

9. On November 3, 2011, Bank served a copy of the Notice with the requisite attachments on Debtor. An accurate copy of the letter and service is attached hereto as **Exhibit 3** and is incorporated herein by this reference.

10. Despite initially doing so, Debtor failed to pay rent to Bank pursuant to the Notice of Default/Assignment of Rents since March 2012.

11. Bank initiated foreclosure by advertisement proceedings on the Mortgage and the foreclosure sale took place on June 21, 2012, with the bank as the successful bidder at the sale.
The owner of non-party Sharksy LLC is now deceased. — *Sharpe's father*

12. The foreclosure redemption period expires on December 21, 2012, and pursuant to the terms of the Subordination Agreement, Bank becomes the successor landlord after acquiring title to the Premises via the foreclosure sale.

13. The Lease Agreement terms include a base rent of \$43,000.00 per year with equal monthly installments of \$3,600.00 for the first year. The annual rent was to increase by 3% each year and was to be paid in equal monthly installments. The Debtor is also responsible for payment of taxes and insurance and utilities for the Premises. The Debtor is also responsible for fees, costs or expenses incurred for enforcing the Debtor's obligations under the Lease Agreement.

14. At the Petition Date, the Debtor owed \$30,090.06 (2012 rental rate of \$4,298.58 x 7 months).

15. Under the Lease Agreement, the Base Rent and the Additional Rent (collectively "Rent") are due on the first day of each calendar month.

16. The Debtor has failed to pay any post petition rent due under the Lease Agreement. The rent due from October 15-31, 2012 totals \$2,080.05. The Rent Due for November and December 2012 totals \$8,597.16

17. On November 19, 2012, Reginald D. Sharpe, D.O., the sole owner of the Debtor testified under oath at his meeting of creditors that there was no insurance for the Premises as required under the Lease Agreement.

18. Dr. Sharpe also testified under oath that the air conditioning unit on the roof of the Premises had been stolen from the Premises and that it had not been replaced.

19. Dr. Sharpe also testified that he is not able to operate his business at the Premises because of issues with labs and regulators and that he has no malpractice insurance. Dr. Sharpe could not say if or when those issues will be resolved.

20. The Debtor filed a monthly operating report on December 17, 2012 (Docket #. 32) wherein is confirmed no rent has been paid for the Premises (despite Dr. Sharpe taking \$15,058.10 in compensation) and rent was paid for the Debtor's other business location in Detroit; no payment for insurance for the Premises is listed on the operating report.

21. Pursuant to 11 U.S.C. §362(d)(1), cause exists for relief from stay because:

a) the Debtor has not made any rent payments made since the Petition Date;

b) the Debtor has failed to insure the Premises as required under the Lease Agreement;

c) the Debtor has failed to make the necessary repairs and maintenance to the Premises as required under the Lease Agreement.

22. Pursuant to 11 U.S.C. §362(d)(2)(A), Debtor has no equity in the Premises and pursuant to §362(d)(2)(B); the Premises is not necessary to an effective reorganization because

the Debtor has another office; the Debtor as not secured medical malpractice insurance and no real prospect for doing so in the future.

23. For the same reasons noted in Paragraph 21-22 above, the bankruptcy case was filed in bad faith to delay, hinder or defraud creditors like Comerica Bank.

WHEREFORE, Comerica Bank prays that this Court issue an Order granting the following relief:

A. Annulment of the stay as to the Premises allowing landlord to exercise its default remedies under the Lease Agreement in accordance with applicable non-bankruptcy law;

B. That the 10-day stay prescribed by Bankruptcy Rule 4001(a)(3) be waived;

C. Alternatively, that if immediate relief from stay is not granted with respect to the premises because the Premises is the subject of a lease that may be assumable:

- 1) Establishment of a deadline for assumption or rejection of the lease;
- 2) Adequate protection in the form of regular monthly payments at the lease rate from Petition Date until assumption or rejection of the Lease Agreement.
- 3) In addition to payment of rent, the Debtor reimburse the Landlord for its costs and attorney fees associated with this Motion