

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

In re:

Korean Western Presbyterian
Church of Los Angeles,

Debtor.

Case No: 2:20-bk-11675-NB

Chapter: 11

**MEMORANDUM DECISION (A) THAT THE
AUTOMATIC STAY COVERS STATE
COURT LITIGATION BUT
(B) DETERMINING THAT "CAUSE"
EXISTS TO MODIFY THE STAY SO THAT
SUCH LITIGATION MAY PROCEED**

Hearing Date:

Date: March 31, 2020

Time: 1:00 p.m.

Ctrm: 1545

For the reasons set forth below, and on the record at the above-captioned hearing, this Court will grant (a) the motion of the Ko Faction¹ for confirmation that the automatic stay of § 362(a) applies to pending state court litigation (dkt. 71, the "Stay Motion"), and (b) the motion of the Choi Faction for relief from the automatic stay under § 362(d)(1) (dkt. 79, 80, 81, the "R/S Motion").

¹ All terms used in this Memorandum Decision have the meanings provided in this Court's concurrently issued Memorandum Decision To Appoint Chapter 11 Trustee.

1 **1. BACKGROUND**

2 The background is set forth in this Court’s concurrently issued Memorandum
3 Decision To Appoint Chapter 11 Trustee.

4 **a. The Stay Motion**

5 On March 6, 2020, the Ko Faction filed the Stay Motion seeking an order stating
6 that the automatic stay applies in the case of *Korean Western Presbyterian Church of*
7 *Los Angeles v. Jong Suk Choi, et al*, Case No. 19STCV40052 (the “State Court
8 Litigation”), pending in the Superior Court of California for the County of Los Angeles
9 (the “State Court”). The Ko Faction had initiated that litigation pre-petition, on
10 November 6, 2019.

11 **b. The R/S Motion**

12 On March 10, 2020, the Choi Faction filed the R/S Motion. That motion disputes
13 that any stay applies to the State Court Litigation but, to the extent this Court
14 determines that the automatic stay does apply, it requests that this Court grant relief
15 from the automatic stay to allow the State Court Litigation to proceed.

16 **c. Procedural history**

17 On March 31, 2020 at 1:00 p.m., this Bankruptcy Court held a hearing on the
18 Stay Motion and R/S Motion, among other motions. Appearances were as noted on the
19 record.

20 At the conclusion of the hearing, this Bankruptcy Court took under submission a
21 number of issues. One issue was whether the Choi Faction’s earlier filed
22 Dismissal/Trustee Motion (dkt. 29) and supplemental notice (dkt. 74, the “Supplemental
23 Notice”), provided adequate notice of the Choi Faction’s request for relief from the
24 automatic stay under 11 U.S.C. § 362. Another issue was whether the R/S Motion was
25 served in compliance with Rule 4001. Another issue was whether there was sufficient
26 “cause” to modify the automatic stay, as to which this Court set a deadline of April 3,
27 2020 for supplemental pleadings from the Ko Faction. On April 3, 2020, the Ko Faction
28 submitted supplemental papers in opposition to the R/S Motion (dkt. 106).

1 Based on a review of the Dismissal/Trustee Motion, the Supplemental Notice, the
2 R/S Motion, and the other filed documents in this case, this Bankruptcy Court was not
3 persuaded that sufficient notice was provided to creditors that the Choi Faction sought
4 relief from the automatic stay, in compliance with Rule 4001(a) (Fed. R. Bankr. P.).
5 Accordingly, this Court directed the Choi Faction to provide further notice by April 6,
6 2020 (dkt. 108). On April 6, 2020, the Choi Faction filed and served additional notice on
7 interested parties (dkt. 109), beyond the Ko Faction that already had received notice
8 and had already filed its papers. The deadline for such other parties to file an
9 opposition was April 16, 2020, but no such opposition is on file.

10 **2. DISCUSSION**

11 For the reasons stated below, this Court is persuaded that the automatic stay
12 applies to the State Court Litigation, but “cause” exists to modify the automatic stay to
13 allow the State Court Litigation to proceed.

14 **a. The automatic stay does apply**

15 This is a thornier issue than first appears. And arguably it is not necessary to
16 determine whether the automatic stay applies because, as set forth below, there is
17 “cause” (§ 362(d)(1)) to grant relief from any stay that does exist.

18 But, as set forth later in this discussion, this Court finds that “cause” exists to
19 modify but not terminate the automatic stay, so it makes a difference if there is or is not
20 any automatic stay to begin with. Although several aspects of the automatic stay do not
21 apply, one does apply.

22 **(i) § 362(a)(1)**

23 Section 362(a)(1) operates as a stay of “the commencement or continuation ... of
24 a judicial, administrative, or other action or proceeding against the debtor that was or
25 could have been commenced before the commencement of the case under this title, or
26 to recover a claim against the debtor that arose before the commencement of the case
27 under this title.” § 362(d)(1) (emphasis added). No stay exists under § 362(a)(1)

28

1 because the subject litigation does not include any claims, counterclaims, or other legal
2 actions against Debtor. See *Parker v. Bain*, 68 F.3d 1131 (9th Cir. 1995).

3 The Ko Faction asserts that § 362(a)(1) applies because the claims by Debtor (or,
4 more precisely, by the Ko Faction purporting to act for Debtor) "have the same effect as
5 if they had been brought by the Defendants instead" (*i.e.*, by the Choi Faction) and
6 therefore should be characterized as "effectively causes of action against the Debtor."
7 Dkt.93, p.10:9-10 (emphasis added). There is no authority cited for that proposition. To
8 the contrary, it is well established that the act of defending against claims brought in the
9 name of a debtor is not stayed. See, *e.g.*, *In re Merrick*, 175 B.R 333, 338 (9th Cir. BAP
10 1994). Accordingly, the automatic stay of § 362(a)(1) does not apply.

11 **(ii) § 362(a)(3)**

12 Section 362(a)(3) operates as a stay of "any act to obtain possession of property
13 of the estate or of property from the estate or to exercise control over property of the
14 estate." § 362(a)(3).

15 **(A) Property "of" or "from" the estate**

16 Although claims held by a debtor are property of the bankruptcy estate, claims
17 about who controls a debtor are not "property of the estate." Any "possession" of
18 property that Debtor owned as of the petition date stays with Debtor, regardless who
19 controls Debtor. The Ko Faction's arguments to the contrary (*e.g.*, dkt. 93, pp.10:25-
20 6:12) are not persuasive.

21 **(B) Acts to exercise "control" over property of the estate**

22 The Ko Faction's alternative argument is more persuasive. In this case the
23 gravamen of the parties' disputes is who has control over Debtor's real property, alleged
24 to be worth roughly \$17 to \$25 million or more (dkt. 71, p.4:9; dkt.84, p.5:19-21). There
25 are interrelated disputes about whether each faction is entitled to control Debtor or is
26 merely a creditor or other type of interested party - *e.g.*, whether LA Open Door is
27 merely a lessee, which is or is not current on rent, or if LA Open Door merged with
28 Debtor and the Choi Faction now controls Debtor.

1 The issues involve not merely theoretical or future control. The issues include
2 who has current control over physical access to the real property for church services,
3 who can examine books and records, who can use Debtor's name, who can speak for
4 Debtor, who can make agreements for Debtor, who has signing authority over its bank
5 accounts, etc.

6 In this situation this Bankruptcy Court finds that the stay does apply, because the
7 disputes over governance are so intertwined with the control of Debtor's property that
8 they constitute acts "to exercise control over property of the estate" within the meaning
9 of § 362(a)(3) (emphasis added). See, e.g., dkt.71, p.16:20-26; *Allentown*
10 *Ambassadors*, 361 B.R. 422, 435-40 & nn.34-40 (Bankr. E.D. Pa. 2007) (extensive
11 review of cases, concluding that whether § 362(a)(3) applies depends on "(1) the nexus
12 between the conduct at issue and the property interests of the bankruptcy estate, (2) the
13 degree of impact on the bankruptcy estate, and (3) the competing legal interests of the
14 non-debtor parties") (footnotes omitted).

15 As the Ko Faction explains:

16 The Complaint [in the State Court action that is the main subject of the
17 motions regarding the automatic stay] thus alleges that the current state of
18 affairs is that the [Choi Faction] are exerting control over the Property, to the
19 exclusion of the Debtor [i.e., the Ko Faction]. The Debtor [i.e., the Ko Faction]
20 seeks a declaration by the Court as to the respective rights of the parties. The
21 relief sought in the Complaint is thus a zero sum game; if the Debtor [i.e., the
22 Ko Faction] fails to obtain this relief, Defendants [i.e., the Choi Faction] will
23 continue to exert control over the Property to the exclusion of the Debtor [i.e.,
24 the Ko Faction]. If the Debtor [i.e., the Ko Faction] prevails, the opposite result
25 will occur. [Dkt.71, p.8:17-22 (emphasis added)]

26 The same exclusive control applies not just to Debtor's real property but also to
27 every other type of property: Debtor's name, bank account, goodwill, etc.

28 The Choi Faction cites authority that, at least as a general proposition,
governance disputes are not stayed by § 362(a)(3). Dkt.84, pp.18:26-20:10. But the
cited authorities are distinguishable.

The decision on which the Choi Faction principally relies is *In re Am. Media*
Distribs., LLC, 216 B.R. 486 (Bankr. E.D. N.Y. 1998). But that decision notes that there

1 was "little or no explanation as to why the automatic stay would apply" and the principal
2 focus was only on the "distraction" that the dispute would cause. *Id.* at 489.

3 Another decision cited by the Choi Faction did not involve the automatic stay - it never
4 even cites § 362. Rather, it involved whether to enjoin stockholders from exercising
5 their regular voting rights to elect directors, which is not at issue in this case. *See In re*
6 *Johns-Manville Corp.*, 801 F.2d 60, 64-69 (2d Cir. 1986).

7 The last decision cited by the Choi Faction involved the voting of pledged shares,
8 but there is no indication that such voting was anything beyond the conventional
9 application of nonbankruptcy contract and voting rights. *In re Marvel Ent. Group*, 209
10 B.R. 832, 838-40 (D. Del. 1997). In fact, *Marvel* distinguishes contrary authorities as
11 involving creditor/shareholders exercising extraordinary remedies, in contrast to "the
12 conventional case of a shareholder seeking to invoke its corporate governance rights"
13 and "matters of corporate governance in the orthodox sense." *Id.* at 839 (citations and
14 internal quotation marks omitted, emphasis added).

15 Unlike *Marvel*, this case involves disputes by the Ko Faction and the Choi
16 Faction that are anything but a "conventional" or "orthodox" exercise of equity holders'
17 voting rights. Instead, both factions allegedly have a mix of roles that appear to include
18 both "claims" (in the broad bankruptcy sense) and the exercise of "equity control," and
19 both factions assert the right to control the disposition of Debtor's real property and
20 other assets. It is difficult to see how the Factions' acts to wrest control of Debtor and
21 all its property from one another are not acts to "exercise control over property of the
22 estate." § 362(a)(3).

23 This is illustrated by the fact that the Ko Faction has filed a motion to appoint a
24 real estate agent to sell the real property. Similarly, the Choi Faction has filed a motion
25 to dismiss this bankruptcy case, which would have the effect of terminating the
26 automatic stay and other provisions of the Bankruptcy Code that protect the estate's
27 real property and its rights to whatever rents are or are not being paid. *See, e.g.*,
28 §§ 362(a)(3)&(c)(2)(B), *and* 549.

1 In other words, the papers filed in this Bankruptcy Court reflect that the Factions'
2 litigation in State Court is not just a conventional stockholder dispute but is a fight
3 among parties whose roles as equity, or creditors, or something else is far from clear,
4 and is a fight over "control" of Debtor's property as much as it is a fight over control of
5 Debtor itself. In these circumstances, this Court finds that the automatic stay of
6 § 362(a)(3) applies.

7 **(iii) Conclusion regarding application of the automatic stay**

8 For the foregoing reasons the automatic stay does apply. But, as set forth below,
9 there is cause to modify the automatic stay to permit the parties to continue their State
10 Court Litigation.

11 Alternatively, even if the automatic stay were inapplicable to the State Court
12 Litigation, the stay still would apply in other respects. For example, the stay would
13 prevent any party from enforcing any future judgment for money damages by collecting
14 out of property of the bankruptcy estate. See §§ 362(a)(1), (3), (4), (6) and (7).
15 Therefore, it is still important to determine how much relief to grant, even if (contrary to
16 this Bankruptcy Court's conclusion above) the stay does not apply to the
17 governance/control aspects of the State Court litigation.

18 **b. There is "cause" to grant relief from the automatic stay**

19 **(i) Legal Standards**

20 The Bankruptcy Court "shall grant relief from the stay" upon a showing of
21 "cause." § 362(d)(1). Such relief need not take the form of a complete termination of
22 the automatic stay, but instead may include "modifying or conditioning such stay." *Id.*

23 "'Cause' is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912
24 F.2d 1162, 1166 (9th Cir.1990). In determining whether "cause" exists to grant relief
25 from the automatic stay to allow a movant to pursue litigation in a non-bankruptcy
26 forum, courts in the Ninth Circuit have examined the factors set forth in *In re Curtis*, 40
27 B.R. 795, 799–800 (Bankr. D. Utah 1984). See *In re Kronemeyer*, 405 B.R. 915 (9th
28

1 Cir. BAP 2009); *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 559–60 (Bankr.
2 C.D. Cal.2004).

3 Those factors are: (1) Whether the relief will result in a partial or complete
4 resolution of the issues; (2) The lack of any connection with or interference with the
5 bankruptcy case; (3) Whether the foreign proceeding involves the debtor as a fiduciary;
6 (4) Whether a specialized tribunal has been established to hear the particular cause of
7 action and whether that tribunal has the expertise to hear such cases; (5) Whether the
8 debtor's insurance carrier has assumed full financial responsibility for defending the
9 litigation; (6) Whether the action essentially involves third parties, and the debtor
10 functions only as a bailee or conduit for the goods or proceeds in question; (7) Whether
11 the litigation in another forum would prejudice the interests of other creditors, the
12 creditors' committee and other interested parties; (8) Whether the judgment claim
13 arising from the foreign action is subject to equitable subordination under Section
14 510(c); (9) Whether movant's success in the foreign proceeding would result in a judicial
15 lien avoidable by the debtor under Section 522(f); (10) The interests of judicial economy
16 and the expeditious and economical determination of litigation for the parties;
17 (11) Whether the foreign proceedings have progressed to the point where the parties
18 are prepared for trial; and (12) The impact of the stay on the parties and the "balance of
19 hurt." *Plumberex*, 311 B.R. at 559. "[W]hile the *Curtis* factors are widely used to
20 determine the existence of 'cause,' not all of the factors are relevant in every case, nor
21 is a court required to give each factor equal weight." *In re Landmark Fence Co., Inc.*,
22 2011 WL 6826253 at *4 (C.D. Cal. Dec. 9, 2011).

23 **(ii) Application of the legal standards**

24 Based on the present record, these factors weigh in favor of modifying the
25 automatic stay to permit the parties to continue their State Court Litigation.

26 As to the first *Curtis* factor (would relief result in partial or complete resolution of
27 the issues), this Bankruptcy Court finds and concludes that granting relief would result
28 in complete resolution of the issues. The State Court appears to have all the parties

1 before it, and to be addressing the same governance/control issues that this Bankruptcy
2 Court would have to address, so it can completely resolve these issues.

3 True, governance issues are also a critical threshold issue for bankruptcy
4 purposes. As the State Court put it, "it's hard for me to believe that the Bankruptcy
5 Court doesn't, as a threshold matter, decide who's in charge." Tr. 2/21/20, p.12:7-9
6 (dkt.71, Ex.10, at PDF p.139). But, as the State Court also observed, the issues are the
7 same in both *fora*. See Tr. 2/21/20, p.14:11-13 (dkt.71, Ex.10, at PDF p.141) ("the
8 threshold issue is I suspect the Bankruptcy Court does decide who's in charge just like
9 I'm trying to do for this preliminary injunction") (emphasis added).

10 It is also true that COVID-19 has caused the State Courts to temporarily close,
11 which might result in some delay in resolving the governance dispute. But there is no
12 evidence from which this Bankruptcy Court can presume that the shutdown will last for a
13 very long time, especially given that this Bankruptcy Court, for example, is conducting
14 almost all of its regular business and this Court and litigants appearing in this
15 Bankruptcy Court have adapted to telephonic procedures.

16 This Bankruptcy Court is not persuaded by the Ko Faction's contention that
17 litigation in the State Court will take longer than in this Bankruptcy Court (dkt. 106,
18 p.2:10-3:11). The Ko Faction's asserted timeline includes time for appeals, but if the
19 same time is factored into any decisions rendered by this Bankruptcy Court, there is no
20 showing that the time frame would be any shorter. For example, this Bankruptcy Court
21 takes judicial notice that in the bankruptcy system there are two intermediate levels of
22 appeal (the District Court and/or Ninth Circuit Bankruptcy Appellate Panel and the Court
23 of Appeals for the Ninth Circuit) before the litigation could be presented for
24 consideration by the Supreme Court, whereas in State Court there is just one
25 intermediate level of appeal. There is also no showing that it would be efficient for this
26 Bankruptcy Court to reinvent the wheel as to the preliminary issues that have already
27 been addressed by the State Court.

28

1 As to the second *Curtis* factor (connection with or interference with the
2 bankruptcy case) and the seventh *Curtis* factor (prejudice to other creditors/interested
3 parties) this Bankruptcy Court finds and concludes that, far from interfering with this
4 bankruptcy case or causing prejudice, resolution of the issues that are already well
5 underway in the State Court is essential to determine the bankruptcy issues: *e.g.*,
6 whether Debtor's bankruptcy petition was even authorized; who is authorized to
7 determine the disposition of property of the bankruptcy estate; who has authority to
8 decide what litigation to pursue on Debtor's behalf; etc. But the underlying legal and
9 factual disputes are all state law issues.

10 As interesting as these issues would be for this Bankruptcy Court to delve into,
11 the roughly 2000 pages of documents attached to the Choi Faction's motion papers
12 (dkt. 79) show that this Bankruptcy Court would be reinventing the wheel. Starting over
13 and re-litigating the issues would be prejudicial to all parties in interest, and it appears
14 that resolving these issues in State Court is the most expeditious and efficient way to
15 address these issues.

16 As to the fourth *Curtis* factor (whether a specialized tribunal has been established
17 to hear the action) and the eleventh *Curtis* factor (whether the proceedings have
18 progressed to the point where the parties are prepared for trial), this Bankruptcy Court
19 finds and concludes that, (i) although the State Court is not specialized in the sense of
20 limiting itself to corporate/religious governance/control issues, the same is true for this
21 Bankruptcy Court, so this factor is neutral, and (ii) although the proceedings in State
22 Court appear to be far from any trial, the roughly 2000 pages show that those
23 proceedings are well underway.

24 As to the tenth *Curtis* factor (interest of judicial economy) this Bankruptcy Court
25 finds and concludes that, while it is true that one purpose of bankruptcy is to avoid
26 piecemeal litigation and enable the bankruptcy court to decide in one forum various
27 related proceedings, forcing the parties to start anew in this Bankruptcy Court would
28 result in a duplication of efforts and would be a waste of judicial resources. This

1 Bankruptcy Court agrees that severing bankruptcy and non-bankruptcy issues also runs
2 the risk of duplicative or wasteful litigation, but the solution is to let the litigation play out
3 in State Court. The record before this Bankruptcy Court is that the State Court has
4 ruled that at least three of the matters before it are related and there is no showing that,
5 if appropriate, it could not decide any and all related matters together.

6 As to the twelfth *Curtis* factor (the impact of the stay on the parties and the
7 "balance of hurt"), the bankruptcy petition has already delayed adjudication of the
8 issues before the State Court, and caused considerable expense and disruption, which
9 this Bankruptcy Court finds fall more heavily on the Choi Faction than the Ko Faction.
10 Among other things, the Choi Faction was not given adequate notice by the Ko Faction
11 of the extraordinary "emergency" relief that the latter sought in this Bankruptcy Court,
12 and it turns out that, so far as this Bankruptcy Court can discern, there is no emergency.

13 To be clear, this Bankruptcy Court is not saying that there is no legitimate need
14 for bankruptcy protection. True, it is not apparent that Debtor is insolvent. But the
15 automatic stay (§ 362(a)) and § 549 may provide broader protection than what is
16 available in other fora to protect against unauthorized transfers of property. For
17 example, a typical injunction only applies to specified parties and specified property,
18 and it does not necessarily render acts in violation of the injunction void *ab initio*. In
19 contrast, the automatic stay applies even to unknown parties and unknown property and
20 acts in violation of the stay are void *ab initio*. See, e.g., *In re Schwartz*, 954 F.2d 569,
21 571 (9th Cir. 1992).

22 But there is no reason known to this Bankruptcy Court why the Ko Faction could
23 not have gained the legitimate protections of the automatic stay and § 549 and then
24 stipulated to relief from the automatic stay to conclude the State Court Litigation.
25 Instead, as noted above, the Ko Faction sought "emergency" relief with inadequate
26 notice, in what appears to be an attempted end-run around the State Court
27 proceedings.

28

1 For all of these reasons, any continued stay of the State Court Litigation has
2 greater cognizable impact on the Choi Faction than the Ko Faction, and the "balance of
3 hurt" also favors granting relief from the stay.

4 In addition to the precise factors outlined in *Curtis*, this Bankruptcy Court is
5 considering all the other facts and circumstances. In the interest of comity and to
6 discourage forum shopping, it is appropriate for the litigation to continue in the State
7 Court. That is the initial forum that the Ko Faction selected, and it is the forum that the
8 Choi Faction favors retaining.

9 For all of the foregoing reasons, this Bankruptcy Court finds that under the *Curtis*
10 factors and analysis there is "cause" (§ 362(d)(1)) to grant relief from the automatic stay
11 as set forth below. This Bankruptcy Court considers below whether there is an
12 alternative basis on which relief from the automatic stay must be granted.

13 **c. Mandatory abstention does not apply**

14 An alternative ground for relief from the automatic stay would be if mandatory
15 abstention applies. (Even then, "relief" from the stay does not necessarily mean
16 immediate termination of the stay - it might be appropriate to modify but not terminate
17 the stay, or to leave it fully in place for some period of time, to give Debtor a "breathing
18 spell" - but the point is that, if mandatory abstention were to apply, that would be an
19 alternative basis for some form of relief from the automatic stay.)

20 Mandatory abstention is governed by statute:

21 Upon timely motion of a party in a proceeding based upon a State law claim
22 or State law cause of action, related to a case under title 11 [*i.e.*, the
23 Bankruptcy Code] but not arising under title 11 or arising in a case under title
24 11, with respect to which an action could not have been commenced in a
25 court of the United States absent jurisdiction under this section, the district
26 court [and the bankruptcy court as a unit thereof] shall abstain from hearing
such proceeding if an action is commenced, and can be timely adjudicated, in
a State forum of appropriate jurisdiction. [28 U.S.C. § 1334(c)(2) (emphasis
added).]

27 The emphasized terms "related to," on the one hand, and "arising under" or
28 "arising in," on the other hand, are terms of art. The Supreme Court has held that the

1 latter are equivalent to the statutory term "core" under 28 U.S.C. § 157(b)(1). *Stern v.*
2 *Marshall*, 564 U.S. 462 (2011).

3 A non-exclusive list of matters defined as "core" proceedings is set forth in 28
4 U.S.C. § 157(b)(2). Matters concerning who has authority to file a bankruptcy petition,
5 make decisions for a debtor in possession, and control its property is a "core"
6 proceeding, as a matter of statutory construction (28 U.S.C. § 157(b)(2)(A) & (O)). See
7 *e.g. In re Fisher Island Invs., Inc.*, 778 F.3d 1172 (11th Cir. 2015) (confirming
8 bankruptcy court had statutory authority over ownership dispute under 28 U.S.C. §
9 157(b)(2)(A), (O), because "ownership issue is a core matter that clearly 'arises under'
10 or 'arises in a case under' chapter 11. Resolution of threshold ownership issue was
11 critical to the administration of the Alleged Debtors' estates").

12 Turning to Constitutional limitations, a determination of who controls Debtor and
13 its property is sufficiently central to the administration of the bankruptcy estate that it
14 has been held to be what is sometimes called "Constitutionally core." See *e.g., In re*
15 *Fisher Island Invs. Inc.*, 778 F.3d at 1192 (affirming bankruptcy court's determination
16 that it had constitutional authority over ownership dispute because "[t]he ownership
17 issue does not simply have 'some bearing' on the bankruptcy proceedings ... the
18 bankruptcy court could not undertake the bankruptcy proceedings without first
19 determining who owned the Alleged Debtor, and thus who represented them"); *In re*
20 *First Korean Christian Church of San Jose*, 567 B.R. 575, 578-578 (Bankr. N. D. Cal.
21 2017) (rejecting argument that bankruptcy court lacked jurisdiction to determine who
22 controlled Debtor and noting that although bankruptcy court must defer to church
23 hierarchy for resolution of religious issues, bankruptcy court could "apply 'neutral
24 principals of law' such as corporate governance in settling disputes as to ownership of
25 church property ...").

26 True, the governance of Debtor depends entirely on nonbankruptcy issues:
27 (i) interpretation and application of nonbankruptcy law and (ii) interpretation and
28 application of nonbankruptcy agreements and principles of the local church and any

1 national or international church organizations. But it is difficult to conceive of anything
2 more central to the administration of a bankruptcy case than determining who has
3 authority to file the bankruptcy petition, or to hire professionals for the debtor in
4 possession, or to sell a debtor's assets or otherwise manage the bankruptcy estate as a
5 trustee for the benefit of creditors.

6 Therefore, any determination of who controls Debtor comes within this
7 Bankruptcy Court's "arising in" jurisdiction and is both statutorily and constitutionally
8 core. In other words, mandatory abstention does not apply, so this is not a ground on
9 which this Bankruptcy Court will grant relief from the automatic stay.

10 Alternatively, even if mandatory abstention were to apply (contrary to this Court's
11 conclusion above), this Court would grant the same relief from the automatic stay, which
12 is set forth below.

13 **d. Scope of relief**

14 Under § 362(d) this Court "shall" grant relief if the statutory criteria for such relief
15 are established. But such relief need not take the form of "terminating" the stay. The
16 statute states: "relief ... such as by terminating, annulling, modifying, or conditioning
17 such stay" § 362(d) (emphasis added).

18 The appropriate balance in this case is to modify and condition the automatic
19 stay under § 362(d)(1) such that the parties may proceed in the State Court Litigation to
20 final judgment (including any appeals) in accordance with applicable nonbankruptcy
21 law, subject to the following limitations (the standard limitations of the undersigned
22 Bankruptcy Judge).

23 **(i) No enforcement against property of the bankruptcy estate**

24 The stay remains in effect with respect to enforcement of any judgment against
25 property of the debtor's bankruptcy estate - any such property shall be distributed when
26 and how provided by the Bankruptcy Code. Nevertheless, the Choi Faction is permitted
27 to enforce its final judgment by (i) collecting upon any available insurance in accordance
28 with applicable nonbankruptcy law or (ii) proceeding against the debtor as to any

1 property that is not property of this bankruptcy estate. See, e.g., § 362(b)(2)(B) &
2 541(b)(7) (analogous provisions of the Bankruptcy Code permitting collection of
3 domestic support obligations from ERISA qualified retirement plans).

4 **(ii) Claim allowance, priority and discharge issues**

5 Any claims arising from the State Court Litigation are subject to this Bankruptcy
6 Court's jurisdiction regarding claim allowance and priority, and the existence and scope
7 of any bankruptcy discharge.

8 **(iii) No relief in *other* bankruptcy cases**

9 To the extent, if any, that the R/S Motion seeks to terminate the automatic stay in
10 *other* past or pending bankruptcy cases, such relief is denied on the present record.
11 See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

12 **(iv) Effective date of relief**

13 This Court will grant the Choi Faction's request to waive the 14-day stay provided
14 by FRBP 4001(a)(3). The State Court litigation has been stayed long enough without
15 adding further delays.

16 **e. Comity with State Court**

17 The State Court Judges stayed their proceedings pending this Bankruptcy
18 Court's ruling on the Stay Motion and R/S Motion. This Bankruptcy Court appreciates
19 the State Court's careful approach to the possible existence of the automatic stay, which
20 turned out to be a complex issue as discussed above.

21 This Bankruptcy Court also seeks to preclude any undue delays or potential
22 gamesmanship in future by parties who might seek to invoke the automatic stay when it
23 does not apply (either because of this Bankruptcy Court's order(s) granting relief from
24 the automatic stay, or because of the inherent limits of § 362(a)). To that end, this
25 Bankruptcy Court offers the following.

26 First and foremost, this Bankruptcy Court is available to make rulings on the
27 applicability of the automatic stay, and to grant any appropriate relief. The Local
28 Bankruptcy Rules and this Bankruptcy Court's posted procedures permit expedited

1 relief, including speedy telephonic hearings if warranted. Even during this COVID-19
2 situation, this Bankruptcy Court's law clerks and the Clerk's Office staff are constantly
3 monitoring voicemails, processing orders, setting up telephonic hearings, etc.

4 Second, recognizing that even speedy relief might not be speedy enough, this
5 Bankruptcy Court reiterates that, contrary to the Choi Faction's arguments (dkt.71,
6 pp.21:25-23:7), the State Court has concurrent jurisdiction. The State Court can
7 interpret (a) the automatic stay (which is deemed to be an order of this Bankruptcy
8 Court), and (b) any other order of this Bankruptcy Court, such as an order modifying the
9 stay. This is no different from the State Court interpreting the orders of any other court,
10 as it does all the time.

11 In other words, the State Court need not halt its proceedings every time any
12 litigant asserts that the automatic stay might apply. See 28 U.S.C. § 1334(b) (federal
13 District Courts, and the Bankruptcy Courts as a unit thereof, have "original but not
14 exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related
15 to cases under title 11") (emphasis added), *In re Gruntz*, 202 F.3d 1074, 1083-84 (9th
16 Cir. 2000) (distinguishing State Court orders "modifying the automatic stay" from those
17 "merely interpreting federal law").

18 Of course, it is up to the State Court, in the exercise of its judgment, to assess
19 whether the risks of proceeding are outweighed by the benefits. See *Gruntz*, 202 F.3d
20 1074, 1087 (if State Court proceeds without order of Bankruptcy Court, the former "risks
21 having its final judgment declared void"). Meanwhile, again, this Bankruptcy Court will
22 make every effort to grant speedy rulings on any issue that might arise involving the
23 automatic stay.

24 **3. CONCLUSION**

25 For all of the foregoing reasons, the automatic stay applies under § 362(a)(3), but
26 there is "cause" for relief from the automatic stay under § 362(d)(1). Such relief should
27 take the form of modifying the automatic stay as set forth above.

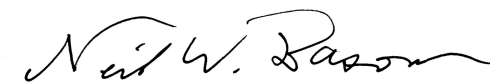
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1 As set forth in more detail above, the parties can proceed with their State Court
2 litigation to final judgments or orders. But the automatic stay remains in place to
3 prevent collection of any monetary judgment out of the bankruptcy estate or disposition
4 of estate property, absent further order of this Bankruptcy Court.

5 This Court will issue separate orders granting the Stay Motion and R/S Motion.
6 The Choi Faction is directed to lodge proposed orders for each of the foregoing motions
7 within seven days after entry of this Memorandum Decision on the docket.

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24 Date: April 21, 2020



Neil W. Bason
United States Bankruptcy Judge