

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

IN RE)	
)	Case No. BK 15-41915-11
GAS-MART USA, INC., <i>et al.</i>)	(Lead Case)
)	
Debtors. ¹)	Chapter 11

**MOTION FOR AMENDED ADMINISTRATIVE CLAIM AND
MOTION TO COMPEL IMMEDIATE PAYMENT**

COMES NOW, MHC Truck Leasing, Inc., a/k/a PacLease and for its Motion for Amended Administrative Claim and Motion to Compel Immediate Payment pursuant to 11 U.S.C. §503(b)(1)(A) for unpaid lease payments and obligations for February 2016 in the amount of \$10,539.71 amending the current allowed administrative claim amount of \$10,089.45 for a total amended administrative claim of \$20,629.16 (“Amended Administrative Claim”), and an order from this Court allowing the amended administrative claim and compelling immediate payment, as the actual, necessary costs and expenses of preserving the estate based upon the following.

1. On July 2, 2015 (the “Petition Date”) Debtors commenced these cases by filing a voluntary petition pursuant to Chapter 11, Title 11, United States Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”).

2. MHC Truck Leasing, Inc. (“MHC”) is the lessor of rolling stock leased to Fran Transport & Oil Co. (“Fran”), pursuant to a Lease initially dated June 18, 2007, as amended from time to time. The rolling stock at issue are three (3) 2011 T800 Kenworth

¹ Gas-Mart USA, Inc., debtor and debtor-in-possession in case BK 15-41915-11, Fran Transport & Oil Co., debtor and debtor-in-possession in Case BK 15-41917-11, G&G Enterprises, LLC, debtor and debtor-in-possession in case BK 15-41918-11, and Aving-rice, LLC, debtor and debtor-in-possession in Case BK 15-41919-11 (collectively referred to herein as “Debtors”).

Day cab trucks (“Trucks”).

3. MHC holds an allowed administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A) in the amount of \$10,089.45 pursuant to Agreed Order Allowing Administrative Claim dated January 15, 2016 (Doc. 530). For convenience, a copy of the Agreed Order Allowing Administrative Claim dated January 15, 2016 (Doc. 530).

4. MHC is seeking an amended administrative claim in the total amount of \$20,629.16 for February 2016 lease payment and obligation pursuant to Agreed Order dated August 25, 2015 (Doc. 259) in which Fran agreed to continue paying monthly lease payments to MHC until such time as the lease is assumed by Fran or Fran seeks to reject the Lease. Fran did not pay the monthly lease payment prior to seeking to reject the Lease; therefore, it was incurred while Fran was in possession and enjoyed the use of the Trucks. The invoices representing the lease payments and obligations due and owing for February 2016 are attached hereto, incorporated by reference herein, and labeled Exhibit “1”.

4. MHC timely filed its proof of claim which consists only of the pre-petition due and owing on the date of filing. Fran stipulated that the pre-petition claim was in the amount of at least \$30,919.12. (Doc. # 259).

5. In order to obtain an administrative expense priority and qualify as “actual, necessary costs and expenses of preserving the estate” two elements must be satisfied: (1) the expense must have arisen from a transaction with the estate, and (2) the transaction must have benefitted the estate in a demonstrable way. § 503(b)(1)(A). “Transaction” is broadly defined for purposes of § 503(b)(1)(A). *In re Athens/Alpha Gas Corp.*, 332 B.R. 578, 580 (B.A.P. 8th Cir. 2005).

6. Here, the first element is satisfied because the expense arose from a

transaction with the estate. Fran made a decision to retain the Trucks after filing the bankruptcy petition. This decision, to continue in possession of the Trucks that Debtor does not own, falls within the broad definition of a “transaction with the estate.” *Id.*

7. The second element is whether the Trucks have benefited the bankruptcy estate. The Trucks were necessary since the Trucks were in constant use since this case was filed and arose prior to the pending motion to reject the lease.

8. For the reasons set forth herein, MHC requests that its allowed administrative claim be amended to include the unpaid obligations incurred prior to surrender of the Trucks and immediate payment of the Amended Administrative Claim.

WHEREFORE, MHC respectfully requests that this Court enter its order granting of the allowance of an Amended Administrative Claim in the amount of \$20,629.16, compel immediate payment of the Amended Administrative Claim and granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

ROBERT A. KUMIN, P.C.

By: /s/Scottie S. Kleypas
Scottie S. Kleypas, #50873
Robert A. Kumin, #25226
6901 Shawnee Mission Parkway
Suite 250
Overland Park, KS 66202
(913) 432-1826
Fax: (913) 236-7115
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E-mail: rkleypas@kuminlaw.com
ATTORNEY FOR LESSOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of March 2016, a true and correct copy of the forgoing document was filed with the Court's CM/ECF system, which sent notice to all parties receiving electronic notices.

/s/Scottie S. Kleypas
Scottie S. Kleypas

36 LOCATIONS IN 9 STATES

Visit www.mhc.com for a list of current locations and services.



SERVICING LOCATION

MHC TRUCK LEASING, INC. DBA

MHC TRUCK LEASING
 1528 N. CORRINGTON
 KANSAS CITY, MO 64120
 1-816-483-0137

CONTRACT INVOICE

Invoice No.	Invoice Date	P.O #	Page
L00800000024089	2/08/2016		1

Customer No.	BILLING PERIOD
156571	01-Feb-16 thru 29-Feb-16

Fran Transport & Oil Company
 Gasmat USA Do Not Contact Customer
 10777 Barkley St Ste 200
 Leawood, KS 66211-1162



UNIT NUMBER	ENDING MILES	BEGINNING MILES	TOTAL MILES	RATE	MILEAGE CHG	FIXED CHARGES	OTHER CHGS	TOTAL
6601411	551852	541600	10252	.0941	964.71	2614.17		3578.88
6601482	454501	450796	3705	.0912	337.90	2551.39		2889.29
6601483	388168	382574	5594	.0912	510.17	2551.38		3061.55

THANK YOU FOR YOUR BUSINESS

PLEASE REMIT TO: P.O. BOX 879269
 KANSAS CITY, MO 64187-9269

TERMS
 The invoice is net due 10 days. A late payment charge of 1.5 % per month, which is an annual rate of 18 %, will be added to accounts not timely paid.



SUB TOTAL	9,529.72
SALES TAX	151.36
TOTAL DUE	9,681.08



36 Locations in 9 States, www.mhc.com

MHC TRUCK LEASING, INC. DBA

MHC TRUCK LEASING - KANSAS CITY
 1528 N. CORRINGTON
 KANSAS CITY, MO 64120
 1-816-483-0137

REPAIR ORDER INVOICE

Customer Number: 156571	Phone: (913) 599-5800	Invoice Number: R00807700208492
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Tax Status	Terms	P.O.#	Service Date	Invoice Date
TAX		N/A	2/01/2016	2/01/2016



Fran Transport & Oil Company
 Gasmart USA Do Not Contact Customer
 10777 Barkley St Ste 200
 Leawood KS 66211-1162

Serial Number	Unit Number	Make / Model	Year	License Number	Mileage
1XKDD49X2DJ369430	6601655	KVW/T800	2013		162678

OPERATION 1

COMPLAINT: REPLACE BROKEN WINDSHIELD
 VMRS CODE: 05-002-024-001-03-12
 CORRECTION: REPLACE WITH NEW-GLASS - WINDSHIELD-GLASS-BROKEN
 REPLACED WINDSHEILD DUE TO BEING CRACKED, HAD TO GO TO PARTS
 TO GET IT. SHOULD BE A REBILL TO FRAN.
 1.5 Hours Labor Total -- 202.50

DW1655-30	WINDSHIELDR44-1032'06	1	97.82	<u>97.82</u>
			Parts Total --	<u>97.82</u>
			Total Operation 1 --	300.32



Labor Total	202.50
Parts Total	97.82
Shop Supplies	24.30
Sales Tax	10.20

REMIT TO:
 P.O. BOX 879269
 KANSAS CITY, MO 64187-9269

TOTAL DUE	334.82
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PLEASE PAY FROM THIS INVOICE

TERMS AND CONDITIONS OF THIS SALE ARE SET FORTH BELOW AND THOSE CONTAINED AT WWW.MHC.COM WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE

- PAYMENT:** Customer shall pay Dealer the total amount listed on the Order, which shall be due in cash upon the tender by Dealer to Customer of the Parts, unless and until credit terms for Customer are approved in a writing signed by a corporate officer or authorized manager of the Dealer. For Customers whose credit has been duly approved in advance by Dealer in a writing signed by a corporate officer or authorized manager of Dealer, the amounts due to Dealer for the Parts shall be in accordance with the terms of the Credit Agreement executed by Customer in connection with applying for credit with Dealer. The terms and provisions of any such Credit Agreement signed by Customer are incorporated herein. An interest charge of 1.5% per month will be charged on past due balances.
- ARBITRATION:** Any controversy or claim arising out of or relating to the Order shall be decided by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, subject to the limitations and restrictions as set forth in the Terms and Conditions contained at www.mhctruck.com/dealers/terms

Customer Copy

PAGE: 1
 MHC250RO (07/07)



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 of current locations and services.

SERVICING LOCATION

MHC TRUCK LEASING, INC., DBA
MHC TRUCK LEASING
 1528 N. CORRINGTON
 KANSAS CITY, MO 64120
 1-816-483-0137

RENTAL INVOICE

Invoice No.	Invoice Date	P.O #	Page
K0080000057005	1/29/2016	DOWN 6601411	1

Fran Transport & Oil Company
 Gasmart USA Do Not Contact Customer
 10777 Barkley St Ste 200
 Leawood, KS 66211-1162

Customer No.	BILLING PERIOD
156571	21-Jan-16 thru 29-Jan-16

PACLEASE - The Distinctive Difference



UNIT NUMBER	ENDING	BEGINNING	TOTAL MILES	RATE	FIXED RATE	DESCRIPTION	CHARGES	TOTAL
6601899 S 6601411	66705	64736	1969	.0941		Mileage	185.28	185.28

Driver Trip Records (DTRs) are required by law for all commercial vehicles licensed or permitted to travel in multiple states. This truck may be equipped with a GPS device that will record the required odometer information for you. However, you will still need to turn in all fuel receipts for the rental unit. Failure to provide DTRs and/or fuel receipts in timely manner will result in additional charges to cover the tax liability and penalties. Please contact your local rental representative if you have any questions. Thank you.

THANK YOU FOR YOUR BUSINESS

PLEASE REMIT TO: P.O. BOX 879269
 KANSAS CITY, MO 64187-9269

TERMS
 The invoice is net due 10 days. A late payment charge of 1.5 % per month, which is an annual rate of 18 %, will be added to accounts not timely paid.

SUB TOTAL	185.28
SALES TAX	.00
TOTAL DUE	185.28





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SERVICING LOCATION

MHC TRUCK LEASING, INC., DBA
MHC TRUCK LEASING
 1528 N. CORRINGTON
 KANSAS CITY, MO 64120
 1-816-483-0137

RENTAL INVOICE

Invoice No.	Invoice Date	P.O #	Page
K00800000056921	1/22/2016	DOWN 6601411	1

Fran Transport & Oil Company
 Gasmart USA Do Not Contact Customer
 10777 Barkley St Ste 200
 Leawood, KS 66211-1162

Customer No.	BILLING PERIOD
156571	14-Jan-16 thru 21-Jan-16

PACLEASE - The Distinctive Difference



UNIT NUMBER	ENDING	BEGINNING	TOTAL MILES	RATE	FIXED RATE	DESCRIPTION	CHARGES	TOTAL
6601899 S 6601411	64736	62344	2392	.0941		Mileage	225.09	225.09

Driver Trip Records (DTRs) are required by law for all commercial vehicles licensed or permitted to travel in multiple states. This truck may be equipped with a GPS device that will record the required odometer information for you. However, you will still need to turn in all fuel receipts for the rental unit. Failure to provide DTRs and/or fuel receipts in timely manner will result in additional charges to cover the tax liability and penalties. Please contact your local rental representative if you have any questions. Thank you.

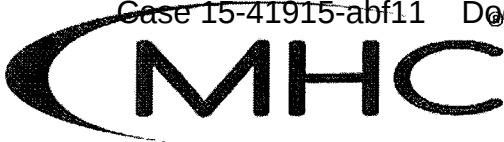
THANK YOU FOR YOUR BUSINESS

PLEASE REMIT TO: P.O. BOX 879269
 KANSAS CITY, MO 64187-9269

TERMS
 The invoice is net due 10 days. A late payment charge of 1.5 % per month, which is an annual rate of 18 %, will be added to accounts not timely paid.

SUB TOTAL	225.09
SALES TAX	.00
TOTAL DUE	225.09





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SERVICING LOCATION

MHC TRUCK LEASING, INC., DBA

MHC TRUCK LEASING
 1528 N. CORRINGTON
 KANSAS CITY, MO 64120
 1-816-483-0137

RENTAL INVOICE

Invoice No.	Invoice Date	P.O #	Page
K00800000056904	1/20/2016	DOWN 6601482	1

Fran Transport & Oil Company
 Gasmart USA Do Not Contact Customer
 10777 Barkley St Ste 200
 Leawood, KS 66211-1162

Customer No.	BILLING PERIOD
156571	15-Jan-16 thru 19-Jan-16

PACLEASE - The Distinctive Difference



UNIT NUMBER	ENDING	BEGINNING	TOTAL MILES	RATE	FIXED RATE	DESCRIPTION	CHARGES	TOTAL
6601655 S 6601482	162664	162632	32	.0912		Mileage	2.92	2.92

Driver Trip Records (DTRs) are required by law for all commercial vehicles licensed or permitted to travel in multiple states. This truck may be equipped with a GPS device that will record the required odometer information for you. However, you will still need to turn in all fuel receipts for the rental unit. Failure to provide DTRs and/or fuel receipts in timely manner will result in additional charges to cover the tax liability and penalties. Please contact your local rental representative if you have any questions. Thank you.

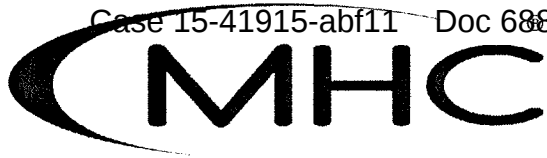
THANK YOU FOR YOUR BUSINESS

PLEASE REMIT TO: P.O. BOX 879269
 KANSAS CITY, MO 64187-9269

TERMS
 The invoice is net due 10 days. A late payment charge of 1.5 % per month, which is an annual rate of 18 %, will be added to accounts not timely paid.

SUB TOTAL	2.92
SALES TAX	.00
TOTAL DUE	2.92





MHC TRUCK LEASING, INC., DBA

MHC TRUCK LEASING
 1528 N. CORRINGTON
 KANSAS CITY, MO 64120
 1-816-483-0137

36 LOCATIONS IN 9 STATES
 Visit www.mhc.com for a list
 of current locations and services.

CUSTOMER INVOICE

Customer No.	Invoice No.	Invoice Date	Page
156571	F00807700009197	02/11/2016	1

Fran Transport & Oil Company
 Gasmart USA Do Not Contact Customer
 10777 Barkley St Ste 200
 Overland Park, KS 66211-1162



UNIT NO.	SALE	TICKET NO.	DATE	QUANTITY	UNIT PRICE	FEES	EXTENDED PRICE	TOTAL QUANTITY	TOTAL PRICE
6601655	Fuel ODO: 162667	852414	02/01/2016	32.0	2.149		68.77		
	Solv DEF BULK V	852414	02/01/2016	3.0	4.910		14.73		
	Total: Fuel							32.0	68.77
	Total: Solv								14.73
6601899	Fuel ODO: 66705	852418	02/01/2016	12.0	2.149		25.79		
	Total: Fuel							12.0	25.79

FUEL	REEFER	OIL	SOLVENT/MISC.	PARTS
44.0/ 94.56	.0/ .00	.00	14.73	.00

THANK YOU FOR YOUR BUSINESS

PLEASE REMIT TO: P.O. BOX 879269
 KANSAS CITY, MO 64187-9269

TERMS
 The invoice is net due 10 days. A late payment charge of 1.5 % per month,
 which is an annual rate of 18 %, will be added to accounts not timely paid.

SUB TOTAL	109.29
SALES TAX	1.23
TOTAL DUE	110.52

