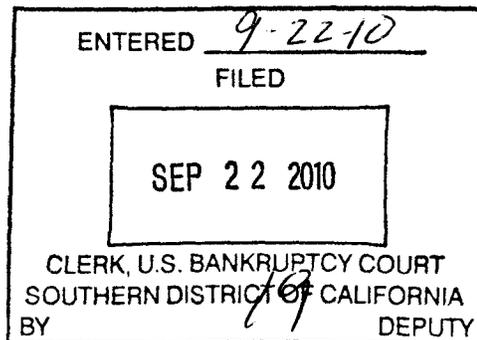


WRITTEN DECISION - NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

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In re)	Case No. 10-03716-PB11
)	R.S. DWB2
THOMAS SMILEY, III,)	
)	ORDER ON MOTION FOR
Debtor.)	RELIEF FROM STAY
)	
_____)	
)	
GERALD D. FACCIANI and)	
JOSEPH F. PROTO,)	
)	
Movants,)	
)	
v.)	
)	
THOMAS SMILEY, III,)	
)	
Respondent.)	
_____)	

On or about January 12, 2009 creditors Facciani and Proto were granted a prejudgment writ of attachment in a suit commenced by them against Mr. Smiley and his company, Commonwealth Investment and Development Corp., in Nevada state court. Over a year later, both Smiley and Commonwealth filed Chapter 11 petitions in bankruptcy. Since then, this Court granted Facciani

1 and Proto relief from stay to complete the state court litigation
2 through judgment. They did so, and prevailed.

3 Debtor contends the state court judgment was entered in
4 error and an appeal will be pursued. Meanwhile, Facciani and
5 Proto now seek relief from stay to pursue to satisfaction their
6 security interest in debtor's main asset, the proceeds of a
7 settlement agreement. Debtor and another creditor, Horan,
8 oppose arguing the asset should be distributed through a plan
9 once all appellate remedies have been exhausted. The only "plan"
10 the debtor has suggested is pursuit of the appeal while holding
11 the secured creditors at bay. That is generally not a proper
12 bankruptcy purpose. See In re Marsch, 36 F.3d 825 (9th Cir.
13 1994); In re Boynton, 184 B.R. 580 (Bankr. S.D. CA 1995).

14 Debtor has no real plan in progress. Creditors, on the
15 other hand, have a perfected security interest, which debtor
16 acknowledges. Relief from the automatic stay to allow the
17 secured creditors to pursue their priority position with the only
18 real asset should be granted, and hereby is.

19 IT IS SO ORDERED.

20 DATED: SEP 22 2010

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PETER W. BOWIE, Chief Judge
United States Bankruptcy Court