UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 17, 2013 at 1:30 p.m.

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1. 13-33126-E-7 JOHN DOLMAN
RWD-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-18-13 [22]

LYUDMILA MOKRUSHIN VS.

CASE CONVERTED TO CH. 7 ON 12/4/13

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*)and Chapter 13 Trustee on November 18, 2013. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Lyudmila Mokrushin ("Movant")seeks relief from the automatic stay with respect to the real property commonly known as 2721 Los Amigos Drive, Rancho Cordova, California. The moving party has provided the Declaration of Lyudmila Mokrushin to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a pre-petition Trustee's Sale on October 7, 2013. Debtors are tenants at sufferance, and movant commenced an unlawful detainer action in Sacramento County Superior Court, Case No. 13UD08551.

Evidence In Support

The moving party filed the declaration and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure may be a cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Chapter 13 Trustee's Response

The Chapter 13 Trustee filed an opposition to the Motion for Relief from Automatic Stay. The Trustee argues that Debtor is delinquent $680.00 under the proposed plan. Additionally, Debtor has paid a total of $0.00 to date. The relevant property has a monthly installment of $530.00 and it is held by Central Mortgage Company. The Trustee has filed a motion to dismiss for which the hearing is scheduled on January 8, 2014.

Conversion

The case was voluntarily converted to one under Chapter 7 of the Bankruptcy Code on December 4, 2013.

A review of the proof of service shows that the Motion and supporting pleadings were not served on the Chapter 7 Trustee.

However, moving party does not seek to take action against the estate or property of the estate, but prosecute an unlawful detainer to obtain possession of property which Movant asserts she owns. Movant does not seek to terminate, foreclose on, or otherwise alter any rights of the estate.

The court will therefore rule as to the Debtor and will serve the Chapter 7 Trustee with the order. If the Trustee believes that any conduct violates the automatic stay which protects the estate and property of the estate, he may act accordingly.

Discussion

Movant has provided an authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor. 11 U.S.C. § 362(d)(2). This now being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

More significantly, cause exists pursuant to 11 U.S.C. § 362(d)(1) to modify the stay with respect to the Debtor. This bankruptcy case was filed on October 9, 2013 as a Chapter 13 case. When facing the hearing on

the Chapter 13 Trustee's Motion to dismiss, the Debtor filed his election to convert this case to one under Chapter 7. Conversion, Dckt. 37. The Motion to Dismiss the Chapter 13 case included the following grounds: (1) Debtor's failure to appear at the November 14, 2013 First Meeting of Creditors, (2) Debtor's failure to provide copies of pay advices, and (3) Debtor's failure to provide copies of tax returns. Motion to Dismiss, Dckt. 28.

Appearances, if any, are stated on the record.

The court shall issue a minute order terminating and vacating the automatic stay to allow Lyudmila Mokrushin, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2721 Los Amigos Drive, Rancho Cordova, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a), as they apply to John Calvin Dolman, Jr., the Debtor, and the property of the Debtor, are modified vacated to allow Lyudmila Mokrushin and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2721 Los Amigos Drive, Rancho Cordova, California.
>
> The court does not modify the automatic stay as to the property of the bankruptcy estate and the Chapter 7 Trustee, which stay may be asserted by the Chapter 7 Trustee.
>
> No other or additional relief is granted.

2. 13-20051-E-7 TYRONE BARBER — **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 12-20-12 [1]**

CASE CONVERTED TO CH. 7 ON 11/23/13

Debtor's Atty: Cory A. Birnberg

Final Ruling: The Status Conference is removed from the calendar. No appearance at the December 17, 2013 Status Conference is required.
Notes:

Continued from 11/13/13 to be heard in conjunction with other matters on calendar.

[CAB-6] Motion for Disbursement of Fees to Family Law Counsel filed 10/29/13 [Dckt 136], set for hearing 12/12/13 at 10:30 a.m.

3. 13-20051-E-7 TYRONE BARBER — **CONTINUED ORDER TO SHOW CAUSE 10-3-13 [122]**

RHS-1
CASE CONVERTED TO CH. 7 ON 11/23/13

CONT. FROM 11-13-13

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on October 4, 2013. 40 days notice of the hearing was provided.

Final Ruling: The court's decision is to discharge the Order to Show Cause. No appearance at the December 17, 2013 hearing is required.

PRIOR HEARING

The court conducted a Chapter 11 Status Conference in this case on October 2, 2013. Neither the Debtor in Possession nor counsel for the Debtor in Possession appeared at the Status Conference. The court's review of the monthly operating reports indicates an inconsistency in the income reported, expenses, and bank account balances. *See* Civil Minutes for October 2, 2013 Status Conference. This bankruptcy case was filed on December 20, 2012. No proposed plan or disclosure statement has been filed in this case. The work performed by professionals in this case has been generally limited to getting professionals employed. *See* Civil Minutes for hearing on motion for compensation, Dckt. 117.

The court ordered that the Debtor in Possession, by counsel or with counsel, to appear and show cause why this Chapter 11 case should not be dismissed or converted to a case under Chapter 7.

Response

On October 21, 2013, Counsel for Debtor, Cory A. Birnberg, filed a declaration. Counsel testifies that he informed his secretary to calendar the October 2 appearance date, which she did, absent the case name. Counsel states his office searched the files to determine which case was set for hearing, could not find one and assumed it was a mis-calendaring.

Counsel states the last operating report was filed early and timely and he has gone over some issues with the U.S. Trustee's office to improve upon the reports. Counsel states he also met with the client to follow up on the reports. Counsel states he has filed a plan and disclosure statement. Counsel apologies for his mistake.

Discussion

A review of the court docket shows that since the issuance of this Order to Show Cause and Counsel's response, Counsel has filed Motions for Compensation for his bookkeeper and special counsel for a child support matter and set them for hearing. Dckts. 131, 136. A Chapter 11 plan and disclosure statement have also been filed by the Debtor-in-Possession, and the Disclosure Statement has been set for hearing. Dckts. 140, 141, 144. Debtor-in-Possession has also filed an objection to claim but it appears to be severely procedurally deficient. Dckt. 139. FN.1.

FN.1. The moving party filed the notice, motion (if any), and proof of service in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

Furthermore, no evidence has been filed in support of the Objection to Proof of Claim. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). No evidence appears to support the Objection to Proof of Claim.

Debtor-in-Possession has also filed a Motion to Change Designation from Small Business Designation to one under Chapter 11 without such designation. Dckt. 147. This appears to be in response to the U.S. Trustee's Motion to Dismiss or Convert, filed October 18, 2013 and set for hearing November 19, 2013. The Motion asserts that the claims in this case exceed $2,493,655.51, which is more than the $2,343,300.00 necessary for a debtor to meet the definition of a small business case. Definitions of Small Business Case and Small Business Debtor, 11 U.S.C. § 101(51C) and (51D). No evidence is provided in support of the Motion or to provide an

explanation as to why the Debtor now believes that the Debts in this case are $2,943,655.51. The Points and Authorities in support of the Motion states that the Debtor did not know that the debts were so large when the case was filed. Dckt. 149.

The Points and Authorities appear to state the grounds upon which the requested relief is appropriate. (The grounds upon which the relief requested in a motion are based must be stated with particularity in the motion, not scattered among various pleadings filed with the court. Fed. R. Civ. P. 7(b), Fed. R. Bank. P. 7007, 9013.) Because consideration of that motion may cause the case to live or die, the court considers what is stated with particularity in the Points and Authorities.

The Debtor in Possession directs the court's attention to the nine proofs of claim filed in this case which total $2,111,184.20. The largest claim is for $1,796,309.35 which has been filed by the Internal Revenue Service. Of this, $70,208.18 is asserted as a priority claim, $70,208.18 as secured, and the balance as an unsecured claim. The attachment to the Internal Revenue Service Proof of Claim indicates that the Debtor has unassessed-no returns filed for the 2012, 2011, 2010, 2009, 2008, and 2007 tax years. The Debtor in Possession agrues that an additional $382,481.31 in claims on the Schedules.

Status of Case

The Order to Show Cause was issued not only because of the non-appearance at the Status Conference, but because of the Debtor in Possession's failure to prosecute the case. As noted by the court, the activity in this case consisted of merely the employment of professionals and the filing of fee applications.

Following the Order to Show Cause, the U.S. Trustee filed a Motion to Dismiss the Chapter 11 Case. Dckt. 126. In addition to the Debtor in Possession not having met the timely plan requirements for a small business case, the U.S. Trustee also raised the grounds that the Monthly Operating Reports were not timely filed and appeared to be inaccurate. The inaccuracies identified by the U.S. Trustee in connection with the motion to dismiss are that the cash balance amounts and fund on hand amounts on several of the Monthly Operating Report are not consistent.

The courts was also concerned that this case, having been filed on December 20, 2012, little had been accomplished other than employing professionals and the filing of fee applications. The Order to Show Cause appears not only to have spawned a motion to dismiss by the U.S. Trustee, but several fee applications, disclosure statement, and Chapter 11 plan from the Debtor in Possession.

The first fee application seeks the payment of $3,360 in fees to Renato Pepengco, as the accountant-bookkeeper for the Debtor in Possession. Application, Dckt. 131. This is for the 2010 Federal and California tax returns, the Philippine Property tax return, and 2012 W-2s and 1099s. The second fee application is for John Guthrie, the Debtor's family law counsel who is seeking to enforce a support order. The Debtor in Possession seeks an interim fee award and authorization to pay counsel $10,000.00.

The proposed Chapter 11 Plan, Dckt. 140, provides for payment of claim in the following manner and amounts:

Class of Claims Creditor	Amount Provided in Plan	Treatment of Claim
Class 1, Internal Revenue Service Secured Claim	Unstated	Subject to Objection of Debtor
Class 2, Franchise Tax Board Secured Claim	Unstated	Unimpaired, to be paid over 5 years, from later of effective date or when claim is allowed by final, non-appealable order
Class 3 Ford Motor Credit Secured Claim	Unstated	Paid in full within 60 days of later of effective date or when order allowing claim is a final, non-appealable order
Class 4 All Priority Claims (Excluding administrative expense claims and priority tax claims)	Unstated	Paid in full over five years from the later of the effective date or when order allowing claim is a final, non-appealable order
Class 5 General Unsecured Claims	Unstated	Paid 20% of value (scheduled amount) over five years.
Class 6 Equity		Property and Business Remains the Debtor's

The Plan fails to provide any specifics by which the Debtor would be bound to perform. No specific amounts to be paid as claims are provided for, no interest rate, no amortization, and no monthly payment amounts. The Plan is a recitation of the legal requirements of the Bankruptcy Code with no financial substance.

For the general unsecured claims, the Plan fails to provide for the payment of claims as filed and allowed, but merely that the Debtor will pay 20% of the claims as the Debtor scheduled them. The proofs of claim are deemed a nullity by the Debtor in Possession.

A glaring omission in the Plan is for the tax priority claims. The Class four priority claims expressly exclude tax claims. The proposed Plan includes a note, stating that under 11 U.S.C. § 1129(a)(9)(D) a secured priority tax claim must be paid in the same manner as a unsecured priority tax claim. However, that does not make an unsecured priority tax claim a secured claim. See 11 U.S.C. § 506(a) for definition of secured claim, limiting it to the value of the collateral securing the claim.

The Plan provides that the Debtor will fund the plan with only $1,500 a month. Over the 60 months of the plan that totals $90,000.00. The plan further states that "The remaining amounts owing will be funded from the operations of the Debtor." No specific amounts are required to be funded and no timing is provided for the "remaining amounts" which would have to be funded.

To put the non-specific funding in context, just from the proofs of claim filed, the Debtor will have to generate from "operations" an additional $2,144,584 for the secured and priority tax claims.

The Disclosure Statement states that the plan is being proposed in a small business bankruptcy case. The financial information provided with the Disclosure Statement is only the most recent monthly operating report.

In describing the claims, the Disclosure Statement projects that there will be $43,000 in administrative expenses (showing only $15,000 in professional fees). Though not so provided in the Plan, the Disclosure Statement describes the payment of a $9,659 priority claim to the California Employment Development Department and a $2,662 priority claim to the California Franchise Tax Board. No treatment of the Internal Revenue Service priority claim is provided, with the Disclosure Statement providing only that the amount is "TBD" (to be determined). The priority claim treatment listed in the Disclosure Statement is not the treatment which is provided for in the Plan.

For the secured claim of the Internal Revenue Service, the Disclosure Statement "discloses" that the treatment is generically going to be payment over five years, for whatever amount it needs to be. No provision is made for either the Internal Revenue Service secured claim or the Franchise Tax Board secured claim for any specific amount or interest to be paid.

For Class 5 general unsecured, the Disclosure Statement discloses that the Debtor will only pay trade debt and then pay only the debt as he has listed it on Schedule F. The Plan does not say that Class 5 is limited only to "trade debt" and that all other unsecured claims are ignored.

The financial information provided as part of the Disclosure Statement is only a monthly operating report. The Debtor in Possession offers no good faith financial projections or a pro forma by which an informed decision on whether a creditor though voting for or against the plan. Looking at the September 2013 Monthly Operating Report attached to the Disclosure Statement, several financial issues bubble to the surface.

A. Cash Receipts Since December 2012.....$1,934,131
B. Disbursements Since December 2012.....($1,804,742)
C. Increase(Decrease) in Cash Since December 2012.....$ 129,389

D. Cash Balance, September 30, 2013.....$ 129,389

E. Bank Account Balances

1. Bank of the West, 4784.....$ 7,676.45
2. Bank of the West, 4839.....$ 156.46
3. Bank of the West, 3711.....$ 0.37

The detail provided to the Monthly Operating Report for September 2013 does not show where the $129,389 cash balance is located.

The Monthly Operating Report also discloses unpaid post-petition liabilities of $100,655 (current to 30-days), $34,378 (over 30-days, non-tax

obligations), and $45,800 for accrued professional fees. These total $180,834.00 in unpaid post-petition liabilities, which exceed the paper "cash balance" shown on the Monthly Operating Report. The Monthly Operating Report also lists a "Work in Process" asset with a value of $477,536.

CONVERSION

The bankruptcy was converted to one under Chapter 7 of the Bankruptcy Code on November 23, 2013.

Counsel for the former Debtor in Possession addressed with the court at prior hearing on another matter the miscalendaring of the hearing on the Order to Show Cause and the Status Conference. Additionally, Counsel explained that

The parties now prosecuting this case as a Chapter 7, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The hearing on the Order to Show Cause having been conducted by the court, the Response of the Debtor in Possession, the proposed plan and disclosure statement referenced by the Debtor in Possession having been considered, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged.

4. 12-25868-E-13 PLB-1 JESUS DIAZ-CORTES AND ARACELI DIAZ-GARCIA Chad M. Johnson

MOTION FOR RELIEF FROM AUTOMATIC STAY 12-3-13 [32]

A-1 SCHOOL, INC. VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Annul the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Annul the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A-1 School, Inc. dba A&B Investment ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 18220 La Cortita Street, La Puente, Los Angeles, California. The moving party has provided the Declaration of Pamela LaBruyere and David Choo to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a Trustee's Sale on November 4, 2013. Movant states that Debtors filed the above-captioned Chapter 13 bankruptcy proceeding in March 2012, in which Debtors are claiming the foreclosure sale was not valid due the bankruptcy filing. **The Trustee's Deed Upon Sale has not been recorded and Movant is unable to obtain clear title to the property.**

Movant states that the Debtors do not list the property as an asset of the bankruptcy estate in their schedules or in their plan of reorganization, confirmed June 26, 2012. Counsel for Movant states she contacted Debtors' Counsel who stated Debtors had no knowledge of the property or of any transfer of the property.

Movant states there have been previous alleged grant deeds and bankruptcies that have delayed foreclosure on the subject property including *In re Esperanza Ramirez*, Central District of California Case No. 12-50701 and *In re Adolfo Garcia Gonzales,* Central District of California Case No. 13-13067. Movant argues that Noemi Diaz has fraudulently transmitted false information to Movant on at least three occasions in order to delay the foreclosure of the subject property. Movant seeks to obtain clear title to the property and requests and order that Movant is free to pursue all state court remedies regarding ownership interest in the property.

The Chapter 13 Trustee has filed a statement of non-opposition.

ANNULMENT

The Court uses "balancing of the equities" test to determine cause to retroactively annul the automatic stay. *Fjeldsted v. Lien* (*In re Fjeldsted*), 293 B.R. 12, 24 (B.A.P. 9th Cir. 2003). In "balancing of the equities," the court has considered the following factors: Debtor's failure to notify the Creditors of the bankruptcy proceedings (*In re Aheong*, 276 B.R. 233, 251 (B.A.P. 9th Cir. 2002)), Debtor's act of filing late petitions to cause delay (*In re Aheong*, 276 B.R. at 251), whether the Creditor acted nonchalantly and continuously violated the stay (*National Envtl. Waste Corp. v. City of Riverside* (*In re National Envtl. Waste Corp.*), 129 F.3d 1052, 1055 (9th Cir. 1997)). Where "the stay harms the creditor and lifting the stay will not unjustly harm the debtor or other creditors[,]" there may be cause to annul the stay. *In re Aheong,* 276 B.R. at 250; *In re Murray*, 193 B.R. 20, 22 (Bankr. E.D. Cal. 1996).

After the owner of the Property failed to make scheduled payments, Movant purchased the subject real property at the foreclosure sale on November 4, 2013. Subsequently, Movant discovered that an alleged grant deed existed purporting to transfer ownership interests in the property from Noemi A. Diaz, a single woman, to Noemi A. Diaz, a single woman, Vincent D. Amaya, a single man, and Jesus Diaz, a single man, as joint tenants. Jesus Diaz-Cortez with co-Debtor Araceli Diaz-Garcia filed this bankruptcy on March 26, 2012. Movant claims Diaz is claiming that the foreclosure sale was not valid due to this bankruptcy case. Movant states that it was not aware of this until a fax was sent November 5, 2013, along with the recorded deed. Debtor failed to fulfill its duty and notify Movant that it had filed for bankruptcy prior to the foreclosure sale. Movant, in good faith and without knowledge of the bankruptcy, purchased the property.

Debtors did not list the property as an asset of the bankruptcy estate in their schedules or plan or reorganization confirming in the bankruptcy case. Thus it would not unjustly harm the Debtor to retroactively annul the stay. Therefore, under the "balancing of the equities" test, the automatic stay is annulled.

362(d)(4)

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the

property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Here, the court finds that proper grounds do not exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The unauthorized transfers of interests in the subject property to beneficiaries who then filed several bankruptcies were a deliberate attempt as a stay to any foreclosure.

The court finds that the filing of the *present* petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property. By Movants allegations, the Debtors claim not to know Noemi Diaz, the individual allegedly using Debtors bankruptcy to hinder the sale, or the subject real property. Debtors did not list the property in their schedules or Chapter 13 plan. Therefore, while there is not evidence that the Debtors are actively participating in a scheme, the court finds that the there is a scheme to delay, hinder or defraud creditors by the transferring of the Property into the name of the Debtors. This scheme is negatively impacting both Movant and the Debtors, making it appear that the Debtors are in league with the perpetrators of the scheme.

The court also grants relief pursuant to 11 U.S.C. § (d)(4), with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Annul the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are annulled, effective as of the March 26, 2012 commencement of this bankruptcy case and all times thereafter, to allow A-1 School, Inc. Dba A&B Investment, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an

obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to allow the purchaser at any such sale obtain possession of the real property commonly known as 18220 La Cortita Street, La Puente, Los Angeles, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4), with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any subsequent bankruptcy case under this Title purporting to affect such real property commonly known as 18220 La Cortita Street, La Puente, Los Angeles, California, filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

5. 12-28879-E-11 ANNETTE HORNSBY
SK-4 Sunita Kapoor

MOTION TO VACATE AND/OR MOTION TO IMPOSE AUTOMATIC STAY O.S.T. 11-27-13 [192]

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2013. By the court's calculation, 11 days' notice was provided.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Tentative Ruling: The Motion to Vacate and/or Motion to Impose Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Vacate and/or Motion to Impose the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor moves the court on shortened notice to vacate the order lifting the automatic stay and for an order reinstating the bankruptcy stay against Deutsche Bank National Trust Company and other Defendants named in the Second Amended Complaint filed by Debtor in the San Francisco Superior Court Case No. CGC12-520585.

Debtor alleges she is the rightful owner of real property located at 950 Harrison Street, Unit 207, San Francisco, California and that Deutsche Bank National Trust Company wrongfully foreclosed on the property on December 7, 2009, as it never properly acquired title. Debtor filed her complaint on May 7, 2012 against Deutsche Bank National Trust Company and Mortgage Electronic Registration Systems, Inc. On May 8, 2012, Debtor filed

for Chapter 11 bankruptcy and on June 15, 2012, the court granted Deutsche Bank National Trust Company's Motion for Relief from Stay.

The court addressed the background of this case in detail in the Memorandum Opinion and Decision Denying without Prejudice Motion for Order Shortening Time, Dckt. 160,

> This Debtor has filed four bankruptcy cases (including the present case) since 2008. These cases and their dispositions are summarized in the following chart.

Case Number and Chapter	**Date Filed Date Dismissed Discharge Entered**	**Disposition Notes**
12-28879 Chapter 11	Date Filed: May 8, 2012 Case Pending No Discharge	No Chapter 11 Plan Proposed, No Disclosure Statement Proposed
12-21050 Chapter 13	Date Filed: January 19, 2012 Date Dismissed: February 23, 2012 No Discharge	Case dismissed due to failure to file Schedules and Statement of Financial Affairs
08-35711 Chapter 7	Date Filed: October 29, 2008 Discharge: January 22, 2010	
08-29875 Chapter 13	Date Filed: July 21, 2008 Date Dismissed: September 5, 2008 No Discharge	Case dismissed for failure to comply with 11 U.S.C. § 521(i).

The Debtor has been utilizing the Bankruptcy Code and federal judicial process since 2008. Her prior Chapter 13 case was dismissed on February 23, 2012. The present case was filed on May 8, 2012, less than three months after the dismissal of the Chapter 13 case.

On Schedule A filed in this case the Debtor lists the 950 Harrison Street Property as an asset having a current value of $597,300.00 (as of the 2012 commencement of the case) and being subject to liens in the amount of $600,000.00. Dckt. 24. On Schedule B the Debtor does not

> list any personal property claims or rights against DBNTC or other persons. Dckt. 25. On Schedule D the Debtor lists Deutsche Bank AG as having a $525,000.00 claim secured by the 950 Harrison Street Property. Dckt. 27. The Debtor does list a wrongful foreclosure, fraud, predatory lending action in the California State Court. Statement of Financial Affairs, Question 4, Dckt. 34.

Id. at 9. The court denied without prejudice the request to shorten time to hear the Motion to Vacate based on the fact that Debtor in Possession had not shown the court grounds to shorten time and bring the parties into court to address a motion to vacate the order terminating the automatic stay pursuant to 11 U.S.C. § 105(a) based on the Debtor in Possession's state court complaint surviving a demurrer. The court directed Debtor to Federal Rule of Civil Procedure 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, which provides grounds for relief from a final judgment.

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998).

Debtor now moves pursuant to Federal Rule of Civil Procedure 60(b)(6), under the catch all provision. Debtor states that she was able to draft an Amended Complaint in state court which pleads a claim against Defendant Deutsche Bank National Trust Company. Debtor states the determination of the respective rights of Deutsche Bank National Trust Company and the Debtor to be made in the California State Court.

The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Here, Debtor has not shown sufficient grounds under Federal Rule of Civil Procedure 60(b)(6), which requires extraordinary circumstances.

Debtor seeks to vacate the order granting relief from the automatic stay to further her goals in the State Court Proceeding, arguing her allegations to this court (even though she claims this motion is made to avoid a multiplicity of legal actions which will needlessly burden the courts and to prevent an abuse of process). Dckt. 194. Debtor also claims that she has now drafted an Amended Complaint against Defendant Deutsche Bank National Trust Company in that action. While this court has addressed the use of the automatic stay in lieu of a state court preliminary injunction, balancing the provisions of 11 U.S.C. § 362(a) and the requirements for an injunction in litigation to determine rights and interests in property. This court made clear in the Memorandum Opinion and Decision Denying the Motion to Shorten Time that these types of actions are appropriate when made party of a bankruptcy plan which provides for the monthly payment on the alleged secured claim to be placed in a blocked account as a self-funded bond.

Debtor states that she has placed $1,500 into a blocked account. This appears to be a bad faith attempt to create the self-funded bond. First, one month of the alleged payment is not how this court explained the requirement. The plan must provide for the monthly payment of the alleged secured claim, not a one time payment. The purpose of the bond is to pay damages if it is determined that the person asserting rights as a creditor or purchaser of the property were improperly enjoined by the automatic stay. *In re De la Salle*, Bankr. E.D. Cal. NO. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN:MBB-1), Dckt. 230 (Bankr. E.D. Cal 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011). Debtors one time payment of $1,500 will not serve the purpose of the bond. Further, Debtor has not provided evidence of the reasoning of the value of this $1,500 payment.

If all the Debtor in Possession wants is an injunction, then she may obtain such from the state court in which she is prosecuting her claims against DBNTC, rather than creating complicated mulit-court litigation. The Debtor in Possession has not proposed a plan in which the monthly payments due under the contract (or a good faith determined amount which would likely be due under a loan modification) be paid into a blocked account pending a determination of who the creditor is and that claim paid, or used to pay the damages arising from that party being wrongfully enjoined from exercising its rights or interests in the subject real property.

The Debtor in Possession has not made much more of her previous general, vague, "it would be right to do," request for the court to vacate the order terminating the stay so that it could go back into effect.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate and/or Impose the Automatic Stay filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.