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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**In re: PACIFICA PARK
APARTMENTS, LLC.**)
)
 Debtor.)
 _____)
 **PACIFICA PARK APARTMENTS,
LLC.,**)
)
 Appellant,)
)
 v.)
)
 **U.S. BANK NATIONAL
ASSOCIATION,**)
)
 Appellee.)
 _____)

**DISTRICT COURT CASE
NO. CIV-F-13-0164 AWI**

**BANKRUPTCY COURT CASE
NO. 12-60039-B-11**

ORDER DENYING MOTION FOR STAY

I. History

Appellant Pacifica Park Apartments filed a Chapter 11 bankruptcy on December 6, 2012. As part of the filing, Appellant listed as an asset an interest in the Citrus Plaza Shopping Center in Exeter, CA (“Property”). Appellee U.S. Bank National Association is a secured creditor who also has an interest in the Property. Appellee made a motion for relief from the automatic stay lifted to allow foreclosure on the Property. Bankr. Case, Doc. 21. Appellant made a motion for authority to use cash collateral. Bankr. Case, Doc. 9. Bankruptcy Judge Richard Lee heard both motions, denying Appellant’s motion and granting Appellee’s motion. Bankr. Case, Docs. 59 and 61. On January 31, 2012, the entire bankruptcy was dismissed. Bankr. Case, Doc. 69. Later that

1 same day, Appellant filed this appeal, seeking review of the two specific, limited decisions (relief
2 from automatic stay and cash collateral). Bankr. Case, Doc. 71. Appellant has not appealed the
3 dismissal of the bankruptcy case. Appellant then made a motion to stay the relief from automatic
4 stay pending appeal. Bankr. Case, Doc. 82. Judge Lee denied the motion. Bankr. Case, Doc. 89.

5 Appellant now makes a motion to stay in district court. Doc. 3. Appellee opposes the
6 motion. Doc. 6.

7 8 **II. Legal Standards**

9 “An appellant seeking a discretionary stay pending appeal under Bankruptcy Rule 8005
10 must prove: (1) appellant is likely to succeed on the merits of the appeal; (2) appellant will suffer
11 irreparable injury; (3) no substantial harm will come to appellee; and (4) the stay will do no harm
12 to the public interest.” Universal Life Church v. United States, 191 B.R. 433, 444 (E.D. Cal.
13 1995), citations omitted. “The party moving for a stay has the burden on each of these
14 elements.” In re Shenandoah Realty Partners, L.P., 248 B.R. 505, 510 (W.D. Va. 2000).
15 “Movant’s failure to satisfy one prong of the standard for granting a stay pending appeal dooms
16 the motion.” In re Deep, 288 B.R. 27, 30 (N.D.N.Y. 2003), citations omitted; accord In re Pon,
17 No. C-93-2745 MHP, 1994 U.S. Dist. LEXIS 2559, at *6 (N.D. Cal., February 25 1994).

18 Under Federal Rules of Bankruptcy 8005, “A motion for a stay of the judgment, order, or
19 decree of a bankruptcy judge...pending appeal must ordinarily be presented to the bankruptcy
20 judge in the first instance....A motion for such relief, or for modification or termination of relief
21 granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate
22 panel, but the motion shall show why the relief, modification or termination was not obtained
23 from the bankruptcy judge.” Review of the bankruptcy judge’s decision is limited. “[A]ppellate
24 courts are reluctant to entertain a request for stay unless it is demonstrated that the trial judge is
25 unavailable or that the request was denied by the trial judge. Nevertheless, only in the former
26 situation does the appellate tribunal normally exercise its own discretion; in other instances (such
27 as where the trial court has denied the stay) the appellate court simply determines whether the
28 trial court abused its discretion.” In re Wymer, 5 B.R. 802, 807 (B.A.P. 9th Cir. 1980). “When a

1 bankruptcy court has ruled on the issue of a stay of its order pending appeal, the district court,
2 sitting as an appellate court, reviews that decision for abuse of discretion.” Universal Life Church
3 v. United States, 191 B.R. 433, 444 (E.D. Cal. 1995). “Discretion will be found to have been
4 abused when the judicial action is arbitrary, fanciful or unreasonable which is another way of
5 saying that discretion is abused only where no reasonable man would take the view adopted by
6 the trial court. If reasonable men could differ as to the propriety of the action taken by the trial
7 court, then it cannot be said that the trial court abused its discretion. It is equally well-established
8 that on appeal to the district court from bankruptcy court, issues of law are reviewed de novo
9 while the district court is constrained to accept the bankruptcy court’s findings of facts unless
10 they are clearly erroneous.” In re Blackwell, 162 B.R. 117, 119 (E.D. Pa. 1993).

11 12 **III. Discussion**

13 Judge Lee has already denied Appellant’s motion to stay. Thus, the proper role of this
14 court is to review Judge Lee’s order on an abuse of discretion standard. In denying the motion
15 for stay, Judge Lee stated that the subsequent dismissal of the overall bankruptcy case
16 independently ended the automatic stay for all of Appellant’s assets, including the Property:
17 “Even if the appellate court were to reverse the Stay Relief Order, the case would remain
18 dismissed and the stay would have terminated by operation of law upon dismissal.” Bankr. Case,
19 Doc. 89, 2:5-7. The bankruptcy case was dismissed on January 31, 2013. Under Fed. Rule
20 Bankr. Proc. 8002, Appellant had fourteen days from entry of that order to file an appeal. No
21 notice of appeal has been filed in the bankruptcy case; a review of the district court clerk’s office
22 files reveals no appeal either. The dismissal is final. The automatic stay in bankruptcy
23 terminates at the time the case is dismissed. 11 U.S.C. § 362(c)(2)(B). Appellant does not
24 address this issue in its briefing. Judge Lee’s reasoning is sound. Even if the court were to find
25 in favor of Appellant, staying the relief from automatic stay would not prevent the foreclosure as
26 the underlying automatic stay has been ended. Appellant’s appeal does not encompass the
27 dismissal of the bankruptcy case.

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IV. Order

Appellant's motion for stay pending appeal is DENIED.

IT IS SO ORDERED.

Dated: March 1, 2013



SENIOR DISTRICT JUDGE