

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 10, 2016

Hearing Room 301

1:00 PM

1:15-12767 4221 Clearvalley, LLC

Chapter 11

#1.00 Confirmation hearing re first amended chapter 11 plan of reorganization

fr. 8/4/16; 9/15/16

Docket 93

Tentative Ruling:

Confirm Debtor's First Amended Chapter 11 Plan of Reorganization [doc. 93]. No later than **April 27, 2017**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **May 11, 2017 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Party Information

Debtor(s):

4221 Clearvalley, LLC

Represented By
M Jonathan Hayes
Roksana D. Moradi

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1:15-12767 4221 Clearvalley, LLC

Chapter 11

#2.00 Status conference re chapter 11 case

fr. 11/5/15; 1/7/16; 2/4/16; 3/10/16(stip); 4/14/16; 6/16/16
8/4/16; 9/15/16

Docket 1

Tentative Ruling:

Is the debtor current with the payment of fees to the United States Trustee?

Party Information

Debtor(s):

4221 Clearvalley, LLC

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
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1:15-13041 Xfire Holding Inc

Chapter 11

#3.00 Post confirmation status conference re chapter 11 case
fr. 11/19/15; 12/30/15; 5/5/16

Docket 1

Tentative Ruling:

On April 15, 2016, the Court entered an order of discharge in this chapter 11 case [doc. 141]. In the status report filed on April 21, 2016 [doc. 144], the reorganized debtor stated that the plan had been consummated and that it intended to apply for a final decree on or before May 30, 2016. As of November 9, 2016, no application for final decree has been filed.

In its prior tentative ruling, the Court continued the post-confirmation status conference to November 10, 2016 at 1:00 p.m. A post-confirmation status report was due on October 27, 2016. However, reorganized debtor did not file a timely status report.

The Court will issue an Order to Show Cause why the Court should not enter a final decree in this case.

Party Information

Debtor(s):

Xfire Holding Inc

Represented By
Lance N Jurich

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1:16-10024 Paulette Vonetta Moses

Chapter 11

#4.00 Status conference re chapter 11 case

fr. 3/3/16; 8/25/16; 9/15/16

Docket 1

***** VACATED *** REASON: Rescheduled for 2:00 p.m. calendar**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulette Vonetta Moses

Represented By
Donna Rebecca Dishbak

**United States Bankruptcy Court
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1:00 PM

1:16-10073 Shahla Dowlati

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 3/3/16; 9/15/16

Docket 1

Tentative Ruling:

Has the debtor filed her 2015 income tax returns?

If so, she has yet to file her 2015 federal income tax return with the Court, in accordance with the Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case, entered on January 20, 2016 [doc. 18].

Party Information

Debtor(s):

Shahla Dowlati

Represented By
Michael Jay Berger

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Central District of California
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1:00 PM

1:16-10486 Robert Marshall

Chapter 11

#6.00 Status conference re: chapter 11 case
fr. 5/5/16; 09/08/16; 9/15/16; 10/20/16

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:00 p.m. on December 1, 2016**, to be held in connection with the hearing on the adequacy of the debtor's disclosure statement [doc. 80].

Appearances are excused on November 10, 2016.

Party Information

Debtor(s):

Robert Marshall

Represented By
M Jonathan Hayes

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1:16-12820 Mike Torabi

Chapter 13

#7.00 Order to show cause re: disability and inability to receive credit counseling briefing pursuant to 11 U.S.C. § 109(h)(1)

Docket 10

***** VACATED *** REASON: Order of dismissal entered 11/9/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mike Torabi Sr

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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2:00 PM

1:14-11024 Royal Dining Catering, Inc.

Chapter 7

#8.00 Litigation Trustee, John J. Menchaca's motion for order extending time to file avoidance actions under 11 U.S.C. § 546

from: 8/25/16; 9/22/16(stip)

Docket 902

Tentative Ruling:

In light of the status of this case and the chapter 7 trustee's filing of a no asset report, to the extent the litigation trustee is still requesting an extension, the Court will extend the deadline to file avoidance actions to **November 30, 2016**.

Party Information

Debtor(s):

Royal Dining Catering, Inc.

Represented By
Danielle A Pham
Eve H Karasik
Eric D Goldberg
Robert P Goe

Trustee(s):

Diane Weil (TR)

Pro Se

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1:16-10024 Paulette Vonetta Moses

Chapter 7

#9.00 Trustee's emergency motion for order
(1) Requiring debtor and persons acting under her direction including Gautam Kumar, CPA for immediate turnover of all estate assets pursuant to 11 U.S.C. 542 and FRBP 1019(4); and
(2) Requiring debtor to comply with debtor's duties pursuant to 11 U.S.C. section 521(a)

fr. 10/24/16

Docket 139

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulette Vonetta Moses

Represented By
Donna R Dishbak

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas

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1:16-10024 Paulette Vonetta Moses

Chapter 7

#10.00 Motion of Dishbak Law Firm to withdraw as counsel of record for debtor

Docket 143

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Paulette Vonetta Moses

Represented By
Donna R Dishbak

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas

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1:16-10024 Paulette Vonetta Moses

Chapter 7

#11.00 Debtor's motion to stay order of conversion and chapter 7 Trustee estate liquidation, entered on 9/26/2016 converting chapter 11 case to chapter 7 pending appeal resolution

Docket 154

Tentative Ruling:

Deny.

I. BACKGROUND

On January 6, 2016, Paulette Vonetta Moses ("Debtor") filed a voluntary chapter 11 petition.

On September 1, 2016, the U.S. Trustee (the "UST") filed a motion to convert the case to one under chapter 7 (the "Motion to Convert") [doc. 105]. On September 22, 2016, the Court issued a ruling on the Motion to Convert (the "Ruling") [doc. 119]. On September 26, 2016, the Court entered an order converting this case to one under chapter 7 (the "Conversion Order") [doc. 121]. Subsequently, Amy L. Goldman was appointed the chapter 7 trustee (the "Trustee").

On October 11, 2016, Debtor appealed the Conversion Order [doc. 134]. On October 17, 2016, Debtor filed a motion to stay the Conversion Order pending appeal (the "Motion") [doc. 154]. Through the Motion, Debtor requests a stay of the Conversion Order on the basis that Debtor and her tenants will face irreparable harm if the Trustee liquidates the estate. The Trustee, the UST and creditors U.S. Bank, N.A. and Real Time Resolution, Inc. all opposed the Motion [docs. 174, 175, 178, 182].

II. ANALYSIS

Pursuant to Fed. Rule of Bankr. P. ("FRBP") 8007(a)(1)(A), "[o]rdinarily, a party must move first in the bankruptcy court for...a stay of judgment, order, or decree of the bankruptcy court pending appeal."

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Chapter 7

"A court has considerable discretion when determining whether to issue a stay pending appeal." *In re GGW Brands, LLC*, 2013 WL 6906375, at *10 (Bankr. C.D. Cal Nov. 15, 2013) (citing to *Nken v. Holder*, 556 U.S. 418, 433-34, 129 S.Ct. 1749, 1761, 173 L.Ed.2d 550 (2009)). "Although the decision whether to stay proceedings is dependent on the circumstances of the particular case, '[a] discretionary stay should be sparingly employed and reserved for the exceptional situation.'" *GGW Brands*, at *10 (citing *In re O'Kelley*, 2010 WL 3984666, at *4 (D. Haw. 2010)). The party requesting a stay { "pageset": "S63 bears the burden of "showing that the circumstances justify an exercise of that discretion." *Nken*, at 433-34.

The court considers four factors when determining whether to issue a stay pending appeal:

1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits
2. Whether the applicant will be irreparably harmed
3. Whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. Where the public interest lies

Id., at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); see also *In re N. Plaza, LLC*, 395 B.R. 113, 119 (S.D. Cal. 2008)

The four factors may be weighed in a sliding scale, "where a stronger showing of one element may offset a weaker showing of another" *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

A. Whether Debtor is Likely to Succeed on the Merits

"While it is not necessary for [movant] to show that it is more likely than not that it will win on the merits, 'at a minimum' the petitioner must show that there is a 'substantial case for relief on the merits.'" *In re Blixseth*, 509 B.R. 701, 706 (Bankr. D. Mont. 2014) (quoting *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012)). "[I]t is not enough that the likelihood of success on the merits is 'better than negligible' or that there is a 'mere possibility of relief.'" *Lair*, at 1204 (9th Cir. 2012) (quoting *Nken*,

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556 U.S. at 434).

Chapter 7

Debtor has not shown that she will be likely to succeed on the merits. The Ruling set forth the basis of the Court's decision to convert this case. Pursuant to 11 U.S.C. § 1112(b)(1), (b)(4)(A) and (b)(4)(B), the Court found cause to convert based on Debtor's dissipation of estate assets, mismanagement of the estate and failure to disclose property of the estate. Debtor does not dispute these findings. Moreover, the Court found conversion was in the best interest of creditors because dismissal would likely result in further dissipation of assets and creditors would benefit most from a chapter 7. Debtor also does not dispute these findings in the Motion.

In fact, Debtor does not discuss her likelihood of success on appeal at all, aside from a blanket statement that the UST did not meet his burden of proof in the Motion to Convert. The Court converted this case based on settled authority which requires that the Court find that there is cause to convert and that conversion is in the best interest of creditors. The Court made findings as to both elements in the Ruling [doc. 119]. Debtor is not likely to succeed on the merits. As such, this factor weighs against staying the Conversion Order.

B. Whether Debtor Will Be Irreparably Harmed

As a threshold requirement, the movant must always show that irreparable harm is probable. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011) (It is a "bedrock requirement that stays must be denied to all petitioners who did not meet the applicable irreparable harm threshold, regardless of their showing on the other stay factors."). Conversely, however, "even certainty of irreparable harm has never *entitled* one to a stay." *Id.* (emphasis in original).

Debtor has not demonstrated that she will be irreparably harmed. The Motion is based, for the most part, on speculative harm to Debtor's tenants. However, Debtor has not explained why she is better suited than the Trustee to operate the properties and engage with tenants. Moreover, this factor involves analysis of harm to the *petitioner*, which in this case is Debtor. Debtor has not demonstrated any harm to her from the conversion of the case. As such, this factor also weighs in favor of denying the Motion.

C. Whether the Stay Will Substantially Injure Other Parties

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Chapter 7

A stay of the Conversion Order would substantially injure creditors of the estate. A stay would allow Debtor to continue using estate assets without any oversight, which would result in further dissipation of assets. A stay also may significantly delay distribution of assets to creditors and resolution of this case. Moreover, staying the Conversion Order could injure tenants of Debtor's properties by causing a lengthy period of uncertainty regarding the management of the real properties in the estate. This factor also weighs in favor of denying the Motion.

D. Where the Public Interest Lies

To the extent that the public interest factor is applicable, prompt administration is a "chief purpose" of the bankruptcy laws, and generally, the public interest weighs against a stay, and in favor of moving forward with the case. FRBP 1001 (stating that the Federal Rules of Bankruptcy Procedure "shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding"); *Katchen v. Landy*, 382 U.S. 323, 328, 86 S.Ct. 467, 472, 15 L.Ed.2d 391 (1966) ("[T]his Court has long recognized that a chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration and settlement of estate of all bankrupts within a limited period.'"); *Dynamic Fin. Corp. v. Kipperman*, 395 B.R. 113, 127 (S.D. Cal. 2008) (finding that "public interest in speedy and accurate bankruptcy proceedings warrants denying the application for stay of the bankruptcy court's Order") (emphasis omitted); *In re Trident Shipworks, Inc.*, 243 B.R. 130 (Bankr. M.D. Fla. 1999) (noting the "well recognized principle" that requires expeditious administration of bankruptcy estates).

Here, public interest weighs heavily in favor of denying the Motion. As noted above, staying this proceeding will considerably delay this case. Moreover, imposing a stay would allow Debtor to continue dissipating the estate's assets, instead of distributing assets to creditors. The public interest lies in ensuring complete and honest reporting to the Court and creditors of the estate, culminating in a fair distribution to creditors. This result cannot be achieved by staying the Conversion Order.

Based on the above, all factors weigh against staying the Conversion Order. Consequently, the Court will deny the Motion.

III. CONCLUSION

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Chapter 7

The Court will deny the Motion.

The UST must submit an order within seven (7) days.

Party Information

Debtor(s):

Paulette Vonetta Moses

Represented By
Donna R Dishbak

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas
Annie Verdries

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1:16-10024 Paulette Vonetta Moses

Chapter 7

#12.00 Debtor's motion for order reconverting chapter 7 case to chapter 11

Docket 156

Tentative Ruling:

Deny.

On January 6, 2016, Paulette Vonetta Moses ("Debtor") filed a voluntary chapter 11 petition. On September 26, 2016, the Court entered an order converting this case to one under chapter 7 (the "Conversion Order") [doc. 121]. On October 11, 2016, Debtor filed a Notice of Appeal of the Conversion Order [doc. 134]. Subsequently, on October 17, 2016, Debtor filed this motion to re-convert her case to chapter 11 (the "Motion") [doc. 156].

"The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 402, 74 L.Ed.2d 225 (1982); *see also Trulis v. Barton*, 107 F.3d 685, 694-95 (9th Cir. 1995).

[A] trial court may not interfere with the appeal process or with the jurisdiction of the appellate court. It is equally established, however, that while an appeal of an order is pending, the trial court retains jurisdiction to implement or enforce the order. This is true because in implementing an appealed order, the court does not disrupt the appellate process so long as its decision remains intact for the appellate court to review. Accordingly, courts have recognized a distinction between acts undertaken to enforce the judgment, which are permissible, and acts which expand upon or alter it, which are prohibited.

In re Hagel, 184 B.R. 793, 798 (B.A.P. 9th Cir. 1995).

Here, Debtor appealed the Conversion Order. The appeal is currently pending before

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Chapter 7

the District Court. Debtor is asking this Court to address the same issues that are before the District Court. However, the filing of the appeal divested this Court of jurisdiction over this matter. As a result, the Court will deny the Motion on the basis that this Court lacks jurisdiction to hear the issues raised in the Motion.

The United States Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Paulette Vonetta Moses

Represented By
Donna R Dishbak

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas
Annie Verdries

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Chapter 7

#12.10 Application to employ paraprofessionals
and establish fee procedure

Docket 132

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Paulette Vonetta Moses

Represented By
Donna R Dishbak

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas
Annie Verdries

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1:16-10024 Paulette Vonetta Moses

Chapter 11

#13.00 Status conference re chapter 11 case

fr. 3/3/16; 8/25/16; 9/15/16

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulette Vonetta Moses

Represented By
Donna Rebecca Dishbak

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1:16-12097 N.E. Designs, Inc.

Chapter 11

#14.00 Application of Debtor and Debtor in Possession pursuant to Bankruptcy Code sections 327(e) and 1107; FRBP 2014; and LBR 2014-1; for order authorizing employment of Fischbach & Fischbach as Special Counsel

fr. 9/22/16; 10/20/16(stip)

Docket 26

Tentative Ruling:

Does the debtor or its principal intend to file a motion to annul the automatic stay? If so, when? Until a motion to annul the automatic stay is before the Court, the Court is not inclined to approve this application.

The Court also questions the explained rationale for the proposed allocation of fees between the debtor and its principal.

9/22/2016 Tentative:

Given the prepetition entry of the state court judgment, what services will the proposed special counsel ("Proposed Counsel") be providing postpetition? If the debtor seeks to appeal the judgment, the debtor must obtain relief from the automatic stay. *See Parker v. Bain*, 68 F.3d 1131, 1135-36 (9th Cir. 1995); and *In re Capgro Leasing Associates*, 169 B.R. 305, 311 (Bankr. E.D.N.Y. 1994) ("[N]o party to the action may appeal absent relief from the automatic stay. Because no entity, including a debtor, may limit or waive the stay, nor appeal during the stay's pendency, the only option is to obtain relief from the stay, and this may only be sought from the bankruptcy judge.").

Will Proposed Counsel be representing other judgment debtors as well? If so, how will Proposed Counsel allocate fees and expenses among multiple clients?

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CONT... N.E. Designs, Inc.

Chapter 11

Debtor(s):

N.E. Designs, Inc.

Represented By
Sandford Frey
Stuart I Koenig

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1:16-12097 N.E. Designs, Inc.

Chapter 11

#15.00 Debtor motion for order authorizing debtor to pay insider compensation
fr. 9/22/16; 11/3/16(stip)

Docket 40

Tentative Ruling:

On October 27, 2016, the debtor filed the Declaration of Eran Gispan (the "Declaration") [doc. 85] in support of its motion for an order authorizing payment of insider compensation to insiders Eran and Nathalie Gispan (the "Gispans"). Attached to the Declaration is the following: (1) the debtor's profit and loss statement for the period between January 1, 2016 and July 20, 2016; (2) the debtor's profit and loss overview for the period between July 21, 2016 and January 31, 2017; and (3) the Gispans' 2015 tax return.

The debtor contends that this supplemental evidence supports a combined monthly salary of \$35,000 to the Gispans. However, as reflected by the debtor's own evidence, this amount is not in line with the Gispans' prepetition monthly salary. For the year 2015, the Gispans' combined yearly salary was \$125,000, or approximately \$10,416.67 per month. The Gispans have not provided any evidence of the amount of benefits received in 2015.

For the prepetition period in 2016, the Gispans received \$85,000, or approximately \$12,781.95 per month. Exhibit 1 to the Declaration also reflects payment by the debtor of certain benefits, although the debtor does not specify which benefits were paid to the Gispans and which benefits were paid to other employees of the debtor. Assuming the automobile expenses were paid for the benefit of the Gispans alone, this would amount to an additional \$3,832.27 per month in benefits to the Gispans prepetition. The debtor has not specified any other benefits paid to the Gispans.

Taking the 2016 monthly salary of \$12,781.95 and adding the monthly benefits of \$3,832.27 yields \$16,614.22 in *combined* salary for the Gispans. The debtor has not provided sufficient evidence justifying the requested \$35,000 per month, which is

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Chapter 11

much higher than the prepetition \$16,614.22 apparently received by the Gispan.

In light of the Gispan's prepetition salary and benefits, the Court finds aggregate insider compensation of \$20,000 per month is a reasonable amount in compensation to the Gispan.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

N.E. Designs, Inc.

Represented By
Sandford Frey
Stuart I Koenig

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Chapter 11

#16.00 Application of Debtor and Debtor in Possession Pursuant to Bankruptcy Code Sections 327(a) and 1107; FRBP 2014; and LBR 2014-1 for Order Authorizing Employment of Law Offices of Kathryn M. Davis as Special Counsel

Docket 63

Tentative Ruling:

If the debtor seeks to appeal the judgment, the debtor must obtain relief from the automatic stay. *See Parker v. Bain*, 68 F.3d 1131, 1135-36 (9th Cir. 1995); and *In re Capgro Leasing Associates*, 169 B.R. 305, 311 (Bankr. E.D.N.Y. 1994) ("[N]o party to the action may appeal absent relief from the automatic stay. Because no entity, including a debtor, may limit or waive the stay, nor appeal during the stay's pendency, the only option is to obtain relief from the stay, and this may only be sought from the bankruptcy judge.").

Does the debtor or its principal (as a co-judgment debtor) intend to file a motion to annul the automatic stay? If so, when? Until a motion to annul the automatic stay is before the Court, the Court is not inclined to approve this application.

The Court also questions the explained rationale for the proposed allocation of fees between the debtor and its principal, Eran Gispan.

Party Information

Debtor(s):

N.E. Designs, Inc.

Represented By
Sandford Frey
Stuart I Koenig