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2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re)
9 TINISHA JASPER,) Case No. 06-20545-A-7
10) Docket Control No. PCJ-1
11 Debtor.) Date: March 14, 2006
12) Time: 1:00 p.m.
13)

13 **MEMORANDUM**

14 Tinisha Jasper filed a chapter 7 petition on March 8, 2006.
15 Her petition is on new Official Form 1. Ms. Jasper's petition
16 indicates at page 2 that (1) her landlord obtained a judgment
17 against her for possession of the debtor's residence; (2) under
18 applicable nonbankruptcy law, there are circumstances under which
19 a tenant is permitted to cure a monetary default that gives rise
20 to a judgment for possession after the entry of that judgment;
21 and (3) Ms. Jasper included with her petition the rent for the
22 30-day period after the filing of the petition.

23 Section 362(b)(22)¹ provides that, subject to section
24 362(1), the automatic stay does not apply to the continuation of
25 an eviction proceeding involving residential real property
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28 ¹ Unless otherwise indicated, chapter and section
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 occupied by the debtor. This new exception is applicable if the
2 landlord has obtained a judgment for possession of the property
3 prior to the filing of the bankruptcy petition.

4 However, section 362(1) permits the debtor to avoid the
5 application of section 362(b)(22) in a 30-day, two-step process.

6 First, concurrently with filing the petition, the debtor
7 certify that under penalty of perjury that applicable
8 nonbankruptcy law there are circumstances under which the debtor
9 may be permitted to cure the entire monetary default that gave
10 rise to the judgment for possession, even after the judgment was
11 entered. In addition, the debtor must certify that the debtor,
12 or an adult dependent of the debtor, has deposited with the clerk
13 of the court any rent that would become due during the 30-day
14 period after the filing of the bankruptcy petition. The clerk of
15 the court must promptly transmit the amount deposited to the
16 landlord.

17 An amendment of Official Form 1, the voluntary petition
18 form, implements section 362(1)(1). The new petition form
19 includes the initial certification required by section 362(1).
20 The debtor's signature at the conclusion of the form attests that
21 all information given on the form is done so under penalty of
22 perjury.

23 Ms. Jasper utilized this form, completed the initial
24 certification required by section 362(1)(1), and signed it under
25 penalty of perjury.

26 After complying with section 362(1)(1), a debtor must,
27 within 30 days of filing the petition, file a second
28 certification attesting that the debtor, or an adult dependent of

1 the debtor, has cured the entire monetary default that gave rise
2 to the judgment for possession. Unlike the rent for the first 30
3 days of the bankruptcy case, the amount necessary to cure the
4 default is not deposited with the clerk. It must be paid
5 directly to the landlord.

6 Under section 362(1)(3), the landlord may file an objection
7 to one or both of the certifications filed by the debtor. The
8 objection must be served upon the debtor. The statute provides
9 that the court "shall" conduct a hearing within 10 days of the
10 filing and service of the objection by the landlord. The purpose
11 of the hearing is to determine whether the certification to which
12 the landlord has objected "is true." If the objection is
13 sustained, the exception to the automatic stay, section
14 362(b)(22), is fully applicable and the landlord may recover
15 possession of the residential property despite the filing of the
16 petition. The clerk of the court must immediately serve upon the
17 landlord and the debtor a "certified copy" of the court's order
18 sustaining the landlord's objection.

19 In this case, Ms. Jasper's landlord, Ron and Maureen Ashley,
20 filed an objection to her initial certification. Ms. Jasper
21 complains that she has not been given sufficient notice of the
22 hearing on the Ashleys' objection. The objection was mailed to
23 her on March 9, and the courtroom deputy clerk telephoned Ms.
24 Jasper on March 10 and March 13 to advise her that she could
25 appear at the hearing by telephone and that the hearing would
26 take place at 1:00 p.m. on March 14. With this service and
27 notice, Ms. Jasper she was able to file a written response to the
28 objection and to appear at the hearing by telephone.

1 Also, the court is required by section 362(1)(3)(A) to hold
2 a hearing on any objection by a landlord "within 10 days after
3 the filing and service of such objection . . ." and determine at
4 that hearing whether the objection has merit.

5 Given the time constraints of section 362(1)(3)(A), the
6 notice given to Ms. Jasper by both counsel for the Ashley's and
7 the court, and Ms. Jasper's ability to respond to the objection
8 and appear at the hearing, her objection to the amount of notice
9 and the timing of the hearing will be overruled.

10 The Ashleys object to Ms. Jasper's initial certification on
11 two grounds.

12 The Ashleys first argue that California law does not permit
13 a tenant under a residential lease to cure a monetary default
14 after entry of a judgment of possession. However, Cal. Code Civ.
15 Proc. § 1179 gives the state court the discretion to relieve a
16 tenant of the forfeiture of a lease, conditioned upon full
17 payment of the rent due.

18 Section 362(1)(A) does not require a debtor to prove that
19 the state court would relieve the debtor of the forfeiture.
20 Rather, the debtor is required to show only that "there are
21 circumstances under which the debtor would be permitted to cure
22 the entire monetary default that gave rise to the judgment of
23 possession. . . ." In this case, Cal. Code Civ. Proc. § 1179
24 creates the theoretical possibility that Ms. Jasper could set
25 aside the forfeiture of her lease in state court. Therefore,
26 this state statute gives her the opportunity to cure the default
27 and remain in possession of her home in the context of this
28 bankruptcy case. This aspect of the Ashleys' objection will be

1 overruled.

2 Next, the Ashleys argue that Ms. Jasper's initial
3 certification is not effective because she did not tender to the
4 court clerk the rent due for the 30-day period following the
5 filing of the petition. Ms. Jasper maintains that she gave a
6 money order for 30 days of rent to the bankruptcy court intake
7 clerk when she filed her petition on March 8.

8 A review of the docket, however, reveals that the clerk made
9 no entry on the docket reflecting the tender of rent in any
10 amount for any period. Had it been tendered, the clerk would
11 have issued a receipt. Any receipt given would be noted on the
12 docket. And, at the hearing on March 14, Ms. Jasper admitted
13 that she did not receive a receipt from the bankruptcy court
14 clerk.

15 The court concludes that Ms. Jasper did not tender any rent
16 with her petition and initial certification.

17 Therefore, the objection to the initial certification will
18 be sustained and section 362(b)(22) shall be immediately
19 applicable. A separate order sustaining the objection will be
20 entered and, as required by section 362(1)(3)(B)(ii), the clerk
21 shall serve a certified copy of that order upon the Ashleys and
22 Ms. Jasper.

23 Dated:

24 By the Court

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27 Michael S. McManus, Chief Judge
28 United States Bankruptcy Court