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DEAN ANDAL

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

In re:
CITY OF STOCKTON,
CALIFORNIA,

Debtor,

Case No. 12-32118-C-9
DC No.: JTS-01

Judge: Hon. Christopher M. Klein

**DEAN ANDAL'S MOTION FOR
RELIEF FROM AUTOMATIC STAY
UNDER 11 U.S.C. SECTION 362(d)(1)
AND 28 U.S.C. 1334(c)**

**Date: August 20, 2013
Time: 9:30 a.m.
Courtroom: 35**

MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The purpose of this Motion is to seek relief from the automatic stay in order to allow DEAN ANDAL, an individual, (hereinafter "Movant") to bring a writ of mandate in the Superior Court for the County of San Joaquin against the CITY OF STOCKTON, CALIFORNIA (hereinafter "Debtor") as real party in interest, pursuant to California Elections Code section 9295. The writ of mandate will challenge the impartiality of proposed language on the upcoming November 5, 2013 ballot. The Debtor, through its elected City Council, approved proposed language for a measure to be placed on the November 5, 2013 ballot. Though the actions of the

1 City Council occurred on July 9, 2013, making them post-petition acts not covered by the
2 bankruptcy stay, out of an abundance of caution Movant makes the instant Motion for Relief from
3 the Automatic Stay and asks this Court to abstain from hearing this purely state law election
4 issue.

5 **I. NON-BANKRUPTCY ACTION**

6 Movant moves for relief from the automatic stay as to Debtor and Debtor's bankruptcy
7 estate in order to proceed in the Superior Court for the County of San Joaquin with a petition for
8 writ of mandate challenging proposed ballot language on the November 5, 2013 ballot
9 (hereinafter Non-Bankruptcy Action). Pursuant to California Elections Code section 9295, which
10 provides that a state court may issue a writ of mandate to prevent the publication of false or
11 misleading information in the ballot pamphlet for any election, Movant seeks to challenge the
12 proposed language of a measure titled "Law Enforcement, Crime Prevention, and other essential
13 City Services Measure" (hereinafter "Measure") in the upcoming November 5, 2013 election.¹
14 Movant believes the proposed Measure language is misleading to the average voter and seeks a
15 writ of mandate ordering the language altered. A copy of the resolution adopting the proposed
16 Measure language is attached as Exhibit "A" to the Declaration of Joseph T. Speaker in support
17 hereof.

18 Pursuant to California Elections Code section 9295(b)(3) the City Council for the City of
19 Stockton must be named as the real party in interest. As a result of this technicality, Movant must
20 bring suit against the Debtor, which is why the instant relief is sought. Movant does not seek any
21 asset of the Debtor nor seek to modify any decree of this Court or otherwise directly interfere
22 with the Chapter 9 bankrupt proceeding. The relief sought by Debtor in the Non-Bankruptcy
23 Action is related solely to a writ of mandate directing the modification of the proposed ballot
24 Measure language.

25 This Motion is made on the grounds that this Court should abstain from deciding those

26 ¹ The Measure is a "general tax" which, pursuant to Cal. Const., art. XIII C, § 1, subd. (a) requires that the tax be used for "general governmental
27 purposes" and is not earmarked for any specific purpose. (*Id.*) In contrast, a "special tax" is any tax earmarked for specific purposes (i.e. funding
28 law enforcement or crime prevention), even if the proceeds are placed into a general fund. (Cal. Const., art. XIII C, § 1, subd. (d).) A "special tax"
requires a 2/3 vote, while a "general tax" requires a simple majority. (*Id.*) The Measure at issue is a "general tax" being disguised as a "special
tax". Voters are being led to believe that the general tax must be used for law enforcement and crime prevention, however by virtue of being a
"general tax" the tax may be used for any lawful governmental purpose once approved.

1 claims under 28 U.S.C. 1334(c) and abstention constitutes good cause under 11 U.S.C. §
2 362(d)(1) to lift the automatic stay.

3 **II. CASE HISTORY**

4 Debtor filed a voluntary petition under Chapter 9 of U.S.C. on or about June 28, 2012, in
5 the United States Bankruptcy Court for the Eastern District of California, Sacramento Division,
6 captioned "In City of Stockton, California". The bankruptcy case number is 12-32118-C-9.

7 **III. GROUND FOR RELIEF FROM STAY**

8 Pursuant to 11 U.S.C. section 362(d)(1) and 28 U.S.C. 1334(c), good cause exists to grant
9 Movant's Motion for relief from automatic stay to proceed with the Non-Bankruptcy Action to
10 final judgment in the non-bankruptcy forum for a multitude of reason. First, the Non-Bankruptcy
11 Action involves a purely state law elections code matter arising out California Elections Code
12 section 9295. California Elections Code section 9295 states in pertinent part:

13
14 a) The elections official shall make a copy of the material ...
15 available for public examination in the elections official's office for
16 a period of 10 calendar days immediately following the filing
17 deadline for submission of those materials.

18 ...

19 (b)(1) During the 10-calendar-day public examination period
20 provided by this section, any voter of the jurisdiction in which the
21 election is being held, or the elections official, himself or herself,
22 may seek a writ of mandate or an injunction requiring any or all of
23 the materials to be amended or deleted. The writ of mandate or
24 injunction request shall be filed no later than the end of the 10-
25 calendar-day public examination period.

26 (2) A peremptory writ of mandate or an injunction shall be issued
27 only upon clear and convincing proof that the material in question
28 is false, misleading, or inconsistent with the requirements of this
chapter, and that issuance of the writ or injunction will not
substantially interfere with the printing or distribution of official
election materials as provided by law.

(3) The elections official shall be named as respondent, and the
person or official who authored the material in question shall be
named as real parties in interest. In the case of the elections official
bringing the mandamus or injunctive action, the board of
supervisors of the county shall be named as the respondent and the

1 person or official who authored the material in question shall be
2 named as the real party in interest.

3 Movant is informed and believes that the 10-day public examination period is set to take
4 place on August 13, 2013 and end on August 23, 2013. For this reason, time is of the essence with
5 obtaining relief from the automatic stay in order to timely file the Non-Bankruptcy Action.

6 Based on the unique nature of the Non-Bankruptcy Action abstention is proper here. 28
7 U.S.C. § 1334 provides in pertinent part:

8 (c)(1) Except with respect to a case under chapter 15 of title 11,
9 nothing in this section prevents a district court in the interest of
10 justice, or in the interest of comity with State courts or respect for
11 State law, from abstaining from hearing a particular proceeding
arising under title 11 or arising in or related to a case under title 11.

12 (2) Upon timely motion of a party in a proceeding based upon a
13 State law claim or State law cause of action, related to a case under
14 title 11 but not arising under title 11 or arising in a case under title
15 11, with respect to which an action could not have been
16 commenced in a court of the United States absent jurisdiction
under this section, the district court shall abstain from hearing such
proceeding if an action is commenced, and can be timely
adjudicated, in a State forum of appropriate jurisdiction.

17 A Federal Court has “power to abstain in the interest of justice, or in the interest of comity
18 with State courts or respect for State law” under 28 U.S.C. § 1334(c)(1). (*Williams v. Shell Oil*
19 169 B.R. 692-93 (S.D. Cal 1994).) Among the factors a court should consider in deciding whether
20 to abstain are: (1) the effect or lack thereof on the efficient administration of the estate if a Court
21 recommends abstention, (2) the extent to which state law issues predominate over bankruptcy
22 issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related
23 proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if
24 any, other than 28 U.S.C. 1334, (6) the degree of relatedness or remoteness of the proceeding to
25 the main bankruptcy case, (7) the substance rather than the form of an asserted 'core' proceeding,
26 (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to
27 be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the
28 bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in

1 bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a
2 jury trial, and (12) the presence in the proceedings of non-debtor parties. *In re Tuscan Estates*,
3 912 F.2d 1162, 1167 (9th Cir.1990), citing *In re Republic Reader's Serv., Inc.*, 81 B.R. 20 422,
4 429 (S.D. Tex.1987).

5 In the instant matter, the Non-Bankruptcy Action contains all of the hallmarks of an issue
6 ripe for abstention by the bankruptcy court. Specifically, the purpose of the Non-Bankruptcy
7 Action is to challenge proposed ballot language for the November 5, 2013 state election, which
8 Movant believes is misleading, confusing, and otherwise inaccurate. Any order by a state court
9 would be limited to altering the proposed language and have no direct impact on the Debtor in the
10 bankruptcy court or whether the Measure is submitted to voters. The Non-Bankruptcy Action
11 contains a purely state law issue centered on state election materials, thus state law “predominates
12 over bankruptcy issues” and is “remote” from any proceedings in this bankruptcy Court.

13 Additionally, California Elections code section 9295(c)(3) cited above specifically
14 mandates that the elections official be named in any writ of mandate as a real party in interest.
15 The current elections official for the City of Stockton is the Registrar of Voters Austin Erdman,
16 who is a San Joaquin County official. Mr. Erdman is not a party to Debtor’s bankruptcy before
17 this Court but is a required party to the Non-Bankruptcy Action, pursuant to statute. Thus, the
18 Non-Bankruptcy Action needs to proceed in state court in order to ensure all necessary parties are
19 brought into the action.

20 Finally, the determination of the issues in the Non-Bankruptcy Actions do not require the
21 expertise of the bankruptcy court, meaning that the interests of judicial economy would best be
22 served by allowing the Non-Bankruptcy Action to proceed in state court. (See Speaker Decl. ¶ 6.)
23 Accordingly, good cause exists to grant Movant’s Motion for relief from the stay to proceed with
24 the Non-bankruptcy Actions to final judgment in the non-bankruptcy forum.

25 **IV. EVIDENCE IN SUPPORT OF MOTION**

26 Movant submits the Declaration of Joseph T. Speaker, which filed concurrently herewith,
27 provides evidence in support of this Motion pursuant to Local Bankruptcy Rule.

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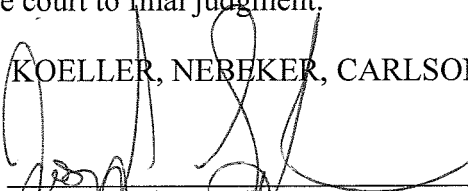
V. CONCLUSION

WHEREFORE, Movant prays that this Court issue an Order:

1. Granting relief from the automatic stay to allow Movant to proceed with the timely filing of the Non-Bankruptcy Action; and
2. Declaring abstention from ruling on the Non-Bankruptcy Action in order to allow Movant to proceed in state court to final judgment.

DATED: August 2, 2013

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