

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Thursday, October 21, 2021

Hearing Room 302

10:00 AM

1:00-00000

Chapter

#0.00 This calendar will be conducted remotely, using ZoomGov video and audio.

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Meeting ID: 161 489 9915

Password: 705297

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Thursday, October 21, 2021

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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

#0.01 Ex parte Motion of Debtor for Order Continuing Hearing
1) City of Los Angeles Motion for relief /Motion to Dismiss Chapter 11
2)State of California's Motion to Dismiss Ch. 11
Request for Evidentiary Hearings and Time to Conduct
Discovery

Docket 88

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01052 Harbour Community, L.P., a California limited part v. California Department

#0.02 Ex parte Motion of Debtor for Order Continuing Hearing
California Department of Housing and Community Development a
Public Entity Motion for Remand; Request for Evidentiary Hearings and Time to
Conduct Discovery

Docket 18

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

California Department of Housing

Represented By
Norma N Franklin

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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10:00 AM

1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01053 Harbour Community, L.P., a California limited part v. City Of Los Angeles,

#0.03 Ex parte Motion of Debtor for Order Continuing Hearing
City of Los Angeles Motion for Remand; Request for Evidentiary Hearings and
Time to Conduct Discovery

Docket 18

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

City Of Los Angeles, Acting

Represented By
Wendy A Loo

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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10:00 AM

1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

#1.00 Motion to Dismiss Chapter 11 Case

Docket 59

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Motion to Dismiss:

§ 1112(b) generally requires a bankruptcy court to dismiss, convert, or appoint a chapter 11 trustee or examiner if it finds "cause." See 11 U.S.C. § 1112(b)(1); see also *In re Prods. Int'l Co.*, 395 B.R. 101, 108 (Bankr. D. Ariz. 2008); 7 *Collier on Bankruptcy*, ¶ 1112.04[7] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2013). This is a two-step process, first the court has to determine if cause existed to act under § 1112(b); and second, if cause existed, it had to determine which remedy, conversion or dismissal, was in the best interest of creditors. See *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. BAP 2006); see also *In re Prods. Int'l Co.*, 395 B.R. at 108.

In finding "cause" sufficient to satisfy the first step of the two-step test, the types of cause enumerated in § 1112(b)(4) are not exhaustive. *St. Paul Self Storage Ltd. P'ship v. Port Authority (In re St. Paul Self Storage Ltd. P'Ship)*, 185 B.R. 580, 582 (9th Cir. BAP 1995); see also *Bronson v. Thompson (In re Bronson)*, 2013 Bankr. Lexis 4652 (*23) (BAP 9 Cir. 2013). Bankruptcy courts enjoy wide latitude in determining whether the facts of a particular case constitute cause for conversion or dismissal under § 1112(b). See *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (9th Cir. BAP 2000), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

In determining whether cause exists under § 1112(b), the bankruptcy court must balance the debtor's continuing desire to remain in chapter 11 against the prospects for a successful reorganization. Even before all confirmation-related litigation has played out, when it becomes apparent to the court that the debtor will not be able to confirm and effectuate a plan within the foreseeable future, the bankruptcy court should exercise its discretion under § 1112(b) to dismiss or convert. *In re Bronson* at (*27); see

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also 7 Collier on Bankruptcy, supra, at ¶ 1112.04[5].

A bad faith filing of a bankruptcy petition constitutes "cause" for dismissal under §1112(b). In re Marsch, 36 F.3d 825, 828 (9th Cir. 1994). The bad faith analysis focuses on whether a debtor is attempting "to effect a speedy, efficient reorganization on a feasible basis" or "to unreasonably deter and harass creditors." Id. A petition is filed in bad faith if a debtor seeks to "achieve objectives outside the legitimate scope of the bankruptcy laws." Id.

Bad faith depends on an amalgam of factors and no specific factor is determinative. In re Arnold, 806 F.2d 937, 939 (9th Cir. 1986). A bankruptcy court may consider any factor which demonstrates an abuse of the bankruptcy process and the purpose of reorganization. In re Marshall, 721 F.3d 1032, 1048 (9th Cir. 2013). A finding of bad faith is made on a case by case basis, there is no list of factors which must be present in each case to make the finding, and the weight given to any particular factor depends on the circumstances of the individual case. In re Can-Alta Props., Ltd., 87 B.R. 89, 91 (9th Cir. BAP 1988); In re Thirtieth Place, 30 B.R. 504, 506 (9th Cir. BAP 1983).

The factors which are usually present in cases not filed in good faith and which may be considered in a motion to dismiss for cause:

- (1) The debtor has only one asset.
- (2) The secured creditors' lien encumbers that asset.
- (3) There are generally no employees except for the principals.
- (4) There is little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments.
- (5) There are few, if any, unsecured creditors whose claims are relatively small.
- (6) There are allegations of wrongdoing by the debtor or its principals.
- (7) The debtor is afflicted with the "new debtor syndrome" in which a one-asset equity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors.
- (8) Bankruptcy offers the only possibility of forestalling loss of the

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**CONT... Harbour Community, L.P., a California limited part
property.**

Chapter 11

In re Stolrow's, Inc., 84 B.R. 167, 171 (BAP 9th Cir. 1988)

The Court is going to continue this motion to a date to be determined at the hearing on October 21, 2021. The factors that are used to determine are present here, the Debtor is a single asset real estate case, filing of the bankruptcy was the last and only option to stop foreclosure sales (the State Court recently denied a motion for preliminary injunction). It is unclear if there are generally no employees, and the unsecured creditor class is small as compared to the State and City. The factual disputes seem to be significant and highly contested, however, leading the court to need more information.

This case is relatively new and there has been a lot of contentious litigation at the outset of this case. This litigation, particularly the motion for relief of stay and the motion to extend exclusivity to file a plan, will allow the Debtor to understand what its obligations are. After these motions are resolved, the Debtor can focus on drafting, proposing, and confirming a plan. The Debtor should be afforded the opportunity to reorganize if there is truly a possibility or such reorganization and not have its' bankruptcy case dismissed at the outset. Section 362(d)(3) contemplates at least the limited time that section gives a SARE. If after given this time, the Debtor is not actively proceeding to confirm a plan, then dismissal maybe warranted. Accordingly, the motion to dismiss will be continued.

The issue of notice is irrelevant because the Debtor was notified of the motion (and the continuance of the motion) and responded. In addition, the motion is being continued, ameliorating any possible prejudice.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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Central District of California
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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

#2.00 Motion For Order Nunc Pro Tunc to August 3, 2021
Petition Date Designating Debtor as Single Asset Real Estate
Debtor Under 11 U.S.C. sec. 101(51B)

Docket 52

Matter Notes:

- NONE LISTED -

Tentative Ruling:

"Nun pro tunc signifies now for then, or in other words, a thing is done now, which shall have the same legal force and effect as if done at [the] time when it ought to have been done." *United States v. Allen*, 153 F.3d 1037, 1044 (9th Cir. 1998) (quoting *Black's Law Dictionary* 964 (5th ed. 1979)); see also *Nisenan Tribe of the Nev. City Rancheria v. Jewell*, 650 Fed. Appx. 497 (9th Cir. 2015). The Supreme Court in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S. Ct. 696, 700-01 (2020) stated:

Federal courts may issue nunc pro tunc orders, or "now for then" orders, *Black's Law Dictionary*, at 1287, to "reflect the reality" of what has already occurred, *Missouri v. Jenkins*, 495 U.S. 33, 49, 110 S.Ct. 1651, 109 L.Ed.2d 31 (1990). "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court." *Cuebas y Arredondo v. Cuebas y Arredondo*, 223 U.S. 376, 390, 32 S.Ct. 277, 56 L.Ed. 476 (1912).

Put colorfully, "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States v. Gillespie*, 666 F.Supp. 1137, 1139 (N.D. Ill. 1987). Put plainly, the court "cannot make the record what it is not." *Jenkins*, 495 U.S. at 49, 110 S.Ct. 1651.

The City seeks a nunc pro tunc order to have the Debtor designated as a single asset real estate case from the petition date. Debtor opposes.

This case was originally filed as a Sub-Chapter V bankruptcy case. When the Debtor realized it did not qualify for Sub-Chapter V treatment, the case

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CONT... Harbour Community, L.P., a California limited part Chapter 11

proceeded as a general chapter 11. The City raised the issue of this being a single asset real estate case as defined by Section 101(51)(b) at the first hearing in this matter. Debtor opposes the nunc pro tunc order because of the time frame laid out by section 362(d)(3).

A nunc pro tunc order is appropriate here. There is simply no dispute that this is a single asset real estate case. This was a single asset real estate case from the date petition was filed as the Debtor's circumstances have not changed since the outset of the filing. This is not creating facts that never occurred; rather, this is correcting a major error made by Debtor at the outset of this case. If nunc pro tunc order were not entered correcting the Debtor's designation, then single asset real estate debtors could easily abuse the bankruptcy system in order to buy more time. That does not appear to be the intent of the statute as explained in the other rulings.

Motion Granted.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

#3.00 Motion to Extend Exclusivity Period for Filing a Chapter 11
Plan and Disclosure Statement

Docket 50

Matter Notes:

- NONE LISTED -

Tentative Ruling:

11 U.S.C 362

"Single asset real estate" is defined as real property consisting of a single property or project, other than a residential property with fewer than four units, which generates substantially all of the gross income of a debtor who is not a family farmer, on which no substantial business is being operated other than operating the real property. 11 USC § 101(51B). There is no dispute between the parties that this is a single asset real estate case.

Section 362(d) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A)the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

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Chapter 11

(B) the debtor has commenced monthly payments that—

- (i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
- (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate;

...

The purpose of section 362(d)(3) is to address perceived abuses in single asset real estate cases, in which debtors have attempted to delay mortgage foreclosures even when there is little chance that they can reorganize successfully. See S. Rep. No. 168, 103d Cong., 1st Sess. (1993) ("This amendment will ensure that the automatic stay provision is not abused, while giving the debtor an opportunity to create a workable plan of reorganization."); 140 Cong. Rec. 10764 (daily ed. October 4, 1994), *reprinted in* App. Pt. 9(b) (statements of Rep. Brooks, chairperson of the House Judiciary Committee) ("Without bankruptcy reform, companies, creditors, and debtors alike will continue to be placed on endless hold until their rights and obligations are adjudicated under the present system—and that slows down new ventures, new extensions of credit and new investments.") Section 362(d)(3) attempts to shorten such cases by requiring that the court grant relief from the stay if a reasonable plan is not filed promptly or payments are not commenced. Relief under 362(d)(3) is mandatory where its provisions are not strictly complied with. See Centofante v. CBJ Dev. (In Re CBJ Dev.) 202 B.R. 467 (BAP 9th Cir. 1996); Leeward Subdivision Partners, LLC v. GDR Lending, LLC (In re Leeward Subdivision Partners, LLC) 2010, Bankr. LEXIS 5100.

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CONT... Harbour Community, L.P., a California limited part Chapter 11

There is no basis for extending the exclusivity period. Debtor needs to either file a plan of reorganization by the 90 day deadline or make interest payments. Parties should come prepared to discuss what the applicable interest payment amounts will be.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 302 Calendar**

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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

#4.00 Chapter 11 status conference

fr. 9/8/21, 9/22/21

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Appearance Required.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01052 Harbour Community, L.P., a California limited part v. California Department

#4.01 Status Conferece re: Notice of Removal

fr. 9/29/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued to October 21, 2021 at 10:00am
No Appearance Required.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

California Department of Housing

Pro Se

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01052 Harbour Community, L.P., a California limited part v. California Department

#4.02 Motion for Remand Defendants California Department
of Housing And Community Development And Gustavo Velasquez

fr. 10/20/21

Docket 5

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Appearance Required

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

California Department of Housing

Represented By
Norma N Franklin

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
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Thursday, October 21, 2021

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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01052 Harbour Community, L.P., a California limited part v. California Department

#5.00 Motion For Order Staying Litigation between Debtor and California Dept Of Housing and Community Development, A Public Entity

Docket 9

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Standard:

"A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "This rule . . . does not require that the issues in such proceedings are necessarily controlling of the action before the court." *Id.* at 863—64. That being said, while a court's discretion to stay matters pending before it is broad, such discretion is not "unfettered." See *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). For instance, "'if there is even a fair possibility that the stay . . . will work damage to someone else,' the stay may be inappropriate absent a showing by the moving party of 'hardship or inequity.'" *Id.* (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)). The length of a stay must be proportionate to "the strength of the justification given for it." See *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). A greater showing is required to justify especially long stays, or those of "indefinite" term. *Id.*; *First Alliance Mortg. Co. v. First Alliance Mortg. Co.*, 264 B.R. 634 (C.D. Cal. 2001).

In order to determine whether staying litigation under its inherent authority is proper, a district court should weigh the following competing interests:

1. The possible damage that may result from granting a stay.
2. The hardship or inequity that a party may suffer if required to litigate.
3. How a stay would affect the "orderly course of justice," including whether it

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would simplify or complicate factual and legal issues in the pending litigation.

Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 (9th Cir. 2005).

In Clinton v. Jones, the United States Supreme Court has acknowledged that "[t]he proponent of a stay bears the burden of establishing its need." 520 U.S. 681, 708, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997). Lockyer further clarified that "if there is even a fair possibility that the stay . . . will work damage to someone else, the party seeking the stay must make out a clear case of hardship or inequity." Lockyer, 398 F.3d at 1112; see also Cisco Sys. V. Wilson Chung, 462 F.Supp. 3d 1024 (N.D. Cal. 2020)

Further, under 11 U.S.C. § 105(a), bankruptcy courts have the legal authority to enjoin prosecution even of governmental actions that fall within the regulatory and police powers exception. Section 105(a) provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Legislative history and case law suggest that it is not impossible for § 105(a) to be used to enjoin even a regulatory or police powers action. See H.R. Rep. No. 95-595, at 342 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6298 ("The effect of the [police powers] exception is not to make the action immune from injunction. The court has ample other powers to stay actions not covered by the automatic stay. Section 105 . . . grants the power to issue such as an injunction. First Alliance Mortg. Co. v. First Alliance Mortg. Co., 264 B.R. 634, 652-53 (C.D. Cal. 2001).

A movant requesting a preliminary injunction usually must show (1) a likelihood of success on the merits; (2) irreparable injury; (3) that the balance of hardships tips in the movant's favor; and (4) that the requested injunction is in the public interest. *Id.*

Whether it be the Court's inherent authority to control its docket or under section 105, staying the litigation is not appropriate. First, this case has been around for almost two years in the State Court and was delayed due to Covid-19. Further delaying this case would be burdensome for the parties and the judicial system. Second, this case needs to be resolved in order to effectuate any confirmed plan. To proceed in any real way with the bankruptcy case, the litigation in this case must be resolved. Finally, the State

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and the City have already raised concerns about the Plaintiff delaying the case and foreclosure. To stay the litigation for an indefinite time to allow the bankruptcy to proceed would be unjustly fair to the concerns of the State and City. Accordingly, the motion to stay the litigation is denied.

In the event the motion for remand is granted, then this motion will be denied as moot.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

California Department of Housing

Represented By
Norma N Franklin

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01053 Harbour Community, L.P., a California limited part v. City Of Los Angeles,

#5.01 Status Conference re: Notice of Removal

fr. 9/29/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued to October 21, 2021 at 10:00am
No Appearance Required.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

City Of Los Angeles, Acting

Pro Se

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01053 Harbour Community, L.P., a California limited part v. City Of Los Angeles,

#5.02 Motion for Remand

fr. 10/20/21

Docket 5

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Appearance Required

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

City Of Los Angeles, Acting

Represented By
Wendy A Loo

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
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1:21-11313 Harbour Community, L.P., a California limited part

Chapter 11

Adv#: 1:21-01053 Harbour Community, L.P., a California limited part v. City Of Los Angeles,

#6.00 Motion Of Debtor For Order Staying Litigation Between Debtor and City Of LA Actiing Trhough Its LA Housing & Community Development Investment Department

Docket 9

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Standard:

"A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "This rule . . . does not require that the issues in such proceedings are necessarily controlling of the action before the court." *Id.* at 863—64. That being said, while a court's discretion to stay matters pending before it is broad, such discretion is not "unfettered." See *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). For instance, "'if there is even a fair possibility that the stay . . . will work damage to someone else,' the stay may be inappropriate absent a showing by the moving party of 'hardship or inequity.'" *Id.* (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)). The length of a stay must be proportionate to "the strength of the justification given for it." See *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). A greater showing is required to justify especially long stays, or those of "indefinite" term. *Id.*; *First Alliance Mortg. Co. v. First Alliance Mortg. Co.*, 264 B.R. 634 (C.D. Cal. 2001).

In order to determine whether staying litigation under its inherent authority is proper, a district court should weigh the following competing interests:

1. The possible damage that may result from granting a stay.
2. The hardship or inequity that a party may suffer if required to litigate.
3. How a stay would affect the "orderly course of justice," including whether it

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would simplify or complicate factual and legal issues in the pending litigation.

Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 (9th Cir. 2005).

In Clinton v. Jones, the United States Supreme Court has acknowledged that "[t]he proponent of a stay bears the burden of establishing its need." 520 U.S. 681, 708, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997). Lockyer further clarified that "if there is even a fair possibility that the stay . . . will work damage to someone else, the party seeking the stay must make out a clear case of hardship or inequity." Lockyer, 398 F.3d at 1112; see also Cisco Sys. V. Wilson Chung, 462 F.Supp. 3d 1024 (N.D. Cal. 2020)

Further, under 11 U.S.C. § 105(a), bankruptcy courts have the legal authority to enjoin prosecution even of governmental actions that fall within the regulatory and police powers exception. Section 105(a) provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Legislative history and case law suggest that it is not impossible for § 105(a) to be used to enjoin even a regulatory or police powers action. See H.R. Rep. No. 95-595, at 342 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6298 ("The effect of the [police powers] exception is not to make the action immune from injunction. The court has ample other powers to stay actions not covered by the automatic stay. Section 105 . . . grants the power to issue such as an injunction. First Alliance Mortg. Co. v. First Alliance Mortg. Co., 264 B.R. 634, 652-53 (C.D. Cal. 2001).

A movant requesting a preliminary injunction usually must show (1) a likelihood of success on the merits; (2) irreparable injury; (3) that the balance of hardships tips in the movant's favor; and (4) that the requested injunction is in the public interest. *Id.*

Whether it be the Court's inherent authority to control its docket or under section 105, staying the litigation is not appropriate. First, this case has been around for almost two years in the State Court and was delayed due to Covid-19. Further delaying this case would be burdensome for the parties and the judicial system. Second, this case needs to be resolved in order to effectuate any confirmed plan. To proceed in any real way with the bankruptcy case, the litigation in this case must be resolved. Finally, the State

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and the City have already raised concerns about the Plaintiff delaying the case and foreclosure. To stay the litigation for an indefinite time to allow the bankruptcy to proceed would be unjustly fair to the concerns of the State and City. Accordingly, the motion to stay the litigation is denied.

In the event the motion for remand is granted, then this motion will be denied as moot.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Defendant(s):

City Of Los Angeles, Acting

Represented By
Wendy A Loo

Plaintiff(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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#7.00 Motion for relief from stay

THE CITY OF LOS ANGELES

Docket 63

Matter Notes:

- NONE LISTED -

Tentative Ruling:

11 U.S.C 362

"Single asset real estate" is defined as real property consisting of a single property or project, other than a residential property with fewer than four units, which generates substantially all of the gross income of a debtor who is not a family farmer, on which no substantial business is being operated other than operating the real property. 11 USC § 101(51B). There is no dispute between the parties that this is a single asset real estate case.

Section 362(d) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A)the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable

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time; or

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(B) the debtor has commenced monthly payments that—

- (i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
- (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate;

...

The purpose of section 362(d)(3) is to address perceived abuses in single asset real estate cases, in which debtors have attempted to delay mortgage foreclosures even when there is little chance that they can reorganize successfully. See S. Rep. No. 168, 103d Cong., 1st Sess. (1993) ("This amendment will ensure that the automatic stay provision is not abused, while giving the debtor an opportunity to create a workable plan of reorganization."); 140 Cong. Rec. 10764 (daily ed. October 4, 1994), *reprinted in* App. Pt. 9(b) (statements of Rep. Brooks, chairperson of the House Judiciary Committee) ("Without bankruptcy reform, companies, creditors, and debtors alike will continue to be placed on endless hold until their rights and obligations are adjudicated under the present system—and that slows down new ventures, new extensions of credit and new investments.") Section 362(d)(3) attempts to shorten such cases by requiring that the court grant relief from the stay if a reasonable plan is not filed promptly or payments are not commenced. Relief under 362(d)(3) is mandatory where its provisions are not strictly complied with. See Centofante v. CBJ Dev. (In Re CBJ Dev.) 202 B.R. 467 (BAP 9th Cir. 1996); Leeward Subdivision Partners, LLC v. GDR Lending, LLV (In re Leeward Subdivision Partners, LLC) 2010, Bankr. LEXIS 5100.

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There is no basis for extending the exclusivity period. Debtor needs to either file a plan of reorganization by the 90 day deadline or make interest payments. Parties should come prepared to discuss what the applicable interest payment amounts will be.

Party Information

Debtor(s):

Harbour Community, L.P., a

Represented By
Andrew Goodman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se