

1 WRITTEN DECISION - NOT FOR PUBLICATION

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CLERK, U.S. BANKRUPTCY COURT	
SOUTHERN DISTRICT OF CALIFORNIA	
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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re) CASE NO. 02-09721-H7
11)
12 COMMERCIAL MONEY CENTER, INC.,) (Jointly Administered with
13 Debtor.) Case No. 02-09720-H7)
14) ADVERSARY CASE NO. 03-90331-H7
15)
16 RICHARD M. KIPPERMAN, Chapter)
17 7 Trustee for the Bankruptcy)
18 Estates of Commercial Money)
19 Center, Inc. and Commercial)
20 Servicing Corporation,)
21 Plaintiff,)
22 v.)
23 NETBANK, FSB, a federal)
24 savings bank,)
25 Defendant.)
26)
27)

22 Richard M. Kipperman, chapter 7 trustee ("trustee") for
23 Commercial Money Center ("CMC" or "Debtor") and Commercial
24 Servicing Corporation ("CSC"), moves for summary judgment on claims
25 One, Two, three, Five and Six of his Complaint against NetBank, FSB
26 ("NetBank").¹ The trustee seeks to avoid NetBank's security
27

28 ¹ The claims for relief are as follows: 1) Declaratory Relief that Transactions Involving CMC-N Purportedly Transferred Assets and CMC-N Collateral Did Not Constitute a "True Sale" and that NetBank Did Not Perfect Any Interest Therein - 11 U.S.C. § 541 and F.R.B.P. 7001(9); 2) Alternative Declaratory Relief

1 interest in three categories of collateral - payment streams
2 generated from underlying equipment leases, the equipment leases,
3 and surety bonds ("bonds") - because NetBank failed to perfect its
4 interests in any of the collateral outside the preference period.

5 The Bankruptcy Appellate Panel (the "BAP") held that the
6 payment streams should be categorized as payment intangibles under
7 the Uniform Commercial Code (the "UCC"). It is undisputed that the
8 underlying equipment leases should be categorized as chattel paper
9 under the UCC. NetBank raises for the first time in this summary
10 judgment motion that the bonds should be categorized as instruments
11 under the UCC, rather than supporting obligations² of either the
12 payment streams or leases.

13 This matter is before the Court on remand from the BAP.³ At
14 issue is whether NetBank perfected its interests in the payment
15

16 that Even if Transactions Involving CMC-N Purportedly Transferred Assets and CMC-N
17 Collateral Constitute a "True Sale," For Such Sale to Be Effective, NetBank Was
18 Required To, But Did Not, Perfect Its Interest Therein - 11 U.S.C. § 541 and
19 F.R.B.P. 7001(9); 3) Order Directing NetBank to Turn Over Estate Assets - 11 U.S.C.
20 §§ 542, 550 and 551; 5) Judgment Voiding 90-Day Preferential Transfer - 11 U.S.C.
21 § 547; 6) Judgment Avoiding Unperfected Interests in CMC-N Purportedly Transferred
22 Assets and CMC-N Collateral - 11 U.S.C. §§ 544 and 551.

20 ² Supporting obligations are defined as "a letter of credit right or secondary
21 obligation that supports the payment or performance of an account, chattel paper,
22 document, general intangible, instrument or investment property." NEV. REV. STAT.
§ 104.9102 (1) (xxx).

23 ³ In January 2005, this Court entered its Memorandum Opinion granting the
24 trustee's first summary judgment motion brought in this Adversary Proceeding. This
25 Court found that under the transaction between CMC and NetBank, the payment streams
26 under certain equipment leases were chattel paper, rather than payment intangibles,
27 and that NetBank did not perfect its interests in the payment streams by either
28 filing or taking actual possession of the underlying leases. The Court also found
that the transaction constituted a loan, and not a true sale. On appeal, the BAP
determined that the payment streams, stripped from the equipment leases, were
payment intangibles, and affirmed this Court's prior finding that the transaction
was a loan secured by, among other things, the payment streams. NetBank, FSB v.
Kipperman (In re Commercial Money Center, Inc.), 350 B.R. 465 (B.A.P. 9th Cir.
2006).

1 streams outside the preference period by taking possession of the
2 leases through a third party agent: As a matter of law, in a loan
3 transaction, could NetBank perfect its interests in the payment
4 streams by possession of the underlying leases? If so, as a
5 question of fact, did NetBank perfect its claimed interest by
6 securing and retaining possession of the leases through a third
7 party agent prior to the preference period?

8 The Court finds that as a matter of law, in a loan
9 transaction, the payment streams which the BAP categorized as
10 payment intangibles under the UCC, can be perfected only by filing
11 a financing statement.

12 Assuming that NetBank could perfect its interests in the
13 payment streams by taking possession of the leases, the Court finds
14 that under the facts and evidence presented, NetBank did not hold
15 constructive possession of the leases through its third party
16 agent, Royal Indemnity Company ("Royal"), or CSC⁴ prior to the
17 preference period.

18 The Court also finds that with respect to the bonds, the law
19 of the case doctrine applies, and the bonds are supporting
20 obligations of the payment streams and the leases. Because NetBank
21 failed to perfect its interests in the payment streams or the
22 leases by filing a financing statement or taking possession of the
23 leases, NetBank is unperfected with respect to the bonds.

24 This Court has jurisdiction to determine this matter pursuant
25 to 28 U.S.C. §§ 1334 and 157(b)(1) and General Order No. 312-D of
26 the United States District Court for the Southern District of
27

28 ⁴ CSC was a subsidiary of CMC.

1 California. This is a core proceeding pursuant to 28 U.S.C.
2 § 157(b)(2)(A) and (K).

3 I.

4 FACTS

5 The facts of this case are set out at length in previous
6 opinions of this Court and the BAP and, therefore, the Court only
7 briefly summarizes the facts necessary to decide the narrow issues
8 before it.

9 CMC's business consisted of originating commercial equipment
10 leases. CMC bought equipment and leased it to consumer end users
11 with sub-prime credit on a nationwide basis. CMC would then
12 package these insured leases together into a "lease pool" and
13 assign the payment stream due under the leases along with surety
14 bonds to third party "investors."

15 NetBank was such an investor. NetBank purchased seven pools
16 for more than \$47 million which are at issue in this adversary
17 proceeding. With respect to each of the seven pools, NetBank, CMC,
18 and Amwest Surety Insurance Company ("Amwest") entered into a
19 separate Sale and Servicing Agreement ("SSA") pursuant to which CMC
20 transferred to NetBank certain rights associated with the pools.
21 Each SSA was identical. Amwest issued surety bonds which
22 guaranteed payment to NetBank. In November 2000, Royal issued new
23 bonds to replace the surety bonds previously issued by Amwest in
24 connection with the NetBank SSAs.

25 The SSA appoints the surety, or in this case, Royal, as
26 "Servicer" of the leases and Debtor as "Sub-Servicer" to assume all
27 ///
28 ///

1 responsibilities and perform all duties of the Servicer.⁵ SSA
2 §§ 3.7, 7.4, Art. VIII. In late 2001 and beginning of 2002, CMC
3 failed to remit the payment streams to NetBank. NetBank made
4 demand on Royal for payment under the bonds. On February 1, 2002,
5 Royal commenced an action in the United States District Court for
6 the Southern District of California to remove Debtor as Sub-
7 Servicer (the "California Suit"). Numerous orders were entered in
8 the California Suit relating to the leases.⁶ Pursuant to a
9 stipulated order, CMC resigned as Sub-Servicer and Royal was
10 authorized to take possession of the leases in March of 2002.

11 II.

12 DISCUSSION

13 Rule 56(c) of the Federal Rules of Civil Procedure, made
14

15 ⁵ Duties of the Servicer/Sub-Servicer include paying all taxes and insurance
16 on the leased equipment (SSA § 3.4), collecting the payment streams from the lessees
17 (SSA § 3.2), and holding the leases and associated files on NetBank's behalf. SSA
§ 2.7(a). Thus, it was contemplated at the closing that the Debtor would retain
the leases.

18 ⁶ Specifically, on February 1, 2002, Royal filed a motion for temporary
19 restraining order ("TRO") against CMC and CSC. The court in the California Suit
20 issued a TRO that same day which required CMC and CSC to make available to Royal
21 all books, records and accounts related to Royal bonded leases. On February 11,
22 2002, the court entered a stipulation and amended TRO which stated: "Beginning on
23 Wednesday, February 6, 2002, CMC and CSC must make reasonably available to Royal
24 all books, records, and accounts related to Royal's bonded leases, including current
25 statements of all bank accounts into which CMC and CSC receive Royal bonded lease
26 payments....The same day, the court entered a second restipulation and amended TRO
27 which contains the same language and also expressly prohibited CMC from removing
28 any Royal bonded lease from a lease pool, depositing any Royal bonded lease payment
into any bank account other than Royal bonded lease designated account, or giving
instructions to lessees under the Leases inconsistent with these requirements. On
February 26, 2002, the court entered yet another order that required CMC to produce
an electronic copy of all lease accounting data by March 4, 2002, to produce or
provide access to the "removed lease filed" by March 6, 2002, and to produce or
provide access to all servicer reports by March 6, 2002. Finally on March 4, 2002,
the court entered a third restipulation and amended TRO which is substantively
identical to the February 11, 2002, second restipulation and amended TRO, but
extended the TRO beyond the March 8, 2002 expiration contained in the February 26,
2002, TRO. NetBank states that on March 19, 2002 and March 26, 2002, the court
entered additional stipulations and orders relating to the leases.

1 applicable to adversary proceedings by Fed. R. Bankr. P. 7056,
2 provides that summary judgment:

3 [S]hall be rendered forthwith if the pleadings,
4 depositions, answers to interrogatories, and
5 admissions on file, together with the
6 affidavits, if any, show that there is no
genuine issue as to any material fact and that
the moving party is entitled to a judgment as a
matter of law.

7 "The moving party bears the initial responsibility of informing the
8 district court of the basis for its motion, and identifying those
9 portions of 'the pleadings, depositions, answers to
10 interrogatories, and admissions on file, together with the
11 affidavits, if any,' which it believes demonstrate the absence of a
12 genuine issue of material fact." Hughes v. United States, 953 F.2d
13 531, 541 (9th Cir. 1992) citing Celotex Corp. v. Catrett, 477 U.S.
14 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). "After the
15 moving party has met its initial burden, Rule 56(e) . . .
16 requires the nonmoving party to go beyond the pleadings and by her
17 own affidavits, or by the 'depositions, answers to interrogatories,
18 and admissions on file,' designate 'specific facts showing that
19 there is a genuine issue for trial.'" Hughes, 953 F.2d at 541
20 (citation omitted).

21 The trustee contends that in a loan transaction, NetBank could
22 perfect its interests in a payment intangible such as the payment
23 streams, only by the filing of a financing statement. Thus, the
24 trustee contends that, as a matter of law, NetBank has an
25 unperfected interest in the payment streams since it is undisputed
26 that NetBank did not file a financing statement. The trustee also
27 maintains that even if NetBank could perfect its interest in the
28 payment streams by possession of the underlying leases, its

1 purported agent, Royal, did not obtain actual possession of the
2 leases until March 12, 2002, which was within the preference
3 period.

4 NetBank acknowledges that it did not have actual possession of
5 the leases, but argues that its agent, Royal, had constructive
6 possession of the leases outside the preference period through
7 various orders entered in the California Suit. NetBank also argues
8 that CSC may possibly have had possession of the leases as their
9 agent as well.

10 NetBank's oral argument focused primarily on the bonds and
11 whether or not they were supporting obligations. NetBank argues
12 that if the bonds are supporting obligations, then the bonds
13 support both the leases and payment streams. Thus, NetBank
14 contends that even if it could not perfect its interest in the
15 payment streams through possession of the underlying leases, it
16 still perfected its interests in the bonds by possession of the
17 leases. On the other hand, NetBank argued that to the extent the
18 bonds are not supporting obligations, the bonds should be
19 classified as instruments⁷ under the UCC, which can be perfected by
20 possession. It is undisputed that NetBank had possession of the
21 bonds at all times and, therefore, NetBank contends it has
22 perfected its interest in those bonds that are not supporting
23 obligations.

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26
27 ⁷ Instruments are defined as "...[a] writing that evidences a right to the
28 payment of a monetary obligation, is not itself a security agreement or lease, and
is of a type that in ordinary course of business is transferred by delivery with
any necessary endorsement or assignment." NEV.REV.STAT. § 104.9102(1)(tt).

1 A. PAYMENT INTANGIBLES CAN ONLY BE PERFECTED BY FILING WHEN
2 TRANSACTION IS LOAN

3 The BAP has categorized the payment streams as payment
4 intangibles under the UCC.⁸ Payment intangibles are perfected by
5 the filing of a financing statement. Compare In re Commercial
6 Management Svc., Inc., 127 B.R. 296 (Bankr. D. Mass. 1991) (in this
7 case decided prior to the revisions to Article 9 in 1999, the court
8 held that possession of chattel paper perfects the payment streams
9 under a lease).

10 Only certain kinds of property under Revised Article 9 can be
11 perfected by possession:

12 [A] secured party may perfect a security
13 interest in tangible negotiable documents,
14 goods, instruments, money or tangible chattel
paper by taking possession of the collateral.
UCC § 9-313(a), NEV. REV.STAT. § 104.9313(1).

15 The plain language of the statute does not include general
16 intangibles or payment intangibles. Official Comment 2 to Section
17 9-313 explains, in pertinent part:

18 A security interest in accounts and payments
19 intangibles -- property not ordinarily
20 represented by any writing whose delivery
21 operates to transfer the right to payment --
may under this Article be perfected only by
filing.

22 See also Thomas C. Thompson Sports, Inc. v. Farmers & Merchs. Bank
23 (In re Turley), 172 F.3d 671, 674 (9th Cir. 1999) (finding that
24 security interest in a general intangible may only be perfected by
25

26 ⁸ Pursuant to UCC §9-102(pp), NEV.REV.STAT. § 104.9102(pp), a payment
27 intangible is included in the definition of a general intangible. Pursuant to UCC
28 § 9-102(hhh), NEV.REV.STAT. §104.9102(hhh), a payment intangible "means a general
intangible...." Therefore, the payment intangible can be perfected by the same
means as a general intangible.

1 filing); Freightliner Mkt. Dev. Corp. v. Silver Wheel Freightlines,
2 Inc., 823 F.2d 362, 369 (9th Cir. 1987) ("A security interest in
3 general intangibles is perfected by the filing of a financing
4 statement.")⁹

5 The Court finds, as a matter of law, NetBank could perfect its
6 interests in the payment streams only by filing a financing
7 statement. It is undisputed that it did not do so. Commercial
8 Money Center, 350 B.R. at 486. Summary judgment is granted in
9 favor of the trustee on this issue.

10 B. NETBANK NEVER HAD CONSTRUCTIVE POSSESSION OF THE LEASES
11 THROUGH ITS ALLEGED AGENT

12 Relying on the case of In re Commercial Management Svc., Inc.,
13 127 B.R. 296 (Bankr. D. Mass. 1991), NetBank contends that it "can
14 and did perfect its interest in the Payment Streams by possession
15 of the Leases." The Court assumes that Commercial Management is
16 correct for purposes of this discussion.

17 It is undisputed that NetBank did not itself take actual
18 possession of the leases. Instead, NetBank relies on perfection by
19 possession through its third-party agent, Royal or possibly CSC.¹⁰

20 The UCC does not define "possession." See UCC § 9-313(a),
21 NEV. REV.STAT. § 104.9313(1). Comment 3 to this section states:

22 In determining whether a particular person has
23 possession, the principles of agency apply.
24 For example, if the collateral clearly is in

25 ⁹ See also Steven L. Harris and Charles W. Mooney, How Successful Was the
26 Revision of UCC Article 9:: Reflections of the Reporters, 74 Chi-Kent L. Rev. 1357,
27 1399 (1999) (noting that a security interest arising out of a sale of a payment
28 intangible is automatically perfected, whereas filing is necessary to perfect a
security interest in a payment intangible which secures an obligation).

¹⁰ For purposes of this motion, the Court construes the evidence in favor of
NetBank and assumes that Royal was NetBank's agent in connection with the leases.

1 possession of an agent of the secured party for
2 the purposes of possession on behalf of the
3 secured party, and if the agent is not also an
4 agent of the debtor, the secured party has
5 taken actual possession without the need to
6 rely on a third-party acknowledgment.

7 The Comment does not use the term constructive possession, but
8 recognizes that a secured party may be deemed to have actual
9 possession if the collateral is in the possession of an agent of
10 the secured party.

11 The purpose of perfection . . . is notice to
12 the world that someone other than the debtor
13 may have an interest in the collateral
14 Possession can serve this perfection notice
15 function . . . Perfection by possession 'exists
16 when the secured party or another person has
17 such possession of the collateral that a
18 reasonable person should have reason to know
19 that another person claims a security interest
20 in the collateral.' In re Julien Co., 168 B.R.
21 647, 671 (Bankr. W.D. Tenn. 1994) (citation
22 omitted).

23 See also In re Havens Steel Co., 317 B.R. 75, 87 (Bankr. W.D. Mo.
24 2004) (interpreting "possession" as used in UCC § 1-201 to
25 encompass constructive possession).

26 NetBank argues that the court orders entered in the California
27 Suit between Royal and the Debtor gave Royal constructive
28 possession of the leases outside the preference period.
29 Specifically, NetBank contends that on February 1, 2002, CMC was
30 restrained from withdrawing any lease payments and was required to
31 make all records relating to the Leases available to Royal.
32 Further orders provided that neither CMC nor CSC were entitled to
33 remove Leases from pools, place Lease payments in accounts other
34 than those specified by Royal, or to instruct lessees in any manner
35 inconsistent with these requirements. [See footnote 3 for a

1 description of the orders]. NetBank contends that Royal's "control
2 of the Leases and the Payment Streams thereunder was complete at
3 this time and provided Royal with constructive possession of the
4 Leases." NetBank also argues that the various orders were filed on
5 the California Suit's docket and provided notice that CMC no longer
6 had the right to control the leases and the payment streams.

7 It is undisputed that Royal did not obtain actual possession
8 of the leases until March 12, 2002, which was within the preference
9 period. According to NetBank, it had constructive possession of
10 the leases through its agent, Royal, which obtained constructive
11 possession of the leases through the various court orders in the
12 California Suit. This novel argument of constructive possession
13 once-removed is unsupported by the case law or otherwise.

14 As pointed out by the trustee, there can't be perfection by
15 constructive possession because actual possession remained at all
16 times with CMC, or with CSC on Debtor's behalf.¹¹ A secured party
17 such as NetBank cannot perfect by claiming constructive possession
18 where the debtor has actual possession. Commercial Money Center,
19 350 B.R. at 486. NetBank also glosses over the notice aspect of
20 perfection. The Court finds that Royal, through the orders entered
21

22 ¹¹ NetBank argues that CSC may have had possession of the leases outside the
23 preference period because CSC serviced all the leases for CMC. NetBank contends
24 that the evidence suggests that CSC may have been NetBank's agent and that
25 possession by CSC prior to the preference period perfected NetBank's interests in
26 the leases. Yet, NetBank offers no "evidence" to support its argument that CSC was
27 NetBank's agent. NetBank's argument is without merit. NetBank's SSAs were with
28 CMC as sub-servicer, and provided that CMC would maintain possession of the leases.
Paragraph 2.7(a) of the SSAs provides that after the closing of the transaction,
CMC retains possession of the leases. Commercial Money Center, 350 B.R. at 472.
As pointed out by the trustee, if CSC did have possession of the leases, it was only
on behalf of CMC, the debtor. See Heinicke Instruments Co. v. Republic Corp., 543
F.2d 700, 702 (9th Cir. 1976) ("The notice function of U.C.C. §9-305 [now U.C.C.
§ 9-313] would be defeated if the debtor, or a person under the debtor's control,
were left in possession of the collateral.").

1 in the California Suit, did not have "such possession [of the
2 leases] that a reasonable person should have reason to know that
3 [NetBank] claim[ed] a security interest in the collateral."
4 Julien Co., 168 B.R. at 671. A reasonable third party would have
5 found that the Debtor (or CSC) had actual possession of the leases
6 until March 12, 2002, when Royal took actual possession.

7 Moreover, the orders in the California Suit directed CMC to
8 provide Royal and others with "access" to accounting and lease
9 information and do not mention "possession" or "control" of the
10 leases. The un rebutted testimony of James R. Patterson, Esq.,
11 Royal's counsel in the California Suit, offered by the trustee,
12 demonstrates that Royal was never specifically seeking possession
13 of anything. Rather, Royal wanted to obtain access to information
14 and restrain the Debtor from removing monies out of any accounts.

15 The Court finds that NetBank, through its agent, Royal, did
16 not have constructive possession of the leases for purposes of
17 perfecting its interests in the payment streams. Royal did not
18 obtain actual possession of the leases until March 12, 2002, which
19 was within the preference period. There being no genuine issues of
20 material fact, the Court grants summary judgment in favor of the
21 trustee on this issue.¹²

22 C. THE BONDS: SUPPORTING OBLIGATIONS OR NOT?

23 NetBank argues for the first time in these multiple
24 proceedings, that some of the bonds may not be supporting

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26
27 ¹² To the extent NetBank relies on its constructive possession of the leases
28 to perfect its interest in the bonds as supporting obligations, that argument also
fails.

1 obligations¹³ of the payment streams or leases since the leases were
2 either nonexistent or void. NetBank contends that upon remand,
3 any issues not expressly or implicitly disposed of by the appellate
4 decision may be considered by this Court. Nguyen v. United States,
5 792 F.2d 1500, 1502 (9th Cir. 1986). According to NetBank, if the
6 bonds are not supporting obligations, the bonds are instruments¹⁴
7 which could be perfected by possession. Because NetBank has had
8 continuous possession of the bonds, its interests in the bonds
9 which are not supporting obligations are perfected and cannot be
10 avoided by the trustee.

11 In its first summary judgment motion filed on May 6, 2004,
12 NetBank argued that the bonds were supporting obligations.
13 "NetBank's . . . argument focuses on the character of payment
14 streams because the surety bonds are supporting obligations."
15 [Case No. 03-90329; Docket #28, 40:13-28]. NetBank concludes that
16 if the payment streams were sold and are perfected, then the surety
17 bonds were as well. [Id. at 40:26-27]. In opposition to NetBank's
18 first summary judgment motion, and in his cross-motion for summary
19 judgment, the trustee maintained that the parties agreed that the
20 surety bonds were "supporting obligations" and because NetBank had
21 not perfected its interests in the payment streams and leases, its
22 interests in the bonds were avoidable as well. [Id.; Docket
23 #85,51:15-18]. Thus, the issue of whether the bonds were
24 supporting obligations was squarely before the Court in the first
25 round of summary judgment motions brought by the trustee and
26

27 ¹³ see supra footnote 2.

28 ¹⁴ see supra footnote 7.

1 NetBank and NetBank conceded and argued that the bonds were
2 supporting obligations.

3 The trustee contends that this Court has already implicitly
4 decided that the bonds are supporting obligations and that this is
5 the "law of the case." The Court agrees. "Under the law of the
6 case doctrine, a court is ordinarily precluded from reexamining an
7 issue previously decided by the same court, or a higher court, in
8 the same case." Hydrick v. Hunter, 466 F.3d 676, 687 (9th Cir.
9 2006) (citation omitted). "For the law of the case doctrine to
10 apply, 'the issue in question must have been 'decided explicitly or
11 by necessary implication in [the] previous disposition.'" Id. at
12 687 (citation omitted). This Court found in the first summary
13 judgment motion that NetBank had not perfected its interest in the
14 payment streams and that the trustee was entitled to summary
15 judgment avoiding NetBank's interests in all of the "'CMC-N'
16 Purportedly transferred Assets" (a term defined in the trustee's
17 complaint to include both the leases and the bonds). Thus, the
18 Court implicitly found that the bonds were supporting obligations
19 and the law of the case doctrine is applicable. The Court need not
20 reach the issue of the proper categorization of the bonds under the
21 UCC.

22 IV.

23 CONCLUSION

24 The Court finds that NetBank failed to perfect its interests
25 in the payment streams because it did not file a financing
26 statement.

27 Assuming that NetBank could perfect its interests in the
28 payment streams by taking constructive possession of the leases,

1 the Court finds that NetBank did not have constructive possession
2 of the leases through it alleged agent, Royal, outside the
3 preference period.

4 The Court also finds that under the law of the case doctrine,
5 the bonds are supporting obligations.

6 Accordingly, NetBank's interests in the payment streams, the
7 leases and the bonds, as supporting obligations of both the payment
8 streams and the leases, are unperfected. The Court grants summary
9 judgment in favor of the trustee.

10 This Memorandum Decision constitutes findings of fact and
11 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure
12 7052. Counsel for the trustee is directed to file with this Court
13 an order in conformance with this Memorandum Decision within ten
14 (10) days from the date of entry hereof.

15
16 Dated: June 6, 2006


17
18 JOHN J. HARGROVE
UNITED STATES BANKRUPTCY JUDGE