UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

Quality Stores, Inc., et al.,

Debtors.

Case No. GG 01-10662
(Jointly Administered)

Chapter 11

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OPINION REGARDING CONAGRA'S CLAIMS RELATING TO CERTAIN LEASE OBLIGATIONS AND DETERMINING ENTITLEMENT TO LETTER OF CREDIT PROCEEDS

Appearances:

Robert J. Bothe, Esq., McGrath, North, Mullin & Kratz, P.C. LLO, Omaha, Nebraska, and Harold E. Nelson, Esq., Borre, Peterson, Fowler & Reens, P.C., Grand Rapids, Michigan, attorneys for ConAgra Foods, Inc.

Colby Anne Kingsbury, Esq., Kirkland & Ellis, LLP, Chicago, Illinois, attorney for debtors Quality Stores, Inc., et al.

I. JURISDICTION

The court has jurisdiction over this bankruptcy case. 28 U.S.C. § 1334. The case and all related proceedings have been referred to this court for decision. 28 U.S.C. § 157(a) and L.R. 83.2(a) (W.D. Mich.). This contested matter is a core proceeding because it concerns the administration of the debtors' estate, 28 U.S.C. § 157(b)(2)(A), allowance of claims against the estate, 28 U.S.C. § 157(b)(2)(B), and turnover of property of the estate, 28 U.S.C. § 157(b)(2)(E).

II. ISSUES

There are two main issues in this contested matter. First, was ConAgra Foods, Inc. (hereinafter "ConAgra") entitled to draw the remaining balance on a standby letter of credit as a result of the Debtors' failure to timely pay its October 2001 lease obligations at two of its store locations? If ConAgra was not entitled to draw on the letter of credit, are the Debtors entitled to any remaining proceeds from the letter of credit? Second, is ConAgra entitled to an administrative expense claim regarding the Debtors' leased property located in Loveland, Colorado? If so, in what amount?

III. FACTS

This chapter 11 case commenced on October 20, 2001, with the filing of an involuntary petition against Quality Stores, Inc. On November 1, 2001, Quality Stores, Inc. and the other Debtors (referred to collectively herein as "the Debtors" or "Quality") consented to the entry of an order for relief.

The court established April 2, 2002 as the bar date for filing administrative claims and claims that arose before the date of the involuntary petition. Under the Debtors' confirmed chapter 11 plan, claims arising out of the rejection of executory contracts or unexpired leases were required to be filed no later than June 12, 2002. Other administrative claims were to be filed no later than June 27, 2002. There is no dispute that ConAgra's asserted administrative claim at issue was timely filed.

A. *The Stock Purchase Agreement and The Letter of Credit*.

1. Background.

Prior to 1997, Country General, Inc. was a wholly owned subsidiary of ConAgra. Although ConAgra was the original lessee of several Country General store locations, most of these leases were subsequently assigned to Country General. Despite the assignments, ConAgra remained liable on the leases as a guarantor.

In 1997, ConAgra sold all of the issued and outstanding stock in Country General to Central Tractor Farm & Country, Inc. n/k/a Quality. The sale transaction was documented by a Stock Purchase Agreement, signed by the parties on June 26, 1997. Exh. 15.

To ensure Quality's timely payment of its lease obligations, Section 3.1.5 of the Stock Purchase Agreement required Quality to execute a standby letter of credit for the benefit of ConAgra. The letter of credit terms were articulated in Exhibit 3.1.5 of the Stock Purchase Agreement and provide that:

> [ConAgra is] to have unilateral right to draw against Letter of Credit *in the event of, and to the extent of, any default by [Quality] . . . in the payment of any rental or other applicable charge or expense due under any lease*. To the extent practicable, [ConAgra] shall provide [Quality] with advance notice of any such draw against a Letter of Credit.

Exh. 15 (Exh. 3.1.5, ¶ 3) (emphasis added). The Certificate for Drawing (which is attached as Annex A to the letter of credit) further details the terms under which ConAgra is entitled to draw on the letter of credit. Exh. H. It states:

> Pursuant to and as provided in Exhibit 3.1.5 of the Stock Purchase Agreement dated as of June 26, 1997 between Central Tractor Farm & Country, Inc. and ConAgra, Inc. (the Stock Purchase Agreement), *[ConAgra] is entitled to making a drawing in respect of payments of rent or other applicable charges or expenses that have not been paid when due (after the*

> *passage of any applicable grace period) under any ongoing obligation lease* (as such term is defined in the Stock Purchase Agreement), and the amount of the sight draft accompanying this certificate does not exceed the amount that the beneficiary is entitled to draw under the letter of credit in accordance with the terms and conditions of said Exhibit 3.1.5.

Exh. H (Annex A, ¶ 2) (emphasis added).

In addition, the terms provide that the letter of credit amount shall be $5,000,000 for the first two years. They further state that "the amount of the Letter of Credit will be reduced in an amount equal to five thirteenths (5/13) of every dollar paid by [Quality] in base rent under lease, such reduction effective one hundred (100) days following such payments so long as no bankruptcy of [Quality] [sic] prior to such time." Exh. 15 (Exh. 3.1.5, ¶ 2).

To effectuate a reduction of the letter of credit amount, Quality was required to execute a Certificate for the Reduction of Amounts Available under Letter of Credit, which was attached to the letter of credit as Annex B. See Exh. H (Annex B). Under the letter of credit terms, Quality was obligated to notify ConAgra of its intended reductions when it submitted the requested reduction to the bank. Exh. H (Annex B, ¶3).

Quality exercised its right to reduce the letter of credit, in accordance with the formula set forth in Exhibit 3.1.5 to the Stock Purchase Agreement and the procedures outlined in the letter of credit, on three occasions. On February 16, 2000, the Debtor reduced the letter of credit by $2,840,767.00. Exh. E. On January 23, 2001, the Debtor reduced the letter of credit by $805,492.00. Exh. F. And, on April 26, 2001, the Debtor reduced the letter of credit by $1,219,220.31. Exh. G. After these reductions, the remaining balance on the letter of credit was $134,520.69.

2. ConAgra's Letter of Credit Draw.

In October, 2001, ConAgra began receiving written notices that the Debtor had not paid its rent obligations under various leases on which ConAgra remained a guarantor. For example, ConAgra was sent a letter with the heading "Landlords [sic] Ten Day Notice" from the landlord at the Yukon, Oklahoma location. Exh. 41. The letter was dated October 18, 2001, and informed ConAgra that October rent for the Yukon location, in the amount of $15,011.52, was past due. Id. ConAgra was sent a similar notice from the landlord of property located in Vidalia, Georgia. Exh. 35. That letter was dated October 25, 2001, and similarly indicated that the Debtor had failed to pay its October rent. Id. The Debtor was sent these notices as well. Exh. 35 & 41.

The default provisions of the Yukon lease state, in pertinent part:

> *In the event of default by Tenant hereunder which shall remain uncured after twenty (20) days notice of the default* . . . within twenty (20) days after Tenant has commenced to cure the default and diligently pursues the curing of the same to timely completion *(except any default involving merely the payment of a sum certain, including Rent, in which case only ten (10) days notice shall be required)* . . . Landlord may . . . repossess [the premises] . . . and/or . . . terminate this Lease . . . or treat the lease as having been breached anticipatorily . . . .

Exh. 38, page 18, ¶ F (emphasis added). The Vidalia lease contains a similar provision and states:

> In the event the Tenant shall, except as provided herein, default in the payment of Rent when due, the Landlord may forward written notice of such default by U.S. Certified Mail, addressed to the Tenant as provided herein, and *failure on the part of the Tenant to cure such default within ten (10) days after the date of receiving said notice*, shall, at the option of the Landlord . . . be cause for termination of this Lease.

Exh. 31, page 17, ¶ 21.B (emphasis added). The court finds that both leases give Quality a ten day grace period after it received notice of a missed rent payment during which to cure the prospective default.

As a result of the notices it received from the Yukon and Vidalia landlords, ConAgra contacted the Debtor to inform it of ConAgra's intention to draw on the letter of credit. ConAgra's first letter to the Debtor was dated October 29, 2001 and stated that ConAgra intended to draw $15,011.22 from the letter of credit for the October rent for the Yukon property. The letter further stated that ConAgra intended to withdraw additional amounts because it "presume[d]" that the Debtor would not be making November rent payments for its Grand Island, Nebraska, Irvington, Nebraska, LaVista, Nebraska, Schuyler, Nebraska, and Ft. Dodge, Iowa locations. Exh. 16.

True to its word, ConAgra executed two sight drafts for draws on the letter of credit. The first sight draft was in the amount of $15,011.52 and the second was in the amount of $105,884.34. Both were dated October 30, 2001 and were sent to Fleet Bank along with a transmittal letter dated October 31, 2001. Exh. 18/N. Neither of these draws actually occurred, however, and ConAgra did not receive the letter of credit proceeds.

Around this same time, checks written by the Debtor to the landlords at the Yukon and Vidalia locations for its October rent were deposited. Although the checks were both dated September 24, 2001, neither was deposited until October 29, 2001. Exh. M (Yukon check) & CC (Vidalia check). The checks cleared the Debtor's account on October 30, 2001. Exh. M & CC.

The court finds that Quality *received* the default notices from the landlords on October 19, 2001 (Yukon) and on October 26, 2001 (Vidalia). This is one day after the respective notices were dated.[1] The court further finds that the Yukon and Vidalia landlords received Quality's October rent payments before the expiration of the ten day grace period.[2] Therefore, Quality was not in "default" under either of the leases as of October 29, 2001.

Apparently unaware of the fact that the October rents had been paid, on November 1, 2001, ConAgra sent another letter to the Debtor informing it that ConAgra intended to draw against the letter of credit for amounts owing under the Vidalia, Georgia lease. Exh. 19. Thereafter, ConAgra prepared an additional Sight Draft and transmitted it to Fleet Bank. This Sight Draft was dated November 2, 2001, and requested a draw of the full balance remaining on the Letter of Credit, $134,520.69. The transmittal letter that accompanied the Sight Draft was dated November 5, 2001.[3] Exh. Q/29. Fleet Bank complied with ConAgra's request and paid the entire balance of the letter of credit to ConAgra on or about November 8, 2001.

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[1] The notices indicate that they were sent via certified mail. Exh. 35 & 41. The evidence before the court, however, does not include receipts that would specify the date the notices were delivered. Although the court suspects delivery of the notices took longer than one day (particularly given the fact that the notices were sent from southern Illinois and Vidalia, Georgia to Muskegon, Michigan), the court concludes that the earliest these notices could have been delivered was one day after they were mailed.

[2] Although the checks may have been received by the landlords earlier, the court finds that, at the latest, the checks were received on the date they were deposited, October 29, 2001.

[3] ConAgra also informed Quality of its intent to draw on the letter of credit in a third and final letter dated November 5, 2001. Exh. 28.

Quality cured its October rent deficiencies within ten days of receiving notices thereof, and was not in "default" under the Yukon or Vidalia leases so as to justify any draw under the letter of credit terms. Therefore, the court finds ConAgra's taking of all remaining letter of credit funds was unauthorized and improper.

3. ConAgra's Entitlement to Draw on the Letter of Credit During November, 2001.

Quality rejected the leases at its Yukon, Oklahoma, Fort Dodge, Iowa, and Glendive, Montana, locations as of November 1, 2001. The November rents for these locations – $10,833.64 for Yukon, $10,208.34 for Fort Dodge, and $2,600.00 for Glendive – total $23,403.01. Quality Pretrial Brief, ¶9.[4] See also Exh. 55.

Although Quality was not technically in default on its November rent at the time ConAgra drew on the letter of credit, the court finds that Quality did not pay its November rent for these locations. Therefore, Quality was eventually (i.e., by mid-November 2001) in default with regard to the three leases. Those defaults would have entitled ConAgra to draw $23,403.01 against the letter of credit.

4. Quality's Failure to Timely Reduce the Letter of Credit.

As noted above, Quality exercised its right to reduce the letter of credit balance on three separate occasions. See Exh. E, F & G. The last of these reductions occurred on April 26, 2001. Now, in connection with this litigation, Quality asserts that it would have been entitled to reduce the letter of credit balance to zero prior to

[4] The testimony provided by ConAgra at trial indicated that it believed the November rent for the Yukon and Fort Dodge locations was $15,177.00 and $15,270.00 respectively. However, ConAgra offered no documentary proof to support these higher asserted amounts.

ConAgra's draw in November 2001.[5] Of course, ConAgra's unauthorized draw preempted any such reduction by Quality.

The court finds that Quality would have been entitled to reduce the letter of credit balance to zero on or before August 2001. Because it failed to exercise this right prior to ConAgra's unauthorized draw, Quality cannot obtain retroactive reduction of the letter of credit balance. It is only entitled to the leftover balance. Therefore, it may exercise its right to reduce (indeed eliminate) the letter of credit proceeds only *after* ConAgra's entitlement to a November rent draw ($23,403.01) is deducted from the original letter of credit balance. Because the balance was in the amount of $134,520.69, Quality is entitled to $111,117.68.

B. *The Loveland, Colorado Damage Claim*.

On April 1, 1999, Quality exercised its option to renew the lease at its Loveland, Colorado location. The lease renewal was effective May 1, 2000 and extended the lease term through April 30, 2003. Exh. 9. From the time the lease was renewed through its rejection, the landlord for Loveland location has been 287 Ventures, LLC (hereinafter the "Loveland landlord").

Quality rejected the Loveland lease effective January 31, 2002. Dkt. 771. On March 28, 2002, the Loveland landlord filed the first of several proofs of claim related to

[5] In its effort to demonstrate it's ability to reduce the letter of credit balance to zero, Quality has applied the "5/13ths" formula to at least two different combinations of data. See Exh. U & EE. Under these calculations, Quality asserts that it would have been able to reduce the letter of credit to zero sometime between 2000 and August 2001. The court need not decide which of these formulas results in the most accurate estimate of the time at which Quality would have been entitled to reduce the letter of credit to zero because, under any calculation, Quality's reduction right would have arisen prior to ConAgra's November 2001 draw.

the leased property. This initial proof of claim characterized the debt owing the landlord as "unsecured" and stated the amount of the debt to be $455,354.76. Exh. 14.

ConAgra also included amounts relating to the Loveland lease in the proofs of claim it filed against the Debtor in March of 2002. Specifically, ConAgra asserted an administrative claim for postpetition rent and taxes in the amount of $3,598.15. Exh. 53. Quality does not dispute this amount or its administrative priority status. On March 30, 2002, ConAgra also filed another "contingent unsecured" claim for $245,907.00 relating to asserted repair/damage costs at the Loveland location. Exh. 55.

The Loveland landlord subsequently demanded $528,944.23 from ConAgra for outstanding rent, tax, and repair obligations on the lease. Negotiations between ConAgra and the Loveland landlord took place, and eventually resulted in a Termination Agreement on April 30, 2002. Exh. 10. Under the Termination Agreement, ConAgra paid the Loveland landlord $425,000.00 in satisfaction of its obligation as guarantor of the lease. Exh. 10.

Seeking indemnification for the amounts it paid under the Termination Agreement, ConAgra filed amended proofs of claim against the Debtor on October 3, 2002. Exh. Z. In its amended proofs of claim, ConAgra seeks to increase its administrative expense claim by *prorating* the $245,907.00 repair/damage costs over the life of the lease – i.e., the date the lease was renewed (May 1, 2000) through the date it was rejected (January 31, 2002). ConAgra asserts, utilizing its proration theory, that $31,336.69 of the $245,907.00 damage claim should be characterized as a postpetition obligation. When added to its $3,598.15 postpetition rent and taxes claim,

ConAgra's total alleged administrative claim for the Loveland location increases to $34,934.84.

The Debtor objects to ConAgra's proration theory and requests that ConAgra's administrative claim be limited to $3,598.15, representing the uncontested postpetition rent and taxes. The court finds there are no facts in the record to support ConAgra's allegation that any damages to the Loveland property occurred postpetition.

IV. DISCUSSION

A. *ConAgra's Letter of Credit Draw*.

A "standby" letter of credit is generally "used in a nonsales transaction as a guarantee against default on contractual obligations." Demczyk v. Mutual Life Ins. Co. (In re Graham Square, Inc.), 126 F.3d. 823, 827 (6th Cir. 1997) (citations omitted). "A letter of credit transaction comprises three separate contracts." Id. In the current dispute between ConAgra and Quality, the court is called upon to analyze the first type of contract, i.e., the underlying contract between Quality, who procured the letter of credit, and ConAgra, the beneficiary under the letter of credit. The issuing bank is not involved in the dispute.

As detailed above, the underlying contract in the letter of credit allowed ConAgra to draw against the letter of credit to reimburse itself for any of Quality's lease obligations that had not been paid when due. However, any such reimbursement was only permitted for deficiencies that remained after the passage of any applicable grace period. In the case of the Yukon and Vidalia leases at issue here, that grace period was ten days after Quality received notice of its potential default. At the earliest, Quality

received the notices regarding its failure to pay October rent for its Yukon and Vidalia locations on October 19 and October 26, 2001, respectively. The Yukon and Vidalia landlords received Quality's October rent payments on October 29, 2001, before the expiration of the ten day grace periods. Since Quality cured its past due rent obligations within the ten day grace periods, it was not in "default" under its lease obligations so as to justify a draw under the letter of credit terms. Accordingly, ConAgra's draw of the letter of credit balance on November 2, 2001 was improper.

Quality rejected the leases for its Yukon, Fort Dodge, and Glendive locations as of November 1, 2001, and never paid November rent for those locations. Consequently, but for its improper draw on November 2, 2001, ConAgra would have been entitled to draw $23,403.01 (representing the November rents for the rejected leases) against the letter of credit in mid-November, 2001.

Quality also asserts that it had the right to reduce the letter of credit balance to zero prior to ConAgra's improper November 2, 2001 draw. The court agrees that Quality had such a right and could have exercised it prior to ConAgra's draw. However, Quality failed to timely act. It has only recently asserted its right to reduce the letter of credit in connection with the present litigation. Based upon this timing, Quality's request to reduce the letter of credit was made *after* ConAgra would have been entitled to draw on the letter of credit for the November rejected lease rents. As a result, Quality is now entitled to the leftover balance of the letter of credit proceeds remaining after ConAgra's November rent draws. The leftover proceeds were wrongfully taken by ConAgra and constitute property of the estate. 11 U.S.C. § 541(a)(1). Quality is entitled to turnover of

these proceeds. 11 U.S.C. § 542(a). ConAgra shall pay Quality $111,117.68 (calculated $134,520.69 minus $23,403.01).

B. *Should the Loveland, Colorado Damage Claim be Prorated?*

In the Sixth Circuit, an administrative "claimant must prove that the debt (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity (or, alternatively, that the claimant gave consideration to the debtor-in-possession); and (2) directly and substantially benefitted the estate." United Trucking Serv., Inc. v. Trailer Rental Co., Inc. (In re United Trucking Serv., Inc.), 851 F.2d 159, 161-62 (6th Cir. 1988) (citation omitted). Normally this two-part test is utilized in those instances when a debtor-in-possession induces a creditor "to part with its goods or services." In re United Trucking Serv., Inc., 851 F.2d at 162. However, when *postpetition damages* are alleged, an "inducement" inquiry is not as important. Id. Rather, the claimant must show that the damages under a breached lease occurred postpetition, thereby, according to the Sixth Circuit, providing benefit to the estate. Id. (citing In re International Coins & Currency, Inc., 18 B.R. 335 (Bankr. D. Vt. 1982) (postpetition damages to leased real property may be allowed as an administrative expense)).[6]

[6] This court believes a related analysis also justifies the grant of an administrative expense when postpetition damages occur to leased property. Under this analysis, the creditor is entitled to an administrative claim if it suffers a detriment as a result of the debtor-in-possession's breach of obligations for which the estate should be held liable. Cf. Reading v. Brown, 391 U.S. 471, 483-85, 88 S.Ct. 1759, 1766-67 (1968) (claims held by victims of a fire negligently caused by the receiver were entitled to administrative priority; "'actual and necessary' costs [of preserving the estate] should include costs ordinarily incident to operation of a business"); Oregon Dept. of Human Resources v. Witcosky, 96 F.3d 1328, 1331 (9th Cir. 1996) ("the rule in Reading applies only in cases involving 'post-petition tort-like conduct'"; although costs relating to the care and transfer of nursing home patients when the home closed were incident to the

On October 3, 2002, ConAgra timely filed its amended proof of claim regarding the Loveland property. See 11 U.S.C. § 501(a). The proof of claim "constitute[s] prima facie evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f). Under § 502(a), the claim "is deemed allowed, unless a party in interest . . . objects." However, the Debtors' objection to ConAgra's claim rebuts the presumption of validity. See In re Gantos, Inc., 181 B.R. 903, 908 (Bankr. W.D. Mich. 1995) (Stevenson, J.). Once the claim has been rebutted, ConAgra has the burden of establishing the validity and amount of its claim by a preponderance of the evidence. Id. Ultimately, this bankruptcy court must "determine the amount of such claim" and allow the claim in the appropriate amount. 11 U.S.C. § 502(b).

The Bankruptcy Code requires that expenses giving rise to administrative claims must be incurred postpetition. 11 U.S.C. § 503(b)(1)(A) ("[T]here shall be allowed administrative expenses . . . including the actual necessary costs and expenses of *preserving the estate*, including wages, salaries or commissions for services *rendered after the commencement of the case* . . . .") (emphasis added); In re United Trucking Serv., Inc., 851 F.2d at 161 (6th Cir. 1988) ("Only those debts . . . that arise *after* the filing of the bankruptcy petition may be accorded administrative expense status.") (emphasis in original); Boyd v. Dock's Corner Assocs. (In re Great Northern Forest Prods., Inc.), 135 B.R. 46, 59 (Bankr. W.D. Mich. 1991) ("Paraphrasing § 503(b)(1)(A) and Sixth Circuit precedent, an administrative priority should be allowed when a claim is

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operation of the debtor-in-possession's business, they were not entitled to administrative priority because they did not result from tort-like conduct).

for an actual and necessary expense, that directly and substantially benefitted the estate, and was incurred postpetition by the debtor in possession").

Without question, ConAgra bears the burden of proving that the damages to the Loveland property occurred postpetition. See In re United Trucking Serv., Inc., 851 F.2d at 162-64 (damages to trailers leased by the debtor, "to the extent that they occurred postpetition . . . were properly accorded priority under § 503"; however, the bankruptcy court must make explicit "findings as to what proportion of the damages occurred prior to filing due to normal wear and tear and aging of the equipment [and] *[o]nly post-filing damages may be treated as an administrative expense* after this allocation is made.") (emphasis added).

ConAgra has failed to meet its burden. It has offered no evidence whatsoever to prove what portion, if any, of the alleged damages to the Loveland property actually occurred postpetition. Instead, relying almost exclusively on "common sense" and "fairness," ConAgra urges this court to prorate the damages over the life of the renewed Loveland lease.[7] ConAgra's proration theory does not substitute for the requisite proofs. The court declines ConAgra's invitation to equitably allow an administrative expense claim based upon speculation.

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[7] In addition to its equitable arguments, ConAgra cites several cases in support of its proration theory. See, e.g., In re Comdisco, Inc., 272 B.R. 671 (Bankr. N.D. Ill. 2002) (discussing proration of administrative expense claims for postpetition rent and taxes); In re Indian Motorcycle Apparel & Accessories Co., Inc., 174 B.R. 659 (Bankr. D. Mass. 1994) (dividing requested attorneys' fees equally between two related debtors); In re Howe Products, Inc., 125 B.R. 313 (Bankr. M.D. Fla. 1991) (prorating rent); In re Tucci, 47 B.R. 328 (Bankr. E.D. Va. 1985) (prorating rent). However, the facts in these cases bear little resemblance to the facts in the present matter. In light of their distinguishable facts, and the relevant Sixth Circuit precedent cited above, these cases deserve no consideration in this court's analysis.

Having failed to meet its burden of proof, the portion of ConAgra's administrative expense claim that relates to Loveland property damages must be completely disallowed. Consequently, ConAgra's administrative expense claim shall only be allowed in the reduced amount of $3,598.15, representing the uncontested unpaid postpetition rent and taxes for the Loveland leased property.

V. CONCLUSION

Quality timely cured its October rent deficiencies within the grace periods provided under the Yukon and Vidalia leases and, therefore, was not in default under the leases within the letter of credit requirements. ConAgra's November 2, 2001 draw against the letter of credit was improper and unauthorized. However, with respect to three leases (Yukon, Fort Dodge, and Glendive) Quality rejected on November 1, 2001, ConAgra was entitled to draw a total of $23,403.01 (representing the November rents) in November 2001. Based upon Quality's right to reduce the letter of credit balance, which arose prior to ConAgra's improper draw, but was not exercised until this litigation, Quality is only entitled to the balance of the letter of credit proceeds, $111,117.68. ConAgra seized the entire balance of the letter of credit when it was only entitled to $23,403.01. The remaining balance in ConAgra's possession is property of the estate. ConAgra shall turnover to Quality the $111,117.68 that it wrongfully seized.

Finally, ConAgra offered no evidence to demonstrate that the alleged damages to the Loveland property occurred postpetition. Therefore, it is not entitled to an administrative expense claim for those alleged damages. ConAgra's administrative

claim for the Loveland property shall be limited to $3,598.15 for postpetition rent and taxes.

An order shall be entered accordingly.

Dated this 26th day of March, 2004
at Grand Rapids, Michigan

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Honorable James D. Gregg
Chief United States Bankruptcy Judge