


SIGNED.

Dated: September 29, 2017




Paul Sala, Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re:
ERIK and DARYL DE JONG,
Debtors.

Chapter 11
Case No. 2:14-bk-00886-PS

**MEMORANDUM DECISION RE:
DEBTORS' OBJECTION THE PROOF OF
CLAIM NO. 7**

Before the Court is the Proof of Claim of Estate of Hugo N. Van Vliet [Claim No. 7-1] and the Debtors' objection thereto [Dkt. 359]. The Court has considered the witness testimony and exhibits submitted by the parties during three days of trial, and the memorandum and arguments of counsel.

This ruling consists of the Court's findings of fact and conclusions of law as required by Bankruptcy Rule 7052 (incorporating Federal Rule of Civil Procedure 52(a)(1)). This matter constitutes a core proceeding over which the Court can make final determinations. 28 U.S.C. § 157(b)(2)(B).

I. Facts

Erik Samuel De Jong and Daryl Lynn De Jong, a/k/a Valkyrie Dairy (the "Debtors"), and Gary Genske ("Genske"), as administrator of the Estate of Hugo N. Van Vliet (the "Landlord"), executed a "Dairy Lease Agreement" dated August 1, 2011 (the "Lease") for the real property

1 located at 19702 ½ West Elliot Road, Buckeye, AZ 85326 (the “Premises”). The lease term ran
2 from August 1, 2011 through July 31, 2015 and required the Debtors to pay monthly rent of \$0
3 for August 2011, \$4,800.00 for September 2011, \$9,600.00 for October 2011 and \$14,400.00 per
4 month for the remaining lease term. The Lease further required the Debtors to pay \$12.00 per
5 month for every cow milked in excess of 1200.

6 While the Lease generally put the requirement on the Debtors to repair and replace the
7 equipment included in the Lease, the Lease required Landlord to “deliver the equipment being
8 leased to the Lessee in good order, condition and repair on the effective date of the Lease.” To
9 that end, Section 5.3 of the Lease required Landlord to:

- 10 a. Reinstall all milking equipment and bring it to normal operating condition;
- 11 b. Bring all leased property and infrastructure to good operating condition;
- 12 c. Lessor to warrant condition of dairy property infrastructure for ninety (90) days
13 after lease commencement;
- 14 d. Ensure that all utilities, fans, misters and shades must be in proper working
15 condition;
- 16 e. Flush, manure and water handling systems must be in normal operating condition
17 to properly handle water runoff in corrals, calf pens, holding pens and transfer
18 lanes;
- 19 f. Re-certify the truck scales.¹

20 Debtors were required to advise Landlord in writing if they disapproved of any of the items
21 identified in paragraph 5.3. If the Debtors disapproved of an item, Landlord had five days to
22 correct the item to the Debtors’ satisfaction. If the Debtors were not satisfied with Landlord’s
23 corrective actions, they could cancel the Lease prior to August 15, 2011.

24 On July 19, 2011, Erik de Jong sent Landlord an email identifying the following
25 necessary repair items:

- 26 • Wooden boards on loading chute: replace missing and broken boards

27
28 ¹ Although the Lease refers to Truck sales, the parties agree that this obligation related to a truck scale located on the Premises.

- 1 • Finish dirt work in all pens
- 2 • Repair or replace all station shades
- 3 • Clean out all manure from pens
- 4 • Hole in various water troughs
- 5 • Cable tensioners need replacing/repairing
- 6 • Dirt level needs to be brought up to an acceptable level (concrete level on posts)
- 7 • A few gates need replacing and repairing
- 8 • Dirt work humps under shade are made of 1' of manure not made of dirt
- 9 • Missing/broken sections of concrete in transfer lanes
- 10 • Ensure all outside lights are working and in proper order
- 11 • Ensure all j-boxes have covers and are protected from the weather
- 12 • Repair plumbing to water troughs- many shutoff valves are broken
- 13 • Missing tin on some shades
- 14 • Repair/replace a few drain grates behind barn
- 15 • Wire to generator stolen needs to be rewired to the barn
- 16 • Water tank leaks
- 17 • Water leaks in the overhead lines in the barn
- 18 • Concrete in footbath needs resurfacing
- 19 • Replace concrete curb for footbath
- 20 • Many broken station operator levers
- 21 • Clean out trash and sediment from all manure water lagoons
- 22 • Block walls at the commodity barn need repairing
- 23 • Maternity area needs cleaning: 2' deep dried manure

24 Mr. de Jong further advised Landlord that it did not need to repair the cooling system (fans and
25 misters) for the cows before May of 2012.

26 Landlord agreed to the Debtors' repair list and contracted with Dave Viss (a well-known
27 dairy repairperson), at the United Dairyman Association (to repair the milking equipment), and
28 other vendors to make the repairs. The Debtors did not exercise their right to terminate the Lease

1 and, instead, took possession of the Premises and began their dairy operation on or about August
2 25, 2011. By the time the Debtors started operating the dairy on August 25, 2011, the Debtors
3 had received a UDA certification that they were a grade A milk producer. The grade A
4 certification continued during the time the Debtors occupied the Premises. On September 12,
5 2011, Mr. de Jong acknowledged that the dairy was in good working order.

6 On October 12, 2011, Mr. de Jong sent an email to Landlord identifying the following
7 repair items that he believed Landlord still needed to address:

- 8 • Trailers #1 and #2- occupants evicted and in need of repairs/replacement
- 9 • David Viss' son's House- Occupants evicted and in need of repairs
- 10 • Lights in feed slab
- 11 • Repair Calf Barn and bring to working order, including water heater. Or guarantee
12 repair at a later date when calf barn is needed
- 13 • Repair and replace broken and missing fans in wash pen
- 14 • Fill all low spots in corrals where water gathers
- 15 • Manger line tarp shades need repair and replacement
- 16 • Bring dirt level to normal level in small pens behind barn
- 17 • Repair broken wall in feed slab area
- 18 • Guarantee three-month period for all cooling fans and equipment during the normal
19 operating time needed (summer)
- 20 • Replace or repair broken air compressors in shop area
- 21 • Replace and repair broken tin and ridge cap in dry cow lots
- 22 • Repair cables in back transfer lanes
- 23 • Repair loose tin in shop area
- 24 • Fill in low spots with dirt in all transfer lanes to the barn or elsewhere
- 25 • Fix all stanchions and replace missing parts
- 26 • Fix Hydraulic Leak in barn for rapid exit system
- 27 • Calibrate Stick reading for milk tanks (Measurements are way off according to UDA)
- 28 • Calibrate, certify, and service scale linkage and assembly (Had it serviced on

1 10/14/11 suggested a complete maintenance tune up, linkages below are seized and
2 need to be broken free and greased) I have received many complaints from our
3 suppliers and vendors that our weights are off by a few thousand pounds
4 Although not acknowledging the obligation to complete all of the items identified, Landlord
5 contracted with third parties to address some of the repair items.

6 Landlord's efforts to satisfy the Debtors were not acceptable to the Debtors who sent
7 Landlord a Notice of Failure to Correct Violations of the Lease Agreement dated December 31,
8 2011. The Notice asserted the following remaining violations of the Lease:

- 9 • Landlord had failed to deliver three of the four residences in move in ready condition.
- 10 • The barn was never brought to normal operating condition' specifically the automatic
11 take-offs, detachers and fans in the drip pens needed repair.
- 12 • The concrete lanes in the cow pens still needed repairs and other small repairs were
13 not completed.
- 14 • Landlord failed to provide warranty work on various equipment malfunctions.
- 15 • That the term "Shades" in the Lease includes shades over the manger lines and that
16 fans were never in proper working order.
- 17 • Landlord failed to fix problems with water runoff in corrals.
- 18 • The scale had calibration and inaccuracy problems.

19 The December 31 Notice advised Landlord that if it did not correct the identified issues in 30
20 days, that the Debtors would repair the items and bill Landlord. Landlord did not agree that it
21 was obligated to make the corrections requested in the December 31 Notice. Landlord pointed
22 out that at the Lease's inception the three residences were occupied – satisfying the move in
23 ready requirement. Landlord further asserted that the barn and equipment were in proper
24 working order, having been repaired at Landlord's expense. Landlord asserted that the manger
25 shades were not an item for which it was responsible, that the water run off was an issue caused
26 by the Debtors' operations and that the scale had been repaired. Finally, Landlord pointed out
27 that it had until May to repair the cow cooling system.

28 After the December 31 Notice, Landlord and the Debtors continued to negotiate a

1 resolution to resolve the Debtors' concerns. Although not listed in the December 31 Notice, Mr.
2 de Jong testified at some length that one of his primary concerns was the need to have Landlord
3 address the repairs to the cow cooling system. During that period, and in violation of their
4 acknowledged obligation to pay rent at the full rate, the Debtors continued to withhold an
5 amount of the rent that they assert represents repairs that they paid. Despite the parties' attempts,
6 they were ultimately unsuccessful in resolving their differences.

7 In February 2012, the UDA offset approximately \$70,000.00 from milk checks owed to
8 the Debtors to pay for repairs done at the Premises. Landlord worked quickly to have the UDA
9 release the Debtors' funds. Landlord then negotiated with the UDA concerning the amounts due
10 and paid the bill in June. Also in February, Mr. de Jong advised his banker that the dairy was
11 doing very well, was achieving remarkable milk for heifers and that the heifers were breeding
12 exceptionally well. He also indicated that he wanted to leave the dairy and "leave the rest of the
13 issues for the next sad sap that rents the place."

14 As far back as December 2011, the Debtors had discussions with Robert Lueck about
15 moving their operations to a dairy that he had for rent. In late February, at or around the time the
16 UDA released its offset on the Debtors' milk check, the Debtors vacated the Premises and moved
17 to Lueck's Sonoran Dairy. On March 3, 2012, after vacating the Premises, the Debtors sent
18 Landlord another Notice of Failure to Correct Violations of the Lease Agreement that purported
19 to terminate the Lease. After the Debtors vacated, the Premises remained vacant until Landlord
20 found a new tenant that began paying rent on October 1, 2013.

21 Landlord has filed a proof of claim in the Debtors' bankruptcy case for \$347,773.46
22 ("Claim") broken out as follows:

- 23 1. Unpaid rent²:
- | | | |
|-------|---------------|-------------|
| 24 a. | October 2011 | \$ 2,011.44 |
| 25 b. | November 2011 | \$ 1,300.25 |
| 26 c. | December 2011 | \$ 6,359.54 |

27 _____
28 ² The Debtors made partial rent payments from October 2011 through March 2012. The Debtors assert that the unpaid rent was expended on repairs to the dairy.

1	d.	January 2012	\$ 13,327.70
2	e.	February 2012	\$ 6,815.36
3	f.	March 2012	\$ 3,696.52
4	g.	April 2012 through	
5		September 2013	\$ 259,200.00
6	2.	Late fee of 6%	\$ 17,562.65
7	3.	Concrete repairs	\$ 15,000.00
8	4.	Excess UDA charges	\$ 7,500.00
9	5.	Manure removal	\$ 15,000.00
10	6.	Legal and admin fees	\$ 2,210.00

11 II. Discussion

12 a. Was the Debtors' Purported Termination of the Lease Effective?

13 The Debtors and Landlord negotiated the Lease prior to the Debtors' taking possession of
14 the Premises. The Debtors viewed the Premises and, as authorized in the Lease, provided
15 Landlord with a list of repair items. The Debtors did not exercise their right to terminate the
16 Lease. Instead, they took possession of and remained on the Premises and started and operated a
17 dairy. Having taken possession of the Premises, and having failed to terminate the Lease by its
18 terms, the Debtors have acknowledged the validity of the Lease. The Debtors' argue that
19 although the Lease was effective, Landlord's failure to satisfy its obligations absolve the Debtors
20 of their obligations under the Lease. Alternatively, Debtors argue that Landlord's failure to
21 repair the Premises to good working order, particularly Landlord's failure to repair the scale and
22 to complete the cow cooling system, constructively evicted them from the Premise.

23 i. Did Landlord's Actions Constitute a Material Breach?

24 Arizona law determines the rights and obligations of the parties under the Lease. *Butner v.*
25 *United States*, 440 U.S. 48, 54-55 (1979). Pursuant to Arizona law, a material breach by one
26 party to a lease excuses the other party from performance. *Specialized Commercial Servs., Inc.*
27 *v. Welsh*, No. 1 CA-CV 08-0181, 2009 WL 532603, at *4 (Ariz. Ct. App. Mar. 3, 2009) (citing
28

1 *Restatement (Second) of Contracts* §§ 237, 238, 225(1)).³ The Debtors argue that Landlord's
2 asserted breaches, as set out in the October list and December 31 Notice absolved them from
3 performing under the Lease and authorized them to terminate the Lease. Primarily, the Debtors
4 rely on Landlord's alleged breach in certifying and repairing the scale, the failure to repair the
5 cow cooling system, and the failure to repair three of the residences on Premises as material.

6 In determining whether a breach is material, the following circumstances are significant:

7 (a) the extent to which the injured party will be deprived of the benefit which he
8 reasonably expected;

9 (b) the extent to which the injured party can be adequately compensated for the
10 part of that benefit of which he will be deprived;

11 (c) the extent to which the party failing to perform or to offer to perform will
12 suffer forfeiture;

13 (d) the likelihood that the party failing to perform or to offer to perform will cure
14 his failure, taking account of all the circumstances including any reasonable
15 assurances;

16 (e) the extent to which the behavior of the party failing to perform or to offer to
17 perform comports with standards of good faith and fair dealing.

18 *Found. Dev. Corp. v. Loehmann's, Inc.*, 163 Ariz. 438, 447, 788 P.2d 1189, 1198 (1990)
19 (citing *Restatement (Second) of Contracts* § 241).

20 Here the purpose of the Lease was to allow the Debtors to operate a dairy. Despite the
21 Debtors continuing request for repairs, they were able to operate a dairy that Mr. de Jong stated
22 was doing very well and which was achieving remarkable milk for heifers. The Debtors were
23 receiving significant sums from the UDA for their grade A milk. Missing from any of the
24 Debtors' evidence or arguments was that they were unable to operate a dairy because of the
25 Landlord's alleged defaults.

26 The Debtors' concerns regarding the cow cooling system did not justify their termination
27 of the Lease. Instead of requiring the repairs at the beginning of the Lease, the Debtors advised
28 Landlord that the repairs were not necessary until May 2012. While the Debtors expressed

³ The Arizona Supreme Court has held that material breach is best analyzed under the analytical framework set out by the *Restatement (Second) of Contracts*. *Foundation Dev. Corp. v. Loehmann's Inc.*, 163 Ariz. 438, 446-47

1 concerns regarding Landlord’s willingness to repair everything on the various lists, they had no
2 reasonable concern that the cow cooling system would go unrepaired. The cow cooling system
3 was included in the initial list provided by the Debtors and was agreed to by Landlord. The
4 Debtors acknowledged the considerable sums Landlord expended to bring the Premises up to
5 good working order and had no good reason to believe that Landlord would not timely make the
6 cooling system repairs. Tellingly, neither of the Debtors’ two Notice of Failure to Correct
7 Violations of the Lease Agreement, one dated December 31, 2011 and one dated March 3, 2012,
8 mention the cow cooling system as a breach of the Lease.

9 Similarly, the scale issues did not warrant a termination of the Lease. The Debtors
10 utilized alternative scales to weigh their feed, milk and cattle. Although inconvenient, the use of
11 other scales did not render the Debtors unable to operate their dairy. Any breach relating to
12 Landlord’s failure to certify or repair the scale gives rise to a claim by the Debtors but not the
13 right to terminate the Lease. *Thompson v. Harris*, 9 Ariz. App. 341, 345, 452 P.2d 122, 126 (Ct.
14 App. 1969) (“breach by one party gives rise only to a suit for damages and does not excuse
15 performance on the part of the other party.”).

16 ii. Were the Debtors Constructively Evicted?

17 The Debtors additionally argue that Landlord’s breaches constructively evicted them
18 from the Premises. “Constructive eviction occurs through intentional conduct by the landlord
19 which renders the lease unavailing to the tenant or deprives him of the beneficial enjoyment of
20 the leased property, causing him to vacate the premises. *Stewart Title & Trust of Tucson v.*
21 *Pribbeno*, 129 Ariz. 15, 16, 628 P.2d 52, 53 (App. 1981)(citing, *Riggs v. Murdock*, 10 Ariz.App.
22 248, 458 P.2d 115 (1969)). Like the discussion above regarding material breaches, Landlord’s
23 alleged breaches did not deprive the Debtors of the beneficial enjoyment of the Premise. The
24 Debtors, who had the right to terminate the Lease up front, accepted the Premises. From August
25 25, 2011 until they vacated the Premises, the Debtors were able to operate their dairy and
26 produce grade A milk. Other than the unfounded fear that Landlord would not repair the cow
27

28 (1990).

1 cooling system before the hot summer months, none of the complained of breaches affected the
2 Debtors' ability to operate a dairy.

3 b. What are Landlord's Damages?

4 Having found that the Lease was valid, the Debtors were obligated to pay rent even if
5 Landlord failed to fulfill its obligations under the Lease. *Thompson v. Harris*, 9 Ariz. App. at
6 345, 452 P.2d at 122. Landlord's asserted rent claim is \$310,273.46, representing the unpaid
7 rent from the Lease's inception through September 2013 (a new tenant began paying rent in
8 October 2013), plus a contractual late fee of \$17,562.65. Landlord also asserts an additional
9 \$39,710.00 in damages for non-rent items. The Debtors assert, however, that Landlord's claim
10 must be reduced or eliminated because of Landlord's (i) failure to mitigate its damages, (ii)
11 responsibilities for its breaches under the Lease and (iii) failure to prove the non-rent damages to
12 which it is entitled.

13 i. Duty to Mitigate

14 A landlord has a duty to mitigate its damages occurring from a breached lease. *Next Gen*
15 *Capital, L.L.C. v. Consumer Lending Assocs., L.L.C.*, 234 Ariz. 9, 12, 316 P.3d 598, 601 (Ct.
16 App. 2013) ("A basic principle of the law of damages is that one who claims to have been
17 injured by a breach of contract must use reasonable means to avoid or minimize the damages
18 resulting from the breach.").

19 The Debtors assert that Landlord failed to mitigate, because Landlord did not actively list
20 the Premises for lease with a real estate broker.

21 Mr. Genske acknowledged that Landlord did not list the Premises for lease with a broker.
22 He explained that failure to list was intentional. Mr. Genske testified that a limited number of
23 real estate brokers specialize in farm leases and that providing the listing to any one of the
24 brokers would likely limit the exposure of the Premises to clients of the other brokers. Instead,
25 Mr. Genske believed that alerting all the brokers to the availability of the Premises best exposed
26 the Premises to the market. Ultimately, Landlord leased the Premises, with the new lease
27 beginning October 2013 -- nineteen months after the Debtors vacated the Premises.

28 Other than complaining about Landlord's mitigation efforts, the Debtors provided

1 insufficient evidence of the appropriate method to mitigate Landlord's damages. The Debtors
2 provided no evidence that additional or different efforts would have resulted in a new tenant
3 more quickly. The lack of evidence is not surprising in light of Erik de Jong's testimony that
4 2012 was a tough year in the dairy business.

5 The Debtors have the burden of establishing Landlord's failure to mitigate. *Stewart Title*
6 *& Trust of Tucson v. Pribbeno*, 129 Ariz. 15, 16, 628 P.2d 52, 53 (Ariz. App. 1972). The
7 Debtors have failed to sustain that burden. Accordingly, the Court will not reduce Landlord's
8 damages for any alleged failure to mitigate.

9 ii. Claims against Landlord

10 Where Landlord's breaches were not material, the Debtors were obligated to pay rent and
11 pursue damage claims against Landlord. *See Thompson v. Harris*, 9 Ariz. App. at 346, 452 P.2d
12 at 127; *see also Leafdale v. Mesa Wholesale Sales Terminal*, 79 Ariz. 112, 114, 284 P.2d 649,
13 650-51 (1955). Much of the Debtors' presentation in opposition to Landlord's claim was an
14 attempt to show the damages caused to the Debtors. If proven, those claims can offset a portion
15 of the Landlord's claim.

16 1. Scale

17 Pursuant to the Lease, Landlord had an obligation to deliver a certified scale. Landlord
18 provided no credible testimony that the scale was certified. The testimony of Mr. Genske and
19 Nick Van Vliet did not establish that the scale was certified. Mr. Genske never viewed the scale
20 or certificate and Mr. Van Vliet's recollection was less than concrete. Conversely, Mr. Viss,
21 who the Court found credible, testified that the scale never operated properly and that he never
22 saw a certificate. Moreover, the Court was never presented with the certificate or the testimony
23 of the party that allegedly certified the scale. On this record, the Court finds that Landlord failed
24 to provide a certified scale. The Court further finds, based upon the testimony of Mr. Viss and
25 Mr. de Jong, that the scale was never in proper working order.

26 The Debtors presented the testimony of Mark Murzda, a representative from Southwest
27 Scale, to address the repairs that were needed for the scale to be certified and operate properly.
28 Mr. Murzda viewed the scale and testified that Southwest Scale could not certify the scale.

1 According to Mr. Murzda the decking around the scale had deteriorated to the point that the scale
2 was unable to repeat accurate weights. The Court found Mr. Murzda to be a knowledgeable and
3 credible witness. Mr. Genske acknowledged receiving Southwest Scale's repair bid of
4 \$40,000.00 for the scale and acknowledged that Landlord refused to approve the large
5 expenditure. Instead, Landlord hired a different repair company that the Court finds did not
6 repair the scale. The Debtors were entitled to a certified scale, the cost of which the Court finds
7 would be \$40,000.00. Accordingly, the Court will reduce Landlord's rent damages by the
8 \$40,000.00 that it should have spent to repair the scale and obtain its certification.

9 2. Residence

10 Landlord agreed that it had not made necessary repairs to one of the homes on the
11 Premises (a home previously occupied by Dave Viss's son). Mr. Genske testified that although
12 the Debtors wanted to completely remodel the residence, the proper repair cost to bring the
13 residence into move in ready condition was between \$10,000.00 and \$15,000.00. Mr. Genske
14 testified that Landlord was prepared to make that expenditure. Despite Landlord's
15 acknowledgment that it was required to make the repairs, Landlord did not make any repairs to
16 the residence. Accordingly, the Court will reduce Landlord's rent damages by the \$15,000.00
17 that it should have spent to repair the residence.

18 3. Trailers

19 Included in the Lease were two trailers. The testimony is conflicting as to whether
20 Landlord repaired one of the trailers. The trailer was occupied when the Debtors took
21 possession. The trailer was re-let after the initial tenant was removed. The Court cannot find that
22 additional repairs were required or the value of those repairs.

23 Landlord acknowledged that it could not put the second trailer into a move in ready
24 condition as required under the Lease. Instead, Mr. Genske testified that the trailer was
25 destroyed. In an attempt to obtain repairs to the trailer, Mr. de Jong indicated that he would
26 reduce the rent due by \$800.00 per month. At one point, Mr. Genske offered a credit of \$600.00
27 against the rent for the destroyed trailer. The Court will use Mr. Genske's estimate of the value
28 of the trailer for rental purposes and reduce the monthly rent due by \$600.00 for the 25 months

1 of rent for which Landlord seeks rent. Accordingly, the Court will reduce Landlord's rent
2 damages by \$15,000.00.

3 4. Cooling system

4 The Debtors also assert that Landlord's failure to repair the cooling system should reduce
5 the damages due Landlord. Unlike the scale, residence and trailer discussed above, Landlord
6 was not required to repair the cooling system until May 2012 – after the Debtors vacated the
7 Premises. Once the Debtors vacated the Premises, Landlord was no longer required to repair the
8 cooling system. *See Restatement (Second) of Contracts* §§ 237, 238, 225(1). Accordingly, the
9 Court will not reduce Landlord's claim by the cost of repairing the cooling system.

10 5. Other items

11 The parties presented conflicting evidence about other repair items that the Debtors
12 believed were necessary. Given the conflicting testimony of the repairs provided and the
13 Debtors' ability to operate a successful dairy that produced grade A milk, the Court cannot find
14 any reduction in Landlord's claim for the remaining items.

15 iii. Proof of non-rental damages

16 Landlord attached to its proof of claim a list entitled Schedule 2, identifying the
17 following items of non-rental damages:

- 18 1. Partial destruction of Corral #9
- 19 2. Repair or replace concrete,
- 20 3. Remove concrete chunks

21 Estimated repair cost \$ 15,000.00

- 22 4. United Dairyman of Arizona

23 Excess charges for milk cooling equipment
24 and overtime labor in July and August 2011,
25 estimated 7,500.00

- 26 5. Stockpiled manure removal, estimated 15,000.00

- 27 6. Dairy abandoned, future security monitoring,
28 to be determined,

1 7. Expense to re-lease dairy, to be determined

2 8. Legal and additional estate administrative fees,

3 to be determined

2,210.00

4 Landlord identified no amount for the claims identified in items 1, 2, 6 and 7 and
5 presented no evidence to quantify those asserted damages. Accordingly, Landlord is not entitled
6 to any award for items 1, 2, 6 and 7.

7 Landlord has estimated the damages that it asserts for the claims identified in items 3, 4,
8 5 and 8. While Landlord did present some evidence regarding the amount that it expended in
9 these categories, Landlord has failed to establish the Debtors' legal obligation for the amounts
10 allegedly expended and/or to identify the specific portion of the amount expended for which the
11 Debtors are responsible. Accordingly, Landlord is not entitled to damages for the items
12 identified in items 3, 4, 5 and 8.

13 III. Conclusion

14 The parties reached an agreement pursuant to which the Debtors leased the Premises
15 from Landlord. Pursuant to the Lease, the Debtors provided Landlord with a list of items to be
16 repaired. Landlord hired third parties to complete the requested repairs. Despite a provision in
17 the Lease authorizing the Debtors to terminate the Lease in its early days, if the Debtors were
18 unhappy with the repairs, the Debtors did not terminate the Lease and remained on the Premises.
19 While on the Premises, the Debtors were able to operate a successful dairy farm. Certain
20 disputes arose concerning whether Landlord was fulfilling its obligations under the Lease.
21 Despite Landlord's many efforts, the Debtors disputed that Landlord had brought the Premises,
22 including equipment and residences located thereon, into an acceptable condition, and vacated
23 the Premises.

24 Where the primary purpose of the Lease was to allow the Debtors to operate a dairy farm,
25 and where Landlord's alleged failures did not prevent the dairy farm operation, the Debtors
26 breached the Lease by withholding or failing to pay rent and by vacating the Premises.
27 Accordingly, the Debtors are obligated to Landlord for the unpaid rent under the Lease. That
28 claim must be reduced, however, by the amounts that Landlord should have expended to comply

1 with its obligations under the Lease before the Debtors' breach. The Court therefore awards
2 Landlord the following:

3	Lease damages	\$310,273.46
4	Less	
5	Scale repair costs	[\$ 40,000.00]
6	Residence repair costs	[\$ 15,000.00]
7	Rent reduction for destroyed trailer	[<u>\$ 15,000.00</u>]
8	Total Claim	\$240,273.46

9 The Court will enter a separate order consistent with this decision.

10 **DATED AND SIGNED ABOVE.**

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