

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	§	
	§	
	§	Case No. BKY 02-31674
SHELDAHL, INC.	§	
	§	
Debtor.	§	Chapter 11 Case
	§	
	§	

**RESPONSE OF WELLS FARGO BANK, N.A.
TO DEBTOR’S OBJECTION TO CLAIM**

COMES NOW Wells Fargo Bank, N.A., formerly known as Wells Fargo Bank Minnesota, N.A. (“Wells Fargo”), as successor in interest to Norwest Bank Minnesota, National Association, as Trustee for Registered Certificateholders of J.P. Morgan Commercial Mortgage Finance Corp., Mortgage Pass-Through Certificates Series 2000-C9 (the “Trust”), and files this Response (the “Response”) to the Debtor’s Objection to Claim No. 700 (the “Objection”), and in support thereof, would respectfully show this Court as follows:

RESPONSE

LEGAL ARGUMENT¹

1. Section 503(b)(1)(A) of the Bankruptcy Code provides that an administrative expense claim shall be allowed for “the actual, necessary costs and expenses of preserving the estate.” §503(b)(1)(A).

A. *THE POST-PETITION RENT ADMINISTRATIVE EXPENSE CLAIM*

2. As set forth in the Administrative Expense Claim filed by Wells Fargo (as amended, the “Administrative Claim”), the Debtor continued to use and/or occupy the Building on a post-petition basis, by storing property and equipment thereon, without paying rent as required under the Lease and Sublease. Such use and occupation of the Building clearly

benefited the Debtor's estate as an integral part of its liquidation. As discussed below, the Trust has a valid lien on such rents pursuant to the Assignment of Leases and Rents (the "ALR") and the right to collect such rents pursuant to the Sublease.

3. In its objection, the Debtor alleges that the Trust is not entitled to an administrative expense claim because such claim did not arise out of a "transaction with the estate." However, a "transaction with the estate" references any obligations arising with the estate or debtor-in-possession on a post-petition basis. See *In re White Motor Corp.*, 831 F.2d 106 (6th Cir. 1987). In this case, the Debtor's continued use of the Building on a post-petition and beneficial basis clearly constitutes a "transaction with the estate." Furthermore, the Debtor has not offered any authority that the Trust's continuing rights with respect to the Debtor under the Loan Documents are insufficient to qualify as a "transaction with the estate." Also, the Debtor argues that the Trust is not entitled to an administrative claim because "Wells Fargo has not taken possession of the property ... [and] ... the right to collect rents, even under an assignment of rents, is an incident of possession and mortgagee does not have any right to collect by virtue of its mortgage alone, which does not give it possession. Any assignment of rents must be activated by the mortgagee taking possession." See *Objection* at ¶ 32.

4. Apparently, the Debtor has failed to fully read the ALR in question. The ALR constitutes a present, absolute and unconditional assignment in which the Trust granted to the Debtor a "revocable license to operate and manage the Property and to collect the Rents." See *ALR* at Section 4.1. In this respect, upon a default of the ALR (which has occurred),

¹ Please note that any capitalized terms not otherwise defined in this Response shall have the meaning ascribed to such term in the Administrative Claim.

“the license granted to the [Debtor] herein shall automatically be revoked and Lender shall immediately be entitled to possess and apply all Rents, whether or not [the Trust] enters upon and takes control of the Property.” See id.

Therefore, the ALR did, in fact, authorize Wells Fargo to collect rent from the Debtor for its use of the Building.

5. Furthermore, Section 21.04 of the Sublease states as follows:

“Landlord’s Right Exercisable by Lender. Each of Landlord [LLC] and Tenant [Debtor] covenants that [the Trust] shall have the right to exercise any and all of the rights of Landlord [LLC] under the Sublease.” See Sublease at Section 21.04.

Therefore, it is quite clear that any “activation” needed by the Trust has indeed occurred and its rights to collect rent from the Debtor vis a vis the Landlord [LLC], even apart from the ALR, is present, contractual and fully enforceable per the Sublease.

6. In addition, as mentioned above, the Debtor had unrestricted access to the Building which it used for storage purposes. In determining whether estate property storage costs are administrative expenses, critical factors are whether premises were utilized for storage and whether the estate thereby was benefited. See In re Aerospace Technologies, Inc., 199 B.R. 331 (Bankr. M.D.N.C. 1996) (providing storage for estate property is “preserving the estate” within meaning of administrative expense provision, and postpetition storage costs, therefore, may be granted administrative expense priority). Furthermore, there is no requirement that the debtor and claimant be party to an expense or storage agreement. *Id.*

7. Wells Fargo continuously urged the Debtor to remove its unencumbered property (i.e., not encumbered by the Trust’s liens) that was stored at the Building. The Debtor did not comply with such request until it began selling its property and equipment from the Building. Certain of such equipment and fixtures were encumbered by the Trust’s liens and the Trust did not consent to such sale (see below re: 400T Chiller).

8. Where a creditor has a claim for costs incurred in connection with the storage of estate property, the measure of the benefit to the estate is the reasonable rental value of the premises that were occupied and used to store the property. See *In re Aerospace Technologies, Inc.*, 199 B.R. at 331. A commercial lessor is entitled to a priority administrative expense claim for use and occupancy of leased premises to store estate assets following postpetition rejection of the underlying lease.

9. The Debtor's characterization of the storage of property and equipment as neither "actual" nor "necessary" is disingenuous at best. See *Objection* at ¶ 33. A showing of postpetition use by a debtor of consideration provided for under a contract is sufficient to satisfy an administrative expense claimant's burden of demonstrating some "benefit" to the estate. See *In re Beverage Canners Intern. Corp.*, 255 B.R. 89 (Bankr. S.D. Fla. 2000). Here, by using the Building as a storage facility, the Debtor saved thousands of dollars of storage and moving costs, clearly benefiting the estate. Moreover, the delay in removing such property prevented the Trust from initiating a timely foreclosure.

10. In its Objection, the Debtor also contends that the Trust is not entitled to its Administrative Claim as a result of the Debtor's setoff rights against Sheldahl Colorado, LLC ("LLC") under the Lease and Sublease. However, the Debtor has no rights of setoff with regard to the Lease and Sublease to which it and its wholly owned subsidiary are the parties. Section 553 of the Bankruptcy Code prevents the application of setoff to the extent that "the debt owed to the debtor by such creditor was incurred by such creditor ... for the purpose of obtaining a right of setoff against the debtor." See 11 U.S.C. § 553(a)(3)(c). Since the simultaneous lease and sublease affiliate arrangement ostensibly was designed to create setoff rights, the Debtors should not be permitted to assert such rights as the basis for the disallowance of the Administrative Claim.

11. In addition, in *In re Communications Dynamics, Inc.*, the court held that under the Uniform Commercial Code, a creditor's right of setoff against sums which it owed to debtor was subordinate to a lenders' lien when the creditor received notice of such lenders' security interest. See *In re Communication Dynamics, Inc.*, 300 B.R. 220 (Bankr. D. Del. 2003). Therefore, the proposition that the Debtor and LLC never paid rent to each other is irrelevant. The Trust is clearly entitled to the rents, and the lease payment history and lease transaction structure should not impede the Trust's enforcement of its rights under the ALR as a result of the Debtor's ineffectual setoff argument.

12. In sum, the Debtor stored certain of its property in the Building on which the Trust has a lien (including its rents) and, therefore, the Trust should be entitled to two months of accrued rent and/or costs of storage.

B. THE 400-T CHILLER ADMINISTRATIVE EXPENSE CLAIM

13. Furthermore, as set forth in the Administrative Claim, the non-consensual sale of the 400T Chiller on a post-petition basis was also beneficial to the Debtor as a material enhancement to the Debtor's estate. In this respect, the Trust has a valid lien on the 400T Chiller pursuant to the Deed of Trust and is entitled to an amount equal to the diminution in the value of the Building resulting from the removal of the Chiller or, at a minimum, the actual proceeds received as a result of the Chiller Sale.

14. The 400T Chiller was sold to a third-party asset purchaser as negotiated by the Debtor (the "Chiller Sale") **without** the consent of the Trust. Pursuant to the Deed of Trust, the Trust has a valid and legally enforceable security interest in all "Fixtures" on the subject property, which specifically includes any air conditioning units (i.e., the 400T Chiller). As a result of the Chiller Sale, the Building has limited air conditioning.

15. While the Debtor acknowledges that the 400T Chiller was intended "to provide water and air cooling required by the operation of process equipment in the facility," see ¶ 21 of

Objection, the Debtor overlooks the 400T Chiller's more critical function of providing cooling capacity for the entire Building. According to the appraisal report dated as of March 5, 2003 by Integra Realty Resources (the "Appraisal"), the cooling capacity of the Building has been reduced from 100% to approximately 35% of the Building area as a result of the removal of the 400T Chiller. Clearly, this has severely impaired the marketability and utility of the Building. The Appraisal states that repairs and enhancements to the 150T Chiller to enable it to cool the remaining 65% of the Building would cost an estimated \$250,000.

16. Furthermore, in August, 2002, the Debtor retained the Colorado Group, Inc. (the "Broker") as a real estate broker to sell the Longmont Facility. The Broker identified a number of issues with the Building that impair its ability to market the Longmont Facility including, but not limited to, the removal by the Debtor of the 400T Chiller from the Building.

17. Again, the Debtor's suggestion that the sale of the 400T Chiller did not benefit the estate strains reality. The Debtor fails to recognize that the 400T Chiller and the proceeds thereof were subject to a lien in favor of the Trust and that, as a result, the proceeds are the property of the Trust and not the Debtor.

18. Accordingly, the Administrative Claim of the Trust set forth herein constitutes an allowable administrative expense claim pursuant to §503(b)(1)(A) of the Bankruptcy Code.

PRAYER FOR RELIEF

WHEREFORE, the Trust requests an order of the Court (1) overruling the Objection, (2) allowing the Administrative Claim in an amount determined by this Court, (3) directing the Debtor to pay the allowed administrative expense claim within thirty (30) days from the entry date of the order; and (4) granting such other and further relief to which the Trust may be entitled.

Dated: March 25th, 2004

Respectfully submitted,

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Series 2000-C9

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Debtor's Objection to Claim No. 700 was served via first class mail, postage prepaid, on the 25th day of March, 2004, as follows:

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