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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re
DEAL MAKERS CONSULTANTS,
INC.,

Debtor.

Case No. 2:14-bk-25826-RK
Chapter 11

**MEMORANDUM DECISION ON
SHOWCASE INVESTMENTS, INC.'S
MOTION FOR RELIEF FROM STAY AND
ANNULMENT OF THE STAY**

DATE: October 29, 2014
TIME: 2:30 p.m.
PLACE: Courtroom 1675
Roybal Federal Bldg
255 East Temple Street
Los Angeles, CA 90012

The above-captioned case came on for an evidentiary hearing before the undersigned United States Bankruptcy Judge on October 10, 2014 on Movant Showcase Investments, Inc.'s Motion for Relief From the Automatic Stay. ECF 11. Movant seeks relief from and retroactive annulment of the automatic stay imposed by 11 U.S.C. § 362(d)(1), (2) and (4) related to real property at 6029 Eileen Avenue, Los Angeles, CA 90043 ("Eileen Property"). Debtor opposes the motion. Although Debtor's Chapter 11

1 bankruptcy case was dismissed on October 9, 2014 and the automatic stay terminated by
2 operation of law pursuant to 11 U.S.C. § 362(c)(2)(B), the motion is not moot because
3 Movant seeks retroactive annulment of the automatic stay and in rem relief pursuant to
4 11 U.S.C. § 362(d)(4).

5 The facts are mostly undisputed. Debtor initiated this case by filing its voluntary
6 petition under Chapter 11 of the Bankruptcy Code on August 18, 2014. Antoinette
7 Roberson transferred title to the Eileen Property to Debtor as a gift for no consideration
8 on August 19, 2014 as so dated and indicated on the deed itself. A nonjudicial
9 foreclosure sale of the Eileen Property was conducted on August 20, 2014, in which
10 Movant was the foreclosing party. See *Debtor's Post-Trial Brief*, ECF 68, pg. 2:7-3:13.
11 Debtor disputes that Movant did not have knowledge of Debtor's bankruptcy case and the
12 automatic stay at the time of the foreclosure sale and denies that the foreclosure sale
13 validly transferred title to the Property to Movant. *Id* at 3:10-13.

14 The Motion was originally heard on September 16, 2014. At that hearing, the
15 court identified the Motion as a contested matter within the meaning of Federal Rule of
16 Bankruptcy Procedure 9014, and set the matter for an evidentiary hearing on October 10,
17 2014. At the October 10 hearing, the court noted the possibility that the Eileen Property
18 was not property of the bankruptcy estate because any interest Debtor had in the
19 Property was not recorded until August 19, 2014, after the bankruptcy petition was filed
20 on August 18, 2014. The court ordered additional post-trial briefing on the issue of
21 whether the Property is property of the estate and whether annulment is proper in this
22 case. The parties timely filed additional briefing, which the court has now reviewed and
23 considered. A further hearing was set for October 29, 2014 at 1:30 p.m., but the court
24 now having considered the post-trial briefing of the parties determines that further oral
25 argument and hearing are not necessary, vacates the hearing on October 29, 2014,
26 takes the matter under submission and now issues its rulings in this memorandum
27 decision.

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1 Because the court finds that the motion for relief from the automatic stay and
2 retroactive annulment of the stay should be granted, it need not resolve the issue of
3 whether the Eileen Property is property of the bankruptcy estate. The court will assume,
4 for the purposes of this motion, that the Eileen Property was property of the bankruptcy
5 estate at the time of the foreclosure sale on August 20, 2014.

6 Movant has made a prima facie showing for relief under 11 U.S.C. § 362(d)(4) that
7 the transfer of all or part ownership of the Property was without its consent as a secured
8 creditor and without court approval and the filing of the bankruptcy petition was part of a
9 scheme to delay or hinder it as a secured creditor. *Real Property Declaration of Andy*
10 *Dick in Support of Motion and Exhibits A through H to Motion; Trial Testimony of Andy*
11 *Dick*. Based on this evidence, the transfer of the Property from the borrower on the loan
12 secured by the deed of trust with Movant as the beneficiary to Debtor was without its
13 knowledge or consent, and Debtor has not met its burden of proving otherwise, or with
14 court approval, pursuant to 11 U.S.C. § 362(g)(2). The evidence indicates that the filing
15 of Debtor's bankruptcy petition and the transfer of the Eileen Property to Debtor took
16 place within one or two days before the foreclosure sale with notice being given to the
17 borrower, Roberson, well in advance of the sale, which supports findings that the transfer
18 was without the consent of the secured creditor, Movant, and that the filing of the
19 bankruptcy petition was part of a scheme to delay or hinder it in its imminent foreclosure
20 sale. The court does not determine whether the filing of the bankruptcy petition was part
21 of a scheme to defraud because it has found alternatively that the evidence indicates that
22 the filing of the petition was intended to delay or hinder the foreclosure sale by Movant,
23 which is sufficient to establish a claim under 11 U.S.C. § 362(d)(4).

24 At the October 10, 2014, hearing, the court identified *In re Fjelsted*, 293 B.R. 12
25 (9th Cir. BAP 2003), as the leading decision regarding retroactive annulment of the
26 automatic stay. *Fjelsted* sets forth twelve factors which courts should evaluate in
27 determining whether to grant retroactive annulment of the automatic stay. In setting out
28 the factors, however, the Bankruptcy Appellate Panel was careful to caution that "such

1 lists are capable of being misconstrued as inviting arithmetic reasoning, we emphasize
2 that these items are merely a framework for analysis and not a scorecard. In any given
3 case, one factor may so outweigh the others as to be dispositive.” *In re Fjeldsted*, at 25.

4 The *Fjeldsted* factors, and the court’s determination of their effect on the analysis of
5 whether to grant annulment in this case are:

6 **1. Number of filings;**

7 This factor is neutral, or weighs against annulment, there is no evidence of repeat
8 filings by Debtor.

9 **2. Whether, in a repeat filing case, the circumstances indicate an intention to delay**
10 **and hinder creditors;**

11 Again, this factor is neutral, there is no evidence of repeat filings.

12 **3. A weighing of the extent of prejudice to creditors or third parties if the stay relief**
13 **is not made retroactive, including whether harm exists to a bona fide purchaser;**

14 Debtor argues that this factor weighs against annulment because there is already
15 an agreement with a third-party buyer of the Eileen Property who will be harmed if the
16 sale does not go through. Debtor argues that the third-party buyer may have to buy the
17 Property from Movant at a higher price than the current agreement. *Debtor’s Post-Trial*
18 *Brief*, ECF 68, pg 8:9-24.

19 In the court’s view, this factor is neutral or weighs in favor of annulment. In this
20 court’s view, the evidence of the viability of the third-party purchase offer was weak, and
21 the court did not find the evidence of this transaction being reasonably likely to
22 consummate to be credible. Moreover, as Debtor points out, Movant may be able to sell
23 the property at a higher price if the stay is annulled, therefore any harm to the third-party
24 buyer will be counterbalanced by benefit to the creditor, and vice versa.

25 **4. The Debtor’s overall good faith (totality of circumstances test): cf. *In re Warren*,**
26 **89 B.R. 87, 93 (9th Cir. BAP 1988) (chapter 13 good faith);**

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1 The court evaluates bad faith in a Chapter 11 bankruptcy case using the “badges
2 of bad faith” identified in *In re Yukon Enterprises, Inc.*, 39 B.R. 919, 921 (Bankr. C.D. Cal.
3 1984). Many of the badges of fraud apply here.

4 1. The transfer occurred within close proximity to the filing of the bankruptcy case. In
5 fact, Glen Quilter, principal of the Debtor, acknowledges that Antoinette Roberson
6 transferred her interest to the Debtor “in anticipation of a possible bankruptcy
7 filing.” *Debtor’s Exhibits, Declaration of Glen Quilter in Support*, ¶10.

8 2. No consideration was paid for the transferred property.

9 3. There is no apparent means for Debtor to service the debt on the transferred
10 Property. Debtor’s Statement of Financial Affairs lists essentially no
11 unencumbered assets and no income. *Debtor’s Summary of Schedules*, ECF 22.

12 The court finds that this factor weighs strongly in favor of annulment, as it is
13 apparent that the primary purpose of the transfer and bankruptcy filing was to delay
14 Movant’s right to foreclose its lien on the Eileen Property.

15 **5. Whether creditors knew of stay but nonetheless took action, thus compounding**
16 **the problem;**

17 This factor is neutral or weighs in favor of annulment. There is insufficient, if any,
18 evidence that Movant was aware that the automatic stay was in effect and applied to the
19 Eileen Property. Movant claims that it “had no notice or knowledge of the asserted
20 interest by this Debtor in the subject property. . . .” *Brief in Support of Movant’s Request*
21 *for Annulment and In Rem Relief From the Automatic Stay*, ECF 64, ¶5. Debtor, on the
22 other hand, states that “Debtor’s representative Quilter testified that he was in daily
23 contact with the foreclosure trustee handling the foreclosure sale. It is unrealistic to
24 believe that the foreclosure trustee did not communicate to Movant that Debtor was
25 asserting an interest in the Property...” *Debtor’s Post-Trial Brief*, ECF 68, pg. 4:18-22.

26 There is no direct evidence that the creditor, Movant, knew of the stay, and
27 foreknowledge of the stay before the foreclosure is unlikely because Debtor was not on
28 record title for the Eileen Property until the deed transferring title from Roberson to

1 Debtor was recorded on August 19, 2014, the day before the foreclosure sale. This fact
2 that the deed transferring Roberson's interest in the Property was not recorded until
3 August 19, 2014, makes it more likely that Movant was not aware that the stay applied to
4 the Eileen Property.

5 **6. Whether the debtor has complied, and is otherwise complying, with the**
6 **Bankruptcy Code and Rules;**

7 This factor weighs heavily in favor of annulment. Debtor's bankruptcy case was
8 dismissed for failure to comply with the Bankruptcy Code and Rules.

9 **7. The relative ease of restoring parties to the *status quo ante*;**

10 This factor weighs in favor of annulment. Because there is a material dispute
11 between the parties as to whether Debtor had an interest in the Eileen Property prior to
12 the transfer on August 19, 2014, it is unclear what effect a denial of annulment would
13 have. The parties very well may be forced to litigate that issue. Because it is unclear
14 what the *status quo ante* was, it would be difficult to restore the status quo now that the
15 underlying bankruptcy case has been dismissed.

16 **8. The costs of annulment to debtors and creditors;**

17 This factor weighs in favor of annulment. Without annulment, Movant will have to
18 reconduct the foreclosure sale now that stay relief is to be granted. It seems pointless to
19 have another foreclosure sale since the underlying bankruptcy case has been dismissed.
20 Movant will be out of pocket for the costs of a second nonjudicial foreclosure sale.

21 **9. How quickly creditors moved for annulment, or how quickly debtors moved to**
22 **set aside the sale or violative conduct;**

23 **10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in**
24 **continued violation of the stay, or whether they moved expeditiously to gain relief;**

25 These two factors weigh in favor of annulment. Movant promptly filed this Motion
26 for Relief From Stay only five days after the non-judicial foreclosure sale. There is no
27 evidence that Movant continued to take steps in violation of the automatic stay.

28 **11. Whether annulment of the stay will cause irreparable injury to the debtor;**

1 This factor weighs against annulment. As pointed out by Debtor, if annulment is
2 granted, it is very likely that Debtor will file another bankruptcy case.

3 **12. Whether stay relief will promote judicial economy or other efficiencies.**

4 Again, Debtor argues that granting annulment will force Debtor to re-enter
5 bankruptcy, and that denying annulment will therefore promote judicial economy.
6 However, since the court determines that Movant is entitled to relief from stay under 11
7 U.S.C. § 362(d)(4), this factor supports annulment in that judicial economy will not be
8 affected by granting annulment.

9 The court finds factors 4, 6, 9, and 10 to be particularly influential in its analysis of
10 Movant's request for annulment of stay. These factors indicate Debtor's lack of good
11 faith as evidenced by its efforts to delay or hinder Movant's foreclosure sale as shown by
12 its receiving the transfer of the Property and filing for bankruptcy simultaneously and by
13 its failure to comply with the basic requirements of the Bankruptcy Code and rules in this
14 case, as well as Movant's diligence in attempting to comply with the Bankruptcy Code's
15 requirements and lack of knowledge of the bankruptcy case and the automatic stay
16 before taking collection action, which lead this court to determine that retroactive
17 annulment of stay should be granted in this case.

18 Based on the reasons set forth above, and the arguments in the moving papers, IT
19 IS HEREBY ORDERED that Movant's Motion for Relief From Stay is GRANTED and that
20 the automatic stay is annulled retroactively.

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1 The hearing currently scheduled for October 29, 2014 at 1:30 p.m. is VACATED.
2 Counsel for Movant is ordered to submit a proposed final order granting stay relief
3 on the court's mandatory stay relief form within 7 days of entry of this decision.

4 IT IS SO ORDERED.

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Date: October 27, 2014



Robert Kwan
United States Bankruptcy Judge