

AUG 15 2008

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	CC-08-1056-DKMo
)		
7	BROTMAN MEDICAL CENTER, INC.,)	Bk. No.	LA 07-19705-BB
)		
8	Debtor.)		
)		
9	_____)		
)		
10	RETHA GREEN, by her guardian)		
	ad litem, Rosslyn Diamond,)		
)		
11	Appellant,)		
)		
12	v.)	MEMORANDUM ¹	
)		
13	BROTMAN MEDICAL CENTER, INC.,)		
)		
14	Appellee.)		
)		

Argued and Submitted on July 25, 2008
at Pasadena, California

Filed - August 15, 2008

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Sheri A. Bluebond, Bankruptcy Judge, Presiding

Before: DUNN, KLEIN and MONTALI, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 Appellant, Retha Green ("Green"),² appeals the bankruptcy
2 court's denial of her motion for relief from the stay to proceed
3 with a state court action against the debtor, Brotman Medical
4 Center, Inc. We AFFIRM.

5
6 **I. FACTS**

7 On August 27, 2007, Green filed her first amended complaint
8 ("complaint") against the debtor in California superior court
9 ("state court action"). Green also named certain physicians and
10 nurses and several unidentified parties as defendants in the
11 complaint.

12 Green asserted against all of the defendants two causes of
13 action, battery and abuse of a dependent adult, arising from the
14 alleged wrongful death of her daughter, Linda Brown ("Brown").
15 Green sought \$5 million in damages on the first cause of action
16 and medical costs and pain and suffering on the second cause of
17 action. She also sought \$25 million in punitive damages on each
18 cause of action.

19 On October 25, 2007, the debtor filed a voluntary chapter 11
20 petition.³ Approximately seven weeks later, Green filed a motion
21

22
23 ² Retha Green appeals by and through her guardian ad litem,
Rosslyn Diamond.

24
25 ³ Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
27 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
28 enacted and promulgated as of October 17, 2005, the effective
date of any relevant provisions of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub.
L. 109-8, 119 Stat. 23.

1 for relief from the stay under § 362(d)(1) ("Motion") to proceed
2 with the state court action.

3 Specifically, Green requested relief from the stay to amend
4 the complaint to include a medical negligence cause of action
5 against the debtor. She also wished to proceed with discovery in
6 the state court action, mainly to obtain from the debtor Brown's
7 medical records, the address of one of the attending nurses and
8 the names of the unidentified defendants.⁴ Notably, discovery
9 was at an early stage, and no trial date had been set in the
10 state court action.

11 The debtor opposed the Motion. Should Green be allowed to
12 proceed with the state court action, the debtor contended, it
13 would be distracted from its reorganization efforts and be
14 burdened with the expense of litigating the state court action.
15 The debtor offered to stipulate to lifting the stay, but only if
16 Green agreed to proceed against the debtor as a nominal defendant
17 only and to limit recovery in the state court action to insurance
18 proceeds.

19 The bankruptcy court issued a tentative ruling prior to the
20 hearing on the Motion. In its tentative ruling, the bankruptcy
21 court acknowledged that the California superior court was the
22 appropriate forum in which to resolve the state court action.
23 The bankruptcy court believed, however, that lifting the stay to
24

25 ⁴ Additionally, Green sought to commence an action against
26 the debtor in either federal or state court for alleged
27 violations of federal and state civil false claims acts. Green
28 also requested that the bankruptcy court allow her to file a
proof of claim within 30 days of any judgment entered in her
favor in the state court action.

1 allow Green to proceed with the state court action would
2 "adversely impact the debtor's reorganization efforts." Given
3 such a negative effect, the bankruptcy court noted that nothing
4 in the Motion explained why relief from the stay needed to be
5 granted immediately.

6 At the February 5, 2008 hearing on the Motion, the
7 bankruptcy court asked Green's counsel why the stay should be
8 lifted now rather than a few months later. Green's counsel
9 merely reiterated the same arguments advanced in the Motion: he
10 needed to obtain from the debtor information relating to the
11 claims and the parties listed in the state court action.

12 The bankruptcy court explained that the stay stopped the
13 prosecution of claims against the debtor only, not against the
14 non-debtor defendants. The bankruptcy court further pointed out
15 that the stay did not prohibit third-party discovery from the
16 debtor. Thus, the bankruptcy court continued, if Green proceeded
17 against the non-debtor defendants only in the state court action
18 for now, she could obtain documents and information from the
19 debtor through third-party discovery, notwithstanding the stay.

20 The bankruptcy court acknowledged Green's desire to proceed
21 with the state court action and her need for information from the
22 debtor to prove her claims. But, the bankruptcy court continued,
23 these reasons did not constitute sufficient cause to lift the
24 stay under § 362(d)(1) at the time of the hearing. The
25 bankruptcy court stressed that the stay "[was] designed to give
26 the [d]ebtor a breathing spell so it [could] focus on its
27 reorganization efforts." Tr. of February 5, 2008 Hr'g, 5:19-21.
28 To establish sufficient cause to lift the stay at that time, the

1 bankruptcy court explained, Green must demonstrate that
2 "something worse [was] going to happen to [her]" if the
3 bankruptcy court did not lift the stay immediately. Tr. of
4 February 5, 2008 Hr'g, 15:10-11.

5 Green's counsel informed the bankruptcy court that, given
6 Green's advanced age, she might die, and that the statute of
7 limitations might run on any unidentified defendants. The
8 bankruptcy court suggested that Green's counsel submit another
9 motion, demonstrating these circumstances. Green's counsel
10 declined to do so.

11 The bankruptcy court denied the Motion for lack of cause
12 shown. The bankruptcy court recommended, however, that Green
13 return in three months with a renewed motion for relief from the
14 stay.

15 On February 5, 2008, the bankruptcy court entered an order
16 denying the Motion without prejudice. Green has not renewed the
17 Motion or filed another motion for relief from the stay in the
18 debtor's bankruptcy case - over five months later as of the date
19 of oral argument.

20 Also on February 5, 2008, the bankruptcy court entered an
21 order setting April 8, 2008 as the last day for filing proofs of
22 claim in the debtor's bankruptcy case. The order provided that
23 if a creditor failed timely to file his or her proof of claim,
24 his or her claim would be disallowed. The creditor also could
25 not participate in the plan confirmation process nor receive any
26 distribution under the confirmed plan. Green did not file a

27 //

28 //

1 proof of claim by the deadline or at any time thereafter.⁵

2 Green appeals.

3
4 **II. JURISDICTION**

5 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
6 §§ 1334 and 157(b)(2)(G). An order denying relief from the stay,
7 though without prejudice, is a final appealable order. See
8 Benedor Corp. v. Conejo Enters. (In re Conejo Enters.), 96 F.3d
9 346, 351 (9th Cir. 1996) ("Conejo").

10 The debtor argues that we should dismiss the appeal as moot
11 because Green did not file a proof of claim pursuant to Rule
12 3002(a), thereby precluding her from receiving any distributions
13 from the bankruptcy estate. It therefore would be "pointless,"
14 the debtor concludes, for the bankruptcy court to grant Green
15 relief from the stay to prosecute her claims against the debtor
16 in the state court action.

17 We cannot exercise jurisdiction over a moot appeal. I.R.S.
18 v. Patullo (In re Patullo), 271 F.3d 898, 900 (9th Cir. 2001). A
19 moot case is one where the issues presented are no longer live,
20 and no case or controversy exists. Pilate v. Burrell (In re
21 Burrell), 415 F.3d 994, 998 (9th Cir. 2005). The test for
22 mootness is whether we still can grant effective relief to the
23 appellant if we decide the merits in his or her favor. Id. We
24

25 _____
26 ⁵ The debtor did not include a copy of the claims register
27 in the record before us. However, we reviewed the bankruptcy
28 court's electronic claims register. See Atwood v. Chase
Manhattan Mortgage Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th
Cir. BAP 2003).

1 must dismiss the appeal if a case becomes moot while the appeal
2 is pending. Patullo, 271 F.3d at 900.

3 Green counters that unless she has a judgment against the
4 debtor, she does not have a claim against it. Only upon
5 obtaining a claim against the debtor through the judgment, Green
6 contends, can she file a proof of claim in the bankruptcy case.
7 According to Green, Rule 3002(c)(3) allows her to file a proof of
8 claim within 30 days after the judgment in the state court action
9 becomes final. Thus, Green concludes, she still can file an
10 allowable proof of claim.

11 Green misapprehends the concept of a claim in bankruptcy. A
12 claim is a right to payment,⁶ whether or not such right is
13 reduced to judgment, unliquidated or disputed. See 11 U.S.C.
14 § 101(5)(A).⁷ This broad definition of a "claim" under the
15 Bankruptcy Code "is designed to ensure that 'all legal
16 obligations of the debtor, no matter how remote or contingent,
17 will be able to be dealt with in the bankruptcy case.'" Cal.

19 ⁶ A right to payment means an enforceable obligation,
20 Johnson v. Home State Bank, 501 U.S. 78, 83 (1991) (quoting
21 Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. 552,
22 559 (1990)); in other words, a right to payment recognized under
state law. Travelers Cas. & Sur. Co. of Am. v. PG&E, 127 S. Ct.
1199, 1205 (2007).

23 ⁷ Section 101 provides, in relevant part:

24 (5) The term "claim" means -

25
26 (A) right to payment, whether or not such
27 right is reduced to judgment, liquidated,
unliquidated, fixed, contingent, matured,
28 unmatured, disputed, undisputed, legal,
equitable, secured, or unsecured

1 Dept. of Health Svcs. v. Jensen (In re Jensen), 995 F.2d 925,
2 929 (9th Cir. 1993) (quoting H.R. Rep. No. 595, 95th Cong., 2d
3 Sess. 1, 309 (1978), reprinted in 1978 U.S.C.C.A.N. 5963,
4 6266) (emphasis in original).

5 Here, Green's complaint sought damages (i.e., the right to
6 payment) for the alleged wrongful death of her daughter.

7 Therefore, although Green has not obtained a judgment against the
8 debtor in the state court action, the causes of action asserted
9 in the complaint constitute claims within the meaning of
10 § 101(5) (A). See, e.g., In re Dow Corning Corp., 211 B.R. 545,
11 560 (Bankr. E.D. Mich. 1997) ("Given [the] broad definition [of
12 the term "claim" under § 101(5)], there is no question that a
13 personal injury claim not yet reduced to judgment falls within
14 its scope."). Accord 2 Collier on Bankruptcy ¶ 101.05[6] (Alan
15 N. Resnick and Henry J. Sommer, eds., 15th ed. rev. 2008) ("Under
16 the Code, the fact that a tort claim may be unliquidated or
17 disputed does not mean that it is not a claim."). See also,
18 e.g., Institut Pasteur & Genetic Sys. Corp. v. Cambridge Biotech
19 Corp. (In re Cambridge Biotech Corp.), 186 F.3d 1356, 1371 (Fed.
20 Cir. 1999) (determining that a patent infringement complaint
21 against the debtor constituted a proof of claim because the
22 appellant's allegations in the complaint constituted "bankruptcy
23 claims" within the meaning of § 101(5)).

24 Green also misconstrues Rule 3002(c) (3).⁸ Rule 3002(c) (3)

25
26 ⁸ Rule 3003 governs the filing of proofs of claim in chapter
27 11 cases. Fed. R. Bankr. P. 3003(a) (2007). Pursuant to Rule
28 3003(c), the bankruptcy court fixes the time for filing proofs of
claim. Fed. R. Bankr. P. 3003(c) (3). See also Prestige Ltd.

(continued...)

1 provides, in relevant part:

2 An unsecured claim which arises in favor of an entity
3 or becomes allowable as a result of a judgment may be
4 if the judgment is for the recovery of money or
5 property from that entity or denies or avoids the
6 entity's interest in property (emphasis added).

7 Rule 3002(c)(3) applies only to creditors whose claims arise
8 as a result of a recovery by the bankruptcy trustee. See In re
9 Int'l Diamond Exch. Jewelers, Inc., 188 B.R. 386, 391 (Bankr.
10 S.D. Ohio 1995) ("The provisions of Bankruptcy Rule 3002(c)(3)
11 govern the filing of all claims arising post-petition as a result
12 of a recovery by the trustee."). That is, a creditor has a claim
13 against the bankruptcy estate when the bankruptcy trustee has
14 obtained a judgment against the creditor either requiring the
15 creditor to turn over any money or property of the bankruptcy
16 estate in its possession or avoiding the creditor's interest in
17 money or property as a preferential transfer or fraudulent
18 conveyance. In re Litamar, Inc., 198 B.R. 251, 254 (Bankr. N.D.
19 Ohio 1994).

20 Green does not have a claim arising from any kind of
21 recovery of money or property by the bankruptcy trustee (or, in
22 this case, the debtor-in-possession). Green's claim instead
23 arises from the alleged wrongful death of her daughter

24 ⁸ (...continued)
25 P'ship-Concord v. East Bay Car Wash Partners (In re Prestige Ltd.
26 P'ship-Concord), 234 F.3d 1108, 1118 (9th Cir. 2000) ("Prestige").
27 Although Rule 3002 governs the filing of proofs of claim in
28 chapter 7, chapter 12 and chapter 13 cases, the exception under
Rule 3002(c)(3) is made applicable to chapter 11 cases by Rule
3003(c)(3). Fed. R. Bankr. P. 3003(c)(3). See also Prestige,
234 F.3d at 1118 n.7.

1 prepetition, while in the care of the debtor. No claim has been
2 asserted against Green. Rule 3002(c)(3) therefore does not
3 apply.

4 We nonetheless disagree with the debtor that the appeal is
5 moot. Whether or not the bankruptcy court ultimately determines
6 that she has an allowed claim against the debtor, Green may need
7 to obtain relief from the stay to facilitate discovery in the
8 state court action. Alternatively, Green may need relief from
9 the stay to the extent that the debtor can be named as a nominal
10 defendant in the state court action so that Green can proceed
11 against the debtor's insurer(s).

12 There are further bases for declining to dismiss the appeal
13 as moot. A new claims bar deadline may be set, either by order
14 of the bankruptcy court, see Rule 3003(c)(3), or upon conversion
15 of the debtor's chapter 11 case to chapter 7, see Rule 1019(2),
16 and Green could file a proof of claim by the new claims bar
17 deadline. Also, although Green missed the formal claims bar
18 deadline, the Motion, which included a copy of the complaint, may
19 be sufficient to provide notice of her claim and may serve as an
20 informal proof of claim. See In re Pizza of Hawaii, Inc., 761
21 F.2d 1374, 1381-82 (9th Cir. 1985) (determining that certain
22 documents, including a copy of the complaint against the debtor's
23 principals attached as an exhibit to the creditor's motion for
24 relief from the stay, constituted an informal proof of claim
25 because they stated an explicit demand revealing the nature and
26 amount of the claim against the estate and evidenced an intent to
27 hold the debtor liable) (citing In re Sambo's Restaurants, Inc.,
28 754 F.2d 811, 815 (9th Cir. 1985)).

1 According to Green, the bankruptcy court should have applied the
2 factors set forth in In re Johnson, 115 B.R. 634 (Bankr. D. Minn.
3 1989), to determine whether cause existed to lift the stay.
4 Green argues that the bankruptcy court instead applied its own
5 inappropriate standard, requiring Green to demonstrate "some
6 extraordinary circumstance" warranting a grant of relief from the
7 stay immediately.

8 The filing of a bankruptcy petition automatically stays all
9 actions or proceedings against the debtor, except those specified
10 under § 362(b). See 11 U.S.C. § 362(a)-(b). See also Conejo, 96
11 F.3d at 351. The stay protects not only the debtor, but its
12 creditors as well. Id. at 351. See also MacDonald v. MacDonald
13 (In re MacDonald), 755 F.2d 715, 717 (9th Cir. 1985) (the
14 automatic stay under § 362 "gives the bankruptcy court an
15 opportunity to harmonize the interests of both debtor and
16 creditors while preserving the debtor's assets for repayment and
17 reorganization of his or her obligations."). For the debtor, the
18 stay provides a "breathing spell" from creditors, allowing the
19 debtor to focus its efforts on reorganization. Conejo, 96 F.3d
20 at 351. For the creditors, the stay facilitates an orderly
21 liquidation process under which all like situated creditors
22 receive equal treatment. Id. at 352.

23 The bankruptcy court can lift the stay for cause. 11 U.S.C.
24 § 362(d)(1). Because "cause" has no clear definition in the
25 Bankruptcy Code, bankruptcy courts determine cause on a case-by-
26 case basis. Conejo, 96 F.3d at 352 (quoting Christensen v.
27 Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162,
28 1166 (9th Cir. 1990) ("Tucson"). When making this determination,

1 bankruptcy courts consider the totality of the circumstances in
2 each case. In re Bryan Road, LLC, 382 B.R. 844, 854 (Bankr. S.D.
3 Fla. 2008). Accord Baldino v. Wilson (In re Wilson), 116 F.3d
4 87, 90 (3rd Cir. 1997).

5 Green contends that the factors in Johnson control the
6 bankruptcy court's determination, but Johnson is not binding
7 Ninth Circuit precedent. Moreover, although the factors
8 discussed in Johnson may be worthy of consideration, as the
9 bankruptcy court pointed out, Johnson focuses on whether cause
10 exists to grant relief from the stay, not on whether the
11 bankruptcy court ought to grant relief from the stay immediately.
12 Given the early stage of the debtor's chapter 11 case at the time
13 the Motion was considered, timing was an issue concerning the
14 bankruptcy court.

15 Within the Ninth Circuit, cause for lifting the stay has
16 been found to exist where the debtor filed a bankruptcy petition
17 in bad faith, see Idaho v. Arnold (In re Arnold), 806 F.2d 937,
18 939 (9th Cir. 1986), where the bankruptcy court determined to
19 abstain from deciding issues in favor of a pending state court
20 trial involving the same issues, see Tucson, 912 F.2d at 1166,
21 and where a creditor wished to proceed with litigation against
22 the debtor in an appropriate non-bankruptcy forum, Santa Clara
23 County Fair Assoc., Inc. v. Sanders (In re Santa Clara County
24 Fair Assoc., Inc.), 180 B.R. 564, 567 (9th Cir. BAP 1995) ("Santa
25 Clara").

26 Where a creditor requests relief from the stay to proceed
27 with litigation against the debtor in a non-bankruptcy forum,
28 Congress has explained that:

1 "[I]t will often be more appropriate to permit
2 proceedings to continue in their place of origin, when
3 no great prejudice to the bankruptcy estate would
4 result, in order to leave the parties to their chosen
5 forum and to relieve the bankruptcy court from many
6 duties that may be handled elsewhere."

7 Santa Clara, 180 B.R. at 566 (quoting S.Rep. No. 989, 95th Cong.,
8 2d Sess. 50, reprinted in 1978 U.S.C.C.A.N. 5787, 5836). In
9 determining whether cause exists under such circumstances, "the
10 bankruptcy court must balance the potential hardship that will be
11 incurred by the party seeking relief if the stay is not lifted
12 against the potential prejudice to the debtor and the bankruptcy
13 estate." In re United Imports, Inc., 203 B.R. 162, 166 (Bankr.
14 D. Neb. 1996).

15 Here, the bankruptcy court weighed the potential hardships
16 to Green from continuing the stay against the potential prejudice
17 to the debtor and the bankruptcy estate if the bankruptcy court
18 lifted the stay immediately. Taking into account the underlying
19 objectives of the automatic stay, the bankruptcy court found that
20 the potential prejudice to the debtor and the bankruptcy estate
21 outweighed the potential hardships for Green, at least at the
22 time of the hearing.

23 The bankruptcy court believed that the debtor had "an awful
24 lot on its plate right now . . . [so it needed] the breathing
25 spell" offered by the automatic stay to focus its efforts on
26 reorganization. Tr. of February 5, 2008 Hr'g, 2:21-22, 5:19-21.
27 Should the stay be lifted immediately to allow Green to proceed
28 with the state court action, the bankruptcy court reasoned, the
debtor would be distracted from its reorganization efforts,
concerned about potential uninsured exposure to Green's claims.

1 Moreover, if the bankruptcy court granted relief from the stay to
2 Green at that time, it logically would have to grant relief from
3 the stay to other creditors with similar actions pending against
4 the debtor. As the bankruptcy court pointed out, given that
5 there were forty or more actions pending against the debtor,
6 having to deal with them all would be "[even more] disruptive and
7 problematic [to the debtor's reorganization efforts],
8 particularly when the senior people may be called to depositions
9 and [the debtor is] trying to put together document protections."
10 Tr. of February 5, 2008 Hr'g, 10:4-6.

11 The bankruptcy court found that Green, on the other hand,
12 would suffer limited hardship, if any, at that time. Green did
13 not demonstrate that she would be harmed or otherwise negatively
14 affected by waiting a few months to obtain Brown's medical
15 records and other information from the debtor. Such documents
16 and information possibly could be obtained from the debtor
17 through third-party discovery without the stay being lifted. See
18 e.g., Groner v. Miller (In re Miller), 262 B.R. 499 (9th Cir. BAP
19 2001). The bankruptcy court thus determined that Green did not
20 establish sufficient cause to lift the stay at the time the
21 Motion was heard.

22 Green argues that the balance of hardships tips in her
23 favor. She contends that the bankruptcy court's denial of the
24 Motion "until some indeterminate time" imposes more hardship on
25 her "because the passage of time will cause the aging of evidence
26 and the fading of memories" concerning the events underlying her
27 causes of action. Appellant's Opening Brief at 24. Green
28 further asserts that denial of the Motion imposes a financial

1 burden on her in that it effectively requires duplicate discovery
2 efforts. Id.

3 As to the latter two points, Green is advancing arguments
4 that she did not raise before the bankruptcy court. Although the
5 bankruptcy court invited Green to submit further papers, Green
6 declined to do so. We will not consider Green's new arguments
7 here. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert,
8 Inc.), 887 F.2d 955, 957 (9th Cir. 1989).

9 Green also alleges that the bankruptcy court attempted to
10 pressure her into waiving her claims against the debtor and to
11 proceed against the insurer(s) only, in exchange for a grant of
12 relief from the stay. Contrary to Green's assertions, however,
13 the bankruptcy court repeatedly told Green that it was not trying
14 "to force anybody to consent to a waiver of claims." Tr. of
15 February 5, 2008 Hr'g, 3:6-7. We discern nothing in the record
16 before us showing that the bankruptcy court attempted to pressure
17 the debtor into waiving her claims and proceeding against the
18 insurer(s) only. Rather, the bankruptcy court was trying to
19 explain that the prejudice to the debtor from lifting the stay
20 would have been less had Green agreed to proceed against the
21 debtor's insurer(s) only.

22 In fact, based on the record before us, the bankruptcy court
23 tried to assist Green in her efforts to move forward with the
24 state court action. The bankruptcy court advised Green that she
25 still could obtain information with regard to the unidentified
26 defendants and other named defendants from the debtor through
27 third-party discovery, as the stay only prohibited litigation
28 against the debtor. The bankruptcy court also advised Green to

1 renew her motion for relief from the stay a few months later. At
2 that time, the debtor would "know where [it was] going in the
3 case," and if the bankruptcy court did not grant relief from the
4 stay, it would "be more inclined to continue the hearing"
5 Tr. of February 5, 2008 Hr'g, 13:4-7. Despite the bankruptcy
6 court's explanations and suggestions, Green apparently has not
7 availed herself of the suggested opportunities.

8
9 **VI. CONCLUSION**

10 Based on our review of the record, we do not have a definite
11 and firm conviction that the bankruptcy court clearly erred, or
12 otherwise abused its discretion, in finding that the prejudice to
13 the debtor would outweigh the hardship to Green if relief from
14 the stay under § 362(d)(1) were granted immediately at the time
15 the Motion was heard. The bankruptcy court did not abuse its
16 discretion in denying the Motion. We AFFIRM.