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U.S. BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

In re:) Chapter 11
MPDK, LLC,) No. 4:06-bk-01602-JMM
	Debtor.	_)
SWX, LLC,) MEMORANDUM DECISION
	Movant,)
VS.		
MPDK, LLC,)
	Respondent.	_

On May 8, 2007, the motion for stay relief or to prohibit or condition use of cash or other collateral, filed by SWX, LLC, came on for hearing. After review of the evidence and the law, the court issues its findings of fact and conclusions of law.

FINDINGS OF FACT

- 1. This is a matter of contract. The relationship between SWX, LLC ("Lessor"), and the Debtor is a lease relationship (Ex. 1). It was executed December 24, 2003. There is no option to purchase contained within that document. All prior communications between the parties were superceded by Exhibit 1. (See Ex. 1 at para. 19(xi).)
- 2. The Debtor defaulted on the lease payments in late November, 2006.
- 3. All of the Lessor's property (with a few exceptions noted hereafter) has been returned to the Lessor.

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1	4.	The Lease (Ex. 1) has not been assumed.
2	5.	The Debtor still retains the telephone number (520-320-1495), and four
3		computers and their attendant software.
4	6.	The items described in paragraph 5 are owned by the Lessor and constitute
5		part of the property leased to the Debtor.
6	7.	The Debtor's plan of reorganization contains no discussion about, nor
7		treatment of, SWX, LLC (Dkt. #172).
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9		CONCLUSIONS OF LAW
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11	A.	A debtor may not pick and choose which leased items it wishes to accept or
12		reject.
13	В.	A lease, if assumed, must be assumed with all its burdens as well as its
14		benefits.
15	C.	In the event of rejection, a lessor is entitled to a return of its leased property.
16	D.	Because the Debtor has rejected the Lease signed on December 24, 2003, the
17		Debtor shall return or make available to the Lessor all of the property
18		described in paragraph 5.
19		
20		RULING
21		
22	The	SWX, LLC motion to dissolve the stay and to condition or prohibit the future use of
23	leased property is C	GRANTED. Counsel for SWX shall lodge an appropriate form of order.
24		
25	DA	ΓED: May 9, 2007.
26		James M. Mearlan
27		JAMES M. MARLAR
28		UNITED STATES BANKRUPTCY JUDGE

1	COPIES served as indicated below this 9th day of May, 2007, upon:	
2		
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13	By /s/ M R Thompson	
14	By <u>/s/ M. B. Thompson</u> Judicial Assistant	
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