

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN (DETROIT)

In re

Case No. 13-53846

City of Detroit

Chapter 9

Debtor

Judge Steven W. Rhodes

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**MOTION OF MARIO'S RESTAURANT, INC. FOR RELIEF FROM STAY AND  
REQUEST FOR ENTRY OF ORDER WAIVING PROVISION OF FRBP  
4001(a)(3)**

Mario's Restaurant, Inc. moves this Court, under Bankruptcy Code §§361, 362, 363, 554 and other sections of the United States Code, and under the Federal Rules of Bankruptcy Procedure 4001 and 6007, for an Order conditioning, modifying or dissolving the automatic stay imposed by Bankruptcy Code § 362. In support of this Motion, the Movant states:

**Background**

1. The Court has jurisdiction over this matter under 28 USC §§ 157 and 1334. This is a core proceeding under 28 USC 157(b)(2). The venue of this case and this Motion is proper under 28 USC 1408 and 1409.
2. Mario's Restaurant, Inc. is a business established in Detroit for over 65 years and is located on Second Avenue. Mario's Restaurant, Inc. was informed that the City of Detroit was considering changing Second Avenue from a one-Way street into a two-way street. Mario's Restaurant, Inc. would be adversely effected by such a change and

wanted to know the factors that were going into that decision as well as who the parties who were advocating such a change.

3. As a result of the interest of Mario's Restaurant, Inc. in the issue of converting Second Avenue from a one-way street into a two-way street, a Freedom of Information request was submitted by Mario's Restaurant, Inc. That request was ignored for a period of time and therefore, suit was started in the Wayne County Circuit Court requesting information on the subject as well as costs for necessitating the suit and was assigned case number 13-008288 CZ.
4. The lawyer assigned to the case who is employed by the City of Detroit indicated that the information should be available to Mario's Restaurant, Inc. despite the fact that a stay is in effect and yet, the information sought has not been supplied.
5. Providing the information regarding the factors and parties behind the move to turn Second Avenue from a One-Way Street into a two-way street will not cost the debtor any money, will not adversely effect the debtor and is directly related to hearings taking place presently before City Council.
6. A proposed order granting relief from the automatic stay is attached as Exhibit "A".
7. The only other party who may be interested in this issue is the debtor itself who has received notice of this Motion. The Movant knows of no

other parties who may be interested in lifting this stay concerning this FOIA suit.

### **ARGUMENT**

8. The Movant is entitled to relief from the automatic stay under the Bankruptcy Code for the following reason(s):

The Movant is not requesting any property that would effect the reorganization of the Debtor as the movant is merely requesting that the City of Detroit produce documents that are available and are presently being considered by City Council.

WHEREFORE, Movant prays:

1. That the automatic stay enjoining this Freedom of Information case number 13-008288 CZ from proceeding be lifted with regard to the City providing the requested information.
2. That the automatic stay be terminated automatically, without hearing, in the absence of a responsive pleading and a waiver of the ten day stay provision;
3. That should relief from the stay be denied, that the stay be modified by requiring the Debtor from moving forward on changing Second Avenue into a two-way thoroughfair until such time as the Debtor provides the information requested under the Freedom of Information Act.
4. That in the event that the motion is contested, that the Debtor be required to pay Movant's costs and attorney fees in seeking relief from the automatic stay.

Respectfully submitted,

/s/Donald McGuigan II P49004

/s/ William S. Stern P27396

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WHEREFORE, Movant prays:

1. That the automatic stay enjoining this Freedom of Information case number 13-008288 CZ from proceeding be lifted with regard to the City providing the requested information.
2. That the automatic stay be terminated automatically, without hearing, in the absence of a responsive pleading and a waiver of the ten day stay provision;
3. That should relief from the stay be denied, that the stay be modified by requiring the Debtor from moving forward on changing Second Avenue into a two-way thoroughfair until such time as the Debtor provides the information requested under the Freedom of Information Act.
4. That in the event that the motion is contested, that the Debtor be required to pay Movant's costs and attorney fees in seeking relief from the automatic stay.

Respectfully submitted,

/s/Donald McGuigan II P49004

/s/ William S. Stern P27396

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**NOTICE OF MOTION**  
**(Motion or Objection)**

Mario's Restaurant, Inc. has filed papers with the court for Relief from Stay (relief sought in motion or objection).

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).**

If you do not want the court to grant the relief sought in the motion for relief from stay, or if you want the court to consider your views on the motion, within (14) days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:

United States Bankruptcy Court  
Eastern District of Michigan  
211 W. Fort St., 21<sup>st</sup> floor  
Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

Donald McGuigan II, 24750 Lahser Road, Southfield, MI 48033; 248-353-9400

Sharon Blackmon, City of Detroit Law Dept., 2 Woodward Ave, 5<sup>th</sup> Floor, Detroit, MI 48226

2. If a response\* if timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.**

Date: September 12, 2013

/s/Donald McGuigan II P49004

/s/William S. Stern P27396

24750 Lahser Road

Southfield, MI 48033

248-353-9400

[bstern1213@yahoo.com](mailto:bstern1213@yahoo.com)

[don@mcguiganlaw.com](mailto:don@mcguiganlaw.com)

\* Response or answer must comply with FRCP 8(b),(c) and (e)

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**CERTIFICATE OF CORPORATE EXISTENCE**

I, William S. Stern, acting as attorney for Mario's Restaurant, Inc., do hereby certify that:

1. I am aware of the corporate existence of Mario's Restaurant, Inc. and am familiar with the corporate records pertaining to the corporation.
2. Mario's Restaurant, Inc. is a duly authorized corporation within the State of Michigan and is properly registered and in existence and is authorized to exist and conduct business.

IN TESTIMONY WHEREOF, on September 12, 2013, I have hereunto subscribed my name to this document attesting to the corporate existence of Mario's Restaurant, Inc.



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William S. Stern, attorney for Mario's  
Restaurant Inc.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2013, I electronically filed a Motion of Mario's Restaurant, Inc, to Lift the Stay in Wayne County Case No. 13-008288 CZ along with a proposed order, Notice under LBR 9014-1 of the Motion to Lift the Automatic Stay with regard to Wayne County Case No. 13-008288 CZ, this Certificate of Service with the clerk of the Court using the ECF system which will send notification of such filing to ECF participants in this matter.

/s/Donald McGuigan II P49004

/s/William S. Stern P27396

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**ORDER FOR RELIEF FROM STAY**

This cause came to be heard upon the motion of Mario's Restaurant, Inc. for entry of an order granting relief from the automatic stay.

The Court finding that L.B.R. 9014 provides for entry of an order if a response has not been filed within fourteen (14) days after service of the Motion on the parties; and

The Court finding that no response has been filed within fourteen (14) days, and the Court having noted that Creditor has complied with the applicable provisions of L.B.R. 9014.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petitioner is granted relief from the stay so far as requiring the City of Detroit to produce the information requested in the Freedom of Information case filed in the Wayne County Circuit Court and assigned case number 13-008288 CZ.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Automatic Stay enjoining the parties from going forward with Wayne County Case Number 13-008288 CZ is hereby lifted so far as the request of Mario's

Restaurant Inc. that the City of Detroit produce the information requested relative to changing Second Avenue from a one-way street into a two-way street.

## **EXHIBIT A**