

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: : Case No. 06-51848
: Jointly Administered
CEP Holdings, LLC, et al., :
: Chapter 11
: Debtors. : Judge Marilyn Shea-Stonum

**APPLICATION OF CARLISLE ENGINEERED PRODUCTS, INC. FOR THE
ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

Carlisle Engineered Products, Inc. (“Carlisle”), through its undersigned counsel, hereby submits this Application for the Allowance of an Administrative Expense Claim (the “Application”) pursuant to Section 365(d)(3) of title 11 of the United States Code (the “Bankruptcy Code”). In this Application, Carlisle respectfully requests that this Court enter an order granting Carlisle an allowed administrative expense claim in the amount of \$98,294.64, which is the amount of rent and real property taxes owed by Debtor Creative Engineered Polymer Products, LLC, f.k.a. CEP Acquisition, LLC (“CEPP” or “Debtor”) for the leased real property commonly known as 119 East Dayton Street, West Alexandria, Ohio 4538 (the “Property”) from September 20, 2006 (the “Petition Date” or “Order for Relief Date”) through the lease rejection date of January 18, 2007 (the “Rejection Date”).

STATEMENT OF FACTS

Carlisle was the original lessee under that certain Lease Agreement dated January 12, 2001 for the Property (the "Lease"), in which Botting-Thompson Realty, Ltd. (the "Lessor") is the lessor. A copy of the Lease is attached hereto and incorporated by reference herein as Exhibit A.

The Lease was assigned to CEPP as a result of that certain Asset Purchase Agreement that CEPP entered into with Carlisle on August 17, 2005. As required pursuant to paragraph 19 of the Lease, to obtain the Lessor's consent to the assignment, Carlisle agreed to guarantee CEPP's performance under the Lease.

On the Petition Date, CEPP filed its voluntary petition for bankruptcy relief under the Bankruptcy Code.

Pursuant to this Court's January 19, 2007 Order, Pursuant to Section 365(d)(4) of the Bankruptcy Code, Extending the Time within which the Debtors must Assume or Reject Unexpired Leases of Nonresidential Real Property, the Lease was deemed rejected as of January 18, 2007.

As a result of CEPP's default under the Lease, the Lessor is enforcing its guarantee against Carlisle rather than submitting its claim for administrative expenses against CEPP. Consequently, as guarantor of the Lease and pursuant to Section 365(d)(3), Carlisle hereby submits its claim for delinquent rent and lease rejection damages due under the Lease.

STATEMENT OF LAW

Section 365(d)(3) of the Bankruptcy Code governs the obligations of a debtor-tenant to its landlord during the post-petition, pre-rejection period of a case. See In re Phar-Mor, Inc., 290 B.R. 319, 322 (Bankr. N.D. Ohio 2003). Section 365(d)(3) expressly provides that

a debtor must timely perform all lease obligations from the order for relief date until the lease is assumed or rejected.¹ See In re Lunn, 129 B.R. 476,477 (Bankr. N.D. Ohio 1991) (any requirement of reasonableness or benefit to the estate is inapplicable to 11 U.S.C. § 365(d)(3)). When a debtor-tenant is obligated under a lease to pay rent and real estate taxes, the debtor is responsible for prorated taxes accrued during the post-petition, pre-rejection period and such amounts constitute an administrative expense. See Phar-Mor, 290 B.R., at 328.

Where, as here, a lessor does not assert its right under the lease, a guarantor may assert the lessor's claim. Bankruptcy Rule 3005(a).

Pursuant to Section 365(d)(3), Carlisle has an administrative expense claim totaling \$98,294.64. Specifically, the Lease obligates CEPP to pay a monthly rental payment in the amount of \$12,208.33 and the real estate taxes for the Property. See Exhibit A, at ¶¶ 3 and 6. From the Order for Relief Date until the Rejection Date, CEPP is obligated to pay rent totaling \$48,833.32. In addition, under the Lease, CEPP is obligated to pay \$49,461.32 for accrued real property tax from the Order for Relief Date to the Rejection Date. In this case, the Lessor has failed to assert its rights under the Lease. As guarantor of the Lease, Carlisle has standing to assert its Section 365(d)(3) claim. Accordingly, this Court should award Carlisle an administrative expense claim totaling \$98,294.64.

CONCLUSION

By this Application, Carlisle respectfully seeks the allowance of an administrative expense claim in the amount of \$98,294.64, for rent and real property taxes accrued during

¹ Section 365(d)(3) states as follows:

The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under an unexpired lease of

the period following the Petition Date and preceding the Rejection Date. Carlisle submits that the accrued rent and taxes constitute an administrative expense pursuant to Section 365(d)(3) of the Bankruptcy Code. Carlisle also requests that its allowed administrative claim be promptly paid by CEPP or at such other time as is deemed appropriate by the Court.

Respectfully submitted,

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nonresidential real property until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title 11 U.S.C. § 365(d)(3).

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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