

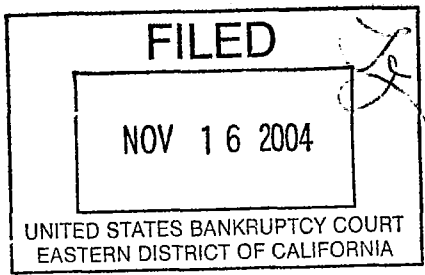
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

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In re
Golden State Capital Corp.,
Debtor.
County of Fresno,
Movant,
v.
Golden State Capital Corp.,
Respondent.

Case No. 04-17201-B-11
DC No. RHC-1



**FINDINGS OF FACT AND CONCLUSIONS OF LAW RE MOTION
FOR IN REM RELIEF FROM THE AUTOMATIC STAY**

Before the court is a Motion for Relief from the Automatic Stay Combined with In Rem Relief filed by the County of Fresno (the "County"). The County seeks relief to conduct a tax sale of real property. Golden State Capital Corp. (the "Debtor") is not represented by an attorney and did not respond to the Motion.¹ The matter was heard on September 23, 2004. Richard H. Chasen, Esq., appeared on behalf of the County. Mark Pope, Esq., Assistant U.S. Trustee appeared for the United States Trustee. Also present was Eddie Mendrin ("Mendrin"), a purported principal and agent for the Debtor. Following the hearing, this court granted relief to the County to conduct a tax sale on or after December 15, 2004. The court took the request for in rem relief under submission.

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11

¹Local Rule 83-183(a) of the United States District Court, Eastern District of California provides, "[a] corporation or other entity may appear only by an attorney." Rule 83-183 is made applicable to bankruptcy proceedings by Rule 1001-1(c) of the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California.

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1 U.S.C. §§ 105 & 362. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (G) & (O).
2 The following constitutes the court's findings of fact and conclusions of law pursuant to
3 Federal Rule of Bankruptcy Procedure 7052. For the reasons set forth below, the County's
4 motion for in rem relief from the automatic stay will be granted.

5 **Findings of Fact**

6 The County has a statutory tax lien against a parcel of real property located at 6101
7 N. Golden State Blvd., Fresno, California 93722 (the "Property"). The County's records list
8 Golden State Capital Corp. as the assessed owner of the Property. The County's efforts to
9 sell the Property relate to unpaid property taxes dating back more than 14 years. The Debtor
10 and its predecessors in title, all of which appear to be controlled by Mendrin, have
11 successfully avoided paying any real property taxes assessed against the Property for the
12 1989-90 through 2003-04 tax years. As of September 2004, the delinquent taxes, penalties
13 and costs assessed against the Property total in excess of \$90,000. The County has attempted
14 to conduct a tax sale of this Property at least 11 times over the last 8 years, however, all of
15 those sales have been "stayed" by a series of bankruptcy filings in various courts and in the
16 names of different debtors, each of which appears to have some relationship to Mendrin.²

17 The Property was first scheduled for a tax sale on March 1, 1996.³ The County
18 withdrew that sale when the Tax Collector received a "Notice of Automatic Stay" for the
19 bankruptcy of Western Nevada Equipment, Inc. aka Golden State Capital Corp. filed in the
20 Northern District of California. That notice was signed by Mendrin and, like all of the other
21

22 ²The Office of the United States Trustee is charged with supervising the
23 administration of bankruptcy cases. 28 U.S.C § 586(a)(3). The United States Trustee
24 contends that Mendrin has actually been involved in 22 bankruptcy filings, either as the
25 debtor, or as the principal in some other form of bankruptcy entity.

26 ³Under California law, real property taxes must be in default for at least five years
27 before the County can commence proceedings to sell the property. California Revenue
28 and Taxation Code § 3691.

1 notices described below, it contained some reference suggesting that the Debtor held an
2 interest in the Property.

3 The next tax sale was scheduled for March 2000. In mid-February 2000, Mendrin
4 delivered a "Notice of Automatic Stay" indicating that Casa de Robles aka Golden State
5 Capital Corp. held an interest in the Property and had filed bankruptcy in the Northern
6 District of California. The County postponed that sale until May 3, 2000.

7 On May 2, 2000, Mendrin delivered another "Notice of Automatic Stay" indicating
8 that Golden State Capital Corp. had filed a petition for chapter 11 relief in the Eastern
9 District of California. In June 2000, the court granted relief from the automatic stay,
10 subsequently dismissed the case, and barred the Debtor from filing again for 180 days.

11 The County rescheduled its tax sale in November 2000. Immediately before
12 commencement of the sale, Mendrin delivered another "Notice of Automatic Stay." This
13 time the debtor was Commonwealth Trust, and the petition was filed in the Northern District
14 of California. Attached to the Notice was copy of a grant deed recorded two days earlier
15 transferring the Property from Golden State Capital Corp. to the new debtor. The bankruptcy
16 case was dismissed in March 2001.

17 A special tax sale was set for November 29, 2001. Days prior to the sale, Mary
18 Mendrin delivered to the County a "Notice of the Automatic Stay" relating to a chapter 13
19 petition, this time filed by Mendrin, aka Commonwealth Trust. That petition was filed on
20 November 13, 2001, in the Northern District of California. The tax sale was postponed until
21 December 6, 2001. The court granted relief from the automatic stay on December 4, 2001,
22 however, the order did not become effective in time for the County to conduct its sale.

23 The County rescheduled the tax sale for March 4, 2002. In mid-January, the County
24 received notice of another chapter 13 petition filed in the Northern District of California by
25 Mendrin with Commonwealth Trust, Casa de Robles, and Lotus Estates listed as akas for the
26 debtor Mendrin.

1 case on April 29, 2004, and barred the debtor from refileing for 180 days.

2 On April 21, 2004, Mendrin delivered notice that Lotus Trust/Commonwealth Trust,
3 dba Golden State Capital Corp. had filed a chapter 13 petition in the Eastern District of
4 California. The Property was again removed from the tax sale. That case was dismissed on
5 May 18, 2004, and the debtor was permanently barred from filing another bankruptcy
6 petition.

7 That brings us to the present case which was filed by Mendrin on August 19, 2004,
8 one day before the latest scheduled tax sale. This petition was signed by Mary Mendrin in
9 her capacity as vice-president of Golden State Capital Corp.⁴

10 **Conclusions of Law**

11 Enough is enough! Mendrin has successfully avoided paying taxes assessed against
12 the Property for more than 14 years. In so doing, Mendrin has egregiously abused the
13 bankruptcy system. This case screams for extraordinary relief.

14 The County Tax Collector has a duty to sell real property when the defaulted taxes
15 have not been redeemed for five years or more. Cal.Rev.&T.Code § 1391(a). The County
16 has asked the court for in rem relief that would exclusively apply to the Property so that it
17 may fulfill that responsibility. Without some creative relief, the next tax sale will most
18 certainly be interrupted by yet another Mendrin - contrived bankruptcy proceeding filed in
19 the name of possibly another debtor in possibly another court.

20 Through multiple bankruptcy proceedings, Mendrin has never confirmed a plan of
21 reorganization to actually pay the real property taxes. The skeleton schedules filed in this

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23 ⁴The court takes judicial notice of the fact that this Debtor is not registered in
24 California as a corporation, foreign, or domestic, according to the records available on the
25 California Secretary of State's Internet Website. The Debtor's protection includes a
26 "Written Consent of Directors of Golden State Capital Corp., signed only by Mendrin,
27 which indicates that the Debtor is a Delaware Corporation. The County produced a
28 certificate from the Delaware Secretary of State indicating that Golden State Capital
Corp. became "inoperative and void" on March 1, 1995, for nonpayment of taxes.

1 petition for bankruptcy relief is a statutory protection that the court cannot lightly disregard.
2 “The purpose of the automatic stay is to give the debtor a breathing spell from his creditors,
3 to stop all collection efforts, harassment and foreclosure actions.” *Matter of Roach*, 660 F.2d
4 1316, 1318 (9th Cir. 1981) *citing* Notes of Committee on the Judiciary, Sen.Rep.No.989,
5 95th Cong., 2d Sess. 54, *reprinted* in [1978] U.S.Code Cong. & Ad.News 5787, 5840. The
6 automatic stay is primarily for the protection of the debtor and the interest of the creditors
7 is a secondary consideration. *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1197
8 (6th Cir. 1983).

9 The protections of the Bankruptcy Code are limited, however, to the “honest but
10 unfortunate debtor.” *Grogan v. Garner*, 498 U.S. 279, 287, 111 S.Ct. 654, 659 (1991). A
11 debtor does not have a constitutional or fundamental right to a discharge in bankruptcy. *Id.*
12 at 287. Similarly, the automatic stay should not be viewed as a “right,” but more as a
13 “privilege” which may be denied to petitioners who abuse it. *In re Tolbert*, 258 B.R. 387,
14 390 (Bankr. W.D. Mo. 2001).

15 Other bankruptcy courts have found that the filing of multiple bankruptcy petitions
16 merely to invoke the automatic stay is both an abuse of process and a matter of bad faith. *See*
17 *Matter of Inesta Quinones*, 73 B.R. 333, 338 (Bankr. D. P.R. 1987); *see also In re Kinney*,
18 51 B.R. 840, 845 (Bankr. C.D. Cal. 1985). The accepted response to abuse of process or bad
19 faith is to dismiss the case, however, when the petitioner's goal is to serially invoke the
20 automatic stay to prevent some action by a creditor, mere dismissal will not be sufficient.
21 *See generally In re Yimam*, 214 B.R. 463, 465 (Bankr. D. Md. 1997). In these extraordinary
22 circumstances, it is appropriate for the court to “implement an appropriate order to prevent
23 the continuing abuse of the bankruptcy process” pursuant to 11 U.S.C. § 105(a).⁶ *Id.*

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26 ⁶The United States Trustee has suggested that he may seek contempt sanctions
27 against Mendrin. As the court has noted above, however, mere dismissal will not address
28 the problem, and contempt sanctions will not offer relief on the motion before the court.

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1 An order for in rem relief would be an extraordinary use of the court's power, but it
2 is not without precedent. In *Great Western Bank v. Snow (In re Snow)*, 201 B.R. 968 (Bankr.
3 C.D. Cal. 1996), Judge Bufford outlined the basis for granting such relief, drawing on the
4 common law doctrine of equitable servitudes. 201 B.R. at 972-74. In *Snow*, a secured
5 creditor sought in rem relief when its efforts to foreclose a lien against real property were
6 frustrated by serial use of the automatic stay. *Id.* at 971. After the court granted relief from
7 the automatic stay as to one debtor, the creditor found that the property had been transferred
8 to another debtor who also sought bankruptcy protection. *Id.* The creditor sought relief that
9 would be binding for 180 days “in any and all Chapter 7, 11 and 13 cases, as to the property
10 and as to this debtor and his transferees, assigns and/or co-owners.” *Id.*

11 After analyzing the law of equitable servitudes, the court in *Snow* concluded that in
12 rem relief was warranted. The court viewed in rem relief as a nontraditional form of
13 equitable servitude that would run with the land for the benefit of the creditor and that would
14 bind all subsequent transferees of the property for a specific period of time. *Id.* at 974.⁷ The
15 court cautioned that in rem relief must be narrowly drawn, limited to achieve its purpose
16 without unduly burdening the land, and properly recorded in the county records. *Id.* at 974-
17 75.

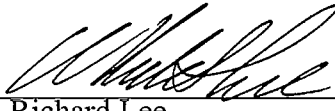
18 **Conclusion**

19 This court is persuaded by the egregious history which precedes this case and Judge
20 Bufford's analysis in *Snow*, that an in rem order for relief from the automatic stay is both
21 appropriate and necessary. Mendrin has abused the bankruptcy system for the sole purpose
22 of interfering with performance of the County's statutory responsibility to collect property
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24 ⁷The *Snow* court denied the creditor's request for in rem relief as to any co-owners
25 of the property on due process grounds. The court also denied the request for an
26 injunction against subsequent transfers of the property because the creditor did not bring
27 an adversary proceeding for injunctive relief and because injunctive relief appeared to be
unnecessary in light of the grant of in rem relief.

1 taxes. Mendrin has shown obvious contempt for the bankruptcy courts that he has run to for
2 protection. Nothing short of extraordinary relief will serve to protect the bankruptcy system.
3 The County desires to complete its tax sale which has been renoticed to take place sometime
4 on or shortly after December 15, 2004. To prevent further certain abuse by Mendrin, the
5 County's motion for in rem relief from the automatic stay will be GRANTED. A separate
6 order will be entered that will both modify the automatic stay for the County and bind all
7 subsequent transferees of the Property for a limited time.

8 Dated: November 16, 2004

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12 W. Richard Lee
13 United States Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

SEE ATTACHED LIST

DATED: 11-16-04

By: Samira Joaquin
Deputy Clerk

EDC 3-070 (New 4/21/00)

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Mark Pope
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