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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PNC BANK, N.A., a National Association,
as a successor in interest to National City
Bank,

Plaintiff,

v.

BELINDA L. SMITH, in personam;
JACOB WINDING, in personam; B & B
Dreamin' Hull No. GMKD283C505 (the
"Vessel"), its engines, machinery,
appurtenances, etc., in rem,

Defendants.

No. 2:10-cv-1916-JAM-EFB PS

ORDER

On May 14, 2015, the court entered judgment under Federal Rule of Civil Procedure 54(b) on all claims save and except the issue of the amount of the deficiency judgment to be entered against defendant Smith. ECF Nos. 161, 162. On August 17, 2015, defendants filed a notice of appeal. ECF No. 168. On that same date, defendant Smith filed a request to proceed *in forma pauperis* on appeal.¹ ECF No. 169.

¹ On August 18, 2015, before the court had an opportunity to issue a decision on Smith's request to proceed *in forma pauperis*, Smith filed a notice indicating that she filed a Chapter 13 Bankruptcy petition the previous day. ECF No. 170. On October 30, 2015, plaintiff filed a motion to authorize the sale of vessel in which plaintiff notified the court that Smith's bankruptcy case was dismissed on October 22, 2015. ECF No. 173 at 5. Accordingly, there currently is no automatic stay in effect.

1 Rule 24(a) of the Federal Rules of Appellate Procedure provides that a party to a district
2 court action who desires to proceed *in forma pauperis* on appeal must file a motion in the district
3 court which:

- 4
5 (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the
6 party's inability to pay or to give security for fees and costs;
7 (B) claims an entitlement to redress; and
8 (C) states the issues that the party intends to present on appeal.

9 Fed. R. App. P. 24(a)(1). Smith submitted a declaration which demonstrates her inability to pay
10 or to give security for fees and costs. Smith did not, however, claim entitlement to redress or
11 describe the issues she intends to present on appeal.

12 Accordingly, IT IS HEREBY ORDERED that Smith's August 17, 2015 request to
13 proceed *in forma pauperis* on appeal (ECF No. 169) is denied without prejudice. The Clerk of
14 the Court is directed to serve a copy of this order on the United States Court of Appeals for the
15 Ninth Circuit, and Smith is hereby informed that she may file a motion to proceed *in forma*
16 *pauperis* in the United States Court of Appeals for the Ninth Circuit. See Fed. R. App. P.
17 24(a)(5).

18 DATED: November 2, 2015.

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EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE