

11 U.S.C. § 362
Fed. R. Evid. 201
Fed. R. Evid. 801(d)(2)
Admissions
Injunction
Judicial Notice
Temporary Restraining Order

Nathan Leston Skinner, Case No. 08-60574-aer13

3/27/2008 RLD

Pub.

Debtor in a case filed in the Eugene Division filed an emergency motion seeking to stay an eviction set for March 27, 2008, in Goleta, California. The judge to whom the case was assigned was not available for an expedited hearing, so the matter was scheduled for a telephone hearing before a judge in the Portland Division, despite the procedural defect of the debtor, pro se, having initiated a contested matter by motion rather than an adversary proceeding as required by Fed. R. Bankr. P. 7001(7). Debtor, the attorney for the landlord, and the attorney for the chapter 13 trustee all participated in the expedited hearing by telephone.

The court took testimony from debtor and landlord's counsel, and took judicial notice of debtor's bankruptcy petition, schedules, Statement of Financial Affairs, statement of current monthly income on Form B22C, and initial chapter 13 plan ("Bankruptcy Documents").

The court determined that the Bankruptcy Documents constituted admissions, in this case that debtor had no interest in the leasehold property ("Premises"). The testimony given on behalf of the landlord was that the lease was in the name of a third party, that the unlawful detainer judgment issued by the Santa Barbara, California Superior Court was against that third party, and that the landlord held no claim against debtor. Debtor testified as his only connection to the Premises that he had some clothes and shoes at the property location. The landlord was obligated under California law to inventory any property left on the Premises after eviction, and landlord's counsel agreed to have any clothes and shoes belonging to debtor boxed and shipped to debtor.

The court denied the debtor's motion for stay, holding (1) it was unlikely that debtor would succeed on the merits in attempting to establish a leasehold interest in the Premises on the date he filed his bankruptcy petition that would invoke

application of the automatic stay under § 362 of the Bankruptcy Code; (2) there was no evidence tending to establish that debtor would suffer any irreparable harm as a result of the landlord completing the eviction of the third party from the Premises; (3) there is no serious question on the merits militating in debtor's favor, and the balance of hardships tipped in favor of the landlord who had received no rent for the Premises over a considerable period of time.

P08-2(7)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
NATHAN LESTON SKINNER,) No. 08-60574-aer13
Debtor.) MEMORANDUM OPINION

The debtor Nathan Leston Skinner's ("Debtor") Emergency Request to Stay the Eviction Set for March 27, 2008 by Creditor Seretteau Green Sought in Violation of the Automatic Stay Which Has Been in Effect Since February 22, 2008 per Judge Radcliffe ("Emergency Motion") was heard on Wednesday, March 26, 2008, at 1:30 pm (the "Hearing"). The Debtor, David Grokenberger, Esq., counsel for Mr. Seretteau Green ("Landlord"), and Paul Garrick, Esq., counsel for Mr. Fred Long, the chapter 13 trustee, all appeared by telephone at the Hearing. The court opened the Hearing by advising the parties that it had reviewed the Emergency Motion, and the papers attached thereto, and had taken judicial notice pursuant to Federal Rule of Evidence 201 of the docket in the Debtor's chapter 13 bankruptcy case, particularly reviewing the Debtor's bankruptcy petition, schedules, Statement of Financial Affairs, statement of current monthly

1 income on Form B22C, and initial chapter 13 plan, as well as the Debtor's
2 Request for Emergency Filing of Bankruptcy as of the Original Date of
3 Tender and supporting letter, and the Debtor's request for waiver of the
4 credit counseling and financial education course requirements. The court
5 then proceeded to hear testimony and argument from the Debtor and Mr.
6 Grokenberger.

7 Based on the documents of record in the Debtor's bankruptcy
8 case and the testimony and arguments presented at the Hearing, the court
9 announced that it would deny all relief requested in the Emergency
10 Motion. The court's findings and conclusions in support of its ruling,
11 pursuant to Federal Rule of Civil Procedure 52(a), applicable with
12 respect to this contested matter pursuant to Federal Rule of Bankruptcy
13 Procedure 9014, are set forth as follows.

14 The Debtor filed his bankruptcy petition effective February 22,
15 2008. The Emergency Motion was filed on March 25, 2008, seeking, in
16 effect, to impose the stay under Section 362 of the Bankruptcy Code (11
17 U.S.C. § 362), on the Landlord to prevent the Landlord from retaking
18 possession of real property located at 7560 Cathedral Oaks Road #8,
19 Goleta, California 93117 (the "Property") pursuant to an unlawful
20 detainer judgment of the Santa Barbara, California Superior Court
21 ("Superior Court") entered on March 19, 2008.

22 Since the relief requested in the Emergency Motion is in the
23 nature of "an injunction or other equitable relief," effectively a
24 temporary restraining order, the Emergency Motion is procedurally
25 incorrect, in that such relief is required to be sought through an
26 adversary proceeding, rather than by means of a motion in the main

1 bankruptcy case, pursuant to Federal Rule of Bankruptcy Procedure
2 7001(7). The Debtor is proceeding pro se and asks for the court's
3 indulgence of deficiencies in his pleadings. However, accommodating any
4 deficiencies as to form in requesting relief does not make up for the
5 fact that, as a matter of substance, the Debtor has not met the
6 evidentiary standards for the relief requested.

7 In the Ninth Circuit, to obtain a temporary restraining order
8 or preliminary injunction, the moving party bears the burden of proof to
9 establish

10 either (1) a combination of probable success on the
11 merits *and* the possibility of irreparable injury if
12 relief is not granted, or (2) the existence of serious
13 questions going to the merits and that the balance of
14 hardships tips sharply in its favor.

15 First Brands Corp. v. Fred Meyer, Inc., 809 F.2d 1376, 1381 (9th Cir.
16 1987) (emphasis in original).

17 The evidence before the court reflects the following: The
18 Landlord entered into a lease agreement for the Property not with the
19 Debtor, but with Ms. Denise d'Sant Angelo ("Sant Angelo") in 2006. The
20 Debtor's name does not appear in the lease agreement or in the lease
21 application as a proposed occupant of the Property. The Debtor did not
22 guarantee the performance of Sant Angelo's obligations under the lease
23 agreement. His name was given to the Landlord as a reference for Sant
24 Angelo, as a former landlord. As a result of nonpayment of rent, the
25 Landlord initiated an unlawful detainer action ("Unlawful Detainer Suit")
26 against Sant Angelo before the Superior Court in October 2007.
Thereafter, Sant Angelo filed a chapter 13 bankruptcy petition in Case
No. SV07-14093-MT in the bankruptcy court for the Central District of

1 California, which resulted in suspension of the Unlawful Detainer Suit
2 by application of the automatic stay of Section 362. Sant Angelo's
3 bankruptcy case was dismissed with a 180-day bar to refiling "under any
4 chapter of the Bankruptcy Code . . . without prior approval of the
5 court," by order entered on December 27, 2007. Internet review of
6 California bankruptcy court records reflects as many as 10 bankruptcy
7 filings by Sant Angelo since 1994. Mr. Grokenberger testified that he
8 was aware of 7 or 8 bankruptcy filings by Sant Angelo over the past 5 to
9 6 years.

10 Following the dismissal of Sant Angelo's bankruptcy case, the
11 Unlawful Detainer Suit proceeded to a judgment in favor of the Landlord
12 on March 19, 2008. A writ of possession has been issued to effect the
13 judgment that, according to Mr. Grokenberger, authorizes the Landlord to
14 evict Sant Angelo at 10:00 am on March 27, 2008.

15 In the Emergency Motion, Debtor asserts that the Landlord
16 accepted rent from him and that he occupied the Property at various
17 points in time, giving him an interest with Sant Angelo as "Co-Debtor."
18 Debtor further asserts that "I have not removed the balance of my
19 possessions from" the Property. Mr. Grokenberger testified that he had
20 no information that Debtor had personal property at the Property or as to
21 Debtor's occupancy of the Property.

22 Debtor argues that the automatic stay applied from the
23 inception of his chapter 13 case to prevent the Landlord from obtaining
24 judgment in the Unlawful Detainer Suit and should apply to prevent the
25 Landlord from completing the process of eviction. He further states that
26 the Landlord "is scheduled to be paid rent if any is due thru my Chapter

1 13 plan, as he is a listed creditor in my bankruptcy." The schedules,
2 Statement of Financial Affairs and initial chapter 13 plan filed by the
3 Debtor tell a very different story.

4 In Debtor's Schedule A-Real Property, in which debtors in
5 bankruptcy are required to "list all real property in which the debtor
6 has any legal, equitable or future interest," the Property is not listed.
7 In Debtor's Schedule B-Personal Property, he does not include any
8 leasehold interest in the Property, and in fact, he does not identify any
9 of his personal property as being located at the Property, even though he
10 generally lists where his tangible personal property is located. The
11 only tangible personal property that is not listed by location on
12 Debtor's Schedule B is "Clothing," valued at \$100. On the Debtor's
13 Schedule F-Creditors Holding Unsecured Nonpriority Claims, the Landlord
14 is listed, with an unliquidated, disputed claim in an unknown amount. On
15 his Schedule G-Executory Contracts and Unexpired Leases, Debtor lists
16 none. In his Statement of Financial Affairs, Debtor does not include the
17 Unlawful Detainer Suit as a suit to which he was a party in the year
18 preceding his bankruptcy filing. During the course of argument, Debtor
19 stated that he had some clothes and shoes at the Property, but he could
20 not identify any other personal property at the Property that belonged to
21 him. Mr. Grokenberger advised the court that upon Landlord retaking
22 possession of the Property, the Landlord is required by California law to
23 prepare an inventory of personal property items and grant access to such
24 items by any party who claims an interest in them. He further made a
25 commitment to make sure that any of Debtor's clothes and shoes at the
26 Property would be boxed up and sent to him.

1 Under Debtor's initial chapter 13 plan, Debtor does not commit
2 to assume any leasehold obligation to the Landlord, but does move to
3 avoid any liens that the Landlord may have against his property. Since
4 the Debtor has signed no lease agreement with the Landlord, Mr.
5 Grokenberger testified that the Landlord does not have any claim against
6 the Debtor. Debtor projects a 100% distribution on allowed claims of his
7 creditors, but his payments over the life of the plan total only \$8,136.
8 If Debtor were really going to pay a claim of the Landlord, the
9 Landlord's money judgment against Sant Angelo is \$12,666.13,
10 substantially in excess of the amount Debtor proposes committing to his
11 plan, without considering commissions to the chapter 13 trustee or the
12 claims of any other creditors.

13 Debtor also asserts in the Emergency Motion:

14 I attempted to file the NOTICE OF STAY OF PROCEEDINGS
15 with the . . . Superior Court on several occasions but
16 the court clerk informed me that I would not be
17 allowed to do so. The clerk further informed me that
they would ignore the bankruptcy filing because that
would "just delay the eviction process."

18 In fact, Sant Angelo did file the NOTICE OF STAY OF PROCEEDINGS with the
19 Superior Court, and the Superior Court did consider it and struck it in
20 deciding to enter a judgment in favor of the Landlord in the Unlawful
21 Detainer Suit, as reflected in the papers attached by the Debtor to the
22 Emergency Motion itself.

23 Based on the foregoing review of the evidence before the court
24 at the Hearing, the court finds it unlikely that Debtor will succeed on
25 the merits in attempting to establish a leasehold interest in the
26 Property on the date of his bankruptcy filing that would invoke

