



SO ORDERED.

SIGNED September 30, 2009.

A handwritten signature in black ink, appearing to read "Robert Summerhays", is written over a horizontal line.

**ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA**

IN RE:

TRI VANTAGE COMPANIES, LLC

CASE NO. 08-50436

Debtor

Chapter 7

MEMORANDUM RULING

The present matter before the court is the Motion for Approval of Administrative Expenses (the "Motion") filed by Steven B. Sweetser. Sweetser was the lessor of the premises occupied by the debtor. This case was originally filed as a case under Chapter 11 of the Bankruptcy Code on March 28, 2008. On January 15, 2009, the case was converted to a case under Chapter 7 of the Code. After considering the parties' submissions, the arguments of counsel, and the relevant authorities, the court **GRANTS** the Motion in part and **DENIES** the Motion in part as follows:

1. Sweetser's request for administrative expense priority for the \$11,250.00 in unpaid lease obligations incurred post-petition but pre-conversion is granted. This amount

is an administrative expense of the Chapter 11 estate.

2. Sweetser's request for administrative expense treatment for unpaid lease obligations incurred after conversion is granted in part. Sweetser is not entitled to the full monthly lease payment post-conversion. The leased property was not fully utilized for an ongoing business after the case was converted to a case under Chapter 7, but was instead temporarily used to store equipment owned by the debtor pending an onsite auction. Sweetser and his workers had full access to the premises up to the time of the auction. The parties opposing the motion (including the Trustee) contend that Sweetser did not properly secure the property post-conversion and property of the estate was lost as a result. The relevant standard for the court is the value of the benefit provided to the estate post-conversion. The court concludes that Sweetser is entitled to administrative expense priority for 50% of the monthly lease payments due from January 15, 2009, through March 30, 2009, for a total of \$4,687.50. This reduced rate is consistent with (1) the limited use of the facility by the Chapter 7 Trustee, (2) Sweetser's unfettered access to the premises, and (3) the security problems resulting in a loss to the estate. In light of the fact that the estate had no use for the premises after the April 2, 2009 auction, Sweetser has not established that the estate received any benefit from the leased property in April 2009.
3. Sweetser's request for administrative expense priority for clean-up costs resulting from the debtor's operations prior to the conversion of the case to a case under Chapter 7 is denied. He has not shown a benefit to the

- estate as required for administrative expense treatment.
4. Sweetser's request for administrative expense priority for premiums he paid to insure the property post-conversion is also denied. Sweetser obtained the insurance on the leased property on January 20, 2009. The Chapter 7 Trustee was not consulted on insurance needs in connection the administration of the estate from January through April 2009. Nor does it appear that the estate received any benefit from the insurance given that there were no ongoing operations and the property was used for a limited purpose. Accordingly, Sweetser has not shown a benefit to the estate as required for administrative expense treatment for these expenses.
 5. Sweetser's request for administrative expense treatment for unpaid taxes from 2005 through 2008 is also denied. While these unpaid taxes may be grounds for an unsecured claim for breach of the lease agreement, they do not qualify for administrative expense treatment. Sweetser has not shown a benefit to the estate as required for administrative expense treatment for these expenses.

In all other respects, the Motion is **DENIED**.

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