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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,)
11 Debtor.)
12 _____)
13 GEORGE ALONSO,) Adv. Proc. No. 06-2314
14 Plaintiff,) Docket Control No. BWL-3
15 v.)
16 BETSEY WARREN LEBBOS,)
17 Defendant.)
18 _____)

19 **MEMORANDUM DECISION DENYING EX PARTE APPLICATION**
20 **FOR ORDER STAYING ADVERSARY PROCEEDING PENDING APPEAL,**
21 **PRESENTATION OF DISQUALIFICATION ISSUES, AND CHANGE OF VENUE**

22 On January 29, 2007 Betsey Warren Lebbos (the "Debtor")
23 filed an Ex Parte Application for Stay of Adversary Proceeding
24 Pending Appeal, Presentation of Disqualification Issues, and
25 Change of Venue (the "Stay Application"). Although it is not
26 crystal clear in the Stay Application what the Debtor is seeking
27 to stay, the caption of the Stay Application contains an
28 adversary proceeding number and the court concludes that the
Debtor is seeking to have the court stay further prosecution of
the Complaint to Determine Dischargeability of Debt for Willful
and Malicious Injury Pursuant to 11 U.S.C. § 523(c)(6)) bearing

1 Adversary Proceeding No. 06-2314-D-7 (the Dischargeability
2 Complaint").

3 In part the Stay Application asserts a stay of the
4 Dischargeability Complaint is warranted because the Debtor
5 represents herself in pro se. The Dischargeability Complaint was
6 filed back on September 15, 2006 and the Debtor filed an answer
7 in pro se on November 21, 2006. The Debtor is an attorney, and
8 as such has a legal education and in the past was a practicing
9 attorney. The Debtor has always represented herself in the
10 Dischargeability Complaint and has had close to four months to
11 retain counsel if she wished to do so.

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

22 The Stay Application does not discuss the merits of the
23 Dischargeability Complaint, let alone demonstrate that the Debtor
24 will probably be successful in defending the action, and although
25 the Debtor asserts irreparable harm, the Debtor fails to state
26 the specific harm that will result if prosecution of the
27 Dischargeability Complaint is not stayed. The Debtor also fails
28 to discuss the existence of serious questions going to the merits

1 of the Dischargeability Complaint, and that in balancing the
2 hardships they tip sharply in favor of the Debtor. As such, the
3 Stay Application fails to establish the elements necessary for a
4 stay under the Federal Rules of Bankruptcy Procedure, Rule 8005.

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

7 Dated: February 6, 2007

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