

1 WRITTEN DECISION - NOT FOR PUBLICATION

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MAY 24 2006  
CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

2 ENTERED 5/25/06  
3 FILED  
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5 MAY 24 2006  
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7 CLERK U.S. BANKRUPTCY COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
9 BY DEPUTY

10 UNITED STATES BANKRUPTCY COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 In re: ) Case No. 06-00191-H11  
13 )  
14 WS-TH, INC., a ) MEMORANDUM RE DEBTOR'S  
15 California Corporation, ) EX PARTE APPLICATION FOR  
16 Debtor. ) ORDER SHORTENING TIME  
17 )

18 An involuntary chapter 11 proceeding was commenced against  
19 WS-TH, Inc. (the "debtor") on February 8, 2006. The involuntary  
20 proceeding was dismissed on April 24, 2006. Debtor filed a  
21 motion to reopen the Chapter 11 case, or in the alternative set  
22 aside the order dismissing Chapter 11 case. The hearing is  
23 scheduled for June 2, 2006.

24 Subsequently, debtor filed its Ex Parte Application for an  
25 Order Shortening Time, to also set for hearing on June 2, 2006, a  
26 Motion to Set Aside Foreclosure Sale.

27 Debtor contends the Court should set aside the foreclosure  
28 sale on its real property because it "assumed" the relief from  
stay that was requested and granted to secured creditors Pacific  
Horizon Financial, Inc. and Pacific Horizon Mortgage Investors I  
LLC (collectively, PHF) did not include relief from stay with  
respect to its real property, but only granted relief to proceed

1 with state court litigation. Debtor contends that "despite the  
2 specific language in the Order for Relief from Stay, [PHF] held a  
3 non-judicial foreclosure sale on April 18, 2006." [See Ex Parte  
4 Application, ¶ 4]. No declarations were submitted in support of  
5 debtor's ex parte application.

6 Both PHF and Ronald A. Bedell, the president of PHF, oppose  
7 the debtor's request.

8 A. THE COURT HAS JURISDICTION TO CONSIDER DEBTOR'S REQUEST  
9 DESPITE THE FACT THE UNDERLYING CASE HAS BEEN DISMISSED

10 "Since dismissal of an underlying bankruptcy case does not  
11 automatically strip a federal court of residual jurisdiction to  
12 dispose of matters after the underlying bankruptcy case has been  
13 dismissed, exercise of such jurisdiction is left to the sound  
14 discretion of the trial court." Lawson v. Tilem (In re Lawson),  
15 156 B.R. 43, 45 (BAP 9th Cir. 1993). "Under the law of the Ninth  
16 Circuit, 'the bankruptcy court retains subject matter  
17 jurisdiction to interpret orders entered prior to dismissal of  
18 the underlying bankruptcy case.'" Id. "The bankruptcy court  
19 does not have jurisdiction, however, to grant new relief  
20 independent of its prior rulings once the underlying action has  
21 been dismissed." Id. See also Davis v. Courington (In re  
22 Davis), 177 B.R. 907 (BAP 9th Cir. 1995) (holding that, where the  
23 underlying case has been dismissed, a bankruptcy court retains  
24 discretionary subject matter jurisdiction over a complaint  
25 alleging a § 362(h) willful violation of the stay).

26 The Court first notes that the request for an order  
27 shortening time is procedural in nature regarding the time period  
28 for proper notice of a motion and does not concern the underlying

1 merits of the motion. Granting or denying an order shortening  
2 time certainly does not implicate a request for "new relief" that  
3 would run afoul of this Court's jurisdiction after dismissal of a  
4 bankruptcy case.

5 Nonetheless, the Court considers the underlying merits of  
6 the debtor's motion to determine whether the matter should be set  
7 on shortened notice. Debtor's ex parte is poorly drafted, but  
8 appears to complain that PHF violated the stay by foreclosing on  
9 debtor's real property without relief and, therefore, the  
10 foreclosure should be set aside. This Court has jurisdiction to  
11 examine its order granting PHF relief from stay which was ruled  
12 on prior to the dismissal of the underlying case.

13 B. THE RELIEF FROM STAY MOTION AND ORDER

14 PHF filed a motion for relief from stay on March 21, 2006.  
15 In the Motion, PHF alleged that the real property owned by the  
16 debtor, known as Warm Springs town homes (16 units) on Torrey  
17 Pines Road in Murrieta, CA (the "property"), was the subject of  
18 the motion. PHF alleged that debtor had failed to insure the  
19 property and also that it was not adequately protected. The  
20 Points and Authorities in support of the motion state that PHF  
21 sought relief from stay to proceed with state court litigation  
22 and additionally stated that movants "seek relief from stay for  
23 lack of adequate protection because the property is not insured."  
24 [P&A 1:26-28].

25 PHF submitted declarations in support of its motion.  
26 Martin T. McGuinn declares that the debtor does not appear to  
27 have insurance coverage on the property. McGuinn sets forth his  
28 efforts in trying to obtain information regarding debtor's

1 insurance coverage. The declaration of Robert Bedell, president  
2 of PHF, also states that he is "informed and believe ... that the  
3 Property is not insured." Bedell's declaration further states  
4 that PHF had scheduled a foreclosure sale on the real property on  
5 February 8, 2006. PHF also submitted the declaration of Steve  
6 Downey, the president of Downey Insurance, which addressed the  
7 type and costs of insurance on debtor's real property. The  
8 supplemental declaration of Martin T. McGuinn states in ¶ 3,  
9 "in addition to continuing with the Riverside litigation, it is  
10 currently the intent of the Movant to continue with its  
11 foreclosure sale once PHF . . . obtain relief from stay. The  
12 foreclosure sale is currently continued to April 10, 2006."

13 Collectively the pleadings submitted in support of the  
14 motion are clear that PHF sought relief with respect to both the  
15 debtor's real property and the state court litigation. Debtor  
16 cannot complain that it did not get notice of PHF's intent given  
17 the numerous references in the notice, motion, points and  
18 authorities, and declaration that it sought relief with respect  
19 to the real property.

20 PHF's motion was unopposed. The Court granted the relief  
21 requested and the order specifically states that the automatic  
22 stay is terminated "for all purposes as to Movant in connection  
23 with the estate's and the debtor's interest in the following real  
24 property...Warm Springs town homes (16 units) located at 39565  
25 Torrey Pines Road, Murrieta, California." The order further  
26 provided for relief from stay to continue with the state court  
27 litigation. The order was entered on April 6, 2006 [Docket #19].  
28 The Court finds that the order granting relief from stay is clear

1 with respect to the relief granted. Debtor never filed a motion  
2 for reconsideration or any pleading that would seek to "clarify"  
3 the relief granted set forth in the order.

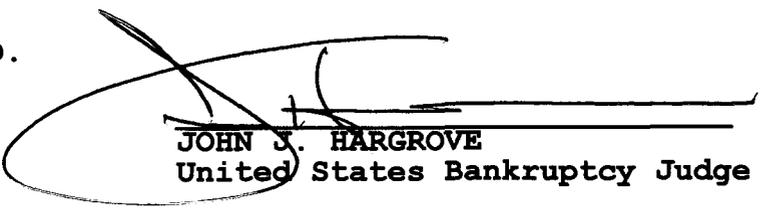
4 The foreclosure sale evidently took place on April 18, 2006.  
5 Now, over a month after the foreclosure, debtor requests an order  
6 shortening time for a motion to set aside a trustee's sale of the  
7 real property. The Court denies the debtor's request for an  
8 order shortening time. Debtor provides no evidence in the form  
9 of declarations in support of its motion. Further, debtor makes  
10 no other argument other than debtor "assumed" relief from stay  
11 was granted only with respect to the state court litigation.

12 It appears to the Court that PHF's motion for relief from  
13 stay was properly served and gave ample notice regarding the  
14 relief sought. It is puzzling to the Court as to why debtor  
15 assumed relief was granted only with respect to the state court  
16 lawsuit. Debtor had plenty of opportunity to file any pleadings  
17 in opposition that were necessary to clear up any confusion  
18 regarding the relief sought and the subsequent foreclosure and it  
19 did not do so until over a month after the foreclosure. Further,  
20 there is no evidence that PHF is going to sell the property to a  
21 third party thereby negating any urgency for shortening time.

22 The debtor's Ex Parte Application for an Order Shortening  
23 Time is DENIED.

24 IT IS SO ORDERED.

25 Dated: May 24, 2006.

  
26 JOHN J. HARGROVE  
United States Bankruptcy Judge

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