

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

IN RE:)
)
CRESCENT OIL COMPANY, INC.,) Case No. 09-20258
)
Debtor.)
)

**SUPPLEMENT TO MOTION AND MEMORANDUM OF STATION ACQUISITION,
LLC FOR ORDER DECLARING LEASES ON NON-RESIDENTIAL REAL PROPERTY
TO BE TERMINATED, COMMANDING DEBTOR TO SURRENDER POSSESSION OF
SUCH REAL PROPERTY FORTHWITH AND FOR RELIEF FROM THE
AUTOMATIC STAY UNDER 11 U.S.C. §362(d) AS NECESSARY OR APPROPRIATE
TO SUCH RELIEF**

COMES NOW Station Acquisition, LLC, by and through undersigned counsel, and for its Supplement to Motion and Memorandum of Station Acquisition, LLC for Order Declaring Leases on Non-Residential Real Property to be Terminated, Commanding Debtor to Surrender Possession of Such Real Property Forthwith and for Relief From the Automatic Stay Under 11 U.S.C. §362(d) as Necessary or Appropriate to Such Relief, states as follows:

1. Movant Station Acquisition, LLC (“Station”) filed its Motion and Memorandum of Station Acquisition, LLC for Order Declaring Leases on Non-Residential Real Property to be Terminated, Commanding Debtor to Surrender Possession of Such Real Property Forthwith and for Relief From the Automatic Stay Under 11 U.S.C. §362(d) as Necessary or Appropriate to Such Relief (the “Motion”) on February 12, 2009 (Doc. #58), seeking this court’s Order declaring the subject leases (the “Leases”) to have terminated prepetition,¹ requiring Debtor to surrender

¹In accordance with the contractual terms of the Leases, Station took the necessary action prepetition to terminate the Leases. See *In re Trigg*, 630 F.2d 1370, 1374 (10th Cir. 1980) (“A contract that provides for termination on the default of one party may terminate under ordinary principles of contract law even if the defaulting party has filed a petition under the Bankruptcy Act.”); *In re J.E. Adams Industries, Ltd.*, 269 B.R. 808, 813 (N.D. Iowa) (quoting *Trigg*).

possession of the underlying real property (the “Real Property”) immediately, and otherwise finding that the automatic stay does not apply to the Real Property.

2. As a result of the prepetition termination of the Leases,² Debtor no longer holds any right, title or interest in the underlying Real Property. See e.g., *In re Haines*, 178 B.R. 471, 477 (Bkrcty. W.D.Mo. 1995) (“the right to lease the premises was transformed into no right at all when the lease was terminated pursuant to the terms of the contract between the parties.”) Debtor’s continued possession and/or control of the Real Property therefore violates the rights of Station to peaceful possession and use of its property. As such, Debtor is in essence a holdover tenant whose improper detention of the Real Property gives rise to a right of compensation by the owner, Station. Compensation of Station should be based on the rent formerly payable under the terminated Leases (the “Prior Rent Obligation”) as that represents the most accurate barometer of the value of continued occupancy by Debtor (or any third parties by and through Debtor) and the damage to Station caused by such occupancy.³

3. Accordingly, Station also requests the Court for supplemental relief in the form of an Order directing prompt and ongoing payment by Debtor to Station on a weekly basis of compensation at the pro rata rate of the Prior Rent Obligation for the entire period of time from the termination of the Leases until relinquishment of the Real Property to Station.

²§365(c)(3) makes clear that the issue of prepetition termination of a nonresidential real property lease is governed by “applicable nonbankruptcy law” which invariably means state law. See e.g., *In re Policy Realty Corp.*, 242 B.R. 121 (S.D.N.Y. 1999), aff’d 213 F.3d 626 (2nd Cir. 2000). “The filing of a bankruptcy petition does not resurrect a lease, and a bankruptcy court does not have power to resurrect a lease which was terminated prior to the filing of the lessee’s bankruptcy petition.” *Bell v. Alden Owners, Inc.*, 199 B.R. 451, 458 (S.D.N.Y. 1996). See also *In re West Pine Const. Co.*, 80 B.R. 315, 323 (Bkrcty. E.D.Pa. 1987) (“We may not resort to equity where a lease has been validly terminated.”)

³To the extent that Crescent fails to surrender possession upon termination of the subject Lease, the terminated Leases obligate Crescent to pay 150% of the monthly Base Rent in effect immediately prior to termination, prorated on a daily basis. See paragraph 25(c) of Exhibit 1 attached to the Motion.

Respectfully submitted,

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