

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

7	In Re:)	
8	MICHAEL T. CAREY and LEONE R.)	No. 2:10-cv-03146-GEB
9	CAREY,)	Bankruptcy Court Case No. 04-
10	Debtors.)	29060-B-7
11	_____)	<u>ORDER AFFIRMING BANKRUPTCY</u>
12	MICHAEL T. CAREY and LEONE R.)	<u>COURT'S DENIAL OF APPELLANTS'</u>
13	CAREY,)	<u>MOTION TO VACATE ORDER</u>
14	Appellants,)	<u>LIFTING AUTOMATIC STAY</u>
15	v.)	
16	UNITED STATES INTERNAL REVENUE)	
17	SERVICE,)	
18	Appellee.)	
19	_____)	

19 Appellants Michael T. Carey and Leone R. Carey ("Appellants")
20 appeal pro se the bankruptcy court's denial of their Federal Rule of
21 Civil Procedure ("Rule") 60(b)(4) motion. Appellants sought in that
22 motion an order vacating a previous order which granted the United
23 States Internal Revenue Service relief from the bankruptcy automatic
24 stay. The bankruptcy court's denial of Appellants' Rule 60(b)(4) motion
25 is reviewed de novo. Retail Clerks Union Joint Pension Trust v. Freedom
26 Food Ctr., Inc., 938 F.2d 136, 137 (9th Cir. 1991).

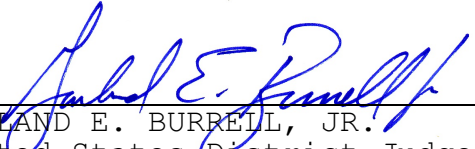
27 Appellants argue the bankruptcy court committed the following
28 errors: 1) It issued a tentative ruling that "failed to address the

1 substance of" Appellants' Rule 60(b)(4) motion; 2) "refused to consider
2 the evidence presented" at a hearing on Appellants' motion; and 3)
3 "refus[ed] . . . to either vacate [the order lifting the automatic stay]
4 or . . . state the foundation that makes [the order] valid[.]"
5 (Appellants Informal Opening Br. 4-5.)

6 The bankruptcy court's tentative ruling about which Appellants
7 complain adequately explained why the bankruptcy court intended to deny
8 Appellants' Rule 60(b)(4) motion, (Appellee's Excerpt of Record 16), and
9 the bankruptcy court stated during the hearing on Appellants' Rule
10 60(b)(4) motion: "The tentative [ruling] is the [final] ruling."
11 (Appellants' Excerpt of Record 9:6.) Further, Appellants have not
12 identified what specific evidence the bankruptcy court improperly
13 refused to consider during the hearing and, therefore, have not
14 supported this basis of their appeal.

15 For the stated reasons, Appellants have not shown that the
16 bankruptcy court erred in denying their Rule 60(b)(4) motion, and the
17 bankruptcy court's ruling is affirmed.

18 Dated: September 1, 2011

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GARLAND E. BURRELL, JR.
United States District Judge