



1           Subsequently, Pacific trust filed for Relief from Stay,  
2 asserting no post-petition payments had been made. An adequate  
3 protection order was agreed upon, and promptly breached. Pacific  
4 Trust thereafter received relief. Meanwhile, debtor was unable  
5 to confirm his proposed plan, and the case was converted to one  
6 under Chapter 7. The case was subsequently dismissed after  
7 debtor failed to appear at the § 341 meeting of creditors.

8           Meanwhile, as debtor apparently found himself unable to make  
9 the payments pursuant to the Adequate Protection Order, he  
10 arranged for his attorney, Mr. Houbeck, to file a Chapter 13 case  
11 for his estranged wife Zahra Abdollahi, who was living  
12 separately. That petition listed her as "co-owner" of the  
13 subject property. Schedule A also noted that she intended "to  
14 surrender all interests". Pacific Trust, properly recognizing  
15 she claimed an interest in the property, which interest upon the  
16 filing became property of her bankruptcy estate, filed for relief  
17 from the stay in her case. Even though she had stated her intent  
18 to surrender her interests in the property, she filed opposition  
19 to the relief from stay and requested a hearing. In her  
20 opposition, she asked for an adequate protection order that would  
21 provide for a 6-month cure, with her estranged husband making the  
22 payments. On November 16, 2007 relief was granted after a  
23 hearing.

24           Debtor then filed the instant case under Chapter 13 on  
25 January 19, 2008. That filing drew the present relief from stay  
26 motion from Pacific Trust, who asserted the case was a bad faith

1 filing. Pacific Trust said the arrearages had grown to over  
2 \$53,000 with 13 months of no payments. Pacific Trust asserted  
3 the balance owing had grown to over \$593,000, while accepting  
4 debtor's value of the property as scheduled at \$738,000. Both  
5 debtor and Pacific Trust have agreed there is a junior lien on  
6 the property held by GMAC to secure a loan of \$201,000, so there  
7 is no equity in the property for debtor.

8 In his opposition to the present motion, debtor claimed a  
9 change in circumstances in that he was able to rent out rooms in  
10 his house to victims of the October, 2007 fires who had lost  
11 their homes, and that he had found a job in the real estate loan  
12 business that afforded him a \$2,000 monthly draw with  
13 commissions. He then launched into a diatribe against Pacific  
14 Trust, not understanding why Pacific Trust had to seek relief  
15 from stay in Ms. Abdollahi's case. He also provided evidence  
16 that he had tendered the first payment to both the trustee and  
17 Pacific Trust on or about February 1, 2008.

18 Debtor filed a declaration in support of his argument that  
19 the plan was feasible. He stated he believed he would owe little  
20 or no taxes for the foreseeable future. He wanted to hang onto  
21 the home for about two years during which he would improve his  
22 "FICO" score so he could refinance the property. He also  
23 believed that: "Within a couple years, the market will stabilize,  
24 as we have seen in the past, and debtor can refinance paying  
25 Movant and GMAC in full." Debtor argued that if relief were  
26 granted, GMAC, the holder of the lien would be prejudiced. While

1 GMAC agreed to loan debtor money in return for its junior lien  
2 and its attendant risks, conspicuously absent from debtor's  
3 declarations is any evidence of any payments made to GMAC. GMAC  
4 has made no appearance in these proceedings to advance its own  
5 interests or protect its position.

6 Pacific Trust filed a response to debtor's contentions of  
7 feasibility. It pointed out that payment of the arrears to  
8 Pacific and GMAC would require \$1,428 per month without interest  
9 to pay it off in 60 months, but the debtor's Schedules I and J  
10 only allowed for \$1,000 per month. Moreover, debtor depends on  
11 \$3,900 per month of rental income from renting rooms in his home,  
12 currently to fire victims. Lastly, debtor had not provided for  
13 payment of over \$7,300 in overdue real property taxes.

14 Debtor responded to Pacific Trust's contentions, claiming  
15 debtor had been told by Pacific Trust personnel that they had  
16 advanced the funds to pay the property taxes, so there was none  
17 owing, in debtor's view. (As Pacific Trust showed, County  
18 records as of 2/28/08 are to the contrary.) The current tenants  
19 have a lease to February, 2009, so debtor should be able to  
20 depend on that income for the interim months. Finally, debtor  
21 filed a pre-confirmation modification increasing the payment to  
22 the trustee to \$1,500 per month. Debtor did not, however, file  
23 any amendments to Schedules I or J, or any declaration to show  
24 where the extra \$500 would come from or how long it would be  
25 available.

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1 After hearing oral argument, the Court was persuaded that  
2 debtor's plan was not feasible, and that relief from stay should  
3 be granted. The Court indicated it would sign an order to that  
4 effect. At one point during the argument, the debtor spoke on  
5 his own behalf and asserted that he had tried to make payments to  
6 Pacific Trust but they had refused to accept them. After Pacific  
7 Trust lodged its order, the Court issued its own, affording  
8 debtor the opportunity to support his claim of attempts to pay.

9 Debtor filed a declaration in which he stated he called  
10 Pacific Trust in late October, 2007, told them he wanted to set  
11 up a payment plan, and offered to pay November on time, plus two  
12 payments for September and October. He says he was told his  
13 proposal was unacceptable and that he would have to pay the full  
14 amount in default, plus the outstanding property taxes of over  
15 \$7,000. The declaration is silent on whether he tendered any  
16 payments to Pacific Trust at any time in 2007. Debtor also noted  
17 that Pacific Trust sent back the two payments he sent in in  
18 February, 2008, but their return was weeks after the hearing at  
19 which the debtor raised the question of refused payments.

20 Pacific Trust has established without opposition that debtor  
21 has no equity in the property, given the total debt owed to  
22 Pacific Trust and GMAC, not to mention real property taxes.  
23 Pacific Trust has also argued that it's interest is not  
24 adequately protected. At first blush, that argument seems  
25 sustainable when no payments were made for 13 months. However,  
26 Pacific Trust has agreed with a value of \$738,000, and asserts a

1 first position debt of \$593,000, so even allowing for costs of  
2 sale, there is some small value cushion to protect Pacific Trust  
3 for some period of time.

4 That leads to Pacific Trust's central argument, that the  
5 petition was filed in bad faith, to delay Pacific Trust  
6 recovering the debt owed to it from its collateral, the property.  
7 The Court is not persuaded that the filing, or the plan, has been  
8 made in bad faith, although feasibility is very much an issue.  
9 Debtor did tender payments to the trustee in the proposed plan  
10 amounts, and debtor did tender to Pacific Trust the February and  
11 March payments, although they have been returned. When told the  
12 plan amount was insufficient, the debtor increased it to meet the  
13 concern.

14 Plan feasibility is really a plan confirmation issue. It  
15 remains to be seen whether debtor's plan is feasible and can be  
16 performed. The Court notes there is a hearing scheduled for  
17 April 30, 2008 on the trustee's objection to confirmation. If  
18 debtor is not current with Pacific Trust on a post-petition basis  
19 - that is, payment tendered to Pacific Trust for February, March  
20 and April, then this Court anticipates confirmation would be  
21 denied and the case dismissed. If the debtor is current with  
22 Pacific Trust, then other confirmation issues will likely be  
23 addressed and will determine the outcome.

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1 In either event, at the present time, the Court is unable to  
2 conclude the instant petition and plan were filed in bad faith,  
3 so Pacific Trust's motion for relief from stay shall be, and  
4 hereby is, denied without prejudice.

5 IT IS SO ORDERED.

6 DATED: APR 23 2008

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8   
9 PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court

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