

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
DRF LOGISTICS, LLC, <i>et al.</i> ,	§	Case No. 24-90447 (CML)
	§	
	§	
Debtors. ¹	§	(Jointly Administered)
	§	

**OBJECTION OF LIQUIDATING AGENT TO (I) APPLICATION OF
TRILOGY LEASING CO., LLC FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM UNDER 11 U.S.C. § 503(b)(1)(A)
AND (II) PARTIAL JOINDER OF MITSUBISHI HC CAPITAL (U.S.A.), INC.**

The Liquidating Agent, on behalf of DRF Logistics, LLC and DRF, LLC, as debtors in the above-captioned chapter 11 cases (together, the “**Debtors**”),² submits this objection (this “**Objection**”) to the (i) *Application of Trilogy Leasing Co. LLC for Allowance and Payment of Chapter 11 Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(A)* (Docket No. 576) (the “**Application**”) filed by Trilogy Leasing Co. LLC (“**Trilogy**”) and (ii) *Partial Joinder of Mitsubishi HC Capital (U.S.A.), Inc. to Application of Trilogy Leasing Co., LLC for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503 (B)(1)(A)* (Docket No. 579) (the “**Joinder**”) filed by Mitsubishi HC Capital (U.S.A.), Inc. (“**Mitsubishi**”), and respectfully represents as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: DRF Logistics, LLC (6861) and DRF, LLC (7236). The Debtors’ mailing address is 3001 Summer Street, Stamford, CT 06926.

² “**Debtors**” means, as the context requires, the Debtors prior to or after the effective date of the *Debtors’ Third Amended Joint Plan of Liquidation* (Docket No. 497) (the “**Plan**”) including, where applicable, the Wind Down Estates (as defined in the Plan). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Background

1. Prior to the commencement of these chapter 11 cases, the Debtors used equipment at various leased facilities, pursuant to certain equipment agreements between Debtor DRF, LLC and Trilogy (such equipment, the “**Equipment**” and such agreements, the “**Equipment Agreements**”). Under the Equipment Agreements, the Debtors made, or caused to be made, monthly payments to Trilogy in connection with the equipment (the “**Equipment Payments**”). Prior to filing the Motion to Reject (as defined below), the Debtors made certain postpetition Equipment Payments to Trilogy. Specifically, on account of the Fixture Agreements (as defined below), the Debtors made, or caused to be made, postpetition Equipment Payments to Trilogy totaling \$2,249,250.04 for the period from the Petition Date until September 30, 2024.

2. On September 30, 2024, the Debtors filed the *Motion of Debtors for Authority to Reject Certain Equipment Agreements Effective as of September 30, 2024* (Docket No. 309) (the “**Motion to Reject**”). Pursuant to the Motion to Reject, the Debtors sought to reject the (i) Equipment Agreements not subject to the Adversary Proceeding (as defined below), effective as of September 30, 2024, and (ii) Fixture Agreements, effective as of September 30, 2024, in the event the Debtors are unsuccessful in recharacterizing the Fixture Agreements in the Adversary Proceeding. The Court approved the Motion to Reject on November 25, 2024 (Docket No. 533).

3. On October 1, 2024, Debtor DRF, LLC commenced an adversary proceeding stylized *DRF, LLC v. Trilogy Leasing Co., LLC*, Adv. No. 24-03205 (CML) (the “**Adversary Proceeding**”), pursuant to which DRF, LLC is seeking to recharacterize certain of the Equipment Agreements as disguised financing arrangements (such Equipment Agreements, the “**Fixture Agreements**”) and claw back funds provided to Trilogy on account of preferential and unauthorized postpetition transfers related thereto.

4. On December 27, 2024, Trilogy filed the Application seeking allowance of \$2,249,250.04 as an Administrative Expense Claim (the “**Asserted Claim**”), which amount is equal to the Equipment Payments made pursuant to the Fixture Agreements arising for the period from the Petition Date through September 30, 2024. As set forth in the Application, “Trilogy disputes the validity of the Debtor’s claims in the Adversary [Proceeding], but out of an abundance of precaution files [the] Application in the event the Debtor is successful in its recharacterization effort and the avoidance of the post-petition payments. Trilogy is entitled to have its claim for allowance of an administrative expense claim recognized as an offset against any recovery to which the Debtor may be entitled.”

5. On December 31, 2024, Mitsubishi filed the Joinder to join in the Application with respect to Equipment Agreements, specifically equipment supplement nos. 47 and 69, which were assigned to Mitsubishi on or about December 2022.

Objection

6. The Application does not provide a sound legal basis for the allowance of the Asserted Claim. The Application only cites two cases³ to support Trilogy’s asserted entitlement to an Administrative Expense Claim. These cases involved postpetition payment obligations arising under true leases. Due to the relief sought in the Adversary Proceeding, these cases are not applicable here.

7. First, if DRF, LLC is successful in the Adversary Proceeding, the Fixture Agreements will be recharacterized as disguised financings arrangements (rather than true leases). As a corollary, DRF, LLC will be the owner of the Equipment, rather than lessee, and Trilogy will

³ *In re Sturgis Iron & Metal Co.*, 420 B.R. 716, 756 (Bankr. W.D. Mich. 2009); *Kimzey v. Premium Casing Equip., LLC*, No. 16-CV-01490, 2018 WL 1321971 (W.D. La. Mar. 14, 2018)

be a creditor with respect to an unsecured prepetition loan provided to DRF, LLC to finance its acquisition of the Equipment, rather than a lessor. Parties that lend money to a debtor to finance the acquisition of equipment are generally not entitled to administrative expense claims pursuant to section 503(b)(1)(A) of the Bankruptcy Code for the debtor's use of such equipment after the commencement of a chapter 11 case. *See In re Cent. Foundry Co.*, 48 B.R. 895 (Bankr. N.D. Ala. 1985). For example, in *In re Cent. Foundry Co.*, the United States Bankruptcy Court for the Northern District of Alabama found that a real property lease was a disguised financing rather than a true lease and, as a result, the "lessor" was not entitled to an administrative expense claim for unpaid postpetition "rent" alleged to be owed to the creditor. Instead, the court found that the creditor (the purported lessor) may be entitled to an administrative priority claim solely as a secured creditor for the diminution in the value of its collateral (the real property) during the course of the chapter 11 case. Since the creditor did not put forth any evidence to demonstrate diminution in the value of its collateral, the creditor did not satisfy its burden of proof to assert a valid administrative priority claim. *See id.* Similarly, upon the successful recharacterization of the Fixture Agreements in the Adversary Proceeding, Trilogy would merely have the rights of a creditor—an *unsecured* creditor—without an ownership interest in the Equipment subject to the Fixture Agreements. Trilogy's position that the Debtors should pay for postpetition use of equipment they own is simply unsupported.

8. Second, if DRF, LLC is not successful in the Adversary Proceeding and the Fixture Agreements are found to be true leases, then Trilogy has already received payment for the Debtors' use of the Equipment during their chapter 11 cases through the date such Equipment Agreements were rejected on September 30, 2024. Trilogy is not entitled to retain the postpetition

Equipment Payments and seek the allowance of the Asserted Claim as such Claim will have been satisfied.

9. For the foregoing reasons, Trilogy is not entitled to the Asserted Claim. Accordingly, the Application and Joinder should be denied, and the Court should enter the proposed form of order denying the Application and Joinder annexed hereto as **Exhibit A** (the “**Proposed Order**”).

WHEREFORE the Liquidating Agent respectfully requests entry of the Proposed Order denying the relief requested in the Application and Joinder and such other and further relief as the Court may deem just and appropriate.

Dated: January 17, 2025
Houston, Texas

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*Attorneys for Wind Down Estates and
Liquidating Agent*

Certificate of Service

I hereby certify that on January 17, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Clifford W. Carlson

Clifford W. Carlson

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: DRF LOGISTICS, LLC, <i>et al.</i>, Debtors.¹	§ § § § § § §	Chapter 11 Case No. 24-90447 (CML) (Jointly Administered) Re: Docket Nos. 576, 579, & [●]
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**ORDER DENYING (I) APPLICATION OF
TRILOGY LEASING CO., LLC FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM UNDER 11 U.S.C. § 503(b)(1)(A)
AND (II) PARTIAL JOINDER OF MITSUBISHI HC CAPITAL (U.S.A.), INC.)**

Upon the *Application of Trilogy Leasing Co. LLC for Allowance and Payment of Chapter 11 Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(A)* (Docket No. 576) (the “**Application**”) and the *Partial Joinder of Mitsubishi HC Capital (U.S.A.), Inc. to Application of Trilogy Leasing Co., LLC for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503 (B)(1)(A)* (Docket No. 579) (the “**Joinder**”); and upon consideration of the *Objection of Liquidating Agent to Application of Trilogy Leasing Co. LLC for Allowance and Payment of Chapter 11 Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(A)* (the “**Objection**”);² and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and consideration of this matter and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application, Joinder, and Objection

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Application, Joinder and Objection; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Application and the Joinder are DENIED in their entirety.
2. This Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2025
Houston, Texas

CHRISTOPHER LOPEZ
UNITED STATES BANKRUPTCY JUDGE