

1 deny the Motion as moot, and will do so by way of an order in the
2 parent bankruptcy case. In addition, the court will construe the
3 Opposition as a counter-motion for certification of a final
4 judgment in Arnold v. Hughes, Adversary Proceeding No. 05-2225-D
5 ("the adversary proceeding"), and will grant the counter-motion.¹

6 I. INTRODUCTION

7 On March 14, 2005, the Defendant filed a petition for relief
8 under chapter 7 of the Bankruptcy Code, thereby commencing this
9 bankruptcy case. On June 14, 2005, the Plaintiffs filed a
10 Complaint to Determine Dischargeability of Debts and for Denial
11 of Discharge, thereby commencing the adversary proceeding. The
12 factual background of this matter is set forth generally in the
13 court's memorandum decision on the Plaintiffs' motion for summary
14 judgment in the adversary proceeding, filed August 24, 2007, and
15 will not be repeated here. As in that decision, references
16 herein to the state court action will be to Rieger v. Arnold, et
17 al., Sacramento County Superior Court Case No. 97AS03390, and
18 "the attorney's fee award" will refer to the state court's award
19 of attorney's fees and costs in favor of the Plaintiffs and
20 against the Defendant.

21 On October 3, 2007, the Plaintiffs filed the Motion,
22 together with a declaration of Clayeo Arnold, and as required by
23 Local Bankruptcy Rule 4001-1(c), a Relief from Stay Information
24 Sheet. On November 14, 2007, the Defendant filed the Opposition,

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26 1. As the Motion was filed in the parent case, and the
27 Defendant seeks certification of a final judgment in the related
28 adversary proceeding, this memorandum will be filed under Docket
Control No. ARP-5 in the parent case and under Docket Control Nos.
ARP-4 and ARP-6 in the adversary proceeding.

1 together with exhibits and her declaration. On November 21,
2 2007, the Plaintiffs filed a reply to the Opposition. On January
3 22, 2008, the Defendant filed a supplemental opposition to the
4 Motion. The Motion was argued on February 13, 2008, Amelia
5 Pritchard appearing for the Plaintiffs, and the Defendant
6 appearing on her own behalf. The court continued the hearing for
7 further briefing, and the parties filed supplemental briefs on
8 February 19, 2008.

9 On February 27, 2008, the Motion came on for final hearing,
10 Amelia Pritchard appearing for the Plaintiffs, and the Defendant
11 appearing on her own behalf. The court advised the parties of
12 its tentative decision to certify a final judgment in the
13 adversary proceeding, as discussed below, and heard additional
14 remarks from both parties.

15 In the Motion, the Plaintiffs seek an order determining that
16 the automatic stay of 11 U.S.C. § 362(a) was lifted upon entry of
17 this court's August 24, 2007 order granting the Plaintiffs'
18 motion for partial summary judgment in the adversary proceeding
19 ("the Partial Summary Judgment Order"), or alternatively, lifting
20 the stay to permit them to exercise their rights under applicable
21 state law.

22 The Defendant responds that no judgment of nondischarge-
23 ability has been entered, and that the Plaintiffs have failed to
24 establish that either claim preclusion or issue preclusion
25 applies to the issue of nondischargeability, for purposes of the

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1 Motion.² The court construes the Opposition as a counter-motion
2 for certification of a judgment under Federal Rule of Civil
3 Procedure 54(b) ("Rule 54(b)"), made applicable to the Motion and
4 in the adversary proceeding by Federal Rules of Bankruptcy
5 Procedure 9014(c) and 7054(a). The court notes that a court may
6 also issue a Rule 54(b) certification sua sponte. 10 MOORE'S
7 FEDERAL PRACTICE, § 54.21[1][a] (Matthew Bender 3d ed.)
8 ("MOORE'S").

9 II. ANALYSIS

10 This court has jurisdiction over the Motion pursuant to 28
11 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding
12 under 28 U.S.C. § 157(b)(2)(G) and (i).

13 A. Procedural Background

14 A brief history of the adversary proceeding is necessary.
15 As indicated above, the Plaintiffs filed their complaint on June
16 14, 2005. In their first two causes of action, the Plaintiffs
17 sought a determination that the attorney's fee award is
18 nondischargeable under 11 U.S.C. § 523(a)(6) as a willful and
19 malicious injury. In their third and fourth causes of action,
20 the Plaintiffs sought to deny the Defendant's discharge, pursuant
21 to 11 U.S.C. § 727(a), for failure to keep adequate records and
22 for concealing property with the intent to hinder, delay, or
23 defraud creditors.

24 The Defendant answered the complaint on September 9, 2005.

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27 2. The Defendant also argued that this court had no juris-
28 diction to resolve the Motion, due to her then pending district
court appeal. That issue has now been resolved by the district
court's dismissal of the appeal, which is further discussed below.

1 On May 22, 2007, the parties filed cross-motions for summary
2 judgment. The Plaintiffs' motion was actually a motion for
3 partial summary judgment, because it pertained only to the causes
4 of action to determine the attorney's fee award to be
5 nondischargeable under § 523(a)(6), and did not address the § 727
6 causes of action. Following briefing and oral argument, the
7 court denied the Defendant's motion for summary judgment, and
8 granted the Plaintiffs' motion in part. Specifically, the court
9 granted the motion to the extent that it sought to determine the
10 attorney's fee award to be nondischargeable.³

11 Thus, on August 24, 2007, by way of the Partial Summary
12 Judgment Order, the attorney's fee award was declared
13 nondischargeable. The court deferred a determination of the
14 amounts due under the attorney's fee award pending a subsequent
15 motion.

16 On September 4, 2007, the Defendant filed a Notice of Appeal
17 from the Partial Summary Judgment Order and a statement of
18 election to have the appeal heard by the district court.

19 In the absence of a Rule 54(b) certification,
20 any order or other decision, however designated, that
21 adjudicates fewer than all the claims or the rights and
22 liabilities of fewer than all the parties does not end
23 the action as to any of the claims or parties and may
be revised at any time before the entry of a judgment
adjudicating all the claims or all the parties' rights
and liabilities.

24 Fed. R. Civ. P. 54(b).

25 Thus, the Partial Summary Judgment Order, because it did not
26 address the Plaintiffs' § 727(a) causes of action, adjudicated

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28 3. The court denied that portion of the motion seeking a
determination of nondischargeability as to other alleged debts.

1 fewer than all the claims in the adversary proceeding, and was
2 therefore not final. As a result, the district court granted the
3 Plaintiffs' motion to dismiss the Defendant's appeal.⁴

4 In the meantime, on October 3, 2007, the Plaintiffs had
5 filed a motion in the adversary proceeding to determine the
6 amounts owed by the Defendant on the nondischargeable attorney's
7 fee award. The motion was briefed and argued, and the court
8 stated its findings and conclusions on the record at a hearing on
9 February 13, 2008. The court issued a minute order on February
10 19, 2008 ("Order Determining Amounts"), determining that the
11 amounts owed on the award were \$122,702.37 to Clayeo C. Arnold
12 and \$190,237.01 to Clayeo Arnold, Professional Law Corporation.

13 B. Rule 54(b) Certification

14 In the Motion, the Plaintiffs complain that they have been
15 unable to collect on the attorney's fee award. They "wish to
16 execute on Debtor's post petition wages," and argue that "the
17 court's order of August 24, 2007 [the Partial Summary Judgment
18 Order] operates as a de facto lift of the automatic stay."⁵ The
19 Defendant argues in response that the Partial Summary Judgment
20 Order "is just that, an order. It is not a final judgment."⁶
21 The Defendant is correct.

22 In effect, both parties want finality to the order; the
23 Plaintiffs so they can execute, and the Defendant so she can

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25 4. Order Granting Appellees' Motion to Dismiss Appeal, filed
26 January 30, 2008, Hughes v. Arnold, Case No. CV 07-01841 LEW, U.S.
District Court for the Eastern District of California.

27 5. The Motion, 4:1-3.

28 6. The Opposition, 8:27-9:1.

1 appeal. The goal of finality can be accomplished by
2 certification pursuant to Rule 54(b), which provides:

3 When an action presents more than one claim for relief
4 -- whether as a claim, counterclaim, crossclaim, or
5 third-party claim -- or when multiple parties are
6 involved, the court may direct entry of a final
7 judgment as to one or more, but fewer than all, claims
8 or parties only if the court expressly determines that
9 there is no just reason for delay.

10 Fed. R. Civ. P. 54(b).

11 The court is required to make an express determination that
12 there is no just reason for delay and to expressly direct the
13 entry of judgment. MOORE'S, § 54.21[3]. The court is to make
14 the determination in light of the policy of "prevent[ing]
15 piecemeal appeals in cases which should be reviewed only as
16 single units." Id., quoting Curtiss-Wright Corp. v. General
17 Electric Co., 446 U.S. 1, 10 (1980). Further, an order may not
18 be certified under Rule 54(b) unless it finally disposes of the
19 claims adjudicated in the order. MOORE'S, § 54.22[2][a].

20 Taking these requirements in reverse order, the court finds
21 that the Partial Summary Judgment Order, as supplemented by the
22 Order Determining Amounts, completely disposes of the first and
23 second causes of action of the Plaintiffs' complaint. Nothing
24 remains to be adjudicated in connection with those causes of
25 action.

26 Next, certifying the Partial Summary Judgment Order as final
27 will not offend the policy of preventing piecemeal appeals,
28 because the causes of action adjudicated in the order, the
29 Plaintiffs' first and second causes of action, are factually and
30 legally distinct from their third and fourth causes of action.
31 The first and second causes of action depend on facts that are

1 starkly different from those alleged in the third and fourth
2 causes of action. The first and second causes of action seek a
3 different form of relief -- a determination that specific debts
4 are not dischargeable -- from the relief sought in the third and
5 fourth causes of action -- denial of the Defendant's discharge as
6 a whole. The grounds for the different forms of relief are
7 separate and distinct from each other. As a result, there is no
8 possibility of duplicative appellate review. In other words, "no
9 appellate court would have to decide the same issues more than
10 once even if there were subsequent appeals." See Curtiss-Wright
11 Corp., 446 U.S. at 8.

12 Finally, the court finds no just reason for delay in
13 entering a final judgment on the Partial Summary Judgment Order.
14 In making this determination, the court is to consider whether a
15 Rule 54(b) certification "will alleviate some hardship or
16 injustice that would result from the delay in the entry of
17 judgment." MOORE'S, § 54.23[1][b]. In this case, the court
18 finds that delaying entry of judgment would unfairly delay the
19 Plaintiffs' ability to recover on their claims against the
20 Defendant, and would unfairly delay the Defendant's right to
21 appellate review.

22 Accordingly, the court finds that there is no just reason
23 for delay, and directs the entry of a judgment on the Partial
24 Summary Judgment Order, as supplemented by the Order Determining
25 Amounts.

26 C. The Motion for Relief from Stay

27 Upon entry of a final appealable judgment on the Partial
28 Summary Judgment Order, as supplemented by the Order Determining

1 Amounts, the automatic stay will no longer operate to preclude
2 execution on that judgment. "[T]he automatic stay provisions of
3 Section 362 do not preclude the execution of a judgment, which
4 has been held by the bankruptcy court to be non-dischargeable,
5 upon property of the debtor which is not property of the estate."
6 Watson v. City Nat'l Bank (In re Watson), 78 B.R. 232, 235 (9th
7 Cir. BAP 1987); see also Arneson v. Farmers Ins. Exch. (In re
8 Arneson), 282 B.R. 883, 892 (9th Cir. BAP 2002); Palm v.
9 Klapperman (In re Cady), 266 B.R. 172, 180 (9th Cir. BAP 2001).

10 The creditor does not need to seek relief from the stay.

11 The Plaintiffs have not indicated in their Motion any
12 intention to seek to enforce the judgment against property of the
13 Defendant's bankruptcy estate. Instead, they intend to pursue
14 only property of the Defendant that is not property of the
15 estate. Thus, pursuant to Watson and Cady, the Motion will be
16 denied as moot, by separate order filed in the parent case.

17 III. CONCLUSION

18 For the reasons set forth above, the court will issue an
19 order in the bankruptcy case denying the Motion as moot, will
20 issue an order in the adversary proceeding granting the
21 Defendant's counter-motion for certification of a final judgment,
22 and will enter in the adversary proceeding a judgment on the
23 Partial Summary Judgment Order, as supplemented by the Order
24 Determining Amounts.

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26 Dated: March 3, 2008

_____/s/
ROBERT S. BARDWIL
United States Bankruptcy Judge

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