

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

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IN RE:)	CASE NO.	05-34331 (LMW)
)		
HOWARD G. GOLD,)	CHAPTER	13
)		
DEBTOR.)	DOC. I.D. NOS.	21, 31
-----)		
GEORGE BROUILLARD,)		
)		
MOVANT)		
)		
vs.)		
)		
HOWARD G. GOLD, MOLLY T.)		
WHITON, TRUSTEE,)		
)		
RESPONDENTS.)		
-----)		

APPEARANCES

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**BRIEF MEMORANDUM AND ORDER CONDITIONING AUTOMATIC STAY
AND DENYING TURNOVER MOTION AS PROCEDURALLY IMPROPER**

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, the above-captioned debtor (the “Debtor”) commenced the instant bankruptcy case by the filing of a chapter 13 petition on August 31, 2005;

WHEREAS, the Debtor and his non-debtor spouse reside at 707 Mix Avenue, #26, Hamden, Connecticut (the “Property”);

WHEREAS, the above-captioned movant (“the Movant”) filed that certain Motion for Relief from Automatic Stay (Doc. I.D. No. 21, the “Lift Stay Motion”) (1) asserting an ownership interest in the Property; and (2) seeking relief from stay to prosecute an eviction action currently pending in the Superior Court for nonpayment of rent since January 1, 2004;

WHEREAS, on April 6, 2006, the court issued an order scheduling the Motion (among other matters) for an evidentiary hearing (the “Hearing”) on April 25, 2006 (*see* Doc. I.D. No. 27);

WHEREAS, on April 25, 2006, the Debtor filed that certain Motion To Turnover [sic] Property (Doc. I.D. No. 31, the “Turnover Motion”) pursuant to 11 U.S.C. § 542 seeking turnover of the Property and certain monetary relief because the Debtor retained “an equitable interest in the [P]roperty.” (Turnover Motion at 1);

WHEREAS, the Debtor and his counsel and the Movant and his counsel appeared at the Hearing. The Movant testified in support of the Lift Stay Motion and the Debtor testified in opposition and the court heard oral arguments of counsel. At the conclusion of the Hearing, the court issued a bench ruling in substantial part as follows;

WHEREAS, based on the evidence submitted at the Hearing, the court determined that the Debtor’s nonpayment of lease amounts was *prima facie* evidence of “cause” for lifting the automatic stay pursuant to 11 U.S.C. § 362(d)(1). However, the court noted that the Debtor raised the issue of the state of title to the Property (as more fully set forth in the Turnover Motion) in opposition to

the Lift Stay Motion and such “extraneous grounds” would be “considered in the summary manner appropriate to an equivalent request for a restraining order or preliminary injunction.” *Federal National Mortgage Assoc. v. Fitzgerald (In re Fitzgerald)*, 237 B.R. 252, 260 (Bankr. D. Conn. 1999);

WHEREAS, the court determined that the Debtor satisfied the standard for preliminary injunction and concluded that the continuance of the automatic stay would be conditioned on several conditions;

WHEREAS, the Turnover Motion procedurally is improper because the matters raised therein may be adjudicated only in the context of an adversary proceeding;

NOW, THEREFORE, it is hereby **ORDERED** that the Lift Stay Motion is granted to the extent set forth below; and it is further

ORDERED that the continuance of the automatic stay in respect of the Property is conditioned upon the following:

- the Debtor’s payment in good funds or before May 1, 2006 (and on the first business day of each calendar month thereafter) of an amount equal to the aggregate of the monthly mortgage payment, relevant monthly condominium fees and relevant monthly tax escrow payment to counsel for the Movant. Counsel for the Movant shall hold such funds in escrow in his firm’s client funds account subject to further order of the court;
- the Debtor’s commencement of an adversary proceeding (the “Adversary Proceeding”) against the Movant by the Debtor’s filing of a complaint (“the

Complaint”) on or before May 31, 2006 setting forth (but not necessarily limited to) substantially the grounds stated in the Turnover Motion; and

- the Debtor’s filing and service of a proposed pretrial order with respect to the Complaint on or before June 30, 2006;

and it is further

ORDERED, that if the Debtor fails to comply with any of the foregoing conditions, the Movant may file with this court and serve upon the Debtor (by overnight mail) an affidavit (an “Affidavit”) stating such noncompliance. If the Debtor does not file with this court a counter-affidavit (a “Counter-Affidavit”) disputing the alleged noncompliance within five (5) days of service of the Affidavit, relief from stay will issue without further notice or hearing. If a Counter-Affidavit is filed, a hearing will be held at the earliest convenience of the court; and it is further

ORDERED that should the Debtor fail to prevail to any material degree in the Adversary Proceeding, the Movant may utilize the foregoing Affidavit/Counter-Affidavit procedure to obtain relief from stay; and it is further

ORDERED that the Turnover Motion is denied as procedurally improper; and it is further

ORDERED that the Clerk’s office shall serve by electronic means (if applicable, otherwise by first-class mail) a copy of this order on the Debtor, his counsel, counsel for the Movant and the Chapter 13 Trustee.

Dated: April 28, 2006

BY THE COURT


Lorraine Murphy Weil
United States Bankruptcy Judge