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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 SACRAMENTO DIVISION
8

9 In re) Case No. 06-22225-D-7
10 BETSEY WARREN LEBBOS,) Docket Control No. BWL-2
11 Debtor.)
12 _____)

13 **MEMORANDUM DECISION DENYING EX PARTE APPLICATION**
14 **FOR ORDER STAYING ADVERSARY PROCEEDING PENDING APPEAL**

15 The court issued an order on January 22, 2007 denying the
16 request of Betsey Warren Lebbos (the "Debtor") made in her letter
17 to the court filed November 1, 2006 which was later briefed as a
18 motion (a) to terminate the appointment of Linda Schuette as the
19 trustee in the Debtor's case, (b) to terminate the appointment of
20 Michael Dacquisto as Schuette's attorney, and (c) for
21 disciplinary relief against the Schuette and Dacquisto.¹ On
22 January 29, 2007 the Debtor filed an Ex Parte Application for
23 Stay of Proceeding Pending Appeal, Presentation of
24 Disqualification Issues, and Change of Venue (the "Stay
25 Application").

26 / / /

27 _____
28 ¹ The January 22, 2007 Order shall be referred to as the
"Order Denying Motion".

1 Although the Debtor does not specifically identify the order
2 she is attempting to stay in the Stay Application, the court
3 concludes the Debtor is seeking to have the court stay the Order
4 Denying Motion. The Order Denying Motion does not grant any
5 affirmative relief, but rather denies certain relief requested by
6 the Debtor. As such, the Order Denying Motion merely continues
7 the status quo.

8 In determining whether to stay an order, the courts in the
9 Ninth Circuit apply the standard employed when considering a
10 motion for preliminary injunction. See, Tribal Village of Akutan
11 v. Hodel, 859 F.2d 662, 663 (9th Cir. 1988). This standard
12 requires that the movant demonstrate either, (1) a combination of
13 probable success on the merits, and the possibility of
14 irreparable harm, or (2) the existence of serious questions going
15 to the merits and a balance of hardship tipping sharply in favor
16 of the movant. Cadance Design Sys., Inc. v. Avant! Corp., 125
17 F.3d 824, 826 (9th Cir. 1997).

18 The Debtor's argument for a stay pending appeal does not
19 demonstrate that the Debtor will probably succeed in overturning
20 the Order Denying Motion on appeal, and the possibility of
21 irreparable harm, or the existence of serious questions going to
22 the merits of the Order Denying Motion, and that in balancing the
23 hardships it tips sharply in favor of the Debtor. As such, the
24 Stay Application fails to establish the elements necessary for a
25 stay under the Federal Rules of Bankruptcy Procedure, Rule 8005.

26 Accordingly, the court denies the Stay Application and the
27 court will issue an order consistent with this Memorandum.

28 Dated: February 2, 2007

/s/
Robert S. Bardwil, Judge
United States Bankruptcy Court