

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 1
JUDGE MARGARET M. MANN, PRESIDING
TUESDAY, DECEMBER 20, 2016

10:00 AM

1 - 11-13106-MM Ch 13 JOSHUA WARREN & SONDR A DIONNE BILBEN

MOTION FOR APPROVAL OF LOAN MODIFICATION AGREEMENT FILED BY JPMORGAN CHASE BANK

Tentative Ruling: The Court having considered the Motion to Approve Loan Modification Agreement (the "Motion"), no opposition having been timely filed and good cause appearing. The Motion is granted and appearances are excused. JP Morgan Chase Bank is to upload an order granting the Motion and attaching the Loan Modification Agreement.

ATTORNEY: MAUREEN A. ENMARK (JOSHUA & SONDR A BILBEN)
ATTORNEY: DREW CALLAHAN (JPMORGAN CHASE BANK)

2 - 13-10550-MM Ch 13 ROBERT EDWARD & PATRICIA ANN CALLOWAY

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: Off calendar. Trustee no longer seeks dismissal. Attorney's guideline fees of \$490.00 were previously paid directly to counsel. Appearances are excused.

ATTORNEY: LARISSA L. LAZARUS (ROBERT & PATRICIA CALLOWAY)

3 - 13-11360-MM Ch 13 MATTISON LOUIS DAVIS & VILMA JENNET SCOTT-DAVIS

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: Off calendar. Trustee no longer seeks dismissal. Attorney's guideline fees of \$490.00 are awarded. Appearances are excused.

ATTORNEY: JOHN F BRADY (MATTISON & VILMA DAVIS)

4 - 14-01548-MM Ch 13 SAMUEL WILLIAM KNOTTS

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: Off calendar. Trustee no longer seeks dismissal. Attorney's guideline fees of \$490.00 are awarded. Appearances are excused.

ATTORNEY: LARISSA L. LAZARUS (SAMUEL KNOTTS)

5 - 14-09850-MM Ch 13 PAUL ADAM & WENDY LYNN GRENDA

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: Off calendar. Trustee no longer seeks dismissal. Attorney's guideline fees of \$490.00 are awarded. Appearances are excused.

ATTORNEY: ANDREW MOHER (PAUL & WENDY GRENDA)

10:00 AM

6 - 15-05414-MM Ch 13 JOSE M & SUSANNA ELENA SEVILLA

MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 8/30/16)

Tentative Ruling: Off calendar. Debtors have been dismissed. Appearances are excused.

ATTORNEY: DIANE C. MCDOWELL (JOSE & SUSANNA SEVILLA)

7 - 16-01500-MM Ch 13 SHAWN P. & JENNIFER L. DRISCOLL

MOTION FOR APPROVAL OF LOAN MODIFICATION AGREEMEND FILED BY DEBTORS

Tentative Ruling: The Court having considered the Motion to Approve Loan Modification Agreement (the "Motion"), no opposition having been timely filed and good cause appearing. The Motion is granted and appearances are excused. The Debtors are to upload an order granting the Motion and attaching the Loan Modification Agreement.

ATTORNEY: ANIKA RENAUD-KIM (SHAWN & JENNIFER DRISCOLL)

8 - 16-02144-MM Ch 13 WALLACE HICKEY

MOTION FOR RELIEF FROM STAY, RS #TSC-1 FILED BY CITIMORTGAGE, INC. (fr. 12/8/16)

ATTORNEY: GARY A. QUACKENBUSH (WALLACE HICKEY)

ATTORNEY: THERON S. COVEY (CITIMORTGAGE, INC.)

9 - 16-03736-MM Ch 13 HOLLY AUSTIN GRIMES

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: Continued to January 17, 2016 at 10:00 a.m., Department 1 to enable the trustee to review the newly filed pleadings by Debtor. Appearances at the December 20, 2016 hearing are excused.

OTHER: HOLLY GRIMES

10 - 16-03870-MM Ch 13 RUSTY SCOTT & CANDICE JACK

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 11/8/16)

Tentative Ruling: Continued to January 3, 2017 at 10:00 a.m., Department 1. Status reports are due one week before hearing. Attorney's guideline fees are awarded. Appearances at the December 20, 2016 hearing are excused.

ATTORNEY: JULIE MORADI-LOPES (RUSTY & CANDICE JACK)

10:00 AM

11 - 16-04310-MM Ch 13 ERICA WHITLEY STANLEY

HEARING ON SUBMISSION OF APPLICATION FOR COMPENSATION AND CONFIRMATION OF CHAPTER 13 PLAN; AND ORDER THEREON (fr. 12/6/16)

Tentative Ruling: Off calendar. Matter has been resolved by PCM. Appearances are excused.

ATTORNEY: ANDREW MOHER (ERICA STANLEY)

12 - 16-06340-MM Ch 13 EULALIO HONORATO ORTUNO

MOTION TO AVOID JUDICIAL LIEN OF FORD MOTOR COMPANY, LLC FILED BY DEBTOR

Tentative Ruling: Motion to Strip Judicial Lien GRANTED. Per Debtor's declaration filed in support, the Debtor's house is valued at \$300,000.00 as of the petition date; pursuant to § 522(f) Court finds that the judicial lien of Ford Motor Credit Company, LLC impairs Debtors' exemption. The combined total of the senior in priority liens encumbering title to the house, plus Debtor's exemption amount, exceeds the value of the house. The judicial lien of Ford Motor Credit Company, LLC is avoided.

As this motion is unopposed, counsel is excused from attending this hearing and may submit an order within 14 days of the hearing date. The order should attach as Exhibit A the legal description of the property in question as required by LBR 9013-10(a)(4) and, after entry of the Order, Debtors should serve the Order on the Affected Creditor as required by LBR 9013-10(c).

ATTORNEY: ANDY C. WARSHAW (EULALIO ORTUNO)

13 - 16-07114-MM Ch 13 BRENT JUSTIN MAGUIRE & DENYS ANN BUTLER

MOTION FOR RELIEF FROM STAY, RS #JMS-1 FILED BY ALVA GARDENS, LP

Tentative Ruling: Off calendar. Matter is resolved. Appearances are excused.

ATTORNEY: JON COOPER (BRENT MAGUIRE & DENYS BUTLER)
ATTORNEY: JAMES R. MCKINLEY (ALVA GARDNES, LP)

02:00 PM

1 - 12-02435-MM Ch 13 CATHERINE ANNE NANNENHORN

MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 8/16/16)

Tentative Ruling: Continued to March 28, 2017 at 2:00 p.m., Department 1. Trustee to track plan payments due January, February and March 2017 with the ability to submit a Dismissal Order if any of these payments are not posted within 14 days of the due date. Debtor to pay her case in full on March 31, 2017. Attorney's guideline fees were previously awarded and paid by the Trustee. Status reports are due one week before hearing. Appearances at the December 20, 2017 are excused.

ATTORNEY: KRISTIN LAMAR (CATHERINE NANNENHORN)

2 - 12-06531-MM Ch 13 ANTONIO B SAMONTE

MOTION FOR APPROVAL OF LOAN MODIFICAITON AGREEMENT FILED BY DEBTOR

Tentative Ruling: Off calendar. The court will allow attorneys fees and the order to be uploaded should be consistent with Debtor's last statement. Appearances are excused.

ATTORNEY: THOMAS K. SHANNER (ANTONIO SAMONTE)

3 - 13-00065-MM Ch 13 JAIME CONTRERAS

1) MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 8/16/16)

Tentative Ruling: Off calendar. Matter has been resolved and appearances are excused.

2) MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTOR

ATTORNEY: D.J. RAUSA (JAIME CONTRERAS)

4 - 14-04509-MM Ch 13 EDWARD RAPHAEL & CATHERINE CATUDIO NAPOLEON

MOTION FOR APPROVAL OF A LOAN MODIFICATION AGREEMENT FILED BY DEBTORS

Tentative Ruling: The Court having considered the Motion to Approve Loan Modification Agreement (the "Motion"), no opposition having been timely filed and good cause appearing. The Motion is granted on the grounds that the real estate arrears have already been paid in full under the terms of the Chapter 13 Plan. Appearances are excused. The Debtors are to upload an order granting the Motion and attaching the Loan Modification Agreement. Attorney's guideline fees of \$490.00 are awarded.

ATTORNEY: D.J. RAUSA (EDWARD & CATHERINE NAPOLEON)

02:00 PM

5 - 14-06903-MM Ch 13 MARIA LUISA MOLANO

MOTION FOR RELIEF FROM STAY, RS #EMM-1 FILED BY MTGLQ INVESTORS, LP

ATTORNEY: DAVID L. SPECKMAN (MARIA MOLANO)
ATTORNEY: ERIN MCCARTNEY (MTGLQ INVESTORS, LP)

6 - 15-07355-MM Ch 13 MARTIN CASTILLO

MOTION FOR RELIEF FROM STAY, RS #ASW-1 FILED BY U.S. BANK (fr. 12/6/16)

Tentative Ruling: Off calendar. Matter has been resolved. Appearances are excused.

ATTORNEY: ANDREW MOHER (MARTIN CASTILLO)
ATTORNEY: DANIEL K. FUJIMOTO (U.S. BANK)

7 - 15-07863-MM Ch 13 TERESA GARCIA TRISTAN

MOTION FOR RELIEF FROM STAY, RS #EMM-1 FILED BY DEUTSCHE BANK NATIONAL TRUST COMPANY (fr. 11/22/16)

Tentative Ruling: Off calendar. Matter has been resolved. Appearances are excused.

ATTORNEY: GREGORY HIGHNOTE (TERESA TRISTAN)
ATTORNEY: ERIN MCCARTNEY (DEUTSCHE BANK NATIONAL TRUST COMPANY)

8 - 16-01597-MM Ch 13 MARK G. DE LEON

MOTION FOR RELIEF FROM STAY, RS #DVW-1 FILED BY VANDERBILT MORTGAGE & FINANCE, INC. (fr. 12/6/16)

ATTORNEY: MICHAEL A. FELDMAN (MARK DE LEON)
ATTORNEY: DIANE V. WEIFENBACH (VANDERBILT MORTGAGE & FINANCE, INC.)

9 - 16-04327-MM Ch 13 ERLINDA AQUINO LADRIDO

1) MOTION FOR RELIEF FROM STAY, RS #MRC-1 FILED BY DEUSTCHE BANK NATIONAL TRUST COMPANY

2) MOTION FOR RELIEF FROM STAY, RS #MRC-2 FILED BY DEUSTCHE BANK NATIONAL TRUST COMPANY

ATTORNEY: RICHARD E. CHANG (ERLINDA LADRIDO)
ATTORNEY: MATTHEW R. CLARK (DEUTSCHE BANK NATIONAL TRUST COMPANY)

02:00 PM

10 - 16-04475-MM Ch 13 JENNIFER TANNER

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: BEN EMBRY (JENNIFER TANNER)

11 - 16-05523-MM Ch 13 SEAN DOMINGUEZ

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE WITH A 180 DAY BAR IMPOSED FILED BY TRUSTEE

OTHER: SEAN DOMINGUEZ

12 - 16-05825-MM Ch 13 SHANNON ANN NEMOUR

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY WELLS FARGO BANK

Tentative Ruling: Off calendar and appearances are excused. Debtor will amend the plan.

ATTORNEY: BILL PARKS (SHANNON NEMOUR)
ATTORNEY: ERICA LOFTIS (WELLS FARGO BANK)

03:00 PM

1 - 14-03142-CL Ch 11 CHRISTOPHER JOHN HAMILTON & ELIZABETH LEIGH TESOLIN

FIFTH INTERIM APPLICATION FOR COMPENSATION & REIMBURSEMENT OF EXPENSES FOR HIGGS, FLETCHER & MACK, LLP, ATTORNEY FOR DEBTORS

ATTORNEY: PAUL J LEEDS (ELIZABETH TESOLIN & CHRISTOPHER HAMILTON)

2 - 14-03142-CL Ch 11 CHRISTOPHER JOHN HAMILTON & ELIZABETH LEIGH TESOLIN

OPPOSITION BY U.S. TRUSTEE TO APPLICATION TO EMPLOY GORDEN & REES AS SPECIAL COUNSEL

US TRUSTEE: DAVID A. ORTIZ
ATTORNEY: JEFFREY D. CAWDREY (CHRISTOPHER HAMILTON & ELIZABETH TESOLIN)

3 - 15-07271-MM Ch 11 CHRISTOPHER ROBIN LAMONT

- 1) STATUS CONFERENCE ON CHAPTER 11 VOLUNTARY PETITION (fr. 11/17/16) (fr. 12/8/16)
- 2) PROPOSED CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR

US TRUSTEE: KRISTIN MIHELIC
ATTORNEY: MICHAEL AVANESIAN (CHRISTOPHER LAMONT)

4 - 15-07425-MM Ch 7 FELIPE FEUNE DE COLOMBI

ADV: 16-90172

FELIPE & NORA DE COLOMBI v. VACALOANS HOLDINGS, LLC & CHARLES D'AGOSTINO, JR. & DEL TORO LOAN SERVICING, INC. & 6714 MUIRLAND, LLC

MOTION TO REMAND THE REMOVED ACTION TO STATE COURT AND FOR A TEMPORARY RESTRAINING ORDER STAYING EVICTION PROCEEDINGS FILED BY PLAINTIFFS (fr. 12/9/16)

Tentative Ruling: In this converted case, Debtor Felipe Feune De Colombi ("Debtor") moves to remand the lawsuit he commenced against Defendant and Creditor Vacaloans Holdings, LLC and its successor Charles Cosmo D'Agostino, Jr. (collectively "Vacaloans"). Debtor claimed in state court that Vacaloans breached an agreement entered into post-petition by not accepting a \$142,500 cure that they had tendered for a loan secured by the real property described as 6714 Muirlands Drive, La Jolla, CA, 92037 (the "Property"). The cure was funded by a post-petition loan Debtor's non-debtor wife Nora obtained from her daughter that was also secured by the Property post-petition. Both of these post-petition transactions, filing the state court suit and encumbering title to property of the estate were not approved by the court (in fact permission was not even sought from the court). As such, they are both potentially void as violations of the automatic stay or may constitute avoidable transfers under 11 U.S.C. § 549.

After the case was converted from Chapter 11 to Chapter 7, the Chapter 7 trustee abandoned the Property on September 21, 2016. The court granted stay relief to Vacaloans to permit it to foreclose on the Property and to take action to regain possession of it. A foreclosure sale occurred on September 28, 2016, which was perfected by the recording of the trustee's deed on October 10, 2016. State court unlawful detainer actions were commenced by Vacaloans pursuant to the stay relief, and Vacaloans believes that it has acted in accordance with the court order. The unlawful detainer action is still pending in state court since neither party has removed it to this court.

The court is advised by Debtor that this case which he now seeks to remand was commenced in defense of the unlawful detainer action, which under state law, must be brought as a separate action since unlawful detainer actions are summary proceedings. Vacaloans contends that its reason for not accepting the cure from Debtor was because it was concerned that the cure arose from invalid post-petition transfers.

Although Vacaloans discussed the litigation claims with the Trustee, no resolution was reached. The court has requested the trustee's position on this action. Vacaloans filed supplemental briefing which stated that if \$142,500 is returned Nora's daughter and the trust deed released all unapproved court transactions were be unwound. Debtor also states the transaction has been unwound because the loan was never actualized and the funds have been returned. Debtor states that although there is "an authorized Deed of Trust . . . still recorded against the Property," Trustee's abandonment renders that Deed of Trust "moot." Neither party addresses the position of the trustee.

While neither parties' supplemental briefing addresses the court's concern about jurisdiction in the context of the applicable law, the court is nevertheless prepared to rule as follows.

Remand

To consider the motion for remand, the court must find that it has

jurisdiction premised on 28 U.S.C. § 1452(a), which provides for removal of a state action "to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." 28 U.S.C. § 1452(a). Section 1334(b), in turn, provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). This court exercises such jurisdiction based upon the reference of bankruptcy cases to this court. District Court General Order 312-D reflects the district courts refer bankruptcy cases to the bankruptcy judges under 28 U.S.C. § 157(a). Despite Debtor's citation to 28 U.S.C. § 1441, this statute is not applicable.

The applicable removal statute, 28 U.S.C. § 1452, provides in pertinent part:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title [28 USCS § 1334].

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.

Removal jurisdiction under 28 U.S.C. § 1452(a) cannot be exercised without jurisdiction under 28 U.S.C. § 1334. *Miles v. Okun (In re Miles)*, 430 F.3d 1083, 1091 (9th Cir. 2005). Although it only contains state court causes of action, the removed complaint references post-petition action involving post-petition property. Under these circumstances, the court would normally be required to consider the "well pled complaint doctrine" and consider rejecting jurisdiction. As noted in *Miles, id. at* 1088, "a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." (citations omitted)

But here, as in *Miles, id.*, "(t)he 'complete preemption doctrine' provides an exception to this general proposition." *Miles* found complete preemption by the Bankruptcy Code over state law abuse of process claims for filing an involuntary proceeding, even though this preemption was not express. Instead preemption was discerned from the "structure and purpose of the Bankruptcy Code to determine whether Congress did indeed intend for § 303(i) to provide the exclusive cause of action." *Id. at* 1089.

This case presents a stronger case for preemption as to property of the estate than in *Miles*, because in this case Congress has been explicit about the exclusive jurisdiction of this court. Under 28 U.S.C. § 1334(e) (1), this court has exclusive jurisdiction over "all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate" *H.K. & Shanghai Banking Corp. v. Simon (in Re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998).

Even as to the avoidable post-petition transfer claims, where Congress' intent was not so express, complete preemption can be discerned because 11 U.S.C. § 549 claims would not exist but for the bankruptcy. Claims relating to post-petition conduct, fall within the "arising in" jurisdiction of 28 U.S.C. § 1334(b), and need not be based upon the broader "related to" jurisdiction. *In re: Miles*, 430 F.3d at 1088-89 (because Congress intended "[§ 303\(i\)](#)

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provide the exclusive cause of action" for damages resulting from filing of an involuntary bankruptcy petition, there was both arising in jurisdiction and complete preemption). This case is analogous since post-petition transfers need no state law counterpart, they only exist because the transfer occurred while a bankruptcy case is pending.

This court thus concludes it has jurisdiction over the removed action. Finding that the court has proper removal jurisdiction, the next step is whether it should nevertheless remand the action to state court. Remand can be granted on any equitable ground under 28 U.S.C. § 1452(b). "The 'any equitable ground' standard gives the court 'an unusually broad grant of authority' in determining whether to remand a case." *In re Roman Catholic Bishop*, 374 B.R. 756, 761 (Bankr. S.D. Cal. 2007)). "Courts have typically identified seven factors governing the decision to remand: (1) the effect of the action on the administration of the bankruptcy estate; (2) the extent to which issues of state law predominate; (3) the difficulty of applicable state law; (4) comity; (5) the relatedness of the action to the bankruptcy case; (6) any jury trial right; and (7) prejudice to plaintiffs from removal." *Id.*

Applying these factors in turn, first, the court considers the effect of the action on the administration of the bankruptcy estate. In the court's view, whether the trustee abandons these claims is outcome determinative of whether these actions should be remanded. If he doesn't, then assets of the estate which would be affected by the action must be decided here. If he does, then there would be minimal effect on the estate, favoring remand.

As to the second factor, the state law predominates except to the extent that the defense is provided by bankruptcy law. If the trustee has no interest in the facts underlying the defense, then that defense will only be governed by state law.

Factor three, the difficulty of state law is neutral since this is an unlawful detainer cure dispute which is standard contract law, except to the extent that it intersects with bankruptcy law.

The comity considerations, factor four, is also influenced by the trustee's decision as to the post-petition avoidable transfers. This court will not remand until the trustee makes his decision and acts so that the bankruptcy issues can be decided here and the state law issues decided there.

Factor five is neutral since there is no right to a jury trial in this court, but there may be one in state court.

The last factor is six, prejudice to Plaintiffs. While they have argued they would be prejudiced by not asserting their defenses to the unlawful detained action, they have not sought to compel the trustee to abandon these claims. Plaintiffs were also the parties who instigated the potential avoidable transfers, and so may have created their own predicament.

This factor supports delaying remand.

Balancing these factors, the court will remand this action, if and when the trustee abandons the claims that are property of the estate.

Abstention

The Remand Motion alternatively requested abstention pursuant to 28 U.S.C. § 1334. However, abstention is inapplicable to removed proceedings because "a successful removal effectively extinguishes the parallel proceeding in state court." *Nilsen v. Neilson (In re Cedar Funding, Inc.)*, 419 B.R. 807, 820 (9th Cir. BAP 2009) (*citing Sec. Farms v. Int'l Bhd. Of Teamsters*, 124 F.3d 999, 1010 (9th Cir. 1997)).

Temporary Restraining Order

In his emergency motion, Debtors requests this court stay any and all eviction proceedings being sought against Debtor in connection with the Property. Neither party provided further briefing directly applicable to the temporary restraining order. The court continues to believe that two of the

critical factors necessary for the court to issue a restraining order are inapplicable here.

Before the Supreme Court's ruling in *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365 (2008), *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113 (9th Cir. 2005) defined the Ninth Circuit test used to determine whether it could issue a temporary injunction. This test involved a sliding scale standard between the factors of strong likelihood of success on the merits and the possibility of irreparable harm. *Save Our Sonoran*, 408 F.3d at 1120.

The *Winter* court, however, ruled that injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 129 S. Ct. at 375-76. Although the opinion only discussed one half of the sliding scale test, the Court held that the sliding scale standard was too lenient for such "extraordinary" relief. *Id.* at 375.

The current Ninth Circuit test for the issuance of preliminary injunction is based upon the four-part test found in *Winter*: "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities [or hardship] tips in his favor, and that an injunction is in the public interest." *Winter*, 129 S. Ct. at 374. Nevertheless, the Ninth Circuit discussed at length *Winter's* impact on the sliding scale test in *Alliance for the Wild Rockies*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) and clarified that certain elements of the sliding scale test are still applicable. *Wild Rockies*, 632 F.3d at 1134. The *Wild Rockies* court held

[T]he serious questions approach survives *Winter* when applied as part of the four-element *Winter* test. That is, 'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of a preliminary injunction, as long as the plaintiff also shows that there is a likelihood of irreparable injury.

Here, the Court finds that the traditional test of *Winters* is not met.

At the last hearing, the court asked for support for a jurisdictional basis to enjoin state court unlawful detainer proceedings which are not pending before this court. None has been provided. Absent such basis, the court cannot find a likelihood of success on the merits .

The court is also dubious as to what irreparable harm might be suffered . If property of the estate in the form of one or two avoidable transfers could be affected by the conclusion of the unlawful detainer action , then the automatic stay of 11 U.S.C. § 362(a)(3) might be implicated. The court has not been asked to address the scope of the stay and will not issue a ruling here. Nevertheless, if the stay is implicated, acts which violate it will be void. Transfers in violation of the automatic stay are void. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 575 (9th Cir. 1992); *40235 Wash. St. Corp. v. Lusardi*, 329 F.3d 1076, 1080 (9th Cir. 2003). The court cannot conclude any harm is irreparable because if Vacaloans proceeds before clarifying the issue, there may be bankruptcy remedies.

The remaining two factors, balance of the equities and public interest, also favor denial of the temporary restraining order. It behooves the bankruptcy process and the state court roles to wait until the trustee has determined if these assets are to be administered before matters proceed to resolution in state court.

The temporary restraining order will be denied.

ATTORNEY: AJAY GUPTA (FELIPE & NORA DE COLOMBI)
ATTORNEY: RUSSEL LITTLE (VACALOANS HOLDINGS, LLC, CHARLES
D'AGOSTINO, JR., DEL TORO LOAN SERVICING, INC., 6714 MUIRLAND, LLC)

03:00 PM

5 - 16-05103-MM Ch 11 JAMES SEE

1) MOTION TO DISMISS CASE FILED BY U.S. TRUSTEE

Tentative Ruling: Off calendar. Case will be dismissed. Appearances are excused.

2) STATUS CONFERENCE ON CHAPTER 11 VOLUNTARY PETITION (fr. 11/8/16)

Tentative Ruling: Off calendar. Case will be dismissed. Appearances are excused.

US TRUSTEE: LESLIE ANNE SKORHEIM
ATTORNEY: MICHAEL AVANESIAN (JAMES SEE)
ATTORNEY: H. JAMES KEATHLEY (PINION LAND & CATTLE COMPANY, LLC,
SUMMER BREEZE INVESTMENTS, LLC)

6 - 16-05103-MM Ch 11 JAMES SEE

ADV: 16-90152

JAMES SEE v. SUMMER BREEZE INVESTMENTS, LLC

MOTION TO DISMISS CASE FILED BY DEFENDANT

Tentative Ruling: The unopposed motion to dismiss will be granted and appearances are excused.

ATTORNEY: MICHAEL AVANESIAN (JAMES SEE)
ATTORNEY: H. JAMES KEATHLEY (SUMMER BREEZE INVESTMENTS, LLC)