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UNITED STATES BANKRUPTCY COURT DISTRICT OF KANSAS

IN RE: CRESCENT OIL COMPANY, INC.,)
et al.) Case No. 09-20258
Debtors.) Chapter 11
_____) (Jointly Administered)

**NEWGENFUEL, LLC's MOTION FOR RELIEF FROM STAY
TO RECOVER POSSESSION OF CERTAIN BLENDER PUMPS
LOCATED IN TOPEKA AND WICHITA, KANSAS**

NewGenFuel, LLC ("NewGen"), hereby moves the Court for an order granting NewGen relief from the automatic stay herein to recover possession of certain blender pumps located in Topeka and Wichita, Kansas (the "Motion"), and represents as follows:

JURISDICTION AND VENUE

1. The court has jurisdiction of this Motion pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Venue is proper pursuant to 28 U.S.C. § 1409(a).
2. The statutory predicates for this Motion is 11 U.S.C. § 362(d) and Fed. R. Bankr. P. 4001.

FACTUAL BACKGROUND

3. On February 7, 2009, the debtor Crescent Oil Company, Inc. (the "Debtor"), filed a petition for relief pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Kansas, in Kansas City, Kansas (the "Bankruptcy Court"), Case Number 09-20258. On February 8, 2009, certain affiliates of the Debtor, Crescent Realty, Inc.; Crescent Fuels, Inc.; Crescent Stores Corporation; and Crescent Business

Development Corp. (collectively the "Affiliates") each filed separate petitions for relief pursuant to Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court. On February 11, 2009, the Bankruptcy Court ordered the joint administration of the Debtor's and the Affiliates' bankruptcies with Case No. 09-20258 being the lead case (the "Bankruptcy Case"). The Debtor and the Affiliates are sometimes hereinafter referred to collectively as the "Debtors." The Debtors are continuing to operate their businesses as debtors-in-possession.

4. NewGen is a holder of a claim against the Debtor and is therefore a creditor of the Debtor.

5. As part of its business the Debtor leases certain filling stations facilities which it leases or subleases to retail operators who then purchase fuel from the Debtor retail sale to the public.

6. Shortly before the filing of the Bankruptcy Case, the Debtor and NewGen were engaged in negotiations for sublease arrangements under which NewGen would sublease portions of certain of the Debtor's filling station facilities. In anticipation of entering into these sublease arrangements, NewGen placed blender pumps which permit the mixing of ethanol with gasoline ("Blender Pumps") on two of the Debtor's filling station facility, described as follows:

- (a) CSC #48, 1531 SW Wanamaker, Topeka, Kansas, 66614 (the "Topeka Station"); and
- (b) CSC # 80, 3805 West 21st Street, Wichita, Kansas, 67213 (the "Wichita Station");

(collectively the "Subject Stations"). The Blender Pumps were installed at Topeka Station on January 7, 2009 and at the Wichita Station on January 19, 2009.

7. NewGen and the Debtor did not enter into the anticipated sublease arrangements regarding the Subject Stations before the filing of the Bankruptcy Case and NewGen does not wish to enter into any lease sublease arrangements with the Debtor at this time.

RELIEF REQUESTED

8. The Blender Pumps are not property of the Debtor and NewGen should have the right to regain possession of its Blender Pumps by removing the Blender Pumps and replacing them with the gasoline pumps which were previously located at the Subject Stations.

9. Section 362 of the Bankruptcy Code stays certain actions by creditors including any act to obtain possession of property of the estate or of property from the estate. 11 U.S.C. § 362(a)(3). In the present case the Debtor has no ownership or other interest in the Blender Pumps. At most, the Debtor merely has possession of the Blender Pumps. Pursuant to 11 U.S.C. § 541 the bankruptcy estate includes all legal and equitable interests of the Debtor in property as of the commencement of the Bankruptcy case. While this possessory interest may be property of the estate which is subject to the automatic stay, the bankruptcy estate has no greater rights to the Blender Pumps than the Debtor had before the Bankruptcy Case was filed. *See, In Re Welch*, 31 B.R. 537, 539 (Bankr. D. Kan. 1983). The Debtor had no rights to the Blender Pumps before the Bankruptcy Case was filed, therefore the bankruptcy estate had no rights to which it could succeed. *See, In the Matter of the Estate of Williams*, 238 Kan. 651, 660, 714 P.2d 948, 955 (1986) *citing Creel v. Birmingham Trust National Bank*, 383 F. Supp. 871 (N.D. Ala. 1974), *aff'd* 510 F.2d 1363 (5th Cir. 1975).

10. The Debtor has no interest in the Blender Pumps other than the Debtor happened to have them located at the Subject Stations at the time it filed the Bankruptcy Case. The Debtor

does not, and cannot, have any equity in the Blender Pumps which are the property of NewGen. The Blender Pumps located at the two Subject Stations are not essential to the Debtor's reorganization. In this case, the Bankruptcy Court's cash collateral order and order authorizing post-petition financing entered in the Bankruptcy Case on February 11, 2009 establishes a mechanism for the liquidation of the Debtor. There will be no reorganization of the Debtor.

11. Additionally, the Debtor is using the Blender Pumps at the two stations which will diminish the value of the Blender Pumps over time. Pursuant to 11 U.S.C. § 362(d)(2) the court should enter an order granting NewGen relief from the automatic stay for cause and should permit NewGen to regain possession of its Blender Pumps by removing the Blender Pumps and replacing them with the gasoline pumps which were previously located at the Subject Stations.

WHEREFORE, NewGen prays that the court modify the automatic stay as requested in the foregoing Motion and for such other and further relief as the court deems just and proper.

Respectfully submitted by,

s/Terry C. Cupps

Terry C. Cupps (KS#11299)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of February, 2009, a true and correct copy of the **NewGenFuel, LLC's Motion for Relief from Automatic Stay to Recover Possession of Certain Blender Pumps Located in Topeka and Wichita, Kansas**, together with the **Notice of Hearing**, were filed electronically with the United States Bankruptcy Court for the District of Kansas using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system, and a copy of the same was forwarded by first class United States mail, postage prepaid and addressed to those parties not participating in the CM/ECF system.

s/Terry C. Cupps _____