

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Chapter 11 Case
The Fry Machine Vending Corporation,
Debtor. BKY Case No. 3-89-3728
MEMORANDUM ORDER

At St. Paul, Minnesota this ____ day of _____, 1990.

This matter came before the Court on July 11, 1990 for continued hearing on Debtor's objection to the claim of Walden Leasing, Inc. Valerie B. Wagoner represents the Debtor. Calvin R. Kuhlman represents Walden Leasing, Inc. This is a core proceeding under 28 U.S.C. Sections 1334 and 157(a), and Local Rule 103(b). The Court has jurisdiction to determine this matter under 28 U.S.C. Section 157(b)(2)(B). Based upon the arguments of counsel, and all of the files and records in this case, the Court now makes the following Order pursuant to the Federal and Local Rules of Bankruptcy.

I.
FACTS

The Debtor filed its Chapter 11 petition on October 3, 1989. At filing, the Debtor disclosed its pre-petition leases of two automobiles and one truck from Walden Leasing, Inc. (hereinafter "Walden"). Walden valued each vehicle at the beginning of the lease term in Schedule A to the lease agreements: the 1989 Oldsmobile Cutlass at \$13,748.44, the 1989 Pontiac Bonneville at \$17,881, and the 1985 Ford F150 Pickup at \$8,063.44.(1) The Cutlass and Pontiac leases were for 48 months, beginning November 1, 1988. The Cutlass rented for \$309.64, depreciated by \$160.38 each month; the Pontiac rented for \$386.14, depreciated by \$223.56 per month. The Debtor paid a \$325 security deposit on the Cutlass, and \$400 on the Pontiac. The truck lease was for 26 months, beginning December 1, 1988. The truck rented for \$341.55, depreciated by \$240.90 per month.

Footnote 1

Exhibit A to Walden's Motion of November 22, 1989 shows values for the three vehicles which differ from those listed in the rental documents signed by Walden and the Debtor on October 6 and October 20, 1988 and November 16, 1988. The rental document values are used here.
End Footnote

The lease agreements determined Walden's damages for early termination as follows: Walden could demand that the Debtor purchase each vehicle at its depreciated value, defined as its original value less accumulated depreciation, plus certain additional costs, or, as an alternative, Walden could sell the vehicles, and recover from the Debtor any deficiency between the vehicles' sale price and their depreciated value, plus costs of

sale, and rents due under the remainder of the leases.

The Debtor did not pay its August, September, and October 1989 payments for any of the vehicles, for a total pre-petition default under its leases of \$3,112.05. At filing, the Debtor listed Walden's lease claim as unsecured, contingent and unliquidated, in the amount of \$32,588. On November 22, 1989, Walden brought a motion seeking, in the alternative, either to have its leases deemed rejected, or to have a time fixed within which the Debtor must decide whether to assume or reject them, and relief from the automatic stay. On December 12, 1989, the Court ordered the Debtor to either assume or reject the leases by December 22, 1989. The Debtor chose to reject the leases, and returned the Cutlass and the truck in mid-December 1989.(2) The Debtor kept the Pontiac until mid-February 1990, then left it garaged in California. Walden retrieved the Pontiac from California and sold all three vehicles.

Footnote 2

Walden's Proof of Claim is not entirely clear: the serial number of one automobile is referenced in calculating the administrative expense claim through mid-December, and the other automobile serial number is referenced for the claim through mid-February, but the truck is not mentioned. Because the Court ordered assumption or rejection of the leases no later than December 22, 1989, it must be assumed that the truck was also returned in mid-December.
End Footnote

Notice to creditors, sent October 30, 1989, fixed the last date to timely file proofs of claim as the confirmation date, or 90 days after the creditor's meeting required by 11 U.S.C. Section 341, whichever was later. The Debtor's plan was confirmed on April 18, 1990. On April 20, 1990, Walden filed its Proof of Claim for \$13,522.64, of which \$2,163.90 was an administrative claim, and \$11,358.74 an unsecured non-priority claim. On May 17, 1990, the Debtor filed its objection to the unsecured, non-priority portion of Walden's claim on the grounds that it was not timely filed, and that its calculation of the unsecured, non-priority portion of the claim was unclear. Walden responded on July 10, 1990, increasing its unsecured, non-priority claim to \$20,317.78, and sought approval of its entire claim.

II.

ISSUES

1. Should the Court allow any portion of Walden's claim filed after the bar date set by the Notice to File Claims?
2. How much should be allowed?

III.

DISCUSSION

1. Allowance. In this jurisdiction, "informal" claims are allowed with other timely filed claims if: the Debtor lists the creditor in its schedules, the creditor presents the Court with sufficient information to determine the existence, approximate amount, and nature of its claim during the pendency of the bankruptcy case, and the creditor asserts its entitlement to a distribution in records filed with the Court. In re Hart Ski Mfg. Co., Inc., 5 B.R. 326 (Bankr. D.Minn. 1980). Under these circumstances, interested parties have sufficient notice of the claim to file appropriate objections. The Court may allow such a claim as timely filed, even if the creditor files its formal Proof of Claim after the bar date for filing claims has passed. Id. at

327, 328. And see *In re Clapp*, 57 B.R. 921, 925 (Bankr.D.Minn. 1986). Once a creditor establishes its informal claim to the court's satisfaction, a liberal policy regarding amendment is appropriate. *Matter of Donovan Wire & Iron Co.*, 822 F.2d 38 (8th Cir. 1987) quoting *Tarbell v. Crex Carpet Co.*, 90 F.2d 683, 685-86 (8th Cir. 1937). And see *In re Haugen Const. Services, Inc.*, 88 B.R. 214, 217 (Bankr.D.N.D. 1988), *aff'd*. 876 F.2d 681 (8th Cir. 1989).

In this case, Walden has established its informal claim: the Debtor disclosed Walden's leases among its executory contracts, and scheduled its potential claim as unsecured; Walden provided sufficient evidence of its claim for the Court to order the Debtor to assume or reject Walden's leases by December 22, 1989; and, other parties-in-interest were put on notice by the Debtor's schedules and Walden's assertion of its rights during the pendency of the case. Therefore, Walden is entitled to have its claim considered as timely filed.

2. Amount. No objection was filed to Walden's \$2,163.90 administrative expense claim for the Debtor's post-petition use of leased vehicles. Therefore, it is hereby allowed.

The Debtor objected to the unsecured, nonpriority portion of Walden's claim in the amended amount of \$20,317.78. Because Walden has not presented proper documentary or testamentary evidence regarding the unsecured, nonpriority portion of its claim, the record is insufficient to support a determination of its allowed amount under 11 U.S.C. Section 502(g).(3)

Footnote 3

11 U.S.C. Section 502(g), in pertinent part, reads as follows: "A claim arising from the rejection, under section 365 of this title... of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition." The most recent submission by claimant is through argument in counsel's brief. The information is not in verified form by an individual with knowledge.

End Footnote

NOW, THEREFORE, IT IS ORDERED:

1. Walden's administrative expense claim is allowed in the amount of \$2,163.90.
2. Walden shall provide the Court with appropriate evidence of its unsecured, nonpriority claim within 30 days of the date of this Order. The Debtor then has 15 days to raise specific continuing objections to its allowance.

Dated:

Dennis D. O'Brien
U.S. Bankruptcy Judge