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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6

7 In re:

8 PACIFIC THOMAS CORPORATION,  
9 Debtor

Case No. 19-cv-06194-MMC  
Bankruptcy Case No. 14-54232 MEH

**DECISION AFFIRMING ORDERS  
DENYING MOTION FOR RELIEF  
FROM STAY AND FOR  
RECONSIDERATION**

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12  
13 Before the Court is appellant Welton Penney's ("Penney") appeal from the  
14 Bankruptcy Court's order, filed July 1, 2019, denying his motion to lift the automatic stay  
15 for the purpose of his pursuing a complaint he filed in state court in 2014, and from the  
16 Bankruptcy Court's order, filed August 19, 2019, denying his motion for reconsideration of  
17 said denial. Having read and considered the parties' respective briefs, including the  
18 portions of the record cited therein, the Court rules as follows.

19 On August 5, 2012, Pacific Thomas Corporation filed a petition for bankruptcy  
20 protection under Chapter 11 of the Bankruptcy Code. (See Doc. No. 1, In re Pacific  
21 Thomas Corporation, Bankruptcy Case No. 14-54232 MEH.) As a result of said filing, a  
22 "stay" automatically arose with respect to actions against the debtor, see 11 U.S.C.  
23 § 362(a)(1), including actions to "obtain possession of property of the estate or of  
24 property from the estate or to exercise control over property of the estate," see 11 U.S.C.  
25 § 362(a)(2).

26 On August 14, 2014, Penney filed in state court an action against his former  
27 employer Self Storage Self Storage Management of California ("Self Storage") and  
28 against two managers of Self Storage, in which he alleged he was wrongfully terminated,

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1 that he was wrongfully evicted from an apartment,<sup>1</sup> and that defendants, after the  
 2 eviction, refused to return personal property left in the apartment and at the worksite.  
 3 (See Docs. 1096-97, In re Pacific Thomas Corporation, Bankruptcy Case No. 14-54232  
 4 MEH.)

5 On June 13, 2019, Penney filed in the Bankruptcy Court a motion, pursuant to 11  
 6 U.S.C. § 362(d), seeking relief from the automatic stay for purposes of allowing him to  
 7 proceed in state court with his 2014 action. In opposition thereto, the Trustee submitted  
 8 an order issued by the state court on March 19, 2015, by which order the state court had  
 9 dismissed Penney's state court action. On July 1, 2015, the Bankruptcy Court denied  
 10 Penney's motion for relief as moot. Thereafter, on July 15, 2019, Penney filed a motion  
 11 for reconsideration, arguing "new evidence" existed to warrant reconsideration,  
 12 specifically, his having filed, on July 12, 2019, a second state court action, which he  
 13 described as raising "substantially the same legal issues and seeking similar relief as the  
 14 prior action." (See Doc. No. 1109 at 2:9-11, 5:13-17, Ex. B, In re Pacific Thomas  
 15 Corporation, Bankruptcy Case No. 14-54232 MEH.) On August 19, 2021, the Bankruptcy  
 16 Court denied the motion for reconsideration.

17 As noted, Penney challenges both of the orders issued by the Bankruptcy Court.  
 18 The Court thus turns to the question of whether issuance of either of those orders  
 19 constituted an abuse of discretion, see In re Gruntz, 202 F.3d 1074, 1084 n.9 (9th Cir.  
 20 2000) (holding bankruptcy court order denying relief from automatic stay is reviewed for  
 21 abuse of discretion); Corex Corp. v. United States, 638 F.2d 119, 121 (9th Cir. 1981)  
 22 (holding order denying motion for reconsideration is reviewed for abuse of discretion),  
 23 and, having considered the matter, finds the Bankruptcy Court did not abuse its  
 24 discretion.

25 \_\_\_\_\_  
 26 <sup>1</sup> Although Penney did not name Pacific Thomas Corporation as a defendant in his  
 27 2014 state court complaint, he asserts the Chapter 11 Trustee, at the time he filed his  
 28 2014 lawsuit, took the position that the named defendants were "protected by the  
 bankruptcy stay since the underlying property was owned by [the] debtor." (See  
 Penney's Opening Brief at 12:19-21.)

1 First, the Bankruptcy Court did not abuse its discretion in denying Penney's motion  
 2 to lift the stay, given that the state court had dismissed the 2014 action more than four  
 3 years before the date on which Penney sought relief from the stay. See, e.g., United  
 4 States v. Ford, 650 F.2d 1141, 1142-43 (9th Cir. 1981) (holding party's motion for leave  
 5 to intervene in case was "moot," where case had been dismissed); Ruby v. Pan  
 6 American World Airways, Inc., 360 F.2d 691 (2nd Cir. 1966) (holding appeal from denial  
 7 of injunctive relief became "moot" after complaint dismissed).

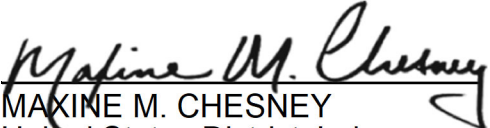
8 Second, the Bankruptcy Court did not abuse its discretion in denying Penney's  
 9 motion for reconsideration, as the motion was based entirely on an event occurring after  
 10 the denial of his motion for relief, specifically, his having filed, eleven days after the denial  
 11 of his motion for relief, a new case in state court, and, contrary to Penney's argument,  
 12 such filing does not constitute "new discovered evidence." (See Penney's Opening Brief  
 13 at 19:24-27); see also Corex, 638 F.2d at 121-22 (holding "newly discovered evidence,"  
 14 for purposes of motion for reconsideration, does not include "events occurring" after  
 15 issuance of order movant seeks to have reconsidered).<sup>2</sup>

### 16 CONCLUSION

17 For the reasons stated above, the Bankruptcy Court's order denying Penney's  
 18 motion for relief from the stay is hereby AFFIRMED, and the Bankruptcy Court's order  
 19 denying reconsideration is hereby AFFIRMED.

20 **IT IS SO ORDERED.**

21  
 22 Dated: March 22, 2021

23   
 24 MAXINE M. CHESNEY  
 25 United States District Judge

26 <sup>2</sup> In both his Opening Brief and Reply Brief, Penney argues he is entitled to relief  
 27 from the automatic stay so that he can pursue the state court action he filed in 2019. As  
 28 the Court observed in a prior order, however (see Order, filed July 29, 2020, at 1:26-28),  
 Penney has not filed in the Bankruptcy Court a motion seeking relief from the automatic  
 stay based on his pursuing his more recently filed action, and, consequently, the  
 Bankruptcy Court has not had occasion to rule on any such request.