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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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4 EASTERN DISTRICT OF CALIFORNIA

5  
6 In re: ) Case No. 09-29162-D-11  
7 SK FOODS, L.P., )  
8 Debtor. ) Docket Control No. LR-3  
9 ) Date: May 26, 2010  
10 ) Time: 10:00 a.m.  
 ) Dept: D  
 )

11 This memorandum decision is not approved for publication and may  
12 not be cited except when relevant under the doctrine of law of  
the case or the rules of claim preclusion or issue preclusion.

13 MEMORANDUM DECISION

14 On April 20, 2010, Chase Equipment Finance, Inc. ("Chase")  
15 filed a request for allowance of an administrative claim in the  
16 amount of \$492,759.34, which is opposed by the chapter 11<sup>1</sup>  
17 trustee in this case, Bradley D. Sharp (the "trustee"). For the  
18 reasons set forth below, the court will grant Chase's request but  
19 allow the trustee to present evidence as to the appropriate  
20 amount of the claim.

21 I. THE POSITIONS OF THE PARTIES

22 Chase asserts an administrative claim for the estate's use  
23 of tomato processing equipment Chase had leased to the debtor in  
24 this case, SK Foods, L.P., prior to the commencement of the case,  
25 equipment that was later transferred to Olam West Coast, Inc.

26  
27 1. Unless otherwise indicated, all Code, chapter, section  
28 and Rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
1330, and to the Federal Rules of Bankruptcy Procedure, Rules  
1001-9036.

1 ("Olam") as part of the trustee's sale of the debtor's business  
2 operations. The trustee contends that (1) the so-called leases  
3 were not true leases, but rather, financing arrangements, and  
4 thus, that Chase is not entitled to an administrative rent claim  
5 in any amount, (2) if the court construes the leases to be true  
6 leases, Chase has not met its burden of proving the extent to  
7 which the estate used the equipment, and (3) that the estate used  
8 only a small portion of the equipment for a short period of time,  
9 and that further proceedings would be required to determine an  
10 appropriate claim for such use. Chase replies that the trustee  
11 is judicially estopped from denying that the leases are true  
12 leases and that the estate's use of the equipment in its  
13 operations and in the sale of the debtor's business constituted  
14 an actual and necessary expense of preserving the estate on  
15 account of which Chase has an administrative claim.<sup>2</sup>

## 16 II. ANALYSIS

17 This court has jurisdiction over the request pursuant to 28  
18 U.S.C. §§ 1334 and 157(b)(1). The request is a core proceeding  
19 under 28 U.S.C. § 157(b)(2)(B).

### 20 A. Judicial Estoppel

21 Judicial estoppel is an equitable doctrine that  
22 precludes a party from gaining an advantage by  
23 asserting one position, and then later seeking an  
24 advantage by taking a clearly inconsistent position.  
25 Rissetto v. Plumbers & Steamers Local 343, 94 F.3d 597,  
600-601 (9th Cir. 1996); Russell v. Rolfs, 893 F.2d  
1033, 1037 (9th Cir. 1990). This court invokes  
judicial estoppel not only to prevent a party from

26 2. As discussed below, the court finds it unnecessary to  
27 determine whether the agreements in question were true leases or  
28 disguised security agreements. Thus, the court uses the term  
"leases" herein to describe the agreements or contracts in  
question.

1 gaining an advantage by taking inconsistent positions,  
2 but also because of "general considerations of the  
3 orderly administration of justice and regard for the  
4 dignity of judicial proceedings," and to "protect  
5 against a litigant playing fast and loose with the  
6 courts." Russell, 893 F.2d at 1037.

7 Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th  
8 Cir. 2001).

9 There are three non-exclusive factors a court may consider  
10 in determining whether to apply judicial estoppel: (1) whether  
11 the "party's later position was clearly inconsistent with its  
12 earlier position," (2) "whether the party has succeeded in  
13 persuading a court to accept that party's earlier position, so  
14 judicial acceptance of an inconsistent position in a later  
15 proceeding would create 'the perception that either the first or  
16 the second court was misled,'" and (3) "whether the party seeking  
17 to assert an inconsistent position would derive an unfair  
18 advantage or impose an unfair detriment on the opposing party if  
19 not estopped." Hamilton, 270 F.2d at 782-83, quoting New  
20 Hampshire v. Maine, 532 U.S. 742, 750-51 (2001).

21 In the Ninth Circuit, application of judicial estoppel  
22 requires a finding that "the court relied on, or 'accepted,' the  
23 party's previous inconsistent position." Hamilton, 270 F.2d at  
24 783, citing Interstate Fire & Casualty Co. v. Underwriters at  
25 Lloyd's, London, 139 F.3d 1234, 1239 (9th Cir. 1998); Masayesva  
26 v. Hale, 118 F.3d 1371, 1382 (9th Cir. 1997).

27 The court will address these three questions to determine  
28 whether the trustee should be estopped from espousing his present  
position that Chase's agreements with the debtor were disguised  
secured transactions rather than true leases.

1 1. Earlier Contrary Position Accepted by the Court

2 Chase begins with the schedules filed in this case.<sup>3</sup> The  
3 trustee listed on the G-schedule most of the debtor's agreements  
4 with Chase Equipment Leasing, Inc., and its predecessor, Bank One  
5 Leasing Corporation. Specifically, he listed various leases and  
6 lease amendments, identifying them by date and/or "lease schedule  
7 number;" namely, Lease Schedule Nos. 1000119253, 1000128455,  
8 1000129904, and 1000126293. He also listed a "Loan and Security  
9 Agreement," as Loan No. 1000119526, and in a later document, he  
10 added a second "Loan Agreement," No. 1000118109.<sup>4</sup> In other  
11 words, he identified in total four "lease schedules" and two  
12 "loan agreements."<sup>5</sup> Lease Schedule Nos. 1000119253, 1000128455,  
13 1000129904, and 1000126293 are the agreements under which Chase  
14 now asserts an administrative claim.

15 The trustee's decision to list these agreements on the G-  
16 schedule rather than the D-schedule is not particularly  
17 significant in light of the disclaimer included with the  
18 schedules:

19 Certain of the agreements listed on Schedule G may be  
20 in the nature of conditional sales agreements or  
21 secured financings. The presence of a contract or

22 3. The schedules and statement of financial affairs in this  
23 case were filed by the trustee rather than the debtor, pursuant  
24 to §§ 521 and 1106(a)(2).

25 4. See Exhibits A-B to Chapter 11 Trustee's Motion for  
26 Authorization to Assume and Assign Executory Contracts and  
27 Unexpired Leases in Connection With the Sale of Substantially All  
28 of the Debtors' Assets, filed June 15, 2009, Exhibit A, p. 23.

29 5. These appear to correspond with the "four equipment  
30 operating leases and two capital leases" with Chase the debtor  
31 had earlier identified. See Declaration of Lisa Crist in Support  
32 of Chapter 11 Petitions and First Day Pleadings, filed May 8,  
33 2009, ¶25.

1 agreement on Schedule G does not constitute an  
2 admission that such contract or agreement is an  
3 executory contract or unexpired lease.<sup>6</sup>

4 However, the distinction made in the G-schedule listings between  
5 lease schedules and loan agreements and especially the language  
6 of the disclaimer itself clearly support a finding that the issue  
7 of leases versus secured transactions was or should have been on  
8 the trustee's radar screen.

9 In fact, the question was addressed directly early on. On  
10 June 11, 2009, apparently in response to concerns raised by the  
11 proposed purchaser, Olam, Chase's counsel wrote to the trustee's  
12 special counsel and financial advisors, presenting an analysis of  
13 the issue and concluding that the lease schedules were true  
14 leases rather than disguised secured transactions.

15 On June 15, 2009, the trustee filed two motions -- to  
16 approve the sale of the assets of the debtor's business as a  
17 going concern (the "Sale Motion") and to approve the assumption  
18 and assignment to the proposed buyer of specifically enumerated  
19 executory contracts and unexpired leases, including the Chase  
20 agreements identified as Lease Schedule Nos. 1000119253,  
21 1000128455, 1000129904, and 1000126293 and Loan Nos. 1000119526  
22 and 1000118109 (the "Assumption Motion"). The Sale Motion  
23 expressly addressed the issue of leases versus disguised secured  
24 transactions, although not specifically in connection with the  
25 Chase agreements:

26 / / /

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27 6. Schedules of Assets and Liabilities for SK Foods, L.P.,  
28 a California limited partnership, filed June 5, 2009, Global  
Notes and Statement of Limitations, Methodology and Disclaimer  
Regarding Schedules and Statements, ¶4(h).

1 To the extent the equipment is the subject of a true  
2 lease, the underlying lease will require assumption and  
3 assignment to the Buyer. The separate Assumption  
4 Motion filed by the Chapter 11 Trustee identifies those  
5 unexpired leases and executory contracts that the  
6 Successful Bidder has identified to be assumed and  
7 assigned as part of the Sale. It is contemplated that  
8 any equipment lessors to unexpired leases that are  
9 included as an Assumed Contract will support the  
10 assignment to the Buyer. The Chapter 11 Trustee  
11 intends to sell free and clear of any equipment liens  
12 representing disguised conditional sales contracts.  
13 The Chapter 11 Trustee further anticipates that the  
14 creditors will consent to the Sale (allowing the sale  
15 to occur pursuant to Section 363(f)(2)). In the  
16 absence of such consent, the Chapter 11 Trustee may  
17 sell free and clear of any equipment liens pursuant to  
18 Section 363(f)(3) (purchase price exceeds the value of  
19 the liens) or Section 363(f)(1) (as noted above).<sup>7</sup>

20 In support of the Sale Motion, the trustee declared, "The  
21 terms of the Purchase Agreement anticipate that the Sale will be  
22 conditioned upon the assumption and assignment of certain  
23 executory contracts and unexpired leases of the Debtors and  
24 certain Related Parties," and identified a list filed as Exhibit  
25 A, including the four Chase lease schedules and the two Chase  
26 loans agreements, as "a list of the Assumed Contracts which may  
27 be assumed and assigned as part of the Sale."<sup>8</sup> In support of the  
28 Assumption Motion, the trustee declared, "In my opinion, the  
contracts listed in Exhibit A to the Assumption Motion will  
benefit the estate and the overall sale process."<sup>9</sup>

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23 7. Chapter 11 Trustee's Motion for Order Approving Going  
24 Concern Sale of Substantially All Operating Assets Pursuant to 11  
U.S.C. § 363, filed June 15, 2009, ¶44.

25 8. Declaration of Bradley D. Sharp in Support of "Chapter  
26 11 Trustee's Motion for Order Approving Going Concern Sale of  
27 Substantially All Operating Assets Pursuant to 11 U.S.C. § 363,"  
28 filed June 15, 2009, ¶8.

9. Declaration of Bradley D. Sharp in Support of "Chapter  
(continued...)

1 On June 16, 2009, Chase opposed both motions on the ground  
2 of the trustee's failure to list and propose payment of the  
3 amounts necessary to cure existing defaults under the lease  
4 schedules. Chase also objected to the sale of its collateral  
5 unless its loans would be paid in full.

6 On or about June 19, 2009, the trustee, Chase, and the Bank  
7 of Montreal, as administrative agent for the debtor's primary  
8 secured lenders, entered into an Agreement Re Purchase of  
9 Equipment and Allocation of Proceeds of Sale (the "Proceeds  
10 Agreement"), in which the parties agreed that (1) Chase would  
11 transfer to Olam "the equipment leased by Chase to Debtors under  
12 the following leases (collectively, the 'Chase Equipment') [Lease  
13 Schedule Nos. 1000119253, 1000128455, 1000129904, and  
14 1000126293]," (2) Chase would transfer to Olam "the collateral  
15 securing the following loan agreements (collectively, the 'Chase  
16 Collateral'): . . . (Loan 1000119526), and . . . (Loan  
17 1000118109)," and (3) in exchange for these transfers, Chase  
18 would be paid at least \$5,000,000 from the proceeds of the sale  
19 to Olam.<sup>10</sup>

20 The Proceeds Agreement also provided, at ¶4:

21 Chase's claims against the Debtors' bankruptcy estates  
22 shall not be reduced or affected by this Agreement,  
23 except such claims shall be reduced to the extent of  
the proceeds of the Chase Equipment and the Chase

24 9. (...continued)

25 11 Trustee's Motion for Authorization to Assume and Assign  
26 Executory Contracts and Unexpired Leases in Connection with the  
Sale of Substantially All of the Debtors' Assets," filed June 15,  
2009, ¶13.

27 10. See Order Approving Going Concern Sale of Substantially  
28 All Operating Assets Pursuant to 11 U.S.C. § 363, filed June 26,  
2009 (the "Sale Order"), Exhibit A.

1 Collateral that Chase receives pursuant to this  
2 Agreement.

3 On June 26, 2009, by way of an order submitted by the  
4 trustee's special counsel with a copy of the Proceeds Agreement  
5 attached as an exhibit, the court approved the sale to Olam,  
6 authorized the trustee to perform his obligations under the  
7 Proceeds Agreement, and directed that the sale proceeds be used  
8 "first to pay Chase \$5 million in accordance with the Proceeds  
9 Agreement . . . ." The order expressly states that its terms and  
10 provisions are binding on the trustee, among others.

11 In summary, the trustee submitted to the court a motion --  
12 the Assumption Motion -- expressly identifying the Chase lease  
13 schedules as leases to be assumed by the trustee and assigned to  
14 the buyer, and another motion -- the Sale Motion -- explicitly  
15 discussing the question of true leases versus disguised  
16 conditional sales contracts, but without mentioning any of the  
17 Chase agreements as a subject of that issue. Four days later,  
18 the trustee entered into an agreement -- the Proceeds Agreement -  
19 - that explicitly referred to "the equipment leased by Chase to  
20 Debtors" and expressly distinguished that equipment from "the  
21 collateral securing [certain] loan agreements" between Chase and  
22 the debtors.

23 Finally, the trustee submitted the Proceeds Agreement to the  
24 court as an attachment to his proposed order approving the sale,  
25 an order that he proposed would be binding on himself and others.  
26 At no time, either in response to Chase's opposition to the Sale  
27 and Assumption Motions or otherwise, did the trustee raise with  
28 the court the possibility that the agreements referred to as



1 Lease Schedule Nos. 1000119253, 1000128455, 1000129904, and  
2 1000126293 might be disguised secured transactions.

3 The court concludes that the trustee earlier took a position  
4 contrary to his present position and that he succeeded in  
5 obtaining the court's reliance on and acceptance of that earlier  
6 position, as set forth in the Sale Motion, the Assumption Motion,  
7 the Sale Order, and the Proceeds Agreement, when the court  
8 approved the sale to Olam.<sup>11</sup>

9 It is irrelevant that the trustee and Chase ultimately  
10 presented a united position on the Sale and Assumption Motions,  
11 and that the court was therefore not called upon to decide on the  
12 merits the question whether the Chase agreements were true leases  
13 or disguised financing arrangements. In the Ninth Circuit, "a  
14 favorable settlement constitutes the success required" for the  
15 application of judicial estoppel. Rissetto, 94 F.3d at 605.<sup>12</sup>

16 2. Unfair Advantage / Unfair Detriment

17 The court also concludes that the trustee would derive an  
18 unfair advantage and impose an unfair detriment on Chase if he is

19  
20 11. The court gives no weight to Chase's arguments  
21 concerning the e-mails exchanged between its counsel and the  
22 trustee's counsel after the sale, to the stipulation for an  
23 extension of time for Chase to file its request for an  
24 administrative claim, or to the Shondale Seymour declarations  
filed April 1, 2010 and April 12, 2010, because it does not  
appear the trustee's position in any of these has been accepted  
or acted upon by the court.

25 12. See, e.g., Hay v. First Interstate Bank of Kalispell,  
26 N. A., 978 F.2d 555 (9th Cir. 1992), in which a chapter 11 debtor  
27 in possession obtained bankruptcy court approval of its  
28 settlement of a particular creditor's secured claim and later  
obtained confirmation of a plan of reorganization. The court  
held the debtor estopped from later pursuing claims against that  
creditor that had not been disclosed to the bankruptcy court.  
978 F.2d at 557.

1 not estopped from claiming the leases were really secured  
2 transactions.

3 In Heritage Hotel Ltd. Partnership I v. Valley Bank (In re  
4 Heritage Hotel Partnership I), 160 B.R. 374 (9th Cir. BAP 1993),  
5 the Ninth Circuit Bankruptcy Appellate Panel affirmed the  
6 bankruptcy court's ruling that a revested chapter 11 debtor was  
7 estopped from prosecuting lender liability claims not disclosed  
8 in its bankruptcy schedules, disclosure statement, or plan of  
9 reorganization. 160 B.R. at 379. In assessing the issue of  
10 detriment to the party defending against the claims, the Panel  
11 observed,

12 the confirmed plan was the product of settlement  
13 agreements between the parties in which both sides knew  
14 the facts which could have given rise to a lender  
15 liability claim and both sides gave something up in  
16 exchange for the approval of the plan. Valley  
17 compromised its position and reasonably relied on  
18 representations made by Heritage [the debtor]. . . .  
19 The obvious prejudice is in Valley's reliance on  
20 statements in the plan which would lead Valley to  
21 reasonably believe that Heritage would pay its claim,  
22 not sue them for lender liability.

23 Heritage Hotel, 160 B.R. at 379.

24 Similarly, in this case, both sides must be held to have  
25 given something up in exchange for what they received as a result  
26 of the Proceeds Agreement and the conclusion of the sale.  
27 Obviously, Chase's rights as a lessor under § 365 differed  
28 greatly from those it might have asserted as a secured creditor  
under § 363(f);<sup>13</sup> in entering into the Proceeds Agreement, Chase  
gave up the right to assert whatever protections and remedies may  
have been available to it under § 363(f). Now that the equipment

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28 13. See In re Pacific Express, Inc., 780 F.2d 1482, 1487  
n.5 (9th Cir. 1986).

1 is gone, and with it whatever rights Chase may have had as a  
2 secured creditor, the court concludes that the trustee, having  
3 gained the benefit of concluding the sale without further  
4 opposition from Chase, gave up the right to take the  
5 diametrically opposite position that the leases were actually  
6 secured transactions.

7       The court holds that judicial estoppel applies.<sup>14</sup> Thus,  
8 there is no need for the court to determine whether the lease  
9 schedules were true leases or disguised secured transactions.  
10 The trustee having staked out his position prior to the sale, the  
11 court will treat the leases as true leases for purposes of  
12 allowing Chase's administrative claim for the trustee's use of  
13 the equipment.

14 **B. Actual and Necessary Expense of Preserving the Estate**

15       Section 503(b)(1)(A) affords administrative status to "the  
16 actual, necessary costs and expenses of preserving the estate  
17 . . . ." The burden of proof is on the claimant. Microsoft  
18 Corp. v. DAK Indus. (In re DAK Indus.), 66 F.3d 1091, 1094 (9th  
19 Cir. 1995).

20       The Code does not specifically identify lease payments  
21 prior to the rejection of a true lease as recoverable  
22 administrative expenses, but where the debtor or  
23 trustee actually uses the leased property, the law is  
24 clear that the rent incurred is an allowable  
administrative expense. [Citations]. Where the debtor  
or trustee only uses a portion of the leased property,  
however, he must pay an administrative expense only for  
that portion of the property.

25 In re Thompson, 788 F.2d 560, 562 (9th Cir. 1986).

26 / / /

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28       14. Thus the court need not reach Chase's quasi estoppel  
argument.

1           In In re Patient Education Media, Inc., 221 B.R. 97 (Bankr.  
2 S.D.N.Y. 1998), the debtor, a producer of educational video  
3 tapes, utilized a custom production set on a sound stage at the  
4 creditor's premises, for which the creditor charged a monthly  
5 storage fee. The debtor kept the set on the sound stage even  
6 during production down time, to avoid the costs of dismantling  
7 and storing it elsewhere and then setting it up to resume  
8 production. The debtor also wanted the set available "to impress  
9 potential investors." By the time the debtor filed its chapter  
10 11 petition, it had ceased operations entirely but kept its  
11 production set on the creditor's sound stage post-petition to  
12 enhance its efforts to sell its remaining assets -- its  
13 intellectual property and the set itself.

14           The debtor countered the creditor's administrative claim for  
15 storage fees on the ground that use of the sound stage did not  
16 benefit the estate because the estate was ultimately unable to  
17 sell the set. However, in allowing the claim, the court found  
18 that the debtor

19           knowingly and willingly used [the creditor's] property  
20 . . . to preserve and maximize the assets of the  
21 estate. [fn] It continued to store its set on [the  
22 creditor's] premises--and hence, [the creditor]  
23 continued to render performance--using the entire sound  
24 stage for that purpose. The debtor thought that  
25 preservation of the set was necessary to the  
26 liquidation process, believing that it gave the company  
27 stature and maximized the possibility of a sale of its  
28 assets to another video producer.

25 221 B.R. at 102-03.

26           In this case, the trustee emphasized from the outset the  
27 seasonal nature of the debtor's business, the necessity of  
28 getting the business sold before the start of the tomato packing

1 season on July 1, and the frenetic activity that would commence  
2 on that date. "During the tomato packing season, the plants are  
3 often running twenty-four hours a day, seven days a week. During  
4 that time, the Debtors employ approximately 1,600 workers to  
5 assist in the pack." Sale Motion, ¶8.

6 The trustee's financial advisors advised him "that a sale of  
7 the facilities prior to the commencement of the tomato packing  
8 season, on or about July 1, 2009, has the greatest chance of  
9 maximizing value to the Debtors' estates." Id. at ¶13. Thus,  
10 the trustee informed the court:

11 Starting now, and building up to the date on which  
12 tomato deliveries begin, the Debtors' business requires  
13 that significant funds be expended for maintenance and  
14 repair so that the two plants are ready to run  
15 constantly through the packing season. In addition,  
16 the Debtors must identify, hire and train a significant  
17 number of seasonal employees who must swing into action  
18 as soon as the tomatoes begin to arrive.<sup>15</sup>

16 Further,

17 [t]he Debtors have no financing commitment for the  
18 packing season, and lack sufficient capital to act  
19 without financing. If a purchaser cannot step in by  
20 July 1, 2009, the pack is not likely to occur, and the  
21 value of each plant will decline rapidly, because the  
22 new owner will not receive the benefit of the pack that  
23 is the foundation for each Debtor's annual  
24 production.<sup>16</sup>

22 In these circumstances, the court finds that the very  
23 substantial equipment leased from Chase was an integral part of  
24 the business ultimately sold as a going concern to Olam. The

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25  
26 15. Id.

27 16. Declaration of Brent C. Williams in Support of "Chapter  
28 11 Trustee's Motion for Order Approving Going Concern Sale of  
Substantially All Operating Assets Pursuant to 11 U.S.C. § 363,"  
¶8.

1 equipment enabled the trustee to present the plants to potential  
2 purchasers in the best possible light; without it, a potential  
3 purchaser almost certainly would have concluded it would be  
4 impossible to locate and finance suitable replacement equipment,  
5 physically transport and install it in the debtors' plants, and  
6 hire and train the seasonal employees in the use of the equipment  
7 so the plants would be ready for round-the-clock operations by  
8 July 1.

9 It is also significant that the trustee himself presented  
10 the assumption and assignment of a variety of leases, including  
11 the Chase leases, as an integral part of the sale. The court  
12 concludes that the estate clearly benefited from having the  
13 equipment on-site and available for transfer to Olam such that  
14 Olam would be fully prepared for the start of the tomato pack.

15 **C. Fair and Reasonable Value of the Equipment**

16 The amount of the allowable administrative claim is  
17 determined "under an objective worth standard that measures the  
18 fair and reasonable value of the lease," not the actual value or  
19 benefit conferred on the debtor. Thompson, 788 F.2d at 563.  
20 "The rent reserved in the lease is presumptive evidence of fair  
21 and reasonable value [citations], but the presumption may be  
22 rebutted by demonstrating that the reasonable worth of the lease  
23 differs from the actual contract rate, [citation]." Id.

24 The court concludes that the Chase equipment as a whole was  
25 an essential component of the going concern sale to Olam, and  
26 thus, the court declines to count plastic bins and numbers of  
27 days in use or to split hairs about the portions of the glass  
28 line utilized for General Mills' order as opposed to ASF/La

1 Victoria's order. The court also rejects the trustee's argument  
2 that the estate did not use the majority of the equipment in May  
3 and June because the tomato processing operations remained idle.  
4 Any such conclusion is belied by the information presented by the  
5 trustee in support of his Sale Motion, as discussed above.

6 However, the court will give the trustee an opportunity to  
7 present evidence to overcome the presumption that the fair and  
8 reasonable value of the estate's use of the equipment was the  
9 amount of the rent reserved by the leases. The trustee will have  
10 20 days from the date of this order in which to request an  
11 evidentiary hearing on this issue; if he does not, the court will  
12 enter an order allowing Chase an administrative claim in the  
13 amount it has requested.

14 **III. CONCLUSION**

15 The court concludes that the trustee is judicially estopped  
16 from denying that Lease Schedule Nos. 1000119253, 1000128455,  
17 1000129904, and 1000126293 are true leases, and thus, the court  
18 will grant Chase's request for an administrative rent claim. The  
19 court also concludes that the trustee knowingly and willingly  
20 used all the equipment that was the subject of those leases for  
21 the benefit of the estate, and thus, Chase will be allowed an  
22 administrative claim for the fair and reasonable rental value of  
23 all the equipment. As set forth above, the court will give the  
24 trustee an opportunity to establish that value in an evidentiary  
25 hearing if he does not agree that the rent reserved in the leases  
26 represents a fair and reasonable value.

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The court will enter an appropriate order.

Dated: June 4, 2010

Robert Bardwil  
ROBERT S. BARDWIL  
United States Bankruptcy Judge



**CERTIFICATE OF MAILING**

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed, or caused to be mailed, by ordinary mail a true copy of the attached document to each of the parties listed below:

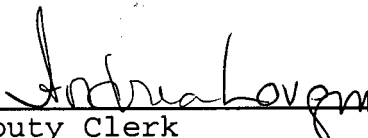
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DATE: June 4, 2010

  
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Deputy Clerk