

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT EASTERN
DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 12-32118-C-9
CITY OF STOCKTON, CALIFORNIA,) DC No. JTS-1
Debtor.)
_____)

OPINION

Before: Christopher M. Klein
United States Bankruptcy Judge

Marc A. Levinson (argued), Patrick B. Bocash, Orrick, Herrington
& Sutcliffe LLP, Sacramento, California, for Debtor.

Joseph T. Speaker (argued), Koeller, Nebeker, Carlson & Haluck,
LLP, Roseville, California, for Dean Andal.

KLEIN, Bankruptcy Judge:

Here is another facet of the balance between state
sovereignty and federal bankruptcy power in a chapter 9 case
regarding adjustment of debts of a municipality. This time it is
citizen litigation challenging a ballot description of a tax
proposed to the electorate by the City of Stockton.

The movant intends to petition a state court for an order
requiring the City to modify its ballot statement describing a

1 tax increase on the ballot in an upcoming election. The ballot-
2 statement issue potentially presages another dispute whether
3 state law requires that voter approval be by a simple majority or
4 by a super-majority.

5 The question here is whether it is necessary for the
6 bankruptcy court to grant relief from the automatic stay of 11
7 U.S.C. § 362(a) or from the additional automatic stay of 11
8 U.S.C. § 922(a) before the ballot-statement litigation commences.
9 Although the analysis may be straightforward to bankruptcy
10 specialists, the paucity of judicial decisions invites confusion.
11 Parsing those sections in light of the Bankruptcy Code's
12 definition of "claim" for which the common denominator is a right
13 to payment of money leads to the conclusion that relief is not
14 required so long as there is no effort to obtain any kind of
15 monetary award against the City or its officers or personal
16 relief against the officers that would interfere with their
17 duties. Hence, the proposed plaintiff's precautionary motion for
18 stay relief is denied as unnecessary.

19 20 Facts

21 The movant and proposed plaintiff, Dean Andal, has tendered
22 to this court a proposed pleading styled "Petition For Peremptory
23 Writ Of Mandate And Alternative Writ Of Mandate" challenging
24 allegedly misleading statements in the City's ballot description
25 of proposed "3/4-cent transaction and use(sales) tax" being
26 placed before the Stockton voters at a special election on
27 November 5, 2013.

The defendants are Stockton's City Clerk and its Registrar

1 of Voters, with the Mayor and Does 1 through 100 named as real
2 parties in interest

3 The bone of contention is the difference under California
4 law between a "general tax," which can be approved by majority
5 vote, and a "special tax," which requires a two-thirds majority.
6 The immediate issue relates to the accuracy of the City's ballot
7 statement. It is contended that a reference to using the tax to
8 "pay for law enforcement and crime prevention services" is
9 inconsistent with what the City wants categorized as a general
10 tax, hence materially misleading.

11 This type of pre-election litigation is a cottage industry
12 that has become a regular part of the California electoral
13 process. See, e.g., Howard Jarvis Taxpayers Ass'n v. City of
14 Roseville, 106 Cal. App. 4th 1178 (Cal. Ct. App. 2003).

15 The City, after reviewing the proposed pleading, does not
16 contend that the bankruptcy automatic stay of § 362(a) applies.

17 But the City perceives complications as to the additional
18 automatic stay of § 922(a) previously addressed in another
19 decision in this case. In re City of Stockton, 484 B.R. 372,
20 374-79 (Bankr. E.D. Cal. 2012) ("Stockton III"). Despite
21 conceding that the proposed pleading seems innocuous, it worries
22 that the presence of "Doe" defendants and the demand for "such
23 other and further relief as the court may deem just and
24 equitable" opens the door to mischief that might stray into the
25 zone of offending the § 922(a) additional stay.

26 The movant has responded to the City's fears by promising
27 that he will not permit the litigation to be transmogrified into
personal actions against City officers or inhabitants, that there

1 will be no monetary claim of any nature, and he waives all rights
2 to attorney fees and costs.

3 Discussion

4 The line between litigation against a chapter 9 municipal
5 debtor that does and does not offend the bankruptcy automatic
6 stays of § 362(a) and § 922(a) is vague.

7 Although these stays generally do not block litigation
8 merely challenging the accuracy of statements in a ballot measure
9 proposing a municipal tax, such litigation could stray into
10 prohibited territory when it implicates a claim.

12 I

13 First, it is important to be precise about the meaning of
14 the term "claim" in the context of "claim against the debtor"
15 because knowing what is, and is not, a "claim" is essential to
16 construing the automatic stays, especially the chapter 9
17 additional automatic stay. 11 U.S.C. § 922(a)(1). Specialized
18 language of bankruptcy invites confusion because "claim" has
19 different meanings that depend on context. What is second nature
20 to bankruptcy specialists may be counterintuitive to others.

21 The word "claim" means different things to different
22 lawyers. For example, all lawyers learn that "claim" is a
23 concept of basic jurisprudence under the rules of res judicata
24 articulated in the Restatement(Second) of Judgments, where
25 "claim" includes all rights of a plaintiff to relief against a
26 defendant arising out of a transactional nucleus of operative
27

1 facts. RESTATEMENT (SECOND) OF JUDGMENTS § 24.¹ And "claim" may have
2 other meanings in such specialized areas of the law as insurance.

3 The Bankruptcy Code defines "claim" as a term of art to
4 refer to a right to payment or a right that can be reduced to a
5 right to payment. 11 U.S.C. § 101(5).² Although a broad concept
6 that encompasses contingent, unmatured, and disputed rights, the

8 ¹The Restatement's concept is:

9 § 24. Dimensions of "Claim" for Purposes of Merger or
10 Bar - General Rule Concerning "Splitting"

11 (1) When a valid and final judgment rendered in an action
12 extinguishes the plaintiff's claim pursuant to the rules of
13 merger or bar (see §§ 18,19), the claim extinguished
14 includes all rights of the plaintiff to remedies against the
15 defendant with respect to all or any part of the
16 transaction, or series of connected transactions, out of
17 which the action arose.

18 (2) What factual grouping constitutes a "transaction", and
19 what groupings constitute a "series", are to be determined
20 pragmatically, giving weight to such considerations as
21 whether the facts are related in time, space, origin, or
22 motivation, whether they form a convenient trial unit, and
23 whether their treatment as a unit conforms to the parties'
24 expectations or business understanding or usage.

25 RESTATEMENT (SECOND) OF JUDGMENTS § 24.

26 ²The definition is:

27 § 101(5). The term "claim" means -

(A) right to payment, whether or not such right is
reduced to judgment, liquidated, unliquidated, fixed,
contingent, matured, unmatured, disputed, undisputed, legal,
equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of
performance if such breach gives rise to a right to payment,
whether or not such right to an equitable remedy is reduced
to judgment, fixed, contingent, matured, unmatured,
disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

1 common denominator of a Bankruptcy Code "claim" is an ultimate
2 right to payment. In order to round up and corral stray and
3 uncertain claims, the court is authorized to "estimate" the value
4 of a "claim" for purposes of bankruptcy administration.³

5 In short, the meaning of the word "claim" in a bankruptcy
6 case requires focus on the precise context because "claim" crops
7 up in multiple contexts. When the question is the effect of a
8 prior judgment, claim is used in the sense of the Restatement.
9 Or, when an insurance contract is at issue, the meaning of claim
10 may turn on the terms of the contract at issue or of general
11 insurance law. But when, as here, the language of the Bankruptcy
12 Code is in question, "claim" boils down to a right to payment as
13 defined at § 101(5).

14 It is the Bankruptcy Code's § 101(5) definition of "claim"
15 that matters for purposes of construing the § 362(a) and § 922(a)
16 automatic stays.

18 II

19 The § 362(a) automatic stay does not apply to prevent the
20

21 ³The estimation authority is:

22 § 502 Allowance of claims or interests

23 . . .

24 (c) There shall be estimated for purpose of allowance
under this section -

25 (1) any contingent or unliquidated claim, the fixing or
liquidation of which, as the case may be, would unduly delay
the administration of the case; or

26 (2) any right to payment arising from a right to an
equitable remedy for breach of performance.

27 11 U.S.C. § 502(c).

1 commencement of a judicial action challenging the accuracy of a
2 ballot statement regarding a local tax measure placed before the
3 voters during a chapter 9 case.

4 In construing the § 362(a) automatic stay, it first is
5 necessary to restate that section, substituting the term
6 "property of the debtor" for "property of the estate" pursuant to
7 § 902(1). 11 U.S.C. § 901(1). The substitution of terms is
8 necessary because in a chapter 9 case the inapplicability of
9 § 541 means that there is no "estate" and, hence, no "property of
10 the estate." Compare 11 U.S.C. § 541, with § 901(a).

11 The restated chapter 9 version of § 362(a) is set forth in
12 the margin.⁴

13
14 ⁴In chapter 9 cases, § 362(a), as revised pursuant to
§ 902(1), is:

15 § 362(a). Automatic stay (chapter 9 version)

16 (a) Except as provided in subsection (b) of this
17 section, a petition filed under section 301 operates as a
stay, applicable to all entities, of -

18 (1) the commencement or continuation, including the
19 issuance or employment of process, of a judicial,
20 administrative, or other action or proceeding against the
debtor that was or could have been commenced before the
21 commencement of the case under this title, or to recover a
claim against the debtor that arose before the commencement
of the case under this title;

22 (2) the enforcement, against the debtor or against
23 property of the debtor, of a judgment obtained before the
commencement of the case under this title;

24 (3) any act to obtain possession of property of the
debtor or of property from the debtor or to exercise control
over property of the debtor;

25 (4) any act to create, perfect, or enforce any lien
against property of the debtor;

26 (5) any act to create, perfect, or enforce against
27 property of the debtor any lien to the extent that such lien
secures a claim that arose before the commencement of the
case under this title;

(6) any act to collect, assess, or recover a claim

1 Six of the eight subsections of § 362(a) are plainly
2 inapplicable to litigation aimed at an allegedly inaccurate
3 ballot statement regarding a tax proposed during the chapter 9
4 case. The five of those subsections that are keyed to the phrase
5 "before the commencement of the case" do not pertain to a dispute
6 grounded in events that arose after the commencement of the case.
7 11 U.S.C. §§ 362(a)(1), (2), (5), (6), and (7). The sixth
8 applies only to a taxpayer debtor that is a corporation. 11
9 U.S.C. § 362(a)(8). The Bankruptcy Code definition of
10 "corporation" does not include a municipality. 11 U.S.C.
11 § 101(9).

12 The only two subsections of § 362(a) that encompass post-
13 petition matters that are not necessarily grounded in pre-filing
14 events are §§ 362(a)(3) and (a)(4).

15 The basic subject matter of the litigation is not aimed at
16 obtaining possession of property of the debtor, obtaining
17 property from the debtor, or to exercise control over property of
18 the debtor. 11 U.S.C. § 362(a)(3).

19 The City's money is property of the debtor within the
20

21 against the debtor that arose before the commencement of the
22 case under this title;

23 (7) the setoff of any debt owing to the debtor that
24 arose before the commencement of the case under this title
25 against any claim against the debtor; and

26 (8) the commencement or continuation of a proceeding
27 before the United States Tax Court concerning a tax
liability of a debtor that is a corporation for a taxable
period the bankruptcy court may determine or concerning the
tax liability of a debtor who is an individual for a taxable
period ending before the date of the order for relief under
this title.

11 U.S.C. § 362(a), revised pursuant to 11 U.S.C. § 902(1).

1 meaning of § 362(a)(3). While the theoretical possibility of a
2 monetary award in the form of fees, costs, or otherwise leaves a
3 potential for offending § 362(a)(3), the movant promises that
4 there will be no such attempt to obtain a monetary award of any
5 nature and has expressly waived all rights to attorney fees and
6 costs. If that assurance turns out to be inadequate, this court
7 has tools at hand to deal with a transgression.

8 Nor is there a significant risk that the ballot statement
9 litigation would lead to an act to create, perfect, or enforce
10 any lien against property of the debtor. 11 U.S.C. § 362(a)(4).
11 Among other things, it is not clear that a judicial lien against
12 property of the City would, as a matter of law, be available.

13 In short, the § 362(a) automatic stay does not bar the
14 filing and prosecution of the ballot statement litigation so long
15 as it does not lead to a monetary award against the City.

17 III

18 The additional automatic stay of § 922(a) stays, inter alia,
19 the commencement or continued prosecution of an action or
20 proceeding against an officer or inhabitant of the debtor "that
21 seeks to enforce a claim against the debtor." 11 U.S.C.
22 § 922(a)(1);⁵ Stockton III, 484 B.R. at 377-79.

24 ⁵The text of the additional automatic stay is:

25 § 922(a). Automatic stay of enforcement of claims against
26 the debtor

27 (a) A petition filed under this chapter operates as a
stay, in addition to the stay provided by section 362 of
this title, applicable to all entities, of -

(1) the commencement or continuation, including the

1 The action names as parties Stockton's Mayor, City Clerk,
2 and Registrar of Voters. Each of these individuals is within the
3 class protected by § 922(a)(1) as an officer or inhabitant of the
4 City.

5 The question becomes whether the ballot statement litigation
6 does purports to seek, as provided by § 922(a)(1), to "enforce a
7 claim against the debtor." 11 U.S.C. § 922(a)(1).

8 Here, the different meanings of claim become important. To
9 be sure, the cause of action under California law regarding
10 ballot statements states a "claim" within the generic procedural
11 concept of a claim. Rather, the "claim" to which § 922(a)(1)
12 adverts is the term as defined at § 101(5) as to which, as noted,
13 the common denominator is a right to payment or a right that can
14 be reduced to a right to payment. 11 U.S.C. § 101(5).

15 As with the analysis of § 362(a)(3), the basic subject
16 matter of the ballot statement litigation does not implicate a
17 right to payment and, at that level, would not constitute a
18 "claim against the debtor" within the meaning of § 101(5). But
19 it is possible that the litigation might lead to some form of
20 monetary award in the form of fees, costs, or otherwise, that
21 might offend § 922(a)(1). But the movant promises that there
22 will be no such attempt to obtain a monetary award of any nature
23

24 issuance or employment of process, of a judicial,
25 administrative, or other action or proceeding against an
26 officer or inhabitant of the debtor that seeks to enforce a
claim against the debtor; and

27 (2) the enforcement of a lien on or arising out of
taxes or assessments owed to the debtor.

11 U.S.C. § 922(a).

1 and has expressly waived all rights to attorney fees and costs.
2 As with § 362(a)(3), if that assurance turns out to be
3 inadequate, this court has corrective tools at hand.

4 In sum, based on the condition agreed by the movant
5 forswearing all monetary relief, § 922(a)(1) does not operate to
6 stay the ballot statement litigation.

8 IV

9 A further consideration also affects the analysis of the
10 ballot statement litigation. As part of the balance between
11 state sovereignty and the exclusive bankruptcy power of the
12 federal sovereign, Bankruptcy Code § 903 reserves state power to
13 control municipalities by legislation or otherwise in the
14 exercise of political or governmental powers of the chapter 9
15 municipal debtor. 11 U.S.C. § 903.⁶

16 Providing for, and regulating, elections and methods for
17 approval of local taxes represents state control of the exercise
18 of political or governmental powers of a municipality within the
19

20 ⁶That section provides:

21 § 903. Reservation of State power to control municipalities

22 This chapter does not limit or impair the power of a
23 State to control, by legislation or otherwise, a
24 municipality of or in such State in the exercise of the
25 political or governmental powers of such municipality,
26 including expenditures for such exercise, but -

27 (1) a State law prescribing a method of composition of
indebtedness of such municipality may not bind any creditor
that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a
creditor that does not consent to such composition.

11 U.S.C. § 903.

1 meaning of § 903.

2 Correlatively, Congress has barred this court from
3 interfering with any of the political or governmental powers of
4 the City. 11 U.S.C. § 904(1);⁷ Ass'n of Retired Employees of the
5 City of Stockton v. City of Stockton (In re City of Stockton),
6 478 B.R. 8, 16-20 (Bankr. E.D. Cal. 2012) (construing § 904).

7 Proposing a local tax for voter approval is an exercise of
8 the political or governmental powers of the City within the
9 meaning of § 904(1).

10 Moreover, recognition of the possibility of a need for
11 electoral or regulatory approval of provisions in a chapter 9
12 plan of adjustment is embodied in the plan confirmation
13 requirements. Regulatory or electoral approval necessary under
14 applicable nonbankruptcy law to carry out a plan provision must
15 either have been obtained before confirmation or the provision
16 must be conditioned on such approval. 11 U.S.C. § 943(b)(6).⁸

17
18 ⁷The statute provides:

19 § 904. Limitation on jurisdiction and powers of court

20 Notwithstanding any power of the court, unless the
21 debtor consents or the plan so provides, the court may not,
22 by any stay, order, or decree, in the case or otherwise,
interfere with -

23 (1) any of the political or governmental powers of the
debtor;

24 (2) any of the property or revenues of the debtor; or

25 (3) the debtor's use or enjoyment of an income-
producing property.

26 11 U.S.C. § 904.

27 ⁸The statute provides in relevant part:

§ 943 Confirmation

...

1 In light of the § 903 reservation of state power, the § 904
2 limitation on the power of this court, and of the § 943(b)(6)
3 requirement of necessary electoral approval as an essential
4 element of plan confirmation, it would be strange if the
5 automatic stay of § 362(a) or the additional automatic stay of
6 § 922(a) were to be construed in a manner that would thwart the
7 ordinary course of state electoral process.

8
9 ***

10 The movant's ballot statement litigation is not subject to
11 the automatic stay of § 362(a) or to the additional automatic
12 stay of § 922(a), the movant having forsworn any effort to obtain
13 any form of monetary award against the City.

14 An appropriate order shall be entered.

15
16 Dated: September 17, 2013.

17
18 United States Bankruptcy Judge
19
20
21
22
23

24 (b) The court shall confirm the plan if –

25 ...
26 (6) any regulatory or electoral approval necessary
27 under applicable nonbankruptcy law in order to carry out any
provision of the plan has been obtained, or such provision
is expressly conditioned on such approval;

11 U.S.C. § 943(b)(6).

INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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