

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 TOTAL PETROLEUM PUERTO RICO
4 CORPORATION,

5 Plaintiff

6 v.

7 LUIS A. VALLE FIGUEROA, ALICIA
8 FIGUEROA MERCADO,

9 Defendants

CIVIL 09-1573 (FAB) (JA)

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11 OPINION AND ORDER STAYING PROCEEDINGS

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13 I. Factual Background

14 Total Petroleum Puerto Rico Corporation filed a verified complaint on
15 June 24, 2009 alleging violations of the Petroleum Marketing Practices Act, 15
16 U.S.C. §§ 2801-06, the Lanham Act, 15 U.S.C. § 1051 *et seq.*, specifically 15
17 U.S.C. §§ 1114(1), 1125(a), (c), the Declaratory Judgment Act, 28 U.S.C. §§
18 2201-02 and state law claims under Articles 1044, 1053, 1077, 1206, 1459 and
19 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, §§ 2994, 3017, 3052,
20 3371, 4066, and 5141. (Docket No. 1.) It also submitted exhibits in support of
21 a motion for preliminary injunction (Docket No. 2.), and an urgent request for an
22 order to show cause as to why plaintiff's request for injunctive relief should not
23 be granted. (Docket No. 5.) Among the relief sought is included the immediate
24 surrender to Total of possession of the sublet premises of the gasoline service
25 station owned by Total, the underground storage tanks and all equipment for the
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3 storage and sale of petroleum products located in the property. It appears that
4 the gasoline service station site once operated by the defendants located at Street
5 No. 459, Km. 3.0, Corrales Ward, Municipality of Aguadilla, Puerto Rico is no
6 longer being operated by the defendants and that they have refused to hand over
7 the keys to the service station to Total.
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10 On June 26, 2009, I scheduled a show cause hearing for July 21, 2009.
11 Unbeknownst to plaintiff, on July 8, 2009, Alicea Figueroa Mercado and her
12 husband filed a Voluntary Bankruptcy Petition under Chapter 7 of the Bankruptcy
13 Code. (The co-defendants ended their business relationship with Total on May 22,
14 2009.) The defendants did not appear at the show cause hearing. Among the
15 non-priority claims listed in the voluntary petition, the defendants listed the
16 surrender of the service station (subject of the present action) and debt
17 acknowledgment. The specific notation states "commercial lease, was
18 surrendered on 2/25/09." Moreover Figueroa Mercado included the lease
19 agreement between herself, her husband and Total as an "Executory Contract
20 and Unexpired Leases." (Docket No. 15-2, at 22.)
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23 On July 20, 2009, Total filed an "Urgent Motion Notifying Bankruptcy Petition
24 filed by Co-defendant and Requesting Issuance of Preliminary Injunctive Relief and
25 Turnover of Property Pursuant to Section 362(B)(10) of the Bankruptcy Code."
26 (Docket No. 15.) It appears from the submissions of Total that the lease
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3 agreement between the defendants and Total was terminated prior to the petition
4 for bankruptcy being filed. Notwithstanding the fact that the asset is listed in the
5 schedule of executory contracts and unexpired leases, and the fact that the keys
6 to the service station have not been handed over to Total as promised, the lease
7 agreement should not be part of the bankruptcy estate if it has expired. Total
8 argues therefore that the filing of the bankruptcy petition does not stay the
9 injunction proceedings precisely because the court is dealing with a pre-petition
10 terminated non-residential lease. Indeed, according to the representation of
11 Total's counsel, the attorney for the bankrupt apparently agrees with the position
12 that the lease is not part of the estate, and that therefore these proceedings are
13 not stayed under section 362(b)(10) of the Bankruptcy Code. Attempts to reach
14 the bankruptcy trustee have been fruitless.

18 II. Analysis

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20 The commencement of a bankruptcy case creates an estate. See Collier on
21 Bankruptcy § 541.02 (15th ed. Rev. 2005). The property of the estate includes
22 "all legal or equitable interests of the debtor in property as of the commencement
23 of the case." 11 U.S.C. § 541(a)(1); see In re Burgess, 438 F.3d 493, 496 (5th
24 Cir. 2006); In re Policy Realty Corp., 242 B.R. 121, 127 (S.D.N.Y. 1999). Title 11,
25 United States Code, Section 541(b)(2) excludes "any interest of the debtor as a
26 lessee under a lease of nonresidential real property" of the estate when
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3 terminated before the filing of the bankruptcy. However, “[a]ll property interests
4 of the debtor vest in the bankruptcy estate when the debtor files for bankruptcy.
5 See 11 U.S.C. § 301; In re Álvarez, 224 F.3d 1273, 1277 (11th Cir. 2000).

7 ‘Property’ has a broad meaning that encompasses ‘everything of value the
8 bankrupt may possess in alienable or leviable form when he files his petition.’
9 Segal v. Rochelle, 382 U.S. 375, 379 (1966).” In re Bracewell, 454 F.3d 1234,
10 1249 (11th Cir. 2006).

12 Notwithstanding the clearly defined argument of Total, the determination of
13 whether the lease in question is a part of the bankruptcy estate is a decision to
14 be first made by the bankruptcy trustee. The bankruptcy court may in turn make
15 a determination excluding the lease from the estate. The law is clear.
16 “Bankruptcy judges may here and determine all cases under title 11 and all core
17 proceedings arising under title 11, or arising in a case under title 11, referred
18 under subsection (a) of this section and may enter appropriate orders and
19 judgments, subject to review under section 158 of this title.” 28 U.S.C. §
20 157(b)(1); Alfonseca-Báez v. Doral Fin. Corp., 376 B.R. 70, 72 (D.P.R. 2007); see
21 also In re Ontos, Inc., 478 F.3d 427, 33 (1st Cir.), cert. denied, 128 S. Ct. 166
22 (2007). This court cannot violate the automatic reference and stay provisions
23 even when the substantive bankruptcy law leaves no room for doubt, since the
24 bankruptcy court is the correct forum for making the initial determination. See
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4 11 U.S.C. § 362(a); 28 U.S.C. § 1334(a). Since that court is tasked with "matters
5 concerning the administration of the estate" as provided in 28 U.S.C. §
6 157(b)(2)(A), this court cannot grant injunctive relief regarding an asset which
7 may fall within the administration of the estate until it is correctly excluded from
8 the estate. The debtor in this case could have filed the lease agreement in the list
9 of property claimed as exempt. 11 U.S.C. § 522(l). The defendant-debtor has
10 listed apparel, a motor vehicle, a small bank account, and two residences in the
11 exempt list. (See Docket No. 15-2, at 15, Schedule C-Property Claimed as
12 Exempt.) "The property claimed as exempt on such list is not part of the estate
13 unless a party in interest objects." Herrans v. Mender, 364 B.R. 463, 469 (D.P.R.
14 2007), aff'd, 524 F.3d 341 (2008) (citing 11 U.S.C. § 522(l)). That the lease
15 agreement was not listed as exempt causes sufficient pause to reject the request
16 for preliminary injunctive relief. Total's claim in the amount of \$59,916.08 is
17 listed as an unsecured nonpriority claim. (See Docket No. 15-2, at 20, Schedule
18 F-Creditors Holding Unsecured Priority Claims.)
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22 In view of the above, this case is stayed until such time if ever the
23 bankruptcy court determines that the lease agreement in question falls outside
24 the estate under 11 U.S.C. § 362(b)(10).
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26 IT IS SO ORDERED.

27 At San Juan, Puerto Rico, this 27th day of July, 2009.

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S/ JUSTO ARENAS
Chief United States Magistrate Judge