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6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA
8 SACRAMENTO DIVISION
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13 In re)
14) Case No. 06-22630-A-7
15 APRIL HORNE,)
16) Docket Control No. JMP-1
17) Date: August 28, 2006
Debtor.)
Time: 9:00 a.m.
_____)

18 On August 28, 2006 at 9:00 a.m., the court considered the
19 motion of Homeq Servicing Corp. requesting relief from the
20 automatic stay. The court's ruling on the motion is appended to
21 the minutes of the hearing. Because that ruling constitutes a
22 "reasoned explanation" of the court's decision, it is also posted
on the court's Internet site, www.caeb.uscourts.gov, in a text-
searchable format as required by the E-Government Act of 2002.
The official record, however, remains the ruling appended to the
minutes of the hearing.

23 **FINAL RULING**

24 The motion will be granted in part.

25 The movant, Homeq Servicing Corporation, seeks an order
26 confirming that the automatic stay is not in effect with respect
27 to the real property located at 7549 Mountain Oak Way, North
28 Highlands, California. The movant seeks the confirmation on the

1 ground that this is the debtor's third bankruptcy filing in the
2 last 12 months. The movant also seeks that the order confirming
3 that there is no automatic stay be binding on the debtor,
4 successors, transferees and/or assignees in any future cases
5 filed by or against her, for a two-year period. It also requests
6 that the order be binding on any debtor claiming an interest in
7 the property for a two-year period.

8 On March 15, 2006, the debtor filed a chapter 13 case (case
9 no. 06-20651). It was dismissed on April 14, 2006. On May 22,
10 2005, the debtor filed another chapter 13 case (case no. 06-
11 21690). The court dismissed this case on June 12, 2006. The
12 debtor filed the instant case on July 19, 2006.

13 Section 362(c) (4) (A) (I) provides that "if a single or joint
14 case is filed by or against a debtor who is an individual under
15 this title, and if 2 or more single or joint cases of the debtor
16 were pending within the previous year but were dismissed, other
17 than a case refiled under section 707(b), the stay under section
18 (a) shall not go into effect upon the filing of the later case;
19 and (ii) on request of a party in interest, the court shall
20 promptly enter an order confirming that no stay is in effect."

21 The court has reviewed the dockets of the first and second
22 cases and has confirmed that those cases were pending within the
23 previous year of the filing of the instant case and that the
24 court dismissed those previous cases within the prior year.
25 Accordingly, the motion will be granted in order to confirm that
26 the automatic stay did not go into effect upon the filing of the
27 instant case on July 19, 2006.

28 However, no other relief will be granted. The movant has

1 cited no authority for the additional remedies sought.

2 If the "in rem" relief is sought pursuant to 11 U.S.C. §
3 362(d)(4), the motion lacks merit.

4 Section 362(d)(4) was added to the Bankruptcy Code by
5 BAPCPA. It allows the court to terminate, modify and/or annul
6 the automatic stay at the request of a creditor secured by real
7 property if the court finds that the filing of the petition was
8 "part of a scheme to delay, hinder, and defraud creditors. . . ."
9 It should be noted that these elements are set forth in the
10 conjunctive rather than disjunctive. Furthermore, the "scheme to
11 delay, hinder, and defraud creditors" must involve one of two
12 elements: multiple petitions affecting the real property, or the
13 "transfer of all or part ownership of, or other interest in, such
14 real property without the consent of the secured creditor or
15 court approval."

16 Section 362(d)(4) also provides that an order granting
17 relief is binding in any other case purporting to affect the real
18 property and filed within 2 years after the date of the entry of
19 such order so long as it is recorded or indexed.

20 The motion does not make a sufficient showing that the
21 debtor filed multiple petitions in order to "hinder, delay, and
22 defraud" the movant or anyone else. At most the motion proves
23 that multiple petitions were filed which delayed the movant.
24 There is no evidence of fraud.

25 To the extent the request for this "in rem" relief is
26 addressed to the court's equitable powers, the request is without
27 merit. Other than under section 362(d)(4), the court has no
28 authority to grant such in rem relief. Accord In re Johnson,

1 2006 WL 2065565, *5 (B.A.P. 9th Cir. 2006).

2 Dated:

3 By the Court

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Michael S. McManus, Chief Judge
6 United States Bankruptcy Court
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