

1 WRITTEN DECISION - NOT FOR PUBLICATION

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MAY 17 2006	
CLERK, U.S. BANKRUPTCY COURT	
SOUTHERN DISTRICT OF CALIFORNIA	
BY	DEPUTY

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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re:) Case No. 05-02594-H7
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12) ORDER DENYING EMERGENCY
13) MOTION FOR STAY OF ORDER
14) PENDING APPEAL
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On May 4, 2006, Marilyn K. Crabb, debtor, filed an Emergency Motion and Request for Stay of Proceedings Preventing the Sale of Debtor's Home ("Emergency Motion") pursuant to Federal Rule Bankruptcy Procedure 8005.

"An appellant seeking a discretionary stay pending appeal pursuant to Rule 8005 must demonstrate all of the following:

1) appellant is likely to succeed on the merits of the appeal;
2) appellant will suffer irreparable injury if a stay is not granted; 3) no substantial harm will come to appellee if a stay is imposed; and 4) the stay will do no harm to the public interest." In re Irwin, 338 B.R. 839, 843 (E.D. Cal. 2006).

"The party moving for a stay has the burden on each of these elements." Id. (citation omitted). "Movant's failure to satisfy one prong of the standard for the granting a stay pending appeal dooms the motion." Id. (citation omitted).

1 The Court finds that debtor failed to demonstrate any of the
2 factors required for issuing a stay pending appeal by a
3 preponderance of the evidence.

4 1. Debtor's Likelihood of Success on Appeal

5 Debtor has failed to put forth any competent evidence for
6 this Court to consider. Debtor's main argument is that this
7 Court approved the sale of her real property at a value that is
8 significantly lower than what she thinks its worth, despite the
9 trustee listing it for sale on the MLS with an experienced broker
10 for a substantial period of time.¹

11 The trustee first entered into a residential listing
12 agreement with Coldwell Banker Residential on October 19, 2005,
13 and it was not until January 2006 when the trustee filed his
14 notice of intended action to sell the property. Debtor opposed
15 the sale and a hearing was held on March 8, 2006. The Court
16 continued the matter twice after that to March 29, 2006, and then
17 to April 12, 2006, to allow the trustee to explore the
18 possibility of remediating the property prior to a sale in order
19 to obtain a higher price. This option was explored because the
20 debtor represented to the Court that she had companies who would
21 remediate the property first and be paid later when the property
22 was sold. The estate has no funds to pay for remediation. [See
23

24 ¹ Debtor valued her residence (the "property") at \$2M on her schedules.
25 In her declaration filed in opposition to the sale, the debtor alleges the
26 property would be worth \$2.5M if it did not have toxic mold and it were
27 repaired. [see docket #62]. Merrill Jacobson, the trustee's broker, filed a
28 declaration in support of the sale. [see Docket #58]. Jacobson declared that
at the initial listing price of \$1.2M, he received no written offers to
purchase the property. He further declares that he lowered the sales price to
\$995,000 after a substantial period of time. He declares that after lowering
the price, he received two offers and the highest was for \$700,000. Jacobson
declares that the condition of the property is quite poor.

1 Docket #20].

2 The trustee submitted remediation reports that demonstrated
3 to the Court that the sale for which the trustee sought approval
4 was in the best interest of the estate and for fair market value.
5 The property was professionally listed and marketed. It is in a
6 state of disrepair and has extensive mold damage throughout. The
7 estate does not have the funds to correct the multiple problems.
8 Further, there were no companies that would perform the
9 remediation work first and get paid later when the property sold.
10 Although debtor complained that the reports were "biased," the
11 debtor had chosen the companies herself. Besides her bald verbal
12 complaints about bias and prejudice, debtor presented no evidence
13 to rebut the reports at the hearings. The sale price therefore
14 provided ample evidence of fair market value.

15 Debtor also complained that the trustee did not obtain an
16 appraisal, however, there is no requirement that the trustee do
17 so and debtor failed to provide one to the Court despite being
18 given ample time to do so.

19 Debtor also contends she was not afforded "due process"
20 because certain documents were never received, however, debtor
21 fails to point out exactly what documents she never received.
22 Upon an examination of the docket, it appears that the trustee
23 served debtor with each document.

24 Debtor's opposition to the sale has been that the sale price
25 was inadequate, but debtor never provided any competent evidence
26 to the contrary. The Court gave the debtor ample opportunity to
27 do so by continuing the sale hearing twice.

28 In sum, debtor fails to show a likelihood of success on the

1 merits. On this ground alone, the stay pending appeal can be
2 denied.

3 2. Irreparable Harm

4 Debtor claims she will lose her home and her appeal will
5 become moot. "It is well settled that an appeal being rendered
6 moot does not itself constitute irreparable harm." Irwin, 338
7 B.R. at 852 (citation omitted). Moreover, as pointed out by the
8 trustee, if the sale is stayed, the existing sale will probably
9 be lost. There is little equity in the home above consensual and
10 nonconsensual liens. Interest continues to accrue on the notes
11 secured by the first and second position consensual liens which
12 are literally years in default and continue to accrue interest,
13 force-placed insurance charges, and property tax charges. The
14 second trust deed holder, Union Bank, has repeatedly told the
15 trustee that a foreclosure by the bank is imminent to which the
16 trustee had stated there is no defense. Thus, the trustee has
17 demonstrated that a stay would harm the many judgment lien
18 creditors secured by the home because they would become unsecured
19 creditors thereby increasing the likelihood that this estate will
20 become insolvent.

21 Debtor has failed to show irreparable injury if this Court
22 denies the stay pending appeal.

23 3. Substantial Harm to Appellee. As discussed above, the sale
24 will probably be lost and the secured creditor, Union Bank, will
25 proceed with their state court remedies against the property to
26 the detriment of the judgment lienholders. The result will be
27 that the unsecured creditor body will be increased and the estate
28 likely to become insolvent. Debtor did not discuss this element,

1 but the harm to the estate is apparent.

2 4. No Harm to the Public Interest. There is no evidence that
3 the public interest will be harmed if the stay is granted. The
4 Court can find no harm to the public if the sale is consummated.

5 The debtor's Emergency Motion is DENIED.

6 IT IS SO ORDERED.

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8 Dated: May 17, 2006.


JOHN J. HARGROVE
United States Bankruptcy Judge

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26 S:\Crabb Stay Order.wpd
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