

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION DAYTON

In Re: DT INDUSTRIES, INC. : CASE NO. 04-34091
Debtor : Judge Thomas F. Waldron
Chapter 11
: **MOTION TO ALLOW**
: **ADMINISTRATIVE EXPENSE CLAIM**
: **AND TO REQUIRE PAYMENT OF**
: **SAME**

CityWide Development Corporation ("CityWide") pursuant to Sections 503(b), 507(a)(1), and 365(d)(3) of the Bankruptcy Code hereby moves this Court for the entry of an order allowing it an administrative expense and authorizing and directing the immediate payment of the same.

s/Dennis L. Patterson

Dennis L. Patterson #0017225
Curtis F. Slaton #0034587
Bogin Patterson Ellis Slaton & Stump LLC
1200 Talbott Tower
131 N. Ludlow Street
Dayton, Ohio 45402
(937) 226-1200
Fax (937) 226-1625
Facsimile:
Counsel for CityWide Development
Corporation

MEMORANDUM

1. Jurisdiction of the within proceeding is vested in this Court by virtue of the provisions of 28 U.S.C. §§ 1334, 157(b)(2)(A), (B) and (M), 503(b), 507(a)(1), and 365(d)(3) in that there is a matter arising under Title 11, referred to the Court under 28 U.S.C. § 157 (a), and arising out or related to the Chapter 11 proceeding filed on or about May 11, 2004, and is a core proceeding.
2. On or about February 20, 1996 CityWide entered into a lease agreement (the "Factory Lease") with Advanced Assembly Automation ("AAA") whereby AAA agreed to lease certain premises located at the corner of West Fifth Street and Mound Street, Dayton, Ohio from CityWide. A copy of the Factory Lease is attached hereto as Exhibit "A".
3. On or about February 20, 1996 DT Industries, Inc. ("DTI") entered into a Guaranty of Lease ("Guaranty of Factory Lease") whereby it guaranteed the performance and payment of AAA under the Factory Lease to CityWide. A copy of the Guaranty of Factory Lease is attached hereto as Exhibit "B".
4. On or about May 13, 1996 CityWide filed a Memorandum of Lease for the Factory Lease in the office of Joy A. Clark, Montgomery County Recorder. A copy of the Memorandum of Lease is attached hereto as Exhibit "C".
5. On or about April 28, 2003 AAA, DTI and CityWide entered into an Amendment to Lease amending the Factory Lease and revising the rent provided for therein. A copy of the Amendment to Lease is attached hereto as Exhibit "D".
6. The Factory Lease, as amended, provides for the payment of rent in the amount of \$52,869.75 per month, plus real estate taxes. AAA has failed to pay the rent and taxes as agreed, has failed to pay the rent for the months of February, March, April, and May, 2004 in the total amount of \$211,479.00, and has failed to pay the real estate taxes in the amount of \$34,222.60, which were paid by CityWide on February 11, 2004. The security deposit of \$54,230.00 has been applied.
7. On or about March 5, 1999 CityWide entered into a lease agreement (the "Headquarters Lease") with AAA whereby AAA agreed to lease certain premises located at 907 West Fifth Street, Dayton, Ohio from CityWide. A copy of the Headquarters Lease is attached hereto as Exhibit "E".
8. On or about March 20, 1999 DTI entered into a Guaranty of Lease ("Guaranty of Headquarters Lease") whereby it guaranteed the performance and payment of AAA under the Headquarters Lease to CityWide. A copy of the Guaranty of Headquarters Lease is attached hereto as Exhibit "F".
9. The Headquarters Lease provides for the payment of rent in the amount of \$24,954.99 per month for the period commencing May 1, 2003 and concluding April 30, 2004, and for rent in the amount of \$25,395.23 for the period commencing May 1, 2004 and concluding April 30, 2005. The Headquarters Lease also provides that AAA is to pay the real estate taxes. AAA has

failed to pay rent and taxes as agreed. AAA failed to pay the rent for the months of February, March, and April 2004 in the amount of \$74,864.97, and \$25,395.23 for the month of May, 2004, for a total of \$100,260.20, and the real estate taxes in the amount of \$7,461.29. CityWide paid the real estate taxes on February 11, 2004, upon AAA's failure to do so. The security deposit in the amount of \$19,015.00 has been applied.

10. On April 30, 2004 CityWide sent AAA and DTI a notice of default of AAA's obligation to pay rent and taxes by certified mail (a copy of that letter is attached hereto as Exhibit "G"). Section 17 of both the Factory Lease and the Headquarters Lease provides that in the event that the unpaid rent and taxes are not paid within 10 days after written notice is given the leases shall terminate. Section 25(b) of both the Factory Lease and the Headquarters Lease provides that if a notice or demand is sent to the Lessee by certified mail, postage paid, at 313 Mound St., Dayton, Ohio 45407, with a copy to DT Industries, Inc., Corporate Center, Suite 2-300, 1949 East Sunshine, Springfield, Missouri 65804, the notice is complete upon mailing. CityWide sent the notice by certified mail, postage prepaid to the foregoing addresses and to DT Industries, Inc. at 441 W. Elm, Lebanon, Missouri 65536, as well as 907 W. Fifth Street, Dayton, Ohio 45407. Neither AAA nor DTI paid the rent and taxes by May 10, 2004, so the Factory Lease and the Headquarters Lease have been terminated.

11. Section 30 of both the Factory Lease and the Headquarters Lease provides that if AAA remains in possession of the leased premises after termination, the tenancy becomes month to month at a monthly rental equal to 125% of the amount of the monthly rental within the term of the lease. The holdover rent for the Headquarters Lease beginning May 11, 2004 is \$31,744.04. The holdover rent for the Factory Lease beginning May 11, 2004 is \$66,087.19. The total holdover rent is \$97,831.23 per month.

12. On or about May 11, 2004 AAA filed a voluntary Chapter 11 petition.

13. Section 365(d)(3) of the Code requires the debtor-in-possession to pay and remain current in all rent due and owing after an order for relief has been entered until such lease is assumed or rejected.

14. Although the debtor-in-possession continues to use the property described in the Factory Lease and the Headquarters Lease, the debtor-in-possession has not paid the rent for the month to month tenancy for either property.

15. The rent due from the debtor-in-possession under the terms of the holdover tenancies for the Factory Lease and the Headquarters Lease from May 1, 2004, and for which the debtor-in-possession is in violation of § 365(d)(3) of the Code, therefore constitutes an administrative expense under § 503(b) of the Code, for which CityWide seeks immediate payment in full.

16. CityWide further submits that, until the assumption or rejection, while the debtor-in-possession continues to use and occupy the property which is the subject of the Factory Lease and/or the Headquarters Lease, all future rent due under the terms of the leases constitutes an administrative expense.

WHEREFORE, CityWide respectfully requests that the Court enter an order: (1) determining that CityWide is allowed a first priority administrative expense claim pursuant to § 503(b) and 507(a)(1) for rent due under the terms of the Factory Lease and the Headquarters Lease; and (2) authorizing and directing the timely payment of the administrative expense to CityWide pursuant to § 365(d)(3) of the Code for the rent which is due and payable from May 11, 2004, and all future rent on the 11th day of each month thereafter, as it becomes due and payable.

Respectfully submitted,

s/Dennis L. Patterson

Dennis L. Patterson
Curtis F. Slaton

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion To Allow Administrative Expense Claim And To Require Payment Of Same was served upon the following either electronically or by regular U.S. mail, this 13th day of May, 2004:

Ronald S. Pretekin, Esq.
Coolidge Wall Womsley & Lombard
33 W. First Street, suite 600
Dayton, Ohio 45402

Julia W. Brand, Esq.
Kenneth J. Ottaviano, Esq.
Matthew A. Olins, Esq.
Katten Muchin Zavis Rosenman
525 W. Monroe Street
Chicago, IL 60661-3693

U.S. Trustee
170 North High Street, Suite 200
Columbus, Ohio 43215-2403

s/Dennis L. Patterson

Dennis L. Patterson

