

This order is SIGNED.

Dated: October 21, 2021



**JOEL T. MARKER
U.S. Bankruptcy Judge**



msc

Prepared and submitted by:

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*Attorneys for Automotive Rentals, Inc. and
ARI Fleet LT*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH**

In re:

EMPIRE SOLAR GROUP, LLC,

Debtor.

Bankruptcy No. 21-23636 (JTM)

Chapter 7

**ORDER APPROVING STIPULATION BETWEEN THE CHAPTER 7 TRUSTEE AND
AUTOMOTIVE RENTALS, INC., AND ARI FLEET LT FOR (1) REJECTION OF
CERTAIN LEASE AGREEMENTS; AND (2) RELIEF FROM, AND ANNULMENT OF,
THE AUTOMATIC STAY AS IT RELATES TO CERTAIN VEHICLES**

The matter before the Court is the *Motion to Approve Stipulation Between the Chapter 7 trustee and Automotive Rentals, Inc., and ARI Fleet LT For (1) Rejection of Certain Lease Agreements; and (2) Relief From, and Annulment of, the Automatic Stay as it Relates to Certain Vehicles* [Docket No. 48] (the “Motion”), which seeks approval of the Stipulation attached hereto as Exhibit 1 (the “Stipulation”) between Automotive Rentals, Inc., a New Jersey

corporation, on its own behalf, and ARI Fleet LT, a Delaware business trust, appearing herein through its servicer Automotive Rentals, Inc. (collectively, “ARI”) and Steven R. Bailey, Chapter 7 Trustee of the above-referenced case (the “Trustee”). The Motion was served through the Court’s CM/ECF system upon all parties that receive electronic notice in this case. In addition, a *Notice of Motion to Approve Stipulation Between the Chapter 7 trustee and Automotive Rentals, Inc., and ARI Fleet LT For (1) Rejection of Certain Lease Agreements; and (2) Relief From, and Annulment of, the Automatic Stay as it Relates to Certain Vehicles and Notice of Opportunity for Hearing* [Docket No. 49] (the “Notice”) that provided for, among other things, notice of the reserved hearing on the Motion and notice of the deadline of October 15, 2021 for filing response to the Motion, was served upon all parties receiving electronic notice in this case, as well as the interested parties set forth in the certificate of service attached to the Motion, and no further notice is required. No responses to the Motion have been filed or received by ARI or the Trustee.

The Court has considered the Motion, the Notice, and applicable law. Based thereon, and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**;
2. The Stipulation between the Trustee and ARI, attached hereto as Exhibit 1, is **APPROVED**;
3. The automatic stay as to the Vehicles is **TERMINATED** and **ANNULLED** pursuant to 11 U.S.C. §§ 263(d)(1) and 362(d)(2);

4. The fourteen (14) day stay period set forth in Fed. R. Bankr. P. 4001(a)(3) and Local Rule 4001-1(d) is **WAIVED**; and

5. The Lease Agreement is **REJECTED** pursuant to 11 U.S.C. § 365.

----- **END OF DOCUMENT** -----

Approved as to form:

RAY QUINNEY & NEBEKER, P.C.

/s/ David H. Leigh

David H. Leigh (signed by Megan K. Baker with permission)
Attorneys for Trustee

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing **ORDER APPROVING STIPULATION BETWEEN THE CHAPTER 7 TRUSTEE AND AUTOMOTIVE RENTALS, INC., AND ARI FLEET LT FOR (1) REJECTION OF CERTAIN LEASE AGREEMENTS; AND (2) RELIEF FROM, AND ANNULMENT OF, THE AUTOMATIC STAY AS IT RELATES TO CERTAIN VEHICLES** shall be served to the following parties in the manner designated below:

- **Steven R. Bailey** tr karen@baileylaw.org, UT06@ecfcbis.com
- **Megan K Baker** baker.megan@dorsey.com, long.candy@dorsey.com
- **Matthew M. Boley** mboley@ck.law, klopez@ck.law
- **Michael R. Johnson** mjohanson@rqn.com, docket@rqn.com; vmoody@rqn.com
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- **Mark C. Rose** mrose@mbt-law.com, markcroselegal@gmail.com
- **Mark S. Swan** mswan@strongandhanni.com, mark@swanlaw.net
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov

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EXHIBIT 1

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*Attorneys for Automotive Rentals, Inc. and
ARI Fleet LT*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH**

In re:

EMPIRE SOLAR GROUP, LLC,

Debtor.

Bankruptcy No. 21-23636 (JTM)

Chapter 7

**STIPULATION BETWEEN THE CHAPTER 7 TRUSTEE AND AUTOMOTIVE
RENTALS, INC., AND ARI FLEET LT FOR (1) REJECTION OF CERTAIN LEASE
AGREEMENTS; AND (2) RELIEF FROM, AND ANNULMENT OF, THE AUTOMATIC
STAY AS IT RELATES TO CERTAIN VEHICLES**

Automotive Rentals, Inc., a New Jersey corporation, on its own behalf, and ARI Fleet LT, a Delaware business trust, appearing herein through its servicer Automotive Rentals, Inc. (collectively, "**ARI**") and Steven R. Bailey, Chapter 7 Trustee of the above-referenced case (the "**Trustee**"), by and through their respective counsel, hereby stipulate and agree as follows:

Background

1. On August 22, 2021 (the "**Petition Date**"), the above-captioned debtor (the "**Debtor**") filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the District of Utah (the "**Court**").

2. On August 23, 2021, the Trustee was appointed as the interim trustee of the Debtor's chapter 7 bankruptcy estate.

3. The Debtor and ARI are parties to that certain Lease and Fleet Management Services Agreement entered into as of February 10, 2020, as amended from time to time, and other agreements, including, without limitation, the Motor Vehicle Lease Agreements related thereto (collectively, the "Lease Agreement"). A copy of the Lease Agreement provided by ARI is attached hereto as Exhibit "A," and the terms and conditions of which are incorporated herein by this reference.

4. A sample of the Motor Vehicle Lease Agreements referred to in the Lease Agreement and provided by ARI is attached as Exhibit 1 to the Lease Agreement, and a schedule which ARI represents as showing the vehicles that are the subject of such Motor Vehicle Lease Agreements is attached hereto as Exhibit "B."

5. ARI asserts that the Lease Agreement is both an executory contract and an unexpired lease of personal property as those terms are used in 11 U.S.C. § 365(d)(5) and other provisions of the Bankruptcy Code. ARI further asserts that there are 36 vehicles that are owned by ARI, leased by ARI to the Debtor, and serviced pursuant to the Lease Agreement (the "Vehicles"). Copies of the titles to those vehicles provided by ARI are attached hereto as Exhibit "C."

6. ARI further asserts that the total amount owed to ARI by the Debtor under the Lease Agreement as of the Petition Date is at least **\$1,206,717.35**, plus any and all applicable fees, costs, expenses, charges and other amounts described therein, and less any amounts due by ARI to Debtor under the Lease Agreement or otherwise that have come due before the Petition Date, which amounts ARI further asserts, as of September 14, 2021, were **\$16,835.96**.

7. In addition, ARI further asserts that it is owed (a) amounts related to the indemnity obligations owed by Debtor to ARI that arise under the Lease Agreement and/or applicable law, which amounts were unliquidated as of the Petition Date and continue to be unliquidated (the “**Empire Solar Indemnity Obligations**”).

8. The Trustee has not yet had an opportunity to complete his investigation as to the amounts ARI asserts are owed by the Debtor under the Lease Agreement, including any amounts alleged to be owed relating to the Empire Solar Indemnity Agreement, and hereby expressly reserves any and all rights, remedies, and arguments relating to the same.

9. The Trustee has attempted to identify the current location of the Vehicles and, to the extent any such information exists, such information has been provided to counsel for ARI. The Trustee has represented to ARI that he does not currently have possession of any of the Vehicles subject to the Lease Agreement.

10. The Trustee and ARI were previously informed that the insurance covering the Vehicles lapsed on September 12, 2021, as a result of the Debtor’s failure to pay required insurance premiums.

11. The bankruptcy estate does not have the resources to pay to renew the insurance policies on the Vehicles or obtain new insurance coverage on the Vehicles, and does not have the ability to pay the Debtor’s ongoing obligations under the Lease Agreement. As a result, the Trustee has informed ARI of his intent to reject the Lease Agreement.

12. Based upon the foregoing, ARI and the Trustee have agreed to the immediate termination and annulment of the automatic stay as it relates to ARI and the Vehicles pursuant to 11 U.S.C. §§ 362(d)(1), 362(d)(2), and that cause exists for any Order granting this joint motion

to take effect immediately, and that the fourteen day (14) stay period set forth in Fed. R. Bankr. P. 4001(a)(3) and Local Rule 4001-1(d) should expressly not apply.

13. Based upon the foregoing, the Trustee has authorized ARI to immediately take all actions to locate, secure, and take possession of the Vehicles, to the extent such actions are authorized and allowed under the terms of the Lease Agreement and as otherwise provided for by law, pending an entry of an order granting this Stipulation, and the Trustee agrees not to assert that such actions on the part of ARI should be deemed violations of the automatic stay; provided, however, that ARI agrees to not take any action to sell, liquidate, or to otherwise dispose of the Vehicles pending entry of an Order granting this Stipulation.

14. The Trustee agrees that in the event he obtains additional information regarding the location of any of the Vehicles, he will promptly pass on such information to counsel for ARI.

15. ARI and the Trustee agree that upon entry of an order approving this Stipulation, the Lease Agreement shall be deemed rejected pursuant to 11 U.S.C. § 365 and that any proof of claim by ARI setting forth any alleged rejection damages against the Debtor's chapter 7 estate shall be filed by the later of (i) the proof of claim deadline in this case, or (ii) 30 days from the entry of any Order approving this joint motion. The Trustee expressly reserves all rights, remedies, and objections relating to any proof of claim filed by ARI.

16. ARI reserves its right to assert and recover any and all claims it may have against the Debtor and its estate (both pre-petition and post-petition) in this bankruptcy case including, without limitation, any administrative expense claims. The Trustee reserves any and all rights he may have on behalf of the Debtor and/or the Debtor's chapter 7 estate against ARI, including any

such claims relating to the Lease Agreement and/or the Vehicles except as otherwise provided herein.

17. ARI shall be responsible for filing and prosecuting a motion seeking approval of this Stipulation. The Trustee agrees that any such motion may be heard on shortened time.

DATED this 24th day of September, 2021.

DORSEY & WHITNEY LLP

/s/ Megan K. Baker

Steven T. Waterman
Megan K. Baker
*Attorneys for Automotive Rentals, Inc. and ARI
Fleet, LT*

DATED this 24th day of September, 2021.

RAY QUINNEY & NEBEKER P.C.

/s/ David H. Leigh (with permission)

Michael R. Johnson
David H. Leigh
Attorneys for the Trustee

DATED this 24th day of September, 2021.

/s/ Steven R. Bailey (with permission)