

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

VAL ANTHONY MISURACA,

No. CV-09-0738-PHX-GMS

10

Appellant,

ORDER

11

vs.

12

U.S. TRUSTEE,

13

Appellee.

14

15

16

17

The Court has received the Motion to Continue Stay in Effect Pending Appeal of Appellant Val Anthony Misuraca.¹ (Dkt. # 2.) As best the Court can determine, Appellant argues that this Court should stay dismissal of the bankruptcy court’s determination that Appellant’s invocation of Chapter 13 was an abuse because Appellant would have no other choice than to file for Chapter 11 bankruptcy relief. (Dkt. # 2 at 3 ¶ 7 (“Mr. Misuraca cannot be forced to file a chapter 11 petition or involuntarily be converted to a chapter 11 proceeding – which is what the lower court is requiring him to do if he wants to seek further bankruptcy relief.”).) Appellant finds Chapter 11 relief objectionable based on dicta from *Toibb v. Radloff*, 501 U.S. 157, 165-66 (1991).

26

27

¹The Court previously issued a stay for the purposes of briefing the motion (Dkt. # 5), but Appellee has not filed a response. Thus, the Court will evaluate the issue upon Appellant’s briefing only.

28

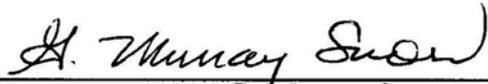
1 In *Radloff*, the Supreme Court held that individual debtors not engaged in business
2 could utilize Chapter 11. *Id.* at 158. In so holding, the Supreme Court rejected the argument
3 of an amicus curie that Congress did not intend such individuals to be subject to involuntary
4 bankruptcy proceedings, as evidenced by the fact that Congress did not provide for
5 involuntary proceedings under Chapter 13. *Id.* at 165-66. The Court reasoned that
6 “Congress’ primary concern about a debtor’s being forced into bankruptcy under Chapter 13
7 [was] that such a debtor, whose future wages are not exempt from the bankruptcy estate,
8 would be compelled to toil for the benefit of creditors in violation of the Thirteenth
9 Amendment’s involuntary servitude prohibition.” *Id.* (internal citation omitted). “Because
10 there is no comparable provision in Chapter 11 requiring a debtor to pay future wages to a
11 creditor,” the Court noted, “Congress’ concern about imposing involuntary servitude on a
12 Chapter 13 debtor is not relevant to a Chapter 11 reorganization.” *Id.* at 166. Appellant
13 argues that recent amendments to Chapter 11 now do include future income as property of
14 the bankruptcy estate, *see* 11 U.S.C. § 1115(a)(2), and thus the *Radloff* dicta counsels that
15 involuntary proceedings under Chapter 11 would be unconstitutional.

16 However, this issue is not ripe. Appellant attempts to argue the unconstitutionality
17 of provisions of Chapter 11 in the course of a Chapter 13 bankruptcy. “For a suit to be ripe
18 within the meaning of Article III, it must present concrete legal issues, presented in actual
19 cases, not abstractions.” *Colwell v. Dep’t of Health & Human Servs.*, 558 F.3d 1112, 1123
20 (9th Cir. 2009) (internal quotations omitted). Appellant does not provide a sufficient basis
21 to challenge the bankruptcy court’s determination that the Chapter 13 filing constituted a
22 statutory abuse. Appellant does argue that *if* he pursued Chapter 11 relief, and *if* involuntary
23 proceedings were initiated against him, then he might have a constitutional claim.
24 Appellant’s motion does not explain how any of these hypothetical possibilities are anything
25 more than abstractions (nor does Appellant attempt to explain how he would be “forced” to
26 file under Chapter 11). As such, Appellant’s motion cannot establish either that he would
27 be harmed or that he is likely to succeed on the underlying appeal on this basis were the court
28

1 to grant a stay. For these reasons, Appellant's motion is not the proper subject of judicial
2 determination at this time.

3 **IT IS THEREFORE ORDERED** that the Motion to Continue Stay in Effect Pending
4 Appeal of Appellant Val Anthony Misuraca (Dkt. # 2) is **DENIED**.

5 **DATED** this 1st day of May, 2009.

6 
7 _____
8 G. Murray Snow
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28