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 DEC 16 2003
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 UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
 MODESTO DIVISION

In re:)
)
 DONALD ALLEN CASNER and) Case No. 01-90267-A-13
 REGINA E. CASNER,)
)
 Debtor(s).)

_____)
)
 DONALD ALLEN CASNER and)
 REGINA E. CASNER,) Adversary No. 03-9142-A
)
 Plaintiff(s),)

v.)
)
 CHASE MANHATTAN MORTGAGE)
 CORPORATION, a New Jersey)
 corporation,)
)
 Defendant(s).)

ENTERED ON DOCKET
 DEC 16 2003
 CLERK, U.S. BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIF.

MEMORANDUM DECISION

In this adversary proceeding, plaintiffs Donald and Regina Casner (the "Casners") seek a temporary injunction under 11 U.S.C. § 105(a) to prevent Defendant Chase Manhattan Mortgage Corporation ("Chase") from foreclosing on their residence. Chase previously obtained an order modifying the automatic stay to allow the foreclosure. The Casners now want additional time to attempt to complete a refinancing that will pay Chase in full and also provide funds sufficient to pay in full all allowed claims in their Chapter 13 case.

Presently before the court is the Casners' motion for a preliminary injunction to restrain Chase's foreclosure pending a

1 determination on the merits of the complaint in this adversary
2 proceeding. For the reasons stated in the balance of this
3 Memorandum Decision, the court grants a preliminary injunction
4 prohibiting foreclosure pending entry of judgment after trial on
5 the complaint.

6 PROCEDURAL BACKGROUND

7 On June 19, 2003, the court entered an Order Granting Relief
8 From Automatic Stay (the "Order Granting Relief From Stay") in
9 favor of Chase. The events leading up to that order are explained
10 in the factual background below. Chase scheduled a foreclosure
11 sale for August 8, 2003.

12 On July 25, 2003, the Casners filed an unverified "COMPLAINT
13 FOR INJUNCTIVE RELIEF, OR IN THE ALTERNATIVE REINSTATEMENT OF THE
14 AUTOMATIC STAY" (the "Complaint"). The Complaint alleges, inter
15 alia, that Chase is the holder of the first deed of trust on the
16 Casners' residence (the "Real Property"), that on May 21, 2003, the
17 Casners submitted an application to a mortgage broker, Equity
18 Funding Co. ("EFC"), for a refinancing of the debts secured by the
19 Real Property, that on June 19, 2003 the court entered an order
20 granting Chase relief from the automatic stay to foreclose on the
21 Real Property, that on or about June 24, 2003 EFC gave the Casners
22 a "pre-approval" for a loan on the Real Property in the amount of
23 \$175,000, that on June 24, 2003 an escrow was opened at a title
24 company for the refinancing, that on July 9, 2003 Chase submitted
25 to escrow a payoff demand stating that the payoff balance on its
26 loan was \$148,260.94 through July 31, 2003, that the amount
27 necessary to pay all allowed unsecured claims in the Casners'

1 Chapter 13 case in full is \$13,711.00, that on July 18, 2003, Chase
2 posted the Real Property with a Notice of Trustee's Sale setting a
3 sale date and time of August 8, 2003 at 2:00 p.m. and that EFC has
4 obtained an opinion of value as part of the proposed refinancing
5 indicating that the current fair market value of the Real Property
6 is \$240,000.00.¹ The Complaint prays for an injunction prohibiting
7 Chase from foreclosing on the Real Property "for a reasonable
8 period of time to allow the debtors to close the refinancing escrow
9 and modify their Chapter 13 plan to pay off the obligation owed to
10 CHASE in full, to provide for a 100% distribution to allowed
11 unsecured claims and receive a discharge in bankruptcy," or in the
12 alternative, for an order reinstating the automatic stay.

13 On July 25, 2003, the Casners also filed an APPLICATION FOR
14 TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION
15 (the "Application"). The Application recited facts similar to
16 those in the Complaint. It requested a temporary restraining order
17 until a hearing could be held on the motion for a preliminary
18 injunction, a preliminary injunction "until trial may be had on the
19 debtors' complaint," or in the alternative, a reinstatement of the
20 automatic stay. The Application was accompanied by the
21 declarations of Carl W. Collins, the Casners' counsel (regarding
22 his communications with counsel for Chase), Ron Findlay, a Senior
23 Loan Officer at EFC (regarding the refinancing application, the
24 value of the Real Property and his expectation that the refinancing

25
26 ¹ The Casners listed the Real Property in their Schedule A, filed
27 with the petition on January 22, 2001, as having a then-current market
28 value of \$200,000.00, subject to a secured claim of \$148,556.51.

1 would close in approximately thirty days) and Regina E. Casner, one
2 of the debtors (regarding the other facts alleged in the Complaint
3 and Application).

4 On July 28, 2003 the court entered an order (the "Order
5 Shortening Time") denying the temporary restraining order (because
6 no injury would occur prior to August 8, 2003) and setting a
7 hearing on the preliminary injunction on August 6, 2003.

8 On August 4, 2003, Chase timely filed opposition to the
9 request for preliminary injunction according to the terms of the
10 Order Shortening Time. Chase argued that the request was improper
11 because the Casners had not appealed the Order Granting Relief From
12 Stay. It also argued that the preliminary injunction should be
13 denied because the refinancing described in the Application was
14 speculative.

15 After the hearing on August 6, 2003, in order to allow time
16 for further consideration, the court issued a temporary restraining
17 order, expiring at 5:01 p.m. on August 15, 2003.²

18 **FACTUAL BACKGROUND**

19 The Casners' request for injunctive relief arises in the
20 bankruptcy case that they commenced by filing a petition under
21 Chapter 13 of the Bankruptcy Code on January 22, 2001. At the time
22 of the filing, Mr. Casner was a material handler/forklift operator
23 employed for the previous twenty years by the Defense Logistic
24

25 ²On August 14, 2003, because of the impending expiration of the
26 temporary restraining order, the court issued a preliminary injunction
27 and stated its intention to file subsequently this Memorandum Decision
explaining its reasoning. Although this Memorandum Decision filed
later, it speaks as of August 14, 2003.

1 Agency of the United States Department of Defense in Tracy,
2 California. Mrs. Casner was a material handler/forklift operator
3 employed for the previous fourteen years by the Defense Logistic
4 Agency of the United States Department of Defense in French Camp,
5 California. They had two dependent children, a sixteen year-old
6 daughter and a twelve year-old son. They had combined monthly
7 take-home pay of \$4,274.54 and monthly living expenses of
8 \$3,974.56, including the then-existing monthly payment to Chase of
9 \$1,493.00.

10 The Casners timely filed a Chapter 13 plan. They subsequently
11 filed an amended plan to cure the objection of a secured creditor
12 other than Chase; the objection was withdrawn, no other objections
13 were filed and the amended plan was confirmed by order entered May
14 24, 2001.

15 At the time of the bankruptcy filing, the Chase claim was at
16 least eight months delinquent.³ The confirmed plan required the
17 Casners to make all post-petition payments directly to Chase as
18 they came due. Pre-petition arrearages were to be paid by the
19 Chapter 13 trustee through the plan.

20 On April 14, 2001, Chrysler Financial Company, LLC

21
22 ³The Casners' initial plan, filed February 1, 2001 listed pre-
23 filing arrearages of \$12,990.00. Their amended plan, filed March 1,
24 2001, listed pre-filing arrearages of \$12,095.13. The latter figure
25 was apparently based on the Chase proof of claim filed February 20,
26 2001, which asserted a total claim of \$149,432.02 and listed pre-
27 filing arrearages of \$12,095.13. Chase subsequently filed two
28 amendments of its claim. On September 4, 2001, Chase filed an
amendment asserting a total claim of \$150,098.02 and pre-filing
arrearages of \$12,770.13. On August 26, 2002, Chase filed an
amendment asserting a total claim of \$150,773.02 and pre-filing
arrearages of \$13,445.13.

1 ("Chrysler") filed a motion for relief from automatic stay.
2 Chrysler was the holder of a secured claim that was not in default
3 when the case was filed. The confirmed plan required the Casners
4 to make all post-petition payments directly to Chrysler as they
5 came due. Chrysler's motion for relief from automatic stay alleged
6 that the Casners had defaulted under the confirmed plan by failing
7 to make the March and April, 2001 post-petition direct payments to
8 Chrysler. The Chrysler motion for relief from automatic stay was
9 resolved by court-approved stipulation. The Casners agreed to make
10 all future post-petition payments to Chrysler in a timely fashion
11 and to pay an additional sum each month to cure the post-petition
12 delinquency.

13 On July 30, 2001, Chase filed a motion for relief from
14 automatic stay. Chase alleged that the Casners had defaulted under
15 the confirmed plan by failing to make the June and July, 2001 post-
16 petition direct payments to Chase. The Casners opposed the Chase
17 motion, claiming that a job injury had caused Mr. Casner to miss
18 three and one-half months of work and that he encountered
19 administrative disruptions in the re-commencement of his pay after
20 his return to work, all of which caused the delinquency. The
21 Casners asserted that they had cured the post-petition delinquency
22 to Chase by August 2, 2001 and were current as of August 28, 2001,
23 the date of the hearing on the Chase motion. Because the Casners
24 had cured the post-petition default before the hearing on the Chase
25 motion, the court denied the Chase motion.

26 On August 3, 2001, Chrysler filed a second motion for relief
27 from automatic stay. The second Chrysler motion recited the

1 earlier stipulation and alleged that the Casners were again
2 delinquent on post-petition direct payments to Chrysler. The
3 Casners opposed the second Chrysler motion on the same grounds they
4 asserted in response to the first Chase motion. They alleged that
5 they had cured the arrearage to Chrysler as of July 23, 2001 and
6 that they were post-petition current with Chrysler as of August 28,
7 2001, the date of the hearing on the second Chrysler motion. At
8 the request of the parties, the court continued the second Chrysler
9 motion so that Chrysler could verify receipt of the cure payments.
10 At the continued hearing, because the Casners were post-petition
11 current to Chrysler, the court denied the second Chrysler motion.

12 On April 24, 2002, Chrysler filed a third motion for relief
13 from automatic stay. The third Chrysler motion recited the earlier
14 stipulation and alleged that the Casners were again delinquent on
15 post-petition direct payments to Chrysler. The Casners did not
16 oppose the third Chrysler motion. On May 14, 2002, the court
17 modified the automatic stay to allow Chrysler to repossess and
18 dispose of its collateral and to apply the proceeds to its secured
19 claim.

20 On May 2, 2002, Chase filed a second motion for relief from
21 automatic stay. Chase alleged that the Casners had defaulted under
22 the confirmed plan by failing to make post-petition direct payments
23 to Chase. The Casners opposed the second Chase motion. They
24 alleged that Mrs. Casner had been ill and unable to work for a
25 period of time, that she had requested an advance on her medical
26 leave, that her receipt of the advance was delayed by her
27 employer's failure to submit the proper paperwork, that they missed

1 one payment to Chase as a result, that Chase refused to accept
2 another payment by electronic transfer, that they tendered one
3 payment by cashier's check on May 13, 2002, that they would tender
4 another payment by May 24, 2002, that according to the second Chase
5 motion they had \$48,144.49 in equity in the Real Property⁴ and that
6 they could cure the final missing payment in four equal monthly
7 instalments (each in addition to the regular post-petition payment)
8 commencing in July, 2002.

9 At the hearing on the second Chase motion, the court
10 conditioned continuation of the automatic stay. The court ordered
11 that the automatic stay would remain in effect if the Casners (1)
12 paid the June through October, 2002 mortgage payments so that each
13 was received by Chase within the grace period, if any, (2) paid a
14 minimum of an additional \$387.89 with each timely regular payment,
15 (3) became completely post-petition current in mortgage payments,
16 including any associated late fees, by October 15, 2002 and (4)
17 paid the June through October, 2002 Chapter 13 plan payments to the
18 trustee in a timely manner. The court also ordered that the motion
19 could be restored to calendar not more than once should the Casners
20 default in post-petition direct mortgage payments to Chase during
21 the period November 1, 2002 through May 31, 2003.

22 After the June 4, 2002 hearing, the Casners apparently paid
23 the one missing payment. On or about July 24, 2002, Chase and the
24 Casners submitted a Stipulated Order Re Adequate Protection (the

25
26 ⁴Chase accepted the Casners' scheduled value of \$200,000.00 for
27 the Real Property and alleged a debt of \$151,985.49, including
28 principal, interest, late charges, attorneys' fees, inspection fees
and foreclosure fees and costs.

1 "Stipulated Order"). The Stipulated Order made no mention of the
2 previously missing payment. It required the Casners to make timely
3 post-petition mortgage payments to Chase, commencing with the July,
4 2002 payment and continuing for the duration of the plan. As was
5 the case with the court's ruling, the Stipulated Order provided
6 that if the Casners failed to make timely payment, Chase could
7 submit a declaration of default and proposed order terminating the
8 automatic stay as to enforcement of Chase's deed of trust on the
9 Real Property. The only relevant opposition to such a declaration
10 would be the Casners' contention that the claimed default had not
11 occurred.

12 The court vacated the June 4, 2002 ruling and entered the
13 Stipulated Order on July 25, 2002.

14 On May 2, 2003, Chase filed a declaration stating that the
15 Casners had failed to pay three direct post-petition mortgage
16 payments. Chase also filed a proof of service showing that the
17 declaration of default under the Stipulated Order had been properly
18 served on the Casners and their counsel.

19 The Casners did not contest the declaration of default, and on
20 June 19, 2003, the court entered the Order Granting Relief From
21 Stay. This adversary proceeding followed on July 25, 2003.

22 ANALYSIS

23 The Complaint constitutes an action under 11 U.S.C. § 105(a)
24 for a temporary injunction to allow the Casners to complete
25 successfully their financial rehabilitation in Chapter 13. The
26 Application seeks a preliminary injunction pending a final
27 determination of the Casners' right to a temporary injunction.

1 preventing the debtors from disposing of the shares or interfering
2 with the trustee's investigation of their value pending resolution
3 of the turnover complaint. On the appeal of the order granting the
4 preliminary injunction, the issue was whether the trustee was
5 likely to prevail in the turnover action. The appellate court
6 concluded that the trustee was likely to prevail in the turnover
7 action, and therefore affirmed the order granting the preliminary
8 injunction. Id. at 266.

9 Here, the "merits" are a bit more confusing. The underlying
10 action seeks a temporary injunction under 11 U.S.C. § 105(a). That
11 claim is deceptively similar to the request for the preliminary
12 injunction itself; however, the two are distinct.

13 Bankruptcy courts have the power to grant injunctive relief
14 under 11 U.S.C. § 105(a), which states that "[t]he court may issue
15 any order, process, or judgment that is necessary or appropriate to
16 carry out the provisions of [the Bankruptcy Code]." Section 105(a)
17 enables a bankruptcy court in appropriate circumstances to enjoin
18 actions not covered by the automatic stay and actions that are
19 excepted from the automatic stay:⁵

20 The section 362(b) exceptions to the automatic stay
21 prevent the imposition of a stay *automatically* upon the
22 commencement of the case. They do not, however, prevent
the bankruptcy court from enjoining actions protected by
the exceptions in appropriate circumstances. The court's

23
24 ⁵ Reported decisions differ on whether a bankruptcy court can
25 reimpose the automatic stay after it has been terminated by operation
26 of 11 U.S.C. § 362(e). See, Wedgewood Inv. Fund, Ltd. v. Wedgewood
27 Realty Group, Ltd. (In re Wedgewood Realty Group, Ltd.), 878 F.2d 693,
699-702 (3rd Cir. 1989). However, under Ninth Circuit law, bankruptcy
28 courts lack authority to reinstate the automatic stay. Canter v.
Canter (In re Canter), 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); In re
Flores, 293 B.R. 251, 253 (Bankr. E.D.Cal. 2003).

1 power is generally based upon section 105 of the Code.
2 The court has ample power to enjoin actions excepted from
3 the automatic stay if the actions would interfere with
4 the rehabilitative process, whether in a liquidation or
5 reorganization case. For example, an action by a
6 governmental unit seeking to enforce its regulatory power
7 is not automatically stayed because it is excepted by
8 section 362(b)(4). Nevertheless, the governmental unit
9 may be enjoined by the court if exercise of its
10 regulatory power would unduly hinder the rehabilitative
11 process and alternative means of protecting the
12 government's interest are available.

13 In effect, by excepting particular acts or actions
14 from the stay, Congress has shifted the burden of seeking
15 relief to the party seeking the protection against those
16 acts. An injunction may be issued, but only under the
17 normal standards for injunctive relief.

18 3 COLLIER ON BANKRUPTCY ¶ 362.05 (15th Ed. Rev. 2002) (emphasis in
19 original). See also, United States v. Commonwealth Cos., Inc. (In
20 re Commonwealth Cos., Inc.), 913 F.2d 518, 527 (8th Cir. 1990).

21 In the Chapter 11 context, many courts have granted temporary
22 injunctive relief under Section 105(a) to prevent actions against
23 non-debtor parties that would detrimentally affect the bankruptcy
24 estate or would impair the debtor's opportunity to reorganize.
25 Well known among such cases is Johns-Manville Corp. v. The Asbestos
26 Litig. Group (In re Johns-Manville Corp.), 26 B.R. 420 (Bankr.
27 S.D.N.Y. 1983), aff'd, 40 B.R. 219 (S.D.N.Y. 1984), rev'd in part,
28 41 B.R. 926 (S.D.N.Y. 1984). In Johns-Manville, the bankruptcy
court did several things. First, it temporarily stayed all suits
and discovery requests pursued against or directed to certain key
officers, directors, employees and agents. The court found that
continuation of actions against the specified people would
"directly interfere with the debtor's estate and/or with its
chances for a successful reorganization." Johns-Manville, 26 B.R.

1 at 426. It further found that the staying of discovery against the
2 debtor would not be effective unless discovery was also stayed
3 against the specified people. Id. It summarized the situation as
4 follows:

5 The massive drain on these individuals' time and energy
6 at this crucial hour of plan formulation in either
7 defending themselves or in responding to discovery
8 requests could frustrate if not doom their vital efforts
9 at formulating a fair and equitable plan of
10 reorganization.

11 Id.

12 Based on the foregoing findings, the bankruptcy court temporarily
13 stayed suits and discovery against the specified individuals from
14 January 10, 1983 to March 1, 1983, a period of about 49 days that
15 roughly corresponded to the debtor's remaining period of plan
16 filing exclusivity under 11 U.S.C. § 1121(b). Id. at 424.

17 Second, the bankruptcy court indefinitely enjoined certain
18 securities class action litigation brought against Manville
19 employees, agents and others. The court found (1) that this
20 litigation was a circumvention of the automatic stay, i.e., that
21 the subject conduct would frustrate the statutory scheme of Chapter
22 11 (Id. at 428), (2) that judgment in the litigation would have
23 serious and adverse consequences for the debtor's estate (Id. at
24 429) and (3) that Manville would be required to participate, thus
25 draining resources and adversely affecting Manville's ability to
26 formulate a plan of reorganization (Id. at 430).

27 Third, on rehearing, the Bankruptcy Court indefinitely stayed
28 actions against Manville's insurers. The court found (1) that
allowing such actions to continue would adversely affect the estate

1 by diminishing the value of its insurance policies and (2) that
2 Manville would be required to participate, thus draining resources
3 and adversely affecting Manville's ability to formulate a plan of
4 reorganization. Id. at 435-437.

5 The bankruptcy court decision in Johns-Manville stands for the
6 proposition that:

7 Pursuant to § 105(a), the Bankruptcy Court may extend the
8 automatic stay under § 362 of the Code to stay and enjoin
9 proceedings or acts against non-debtors where such actions
10 would interfere with, deplete or adversely affect property of
... [the debtors'] estates or which would frustrate the
statutory scheme of chapter 11 or diminish ... [the debtors']
ability to formulate a plan of reorganization...

11 Id. at 436.

12 Several appeals were taken from the Bankruptcy Court's ruling.
13 In In re Johns-Manville, 40 B.R. 219 (S.D.N.Y. 1984), District
14 Judge Brieant affirmed the Bankruptcy Court on an appeal taken by a
15 Manville co-defendant. The District Court pointed out that the
16 injunctive power exercised by the Bankruptcy Court under Section
17 105 must be exercised in aid of some other section of the
18 Bankruptcy Code, or to achieve the goals of the Bankruptcy Code:

19 While § 105 vests the Bankruptcy Court with authority to
20 extend the stay, such an extension must be in aid of authority
21 exercised by the court pursuant to some other provision of the
22 Code, in this case, § 362. In order to issue a stay under §
105, the court must determine that such relief is at least
appropriate to achieve the goals of a Chapter 11
reorganization, and is necessary to protect the debtor.

23 Johns-Manville, 40 B.R. at 225.

24 The District Court also stated that Section 105 injunctions of
25 the kind under review are temporary:

26 This Court recognizes, as does the Bankruptcy Court, that
27 stays of proceedings of the sort present here, are not
intended to be permanent. They must be reasonable as to scope

1 and duration....

2 Notwithstanding any impressions to the contrary, neither the
3 reorganization proceedings nor the stay can last forever.

4 Id.

5 The District Court affirmed "without prejudice to future
6 application(s) for complete or partial relief from the stays
7 imposed pursuant to § 362 of the Bankruptcy Code and the Bankruptcy
8 Court's prior orders, based on the circumstances and the equities
9 of the case as they may then exist." Id. at 231.

10 In In re Johns-Manville, 41 B.R. 926 (S.D.N.Y. 1984), District
11 Judge Haight reversed the Bankruptcy Court on an appeal by another
12 Manville co-defendant. The reversal was based on the perceived
13 equities of the case, not on the Bankruptcy Court's lack of
14 authority to issue a stay of the kind that it had issued. 41 B.R.
15 at 931-933.

16 Other decisions in Chapter 11 cases have reached similar
17 conclusions and have granted injunctions under 11 U.S.C. § 105(a)
18 to protect non-debtor parties.⁶ See, e.g., Otero Mills, Inc. v.
19 Security Bank & Trust (In re Otero Mills, Inc.), 21 B.R. 777

20
21 ⁶ Some court's hold that the power to "extend the stay" under
22 Section 105 is not applicable in Chapter 7 because there is no
23 reorganization to protect. See, e.g., Gray v. Hirsch, 230 B.R. 239,
24 243-44 (S.D.N.Y. 1999). Other cases do not impose such a limitation.
25 See, e.g., Whitaker v. Interstate Commerce Comm'n (In re Olympia
26 Holding Corp.), 161 B.R. 524 (M.D. Fla. 1993) (affirming in part and
27 reversing in part the issuance of a preliminary injunction in favor
28 of a Chapter 7 trustee); Archambault v. Hershman (In re Archambault),
174 B.R. 923 (Bankr. W.D. Mich. 1994) (granting a preliminary
injunction in an individual Chapter 7 case to protect a non-debtor);
and Ochs v. Lipson (In re First Cent. Fin. Corp.), 238 B.R. 9 (Bankr.
E.D.N.Y. 1999) (declining to enjoin claims against a Chapter 7 debtor's
director and officer liability policy where the court concluded that
the policy proceeds were not property of the estate).

1 (Bankr. D.N.M. 1982), aff'd, 25 B.R. 1018 (D.N.M. 1982) (enjoining
2 indefinitely a creditor's actions against the debtor's president
3 and shareholder who guaranteed the debtor's obligation); In re
4 Arrow Huss, Inc., 51 B.R. 853 (Bankr. D. Utah 1985) (granting the
5 debtor's unopposed request for a 45-day stay preventing credit card
6 companies from pursuing several of the debtor's officers and
7 employees to collect debts incurred by said officers and employees
8 on behalf of the debtor and discussing prior cases on this issue);
9 A.H. Robins Co., Inc. v. Piccinin (In re A.H. Robins Co., Inc.),
10 788 F.2d 994 (4th Cir. 1986), cert. denied, 479 U.S. 876
11 (1986) (affirming a district court order enjoining indefinitely
12 product liability litigation against the debtor and co-defendants);
13 and In re United Health Care Org., 210 B.R. 228 (S.D.N.Y.
14 1997) (declining to grant an exemption to its previously issued
15 preliminary injunction against prosecution of claims against third
16 parties where such prosecution would foreclose a source of funding
17 for the debtor). Other cases have recognized the court's authority
18 to issue such injunctions in appropriate circumstances, but have
19 declined to issue an injunction, or reversed the bankruptcy court's
20 exercise of its authority to issue an injunction, based on the
21 facts of the case. See, e.g., Costa and Head Land Co. v. Nat'l
22 Bank of Commerce (In re Costa and Head Land Co.), 68 B.R. 296 (N.D.
23 Ala. 1986) (vacating a bankruptcy court order granting a preliminary
24 injunction enjoining a bank from selling, transferring or otherwise
25 disposing of securities pledged by non-debtor general partners of
26 the debtor because the evidence did not support the bankruptcy
27 court's findings on the elements necessary for a preliminary
28

1 injunction); Millard v. Developmental Disabilities Inst., 266 B.R.
2 42 (E.D.N.Y. 2001) (declining to extend the automatic stay to non-
3 debtor defendants where the debtor's reorganization was not so
4 complex as to require an inordinate amount of non-debtor
5 defendants' time).

6 The case law in the area establishes no uniform standard for
7 the merits of a claim for temporary injunctive relief under Section
8 105(a) in the Chapter 11 context. The court gleans the following
9 from the case law as relevant factors for consideration:⁷

10 1. Will the threatened actions interfere with, deplete or
11 adversely affect property of the bankruptcy estate?

12 2. Will the threatened actions frustrate the statutory
13 bankruptcy scheme?

14 3. Will the threatened actions interfere with the bankruptcy
15 rehabilitative process?

16 4. If one or more of the foregoing effects is/are present, is
17 the requested stay reasonable as to scope and duration?

18 5. If one or more of the foregoing effects is/are present, are
19 appropriate means available to protect the non-debtor party's
20 interests?

21 The court has authority to issue injunctions under 11 U.S.C. §
22 105(a) in Chapter 13 cases. 11 U.S.C. § 103(a); Canter, 299 F.3d
23 at 1155. In considering the likelihood of success on the merits of
24

25 ⁷Equitable defenses are relevant to a request for a preliminary
26 injunction. 13 MOORE'S FEDERAL PRACTICE, §§ 65.03 and 65.06[5] (3rd Ed.
27 2003); GoTo.Com, Inc. v. Walt Disney Co., 202 F.3d 1199, 1209-10 (9th
Cir. 2000). In this instance, however, Chase asserted no equitable
28 defenses.

1 a request for a temporary injunction in a Chapter 13 case, the
2 court will apply the above-summarized factors developed in the
3 Chapter 11 context.

4 **The Request For A Preliminary Injunction**

5 The Casners are entitled to a preliminary injunction under
6 either the traditional or the alternative test. Applying the
7 traditional test, the court first reviews likelihood of success on
8 the merits of the Casners' request for a temporary injunction.

9 **Likelihood of Success on the Merits.**

10 Based on the evidence before the court on the Application, the
11 Casners are likely to prevail on the merits of the Complaint's
12 claim for a temporary injunction. Foreclosure by Chase will
13 extinguish the Casners' interest in the Real Property, their
14 residence, which is property of their bankruptcy estate.⁸ In
15 addition, the Casners' experience in this Chapter 13 case shows
16 their inability to make consistently all of their direct payments
17 on secured claims and their Chapter 13 plan payments. Chrysler
18 made three motions for relief from automatic stay, and the court
19 ultimately modified the automatic stay to allow Chrysler to
20 repossess and foreclose. Chase made two motions for relief from
21 automatic stay. After the Casners defaulted under a stipulated
22 adequate protection order flowing from the second Chase motion, the
23 court modified the automatic stay to allow Chase to foreclose. It
24 is clear that the Casners can successfully complete a financial

25
26 ⁸The Casners' confirmed Chapter 13 plan states that property of
27 the estate will not re-vest in the debtors until a discharge is
28 granted. Thus, the Real Property is property of the bankruptcy estate
notwithstanding 11 U.S.C. § 1327(b).

1 rehabilitation in this case only if they sell or refinance the Real
2 Property to complete their plan. Thus, foreclosure will deplete
3 property of the bankruptcy estate and interfere with the
4 rehabilitative process.

5 The facts disclosed in the Application and the Chase motions
6 for relief from automatic stay show that the value of the Real
7 Property exceeds the Chase claim by \$50,000.00, or more. The
8 Complaint seeks a temporary stay of foreclosure for sufficient time
9 to permit the refinancing escrow to close and to permit the Casners
10 to seek modification of their Chapter 13 plan. Given the apparent
11 excess value in the Real Property over the amount of the Chase
12 claim, a stay of some short duration, e.g., 60 to 90 days, would
13 not ultimately prejudice Chase's ability to obtain full payment
14 from the Real Property. Furthermore, nothing in the court's ruling
15 prevents Chase from seeking dissolution of the preliminary
16 injunction or any subsequent temporary injunction based on changed
17 circumstances. Thus, a temporary stay of the duration mentioned
18 above would be reasonable in scope and duration and Chase's
19 interests would be protected.

20 The court finds that the Casners are likely to prevail on the
21 merits of their request in the Complaint for a temporary
22 injunction.

23 **Irreparable Injury.**

24 The Casners will suffer irreparable harm if a preliminary
25 injunction is denied. In that event, the Casners will lose their
26 interest in Real Property, their residence, including the excess
27 value described above.

28

1 **Balance of the Hardships.**

2 The balance of the hardships tips in the Casners' favor. The
3 Casners are faced with loss of their residence and the "equity"
4 therein. Chase is an institutional lender that will ultimately be
5 paid its principal, interest and allowable costs, even if a
6 preliminary injunction is granted.

7 **Public Policy.**

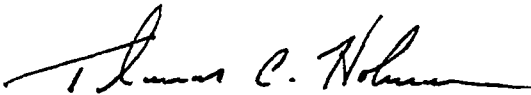
8 Public policy is not offended by granting a preliminary
9 injunction. Granting injunctive relief to allow the Casners an
10 opportunity to complete the refinancing and modify their plan is
11 the only method by which the rehabilitative purposes of Chapter 13⁹
12 can be effectuated in this case.

13 Having established entitlement to a preliminary injunction
14 under the primary test, the Casners have, a fortiori, established
15 entitlement to such relief under the alternative test.

16 **CONCLUSION**

17 For the foregoing reasons, the Court will issue a preliminary
18 injunction to prevent foreclosure on the Real Property by Chase
19 pending entry of judgment after trial on the Complaint. The court
20 will also accelerate the status conference in this adversary
21 proceeding with the intention of establishing an accelerated
22 schedule for discovery and trial. A separate order will issue.

23 Dated: DEC 16 2003

24 
25 THOMAS C. HOLMAN
26 UNITED STATES BANKRUPTCY JUDGE

27 ⁹ See 8 COLLIER ON BANKRUPTCY ¶ 1300.02 (15th Ed. Rev. 2002).

CERTIFICATE OF MAILING

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I, Carlene Walker, in the performance of my duties as Calendar Clerk to
The Honorable Thomas C. Holman, mailed by ordinary U.S. mail to each of the
parties a true copy of the attached document to:

Carl W. Collins
Altman & Collins
P.O. Box 3291
Modesto, CA 95353

Marisol Antonio
Polk, Prober & Raphael
P.O. Box 4365
Woodland Hills, CA 91365

Donald & Regina Casner
P.O. Box 3440
Arnold, CA 95223

Russell D. Greer
Chapter 13 Trustee
P.O. Box 3051
Modesto, CA 95353

Office of the U.S. Trustee
U. S. Courthouse
1130 O St., Rm. 1110
Fresno, CA 93721

Dated: 12/16/03

Carlene Walker
Carlene Walker
Calendar Clerk to Judge Holman