

1
2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
6
7

8)
9 In re) Case No. 07-20660-A-13G
10 PEDRO and MILAGROS TAGALICUD,) Docket Control No. MWP #1
11 Debtors.) Date: April 2, 2007
12) Time: 9:00 a.m.
_____)

13 *On April 2, 2007 at 9:00 a.m., the court considered a motion*
14 *for relief from the automatic stay by Helvetica Capital Funding*
15 *and the debtors' opposition to that motion. The court's ruling*
16 *on the motion and the opposition is appended to the minutes of*
17 *the hearing. Because that ruling constitutes a "reasoned*
18 *explanation" of the court's decision, it is also posted on the*
19 *court's Internet site, www.caeb.uscourts.gov, in a text-*
20 *searchable format as required by the E-Government Act of 2002.*
21 *The official record, however, remains the ruling appended to the*
22 *minutes of the hearing.*

23 **FINAL RULING**

24 The motion will be granted in part.

25 Beginning April 9, 2003, the debtors filed seven chapter 13
26 petitions. The seven petitions bear case numbers: 03-91466, 03-
27 94469, 04-92637 (this petition was originally filed in the
28 Modesto Division but was later transferred to the Sacramento
Division where it was reassigned Case No. 04-31857), 05-22551,
06-22185, 06-24322, and the most recent case, 07-20660. This
tabulation does not include a duplicative case, Case No. 06-
22186, electronically filed on June 22, 2006 at the same time as

1 Case No. 06-22185. In the six other cases preceding the present
2 case, five were dismissed prior to confirmation usually because
3 the debtors had defaulted in making plan payments. In the
4 remaining prior case, Case No. 03-94469, a plan was confirmed on
5 April 5, 2004, but the case was soon dismissed on July 8, 2004
6 because the debtors failed to make plan payments.

7 The motion correctly points out that the two chapter 13
8 petitions immediately preceding the present case, Case Nos. 06-
9 22185 and 06-24322, were both pending and dismissed within the
10 year preceding the present case. The former was dismissed on
11 October 3, 2006 and the latter on January 18, 2007.

12 11 U.S.C. § 362(c)(4) provides that when an individual
13 debtor has filed 2 or more prior cases that were pending during
14 the previous year, but were dismissed, the automatic stay never
15 goes into effect. Section 362(c)(4)(A) also provides that "on
16 request of a party in interest the court shall promptly enter an
17 order confirming that no stay is in effect...." See also 11
18 U.S.C. § 362(j).

19 The debtor, or any other party in interest, may request that
20 the court impose the automatic stay despite the filing and
21 dismissal of multiple prior petitions. See 11 U.S.C. §
22 362(c)(4)(B). Such a request must be made with notice and a
23 hearing and must be made within 30 days of the filing of the
24 petition. To obtain the automatic stay, the debtor or other
25 party in interest must demonstrate that the latest case has been
26 filed in good faith. If shown, the court may impose conditions
27 on the imposition of the automatic stay.

28 In this case, neither the debtors nor any other party in

1 interest sought to impose the automatic stay and the time to make
2 such request expired on March 2, 2007.

3 Therefore, the court will confirm that the automatic stay is
4 not effective in this case as to the movant and any enforcement
5 of its security interest in property of the debtors or the
6 estate. Because the court will enter such an order, it is
7 unnecessary to consider the request that the automatic stay be
8 terminated - the automatic stay was never effective in this case.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28