

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**In re:**

**Dynamic Tours & Transportation, Inc.,**

**Debtor.**

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**Case No. 6:04-bk-02009-6B1  
Chapter 11**

**ORDER**

This matter came on the motion of General Electric Capital (“GE”) for an Order, (I) Pursuant to 11 U.S.C. §§ 365(d)(2),(10) and 503(b)(1)(A), (A) Requiring Payment of Post Petition Lease Obligations, (B) Compelling Immediate Assumption or Rejection of Leases, and (C) Granting an Allowed Administrative Claim, or (II) Pursuant to 11 U.S.C. §362(d) for Relief from Automatic Stay, and/or (III) for the Payment of Adequate Protection Pursuant to 11 U.S.C. §§ 363(e) and 361. This order determines whether the transaction between GE and Debtor is a lease or a financing agreement. The following Findings of Fact and Conclusions of Law are made after reviewing the evidence.

**FINDINGS OF FACT**

Debtor entered into five Commercial Transportation Lease Agreements (“Lease”) with GE, pursuant to which the Debtor leased certain buses (“Buses”). The consideration Debtor paid GE for the use of the Buses is substantially less than the fair market value of the Buses. The remaining economic values of the Buses at the end of the Lease range from

approximately 25% to over 50%. GE's residual interest at the end of the Lease is substantial.

Debtor was provided with an option to terminate the lease early without incurring an obligation for the total cost of the Buses. The Leases each provide that "the noncancelable minimum Lease term for each Vehicle is 367 days beginning upon the first periodic period payment date. Thereafter, the Lease term may be renewed each payment period, provided that such renewals shall not extend the Lease term beyond the Lease term set in Exhibit C hereto."<sup>1</sup> Debtor could terminate its obligations pursuant to the Leases without incurring an obligation to GE for the full cost of the equipment.

### CONCLUSIONS OF LAW

Whether a transaction creates a lease or security interest is determined by the facts of each case.<sup>2</sup> Section 671.201(37)(a) states:

a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease **not** subject to termination by the lessee (emphasis added); and ...[one of the four enumerated conditions are present in the lease].

Debtor can terminate the lease early without incurring an obligation to GE Capital for the total cost of the Buses. The first part of the statutory test has not been satisfied and the Court need not examine the four criteria set forth in § 671.201(37)(a)(1)-(4).

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<sup>1</sup> Section 4

<sup>2</sup> Fla. Stat. § 671.201(37).

The determination of whether the agreement is a true lease or a security agreement absent a mandated classification is based on the facts of the case. The consideration Debtor paid GE for the use of the Buses is substantially less than the fair market value of the Buses. The residual values or remaining economic lives of the Buses range from approximately 25% to over 50%. GE retained a substantial economic benefit at lease termination and the transaction therefore is a true lease.

**ORDERED, ADJUDGED AND DECREED** that the transaction between GE and Debtor is a lease.

Dated this 19<sup>th</sup> day of November 2004.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge