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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 06-22225-D-7
)
BETSEY WARREN LEBBOS,)
)
)
Debtor.)
)

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MEMORANDUM DECISION ON EX PARTE REQUEST
FOR A STAY OF SALE OR COMPROMISE OF LAWSUIT

On June 13, 2008, Betsey Warren Lebbos, the debtor herein, filed an Ex Parte Request for a Stay of Sale or Compromise of Lawsuit ("the Request") in this bankruptcy case. For the reasons set forth below, the court will deny the Request.

I. INTRODUCTION

On February 11, 2008, Linda Schuette, chapter 7 trustee in this case, filed a motion ("the Sale Motion") for approval of the compromise and/or sale of certain claims of the debtor asserted in and related to a lawsuit entitled Betsey Warren Lebbos v. Judges of the Santa Clara Superior Court, et al., Case No. 02-01944, pending in the United States District Court for the Central District of California ("the State Court Action"). On February 26, 2008, the debtor filed a motion to continue the hearing on the Sale Motion, in which she sought a continuance and also set forth various arguments in opposition to the Sale

1 Motion. A hearing was held on March 12, 2008, at which attorney
2 John Read appeared specially for the debtor. The court denied
3 the debtor's request for a continuance and granted the Sale
4 Motion. A minute order granting the Sale Motion was entered on
5 March 13, 2008 ("the Order").

6 In the Request, the debtor seeks a stay of the Order
7 "pending completion of the investigation" concerning her
8 assertion that the trustee failed to give proper notice of the
9 Sale Motion.

10 II. ANALYSIS

11 This court has jurisdiction over the Request pursuant to 28
12 U.S.C. §§ 1334 and 157(b)(1). The Request is a core proceeding
13 under 28 U.S.C. § 157 (b)(2)(A), (N) & (O).

14 The debtor provides no statutory or rule authority for her
15 Request, and she makes no mention of a pending appeal from the
16 Order. However, the court's docket in this case discloses that
17 the debtor has filed a notice of appeal from the Order. The
18 court thus construes the Request as a request for a stay pending
19 appeal, pursuant to Federal Rule of Bankruptcy Procedure 8005.

20 The debtor contends that the trustee failed to give notice
21 of the Sale Motion to the debtor, to her attorney in the State
22 Court Action, Joseph Giovanazzi, and to creditors. The
23 contention that the debtor herself did not receive notice is
24 inexplicable in that approximately two weeks before the hearing,
25 she filed a ten-page motion for a continuance of the hearing, and
26 she was able to have an attorney make a special appearance on her
27 behalf at the hearing. The contention that Giovanazzi did not
28 receive notice was addressed in the court's findings and

1 conclusions, read into the record at the hearing on the Sale
2 Motion. The court finds no reason in the present Request to
3 alter those findings and conclusions.

4 Finally, the debtor claims that creditor Paul Deavenport did
5 not receive notice of the Sale Motion. Attached to the Request
6 is a declaration of Paul Deavenport, in which he testifies that
7 he "was not served at any time with a motion to sell the federal
8 lawsuit"

9 By contrast, the proof of service of the Sale Motion
10 evidences service of the notice of hearing on Deavenport at the
11 address listed in the debtor's master address list filed in this
12 case. Deavenport has not filed a notice of change of address or
13 a proof of claim in this case advising the court and the parties
14 of any other address. Further, on January 9, 2008, Deavenport
15 filed a declaration outlining various arguments in opposition to
16 a prior motion by the trustee to approve a compromise of the
17 State Court Action. Deavenport did not indicate in that
18 declaration that he had not been served with the prior motion or
19 that he had had any problems with service of notices in this
20 case. Finally, as noted in the findings and conclusions stated
21 on the record at the hearing on the Sale Motion, the debtor
22 herself has called into question Deavenport's status as a
23 creditor in this case. The present declaration fails to convince
24 the court that service of the Sale Motion was improper.

25 On a final note, the debtor makes the suggestion for the
26 first time in the Request that she, Giovanazzi, and Deavenport
27 were deprived of the opportunity to bid on the claims that were
28 the subject of the Sale Motion. By contrast, the notice of

1 hearing of the Sale Motion advised interested parties that the
2 proposed compromise might be considered as a sale, and that the
3 trustee would offer the claims for sale at the hearing. The
4 notice of hearing contains the trustee's proposals for the sale
5 procedures. No one expressed any interest in entering an overbid
6 at the hearing. In her motion for a continuance of the hearing,
7 the debtor raised several arguments in opposition to the Sale
8 Motion and in support of a continuance; she made no mention of
9 any interest in overbidding and no suggestion that any other
10 party might need more time to prepare an overbid.

11 II. CONCLUSION

12 In conclusion, nothing in the present Request persuades the
13 court (1) that the Debtor is likely to succeed on the merits of
14 her appeal or her investigation, and (2) that the absence of a
15 stay creates the possibility of irreparable injury to her, to
16 creditors, or to the public interest. Similarly, she has not
17 shown the existence of serious questions going to the merits of
18 her appeal, and has failed to show that a balancing of the
19 hardships tips in her favor. See Tribal Village of Akutan v.
20 Hodel, 859 F.2d 662, 663 (9th Cir. 1988); Cadance Design Sys. v.
21 Avant! Corp., 125 F.3d 824, 826 (9th Cir. 1997).

22 Accordingly, the court will deny the Request.

23 Dated: June 19, 2008

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