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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,

2:06-cr-00186-PMP (PAL)

13 Plaintiff,

14 v.

15 POWER COMPANY INC., doing business as  
16 THE CRAZY HORSE TOO, and  
17 FREDERICK JOHN RIZZOLO,

(Oral Argument Requested)

18 Defendants.

19 **PETITIONER CANICO CAPITAL GROUP, LLC'S**  
20 **MOTION TO LIFT STAY**

21 COME NOW, Petitioner Canico Capital Group, LLC (hereinafter "Canico"), by and  
22 through its undersigned attorney, Michael R. Mushkin, Esq. of the law firm of Michael R.  
23 Mushkin & Associates, and moves this Court pursuant to 18 U.S.C. § 1963(I) and any other  
24 applicable statutes and rules of law for its Order lifting the stay so that Petitioner Canico may go  
25 forward with the foreclosure and foreclosure sale on the property located at 2440-2497 Industrial  
26 Road, Las Vegas, Nevada, and the business previously operated on same property more  
27 commonly and collectively known as the Crazy Horse Too Gentleman's Club (hereinafter  
28 "Crazy Horse" or "the Property" or "the subject Property").

1 Canico bases its motion on the following grounds: (1) Security Pacific Bank established  
2 its priority interest in the Property by virtue of its deed of trust; (2) the Property's value has been  
3 decimated and continuous to decline; (3) the Property no longer holds any value to the United  
4 States as a substituted asset in this forfeiture proceeding; (4) the United States has failed to sell  
5 the Property in over two years and generate forfeitable net proceeds which was the underlying  
6 basis for the United States' motion to stay foreclosure made pursuant to 18 U.S.C. § 1963(e) et  
7 al. (Document #167 granting Document #122); (5) the order granting an issuance of stay made  
8 pursuant to 12 U.S.C. § 1821(d)(12)(ii) for a period of ninety (90) days has expired (Document  
9 #267); (6) it is unjust to force the holder of the note to sit idle without income while the Property  
10 loses its value; (7) Canico has since become the holder of the note; and (8) the United States has  
11 made no payments to Canico pursuant to the Deed of Trust, Fixture Filing, Assignment of Rents,  
12 and Security Agreement et al. (Document #122-4).

13  
14  
15 This Motion is made and based on the papers and pleadings on file in this action, the  
16 accompanying memorandum of points and authorities, the supporting declarations, and the  
17 exhibits attached thereto.

18 DATE: March 9, 2010.

19  
20 MICHAEL R. MUSHKIN & ASSOCIATES

21  
22 By: /s/ MICHAEL R. MUSHKIN

23 MICHAEL R. MUSHKIN, ESQ.  
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28

POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

1. On June 1, 2006, Defendant Power Company, Inc. pled guilty to conspiracy to participate in an enterprise engaged in racketeering activity in violation of 18 U.S.C. § 1962(d). *See*: Document #7, page 3; Document #9. Defendant Rizzolo also pled guilty to conspiracy to defraud the United States in violation of 18 U.S.C. § 371. *See*: Document 8, page 2; Document 10.

2. Defendant Power Company, Inc. agreed to forfeit \$4,250,000.00 pursuant to 18 U.S.C. 1963(a)(1), (2), and (3) and also agreed to sell the Crazy Horse within one year in order to pay various debts, including the cash forfeiture (Document #7, page 7). The \$4,250,000.00 was to be paid no later than at the time of the sale of Crazy Horse Two (Document #7, page 3). Defendant Rizzolo, the principal owner of Defendant Power Company, Inc., also voluntarily and immediately agreed to the administrative forfeiture, civil forfeiture, and/or criminal forfeiture of all of his rights to, title in, and interest in the \$4,250,000.00 to the United States of America under 18 U.S.C. § 1963(a)(1), (2), and (3) (Document #8). If the Crazy Horse was not sold at the end of the 12-month period for selling of the Crazy Horse, the government and defendant were to confer in a good faith effort to determine and agree on a third party manager/seller of the Crazy Horse (Document #7, lines 18-24).

3. On or about June 28, 2006, this Court entered its Order of Forfeiture ordering that the right title, and interest of the property therein described as \$4,250,000.00 is condemned, forfeited, and vested in the United States of America pursuant to 18 U.S.C. § 1963(a)(1), (2), and (3). This Court further ordered that said forfeited property be seized and disposed of in accordance with the law as well as any income derived as a result of the United States of America's management of the property and proceeds from the sale. Document #12.

1           4.       On July 26, 2006, the government further filed a Supplement to Criminal Plea  
2       Agreements wherein attached was a Closing Agreement between the Defendants and the Internal  
3       Revenue Service holding the Defendants joint and severally liable for failure to collect, account  
4       for, and pay over F.I.C.A. withholding and Federal Income Tax withholding on tips earned by  
5       Defendant Power Company, Inc.'s employees (Document #13).

6           5.       Defendants failed to sell the property within one year of their guilty pleas despite  
7       prospective buyers.  
8

9           6.       On August 21, 2007, this Court entered an order (Document #62) granting the  
10       United States' motion to substitute the Crazy Horse for the cash forfeiture and ordered that the  
11       substitute assets shall be sold and applied to the Defendants' forfeiture and restitution  
12       obligations pursuant to the Order of Forfeiture (Document #12) and the Judgments in a Criminal  
13       (Document #42 & 43). This Court further granted motions as to the prospective purchases and  
14       approved the sale of the substitute assets to one of the following three purchasers: Imperial  
15       Share Holdings Corp.; The Mortgage Broker, Inc.; and White Drive Acquisitions, LLC, a  
16       Nevada Limited Liability Company (Document #62). However, the deal never closed.  
17

18           7.       On September 26, 2007, Security Pacific Bank filed its petition for an ancillary  
19       hearing asserting its interest as an innocent third party with respect to the Crazy Horse  
20       (Document #75). Security Pacific Bank was the beneficiary of a Deed of Trust, dated October  
21       26, 2005, and executed by RICRIZ, LLC, a Nevada limited liability company (the "Borrower"),  
22       as trustor, in favor of Security Pacific Bank, securing a commercial real estate loan made by  
23       Security Pacific Bank to the Borrower in the original principal amount of Five Million and  
24       00/100 Dollars (\$5,000,000.00) (the "Loan"). At the time of filing in 2007, the following  
25       amounts were due: a principal balance of \$4,853,026.28, unpaid interest in the amount of  
26  
27  
28

1 \$26,272.31, interest currently accruing at 10.25% per annum contract rate of interest, and other  
2 costs, fees, and expenses, including attorneys' fees and costs. Document #75, page 4.

3  
4 8. The Deed of Trust constitutes a first-priority lien and encumbrance on the  
5 Property and was recorded in the Official Records of the Clark County, Nevada, on November 3,  
6 2005, as Document No. 03998. A true and correct copy of the Deed of Trust is attached to  
7 Security Pacific Bank's petition as Exhibit A to Document #75. See also Government Exhibit 3  
8 attached to United States of America's Motion to Stay Foreclosure (Document #122). A copy of  
9 the Promissory Note Secured by Deed of Trust dated October 26, 2005, in the original principal  
10 amount of Five Million and 00/100 Dollars (\$5,000,000.00) (the "Note") is also attached to  
11 Document #75 as Exhibit C. In addition, Assignments of Leases were attached thereto as  
12 Exhibit D. Petitioner further incorporates the Petition of Security Pacific Bank for Ancillary  
13 Hearing (Document #75) filed September 26, 2007, and the exhibits thereto herein.

14  
15 9. The USA acknowledged that the Bank was a bona fide purchaser for value  
16 without cause to believe that the property was subject to forfeiture (Document #123).

17  
18 10. On November 6, 2007, Defendants filed a Motion to Enforce Plea Agreements  
19 and to Appoint Third-Party Manager of the Crazy Horse Too's Business (Document #88). Said  
20 motion was filed in an attempt to help the Crazy Horse retain its economic value and to prevent  
21 the Crazy Horse from losing its grandfathered status with the City of Las Vegas as a location  
22 where a cabaret nightclub serving liquor could operate if the business was not reopened by the  
23 end of the year. This motion was later withdrawn on November 16, 2007 (Document #90).

24  
25 11. On January 22, 2008, the United States of America filed its motion to stay  
26 foreclosure asserting its basis in law to sell the forfeited property rather than allow a foreclosure  
27 and foreclosure sale since it claimed that the sale by the United States is more likely to generate  
28 more sales proceeds than a foreclosure auction (Document #122, page 2). Security Pacific Bank

1 did not oppose the motion “without prejudice to its right to seek relief in the future from any  
2 stay entered should circumstances warrant. (Document #136). The government’s motion was  
3 granted on February 28, 2008.” Document #167.  
4

5 12. On June 23, 2008, this Court entered its First Amended Order of Forfeiture  
6 (Document #222). In said order, this Court listed the order of distribution of the sale proceeds  
7 of the forfeited property in basically the following order of priority: (1) United States Marshals  
8 Service’s costs, expenses, and private counsel’s attorney fees for the real property transaction  
9 related to the care and sale of the Property; (2) Clark County Taxes owed; (3) City of Las Vegas  
10 sewer lien; and (4) the Security Pacific Bank loan with attorney’s fees, penalties, and interest.  
11 The Order details the remaining distribution if any other proceeds were remaining (Document  
12 #222). This Court further ordered that the forfeited Property was condemned, forfeited, and  
13 vested in the United States, subject to the conditions mentioned in the order and shall be  
14 disposed of according to law (Document #222).  
15

16 13. On or about June 30, 3008, Security Pacific Bank was informed that the City of  
17 Las Vegas declared that the “grandfathered” exemption to the city’s zoning requirements that  
18 allowed the Crazy Horse to operate with an exotic dance use permit and tavern license expired  
19 due to lack of use by the Crazy Horse (Document #243, pages 4-5).  
20

21 14. Having considered the request of the Federal Deposit Insurance Corporation, as  
22 receiver for Security Pacific Bank, this Court issued its order on December 31, 2008, granting a  
23 stay pursuant to 12 U.S.C. § 1821(d)(12)(ii) for a period of ninety (90) days which has since  
24 expired (Document #267).  
25

26 15. On June 9, 2009, the Federal Deposit Insurance Corporation, as receiver for  
27 Security Pacific Bank, executed an Allonge to the \$5,000,000.00 Promissory Note Secured by  
28 Deed to Trust payable to Olympic Capital Venture, LLC, a Delaware limited liability company

1 Without Recourse. An Assignment of Beneficial Interest in Deed of Trust was also executed by  
2 the Federal Deposit Insurance Corporation, as receiver for Security Pacific Bank. On July 23,  
3 2009, Olympic Capital Venture, LLC then executed an Allonge regarding the subject note  
4 payable to Canico Capital Group, LLC. *See*: Exhibit "A" attached hereto.  
5

6 16. On February 18, 2010, Defendant Rizzolo filed his Request for Hearing to  
7 Modify Conditions or Terms of Supervision in order to avoid ambiguities arising out of the  
8 global pleas and the agreements to pay restitution upon the sale of the Crazy Horse (Document  
9 #279).  
10

11 17. The U.S. Government has yet to sell the Crazy Horse.

12 18. The current balance due Canico on the \$5,000,000.00 Promissory Note is  
13 \$4,853,026.28 on the principal amount, plus \$2,183,861.70 in interest at a rate of 18% thru  
14 March 1, 2010 (30 months), plus \$485,302.62 (10% of principal balance as penalty), plus  
15 interest from March 1, 2010 to sale date at a rate of \$2,426.51 per day, plus attorney's fees and  
16 costs.  
17

## 18 **II. ARGUMENT**

### 19 **A. Summary of Argument**

20 Although statutory authority may exist permitting the Plaintiff to convert a monetary  
21 forfeiture judgment into a property seizure of third-party assets, innocent third-parties must be  
22 protected pursuant to the United States Constitution. Consequently, the stay must be lifted to  
23 prevent further damage to innocent persons, especially since the United States has no real  
24 interest remaining in the seized property.  
25

### 26 **B. The Stay must be Lifted to Prevent Further Damage to Innocent Persons.**

27 When the Plaintiff United States of America filed its motion to stay foreclosure, the  
28 Plaintiff asserted that the Security Pacific Bank's sole remedy was through an ancillary hearing



1 provided under 18 U.S.C. § 1963(l) and that the sale by the United States was more likely to  
2 generate more sale proceeds than a foreclosure sale. Document #122, page 2, lines 11-15.

3  
4 The Plaintiff further claimed that "The United States Marshals Service's sale of the  
5 forfeited property will not harm the bank." Document #122, page 11, lines 8-9. That was over  
6 two (2) years ago and the United States Marshals Service has failed to sell the seized property  
7 though it has it has claim for its own costs, expenses, and private counsel's attorney fees for the  
8 real property transaction related to the care and sale of the Property. Document #222, page 8,  
9 lines 21-26.

10  
11 The August 13, 2007, Declaration of Anthony J. Mace, Special Agent of the Federal  
12 Bureau of Investigation (FBI), provides, in part:

13 12. On October 26, 2005, RIZZOLO signed a \$5,000,000.00 in United  
14 States Currency note which was secured against the real property on November 3,  
15 2005. The FBI has not been able to track or locate the \$5,000,000.00 in United  
16 States Currency.

17 13. From on or about October 26 to on or about through June 2007,  
18 Rizzolo allowed the Crazy Horse to be operated. The Crazy Horse Too [was] not  
19 managed properly which caused it to diminish in value. The value of the business  
20 is the cash flow minus the expenses. The Crazy Horse Too has not paid and owes  
21 approximately \$2,466,500.00 in rent, \$595,023.82 in IRS employee withholding  
22 taxes, and \$386,202.07 in Nevada State sales taxes. The management of the  
23 Crazy Horse Too was not managed correctly, causing the business to decline  
24 dramatically and diminishing the value of the property. Ex. 1.

25 \* \* \* \* \*

26 17. On July 11, 2007, the Cabaret and Liquor License for the Crazy  
27 Horse Too were to surrender to the Clark County Commission. The club has not  
28 been open for business since, and is in jeopardy of being substantially diminished  
in value.

23 Document 122-2, page 3-4. The Plaintiff United States of America clearly realized and  
24 acknowledged years ago that the Crazy Horse owed almost \$2.5 million dollars in back  
25 rent and was about to lose its cabaret and liquor license. Document #122.

26 Pursuant to 18 U.S.C. § 1963(l) and this Court's First Amended Order of Forfeiture  
27 (Document #222), this Court specifically found that Security Pacific Bank had an interest of the  
28



1 loan in the forfeited Property (which has since been transferred to the Petitioner). This Court  
2 also “conditionally” granted permission to the United States to sell clear and good title to the  
3 forfeited Property to any subsequent purchaser or transferee subject to a specific order of  
4 distribution of the sale proceeds. The order of distribution is as follows: United States Marshals  
5 Service’s costs, expenses, and private counsel’s attorney fees for the real property transaction  
6 related to the care and sale of the Property; Clark County Taxes owed; City of Las Vegas sewer  
7 lien; the Security Pacific Bank loan with attorney’s fees, penalties, and interest; the restitution of  
8 US \$9,000,000.00 plus interest to Kim and Amy Henry; the restitution of US \$1,734,000.00 plus  
9 accruals to the IRS, and so on. The forfeiture of US \$4,250,000.00 is subordinate to the Security  
10 Pacific Bank loan with attorneys’ fees, penalties, and interest. Document #222, page 9.

11  
12 In order for the Plaintiff to have obtained \$1.00 on the Property as of the 1998 Order, the  
13 property would have to have been sold in excess of \$16,337,526.28 plus accumulated fees,  
14 penalties, and interest. This \$16 Million plus figure amount does not even include: the U.S.  
15 Marshals Services costs, expenses, and so on; the Clark County Taxes; the City of Las Vegas  
16 sewer lien; the accruals to the IRS, interest; the attorneys’ fees, penalties, and interest owed  
17 Security Pacific Bank and/or the Petitioner; nor the amounts of \$2,466,500.00 in rent, of  
18 \$595,023.82 in IRS employee withholding taxes, and of \$386,202.07 in Nevada State sales taxes  
19 as stated in Special Agent Mace’s declaration. Document 122-2, page 3-4. The motion filed by  
20 the Defendants in 1997 asserts that Defendants must pay approximately \$25,000,000.00 towards  
21 fines, restitution, civil forfeiture, the Henry family, and to other secured creditors not taking into  
22 account costs associated with the sale of Property and additional taxes inextricably linked to the  
23 sale of the business/property. Document 88, page 8, lines 3-6.

24  
25 The forfeited Property has not been sold despite Plaintiff’s claims that “The stay of  
26 foreclosure and foreclosure sale would [allegedly] protect and preserve the forfeited property  
27  
28

1 from being auctioned for much less than it is worth, the amount owed by RICRIZ.” Document  
2 122, page 7, lines 8-9. Plaintiff’s original motion further provides:

3  
4 “With respect to property ordered forfeited . . . , the Attorney General is authorized  
5 to – (4) direct the disposition by the United States of all property forfeited . . . by  
6 public sale or any other commercial feasible means, making due provision for the  
rights of any innocent persons. 18 U.S.C. §1963(g)(4); *see also* 21 U.S.C. §  
853(i)(4) (same).”

7 Document #122, page 8, fn. 7.

8 Deals ranging from \$29,000,000.00 to \$48,000,000.00 have failed to close. Document  
9 #88, page 5, lines 15-17. More than two years have passed since Plaintiff filed its motion and  
10 the Property has not been sold by public sale or any other commercial feasible means, making  
11 due provision for the rights of the innocent persons. The Affidavit of Counsel in Support of  
12 Motion to Enforce Plea Agreements and to Appoint Third-Party Manager of the Crazy Horse  
13 Too’s Business further provides information that the United States Marshal and the United  
14 States Attorney have informed Defendants’ counsel that they are not interested in having the  
15 business reopened. Document 88, page 15, lines 2-3. The loss of the cabaret and liquor license  
16 by Crazy Horse, a cabaret which sold liquor, has more than likely substantially diminished the  
17 value of the Property. This is something that government agents already foresaw. Document  
18 #122-2 previously cited above.

19  
20  
21 The United States has taken a well-recognized property right held by the Petitioner since  
22 the Petitioner is unable to foreclose on the property and sell the property at foreclosure or to  
23 obtain rents pursuant to the security agreement, deed of trust, and assignment of rents. *See also*  
24 Document #122-4. In very plain language, Petitioner’s acquired the mortgagor’s interest in the  
25 Property. Plaintiff United States of America has by its inability to sell the Property been  
26 constructively destroying the mortgage on the Property. Petitioner has suffered a taking for  
27 which it is entitled to compensation. *See Sheldon v. United States*, 7 F.3d 1022, 1993 U.S. App.  
28

LEXIS 27028 (CA Fed. Cir. 1993) (Government's action was taking in that it destroyed mortgagee's security interest and interfered with their right of maintenance and foreclosure whether the government had the intent and purpose of extinguishing the mortgage or not); Innovair Aviation, Ltd. v. United States, 83 Fed. Cl. 498, 2008 U.S. Claims LEXIS 247 (2008) (Court further awarded interest, compounded annually, from the date it determined the government took a technology license agreement and failed to pay just compensation). Since there are no criminal proceedings pending against the Petitioner and the Plaintiff acknowledged that the bank was a bona fide purchaser for value without cause to believe that the property was subject to forfeiture (Document #123), Petitioner's property should be returned to Petitioner so that Petitioner may foreclose on the deed of trust securing the promissory note and hold a foreclosure sale of the subject Property and business.

### III. CONCLUSION

Based on the foregoing, this Court should lift the stay previously imposed upon Security Pacific Bank in its entirety and permit Petitioner Canico Capital Group, LLC to foreclose on the deed of trust securing the promissory note and hold a foreclosure sale of the subject Property and business, which includes, but is not limited to all of the real property, all of the leasehold improvements, and the business operated on the real property under the name of Crazy Horse Too.

DATE: March 9, 2010.

MICHAEL R. MUSHKIN & ASSOCIATES

By: /s/ MICHAEL R. MUSHKIN

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of March, 2010, I electronically filed the forgoing with the Clerk of Court using the court's transmission facilities (CM/ECF) system to make service, which will cause the forgoing document to be served by electronic means to those registered as an electronic case filing user with the Clerk of Court as shown in the Court's Notice of Electronic Filing at the time of electronic filing.

The following are those who are currently on the list and/or were on the list to receive e-mail notices for this case as of March 3, 2010.

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