

The relief described hereinbelow is **SO ORDERED**.

SIGNED this 22nd day of November, 2021.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

SCOTT GREGORY HATTRUP,

Debtor.

Case No. 19-21065

Chapter 13

ORDER GRANTING MOTION FOR ADMINISTRATIVE EXPENSES

Creditor Julia Deng bought debtor Scott Hatstrup's home (the "**Residence**") at an IRS auction in 2016. In 2017, Deng obtained an eviction judgment against Hatstrup in a Johnson County, Kansas, district court. Hatstrup appealed the eviction and filed an \$18,000 bond—set by the Kansas district court based on its estimate that fair market rent for the Residence was \$1,500 per month—to stay the eviction pending his appeal.

Over the next 21 months, the Kansas Court of Appeals affirmed the district court's judgment against Hattrup and the Kansas Supreme Court denied review. Accordingly, on May 14, 2019, the district court issued a writ of restitution in Deng's favor. Ten days later, before the Johnson County sheriff could execute the writ and evict him from the Residence, Hattrup filed for bankruptcy under Chapter 13.

Deng successfully evicted Hattrup on September 18, 2020, after obtaining stay relief under [11 U.S.C. § 362\(d\)](#) from this Court. On October 20, 2020, the Court ordered that Hattrup's remaining personal property in the Residence (which, according to Deng, filled every room from floor to ceiling such that "entrance could not be made other than through a small opening in the back door"¹) was deemed abandoned. Hattrup finished removing his personal property the following month.

This matter now comes before the Court on Deng's motion for administrative expenses under [11 U.S.C. § 503\(b\)\(1\)](#). Deng seeks \$25,300 in post-petition rent—\$1,500 per month—as compensation for Hattrup's use of the Residence from May 24, 2019, through October 20, 2020. Hattrup opposes Deng's motion, arguing that Deng is not entitled to administrative expenses under § 503(b)(1) because she (1) had no written lease agreement with Hattrup and (2) did not provide any financial benefit to Hattrup's bankruptcy estate. Additionally, Hattrup challenges Deng's figure of \$1,500 per month, arguing that he had "no input as to the amount" of the appeal bond.

¹ ECF 103 ¶ 11.

Section 503(b)(1)(A) provides that administrative expenses “shall be allowed” for “the actual, necessary costs and expenses of preserving the estate.” An expense for a debtor’s use of a creditor’s property is administrative under this subsection if (1) the expense arises out of a transaction between the debtor and the creditor and (2) the bankruptcy estate benefits from the use of the property. *See Gen. Am. Transp. Corp. v. Martin (In re Mid Region Petroleum)*, [1 F.3d 1130, 1133](#) (10th Cir. 1993). The party claiming entitlement to administrative expenses has the burden of proof. *Id.* at 1132.

Bankruptcy courts in the Southern District of New York and the Southern District of Texas have held that a debtor’s post-petition use of residential property as a home following a foreclosure sale creates an administrative expense for the new owner under § 503(b)(1)(A). *See In re Kuvykin*, No. 18-10760 (JLG), [2018 WL 4191854](#) (Bankr. S.D.N.Y. Aug. 31, 2018); *In re Espinosa*, [542 B.R. 403](#) (Bankr. S.D. Tex. 2015). Those courts reasoned that (1) a debtor’s continuing use of residential property after foreclosure creates a “continuing involuntary transaction” with the new owner and (2) a debtor’s use and occupancy of property as his home benefits the bankruptcy estate because “[i]t is self-evident that in order to survive and faithfully prosecute a bankruptcy case, an individual debtor must have a physical home to occupy.” *Espinosa*, [542 B.R. at 411](#); *see Kuvykin*, [2018 WL 4191854](#), at *3-*4; *see also 4 Collier on Bankruptcy* ¶ 503.06[3][a] (Richard Levin & Henry J. Sommer eds., 16th ed.) (“‘Transaction’ with the estate does not require a contractual relationship with the estate.”). This Court finds *Kuvykin* and *Espinosa* persuasive, and holds

that (1) although there was no written contract between the parties, Hattrup's continuing use of the Residence created an involuntary "transaction" between him and Deng for purposes of § 503(b); and (2) Hattrup's post-petition use of the Residence benefited his Chapter 13 bankruptcy estate because he would necessarily have incurred other housing expenses without it. Accordingly, the Court holds that Hattrup's post-petition use of the Residence generated an administrative expense for Deng under § 503(b)(1)(A) in an amount equal to the benefit such use conferred on Hattrup's bankruptcy estate.

"The amount of benefit conferred to the estate is the amount of money Debtor[] saved by avoiding alternative living arrangements." *Espinosa*, 542 B.R. at 414. The amount of a bond set by a state court for a stay of eviction pending appeal is, while not binding on the bankruptcy court, "solid evidence" as to this amount. *See id.* Here, then, the amount of Hattrup's appeal bond—\$18,000—is solid evidence that the amount of benefit conferred to Hattrup's bankruptcy estate by his use of the Residence was \$1,500 per month. Hattrup's amended Schedule J, filed December 14, 2020, in which he listed rental or home ownership expenses of \$1,500 per month and property storage expenses of \$700 per month² following his eviction from the Residence, is further evidence that his bankruptcy estate benefited by at least that amount.

For these reasons, Deng's motion for \$25,300 in administrative expenses under 11 U.S.C. § 503(b)(1)(A) for post-petition rent is hereby granted. The Court

² *See* ECF 117.

will address Hatstrup's request to convert this case³ to Chapter 7 in a separate order. *Cf.* [11 U.S.C. §§ 348\(d\), 1307\(a\)](#).

IT IS SO ORDERED.

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³ See Debtor's Resp. to Trustee Mot. Dismiss ¶ 3, ECF 154 ("Debtor believes that it would be more effective to convert this case to Chapter 7 and hereby seeks approval of the court to do so.").