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

In re: No. C 18-02822 WHA
BRUGNARA PROPERTIES VI
Debtor.

**ORDER DENYING
MOTION TO VACATE
STAY ORDER**

INTRODUCTION

In this bankruptcy appeal, a secured creditor moves to intervene and vacate an prior order granting a limited and narrow stay. For the reasons stated below, the motion to vacate is **DENIED.**

STATEMENT

Debtor Brugnara Properties VI (BPVI) and the Brugnara family are familiar players before this Court. BPVI is a corporation created by Luke Brugnara, BPVI’s former president and secretary. BPVI’s only asset has been the Brugnara family home located in San Francisco.

In 2010, Luke Brugnara appointed his wife Kay Brugnara as BPVI’s president and secretary. In exchange for her duties, Kay Brugnara has been “compensated” \$200,000 a year (fixed for ten years) in the form of rent credit at the Brugnara family home (Dkt. No. 3).

This is BPVI’s fourth Chapter 11 case. There are currently multiple liens — totaling over \$14 million — against BPVI’s property. Two of these liens were placed by the IRS and FTB as nominee liens for taxes owed by Luke Brugnara (who is currently incarcerated for tax

1 fraud). BPVI disputes its status as nominee and/or alter ego of Luke Brugnara and thus disputes
2 the validity of the nominee liens.

3 In this fourth (voluntary) Chapter 11 case alone, BPVI has filed three amended plans for
4 reorganization. On April 3, the United States Bankruptcy Court for the Northern District of
5 California rejected BPVI's most recent plan for reorganization, concluded that the proposed
6 plan was not confirmable on its face, and granted a non-tax creditor's motion to appoint a
7 Chapter 11 trustee. The trustee subsequently recommended that BPVI's case be converted to
8 Chapter 7. On April 16, the bankruptcy court denied Kay Brugnara's motion for
9 reconsideration of the order converting the case to Chapter 7.

10 On May 11, Kay Brugnara appealed the order denying the motion for reconsideration
11 and moved to stay the sale of the property (her home) pending appeal. Kay Brugnara appealed
12 in part on the grounds that BPVI had not yet been permitted to litigate the validity of its IRS
13 and FTB nominee liens prior to being required to propose a confirmable plan. BPVI would
14 have been able to procure a confirmable plan, according to Kay Brugnara, had it not been for
15 the allegedly invalid nominee liens placed against her home. An order dated June 7 granted
16 BPVI's emergency motion to stay for the sole, limited purpose of allowing BPVI to dispute
17 before the bankruptcy court its alleged status as nominee and/or alter ego of Luke Brugnara
18 (Dkt. No. 18).¹ In other words, before the bankruptcy court trustee sells Kay Brugnara's family
19 home out from under her, the order simply insisted that she be allowed to litigate whether or not
20 BPVI is really the nominee and/or alter ego of Luke Brugnara (who owes the taxes). This issue
21 is teed up for decision before the bankruptcy court later this year.

22 *Pro se* proposed intervenor Paul Greenfield, a secured creditor of BPVI's asset, now
23 moves to intervene the instant appeal and vacate the order granting the limited stay, arguing that
24 the granting of BPVI's stay was based on an incomplete record. BPVI opposes Greenfield's
25 motion to intervene on the grounds of untimeliness and lack of standing. BPVI further opposes
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28 ¹ Kay Brugnara and Luke Brugnara both separately appealed the order as well (Case Nos. 18-02823,
18-2787). Kay Brugnara subsequently appealed the bankruptcy court's separate order granting the trustee's
motion to reject executory contract (Case No. 18-03440).

1 Greenfield’s motion to vacate the stay based on the motion’s procedural posture. This order
2 follows full briefing and oral argument.²

3 **ANALYSIS**

4 Greenfield seeks intervention in the instant appeal primarily to move to vacate the June
5 7 order granting the emergency motion to stay. Because this order denies the motion to vacate
6 on the merits, it need not and will not reach Greenfield’s motion to intervene.

7 Greenfield moves under Rules 60(a) and (b) to vacate the stay order. Civil Local Rule
8 7-9(a), however, requires that “before the entry of a judgment adjudicating all of the claims and
9 the rights and liabilities of all the parties in a case,” a party must first obtain a leave to file a
10 motion for reconsideration of any interlocutory order. This order now treats Greenfield’s
11 motion to vacate the stay order as a motion for reconsideration (and accordingly grants leave for
12 the motion).

13 In essence, Greenfield argues that the parties’ briefing in connection with the emergency
14 stay motion focused narrowly on the validity of the nominee liens and as such, harm to other
15 creditors was not properly considered (Dkt. No. 40 at 4). Thus while Greenfield acknowledges
16 the Court’s understandable reasoning for ordering the limited stay — *i.e.*, to prevent the
17 potentially unnecessary eviction of Kay Brugnara and her family from their home (while her
18 husband Luke remains in federal prison) — he asserts that the bankruptcy court’s order
19 converting BPVI’s case to Chapter 7 “more appropriately focused on [BPVI’s] inability to
20 confirm a plan of reorganization to make payments to the secured creditors *other than* the
21 taxing agencies” (Dkt. No. 40 at 5) (emphasis in original). Greenfield further takes issue with
22 the fact that what was originally intended as an approximately two-month stay has turned into a
23 six-month minimum stay.

24 Greenfield, however, does not offer any material facts or dispositive legal arguments
25 that were not already raised in the original briefing for the emergency motion for stay. This

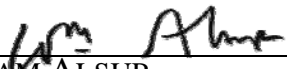
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27 ² Greenfield requests judicial notice of various exhibits (Dkt. No. 37). No party has opposed. These
28 exhibits are public documents filed in the bankruptcy court in connection with the underlying case. A court may
judicially notice a fact that is not subject to reasonable dispute because it “can be accurately and readily
determined from sources whose accuracy cannot reasonably be questioned.” FRE 201(b). Accordingly,
Greenfield’s request for judicial notice is **GRANTED**.

1 Kay Brugnara. If it turns out, however, that BPVI is *not* a nominee and/or alter ego, and its
2 separate corporate existence must be honored, the trustee might nevertheless be within her
3 authority to sell the home and kick out Kay Brugnara, this due to large debts owed to secured
4 creditors having nothing to do with unpaid taxes. But in the latter scenario, at least the trustee
5 would not be influenced or swayed by the question of an overhang of tax liability. A plan of
6 reorganization might be more plausible, in the eyes of the bankruptcy court and trustee, if the
7 tax liability vanished as a lien on the home.

8 Thus for the foregoing reasons, proposed intervenor Greenfield's motion to vacate the
9 stay order is **DENIED**.

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11 **IT IS SO ORDERED.**

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13 Dated: October 5, 2018.

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16 WILLIAM ALSUP
17 UNITED STATES DISTRICT JUDGE
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