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ENTERED FEB 27 2002

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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IN RE:

CHRISTINA M. KITTEL

Debtor

MICHAEL D. WEBB
U.S. BANKRUPTCY CLERK
DAYTON, OHIO

Case # 00-32035
(Ch. 13, Judge Waldron)

**ORDER GRANTING MOTION OF FORD MOTOR CREDIT FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

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This cause came before the Court on the Motion of Ford Motor Credit Company filed 11/26/2001 requesting allowance and payment of an administrative expense claim pursuant to 11 U.S.C. § 503(b) (1) (A). The Ch. 13 Trustee filed a response and Ford Credit subsequently filed an Affidavit in support of the motion and a hearing memorandum, both of which were filed on 2/5/2002, the date of the hearing.

Ford Credit was the lessor of a 1999 Mercury Cougar leased to the Debtor, Christina Kittel, pursuant to an Ohio Motor Vehicle Lease Agreement. The lease agreement was assumed under the confirmed Ch. 13 plan of the debtor pursuant to 11 U.S.C. §365(a). There is a remaining balance of \$1,867.85 due to Ford Credit on a prepetition default under the lease that was to be cured pursuant to 11 U.S.C. §365(b) (1) (A).

When the lease expired in September, 2001 the vehicle was returned to Ford Credit. The lease agreement assumed by the Debtor contained a provision that the mileage on the vehicle would not exceed 36,020 miles during the lease term but when it was surrendered to Ford Credit in Sept., 2001 the vehicle had been driven 77,841 miles. The lease contractually obligated the

Debtor to pay to Ford Credit \$0.15 per mile for each mile in excess of the 36,020 mileage limitation. Ford Credit's motion asserts that the 41,821 excess miles times the \$0.15 per miles results in the claim amount of \$6,273.00 and that said amount plus the remaining balance of \$1,867.85 on the prepetition default is entitled to administrative expense priority.

The Court finds the motion of Ford Motor Credit Co. to be well taken and grants the same. Allowance of the administrative expense claim however results in an inability for the present Ch. 13 plan of the debtor to pay out within the 5 year limitation provided under 11 U.S.C. §1322(d). Additionally there is a nonbankruptcy codebtor who the Debtor is desirous of protecting by proposing a modified plan to pay Ford Credit's claims in full.

IT IS THEREFORE ORDERED,

1. Ford Credit is hereby allowed an administrative expense claim in the sum of \$6,273.00 for the excess mileage contracted under the assumed motor vehicle lease agreement. In addition the Court finds that the remaining balance of the prepetition default to be cured under the plan pursuant to 11 U.S.C. §365(b)(1)(A) in the sum of \$1,867.85 is likewise entitled to administrative expense priority under 11 U.S.C. §503(b)(1)(A). Ford Credit is thus allowed an administrative expense claim in the total sum of \$8,140.85 (\$1,867.85 + \$6,273.00). Said administrative expense claims shall be paid before distribution to any other creditor in the case.

2. The Debtor is hereby granted 21 days from the date of entry of this order to file a modified plan.

SO ORDERED.

Thomas F. Waldron
Thomas F. Waldron, 2/27/02
United States Bankruptcy Judge

John A. Schuh
John A. Schuh
Schuh & Goldberg, LLP
Ch. Reg. 0015292
Attorney for Ford Credit
2662 Madison Rd.
Cinti., Ohio 45208
(513) 321-7662

Scott Stout 2/26/02
Scott Stout, Staff Attorney for
Jeffrey M. Kellner
Ch. 13 Trustee
131 North Ludlow Street, Suite 900
Dayton, Ohio 45402-1161

Wayne P. Novick
by John A. Schuh
Wayne P. Novick
Attorney for Debtor
2135 Miamisburg-Centerville Road
Centerville, OH 45459

Per faxed authority 2-11-02