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12 GEORGE O.J. BAKER and
THE INTERFAITH COUNCIL OF SAN JOAQUIN

13
14 UNITED STATES BANKRUPTCY COURT
15 EASTERN DISTRICT OF CALIFORNIA
16 SACRAMENTO DIVISION

17 In re:
18 CITY OF STOCKTON, CALIFORNIA,
19 Debtor.

CASE NO. 12-32118
DC No. PH-1
Chapter 9

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: January 8, 2013
Time: 9:30 a.m.
Judge: Hon. Christopher M. Klein
Dept.: 501 I Street, 6th Floor
Dept. C; Courtroom No. 35
Sacramento, CA 95814

1 Here, cause exists to grant relief from the automatic stay because (1) the Replacement
 2 Unit Obligation is not a debt subject to discharge under the Bankruptcy Code, (2) the Relocation
 3 Assistance Fund and its attendant obligations belong to the Successor Agency – not to the City –
 4 and thus are not properly included among the City’s assets and obligations in these proceedings,
 5 and (3) analysis of the factors courts assess when considering whether to order relief from stay
 6 favors granting this Motion.

7 Pursuant to Section 362 of the Bankruptcy Code, the *Price* Judgment Creditors
 8 respectfully request that the Court enter an order granting relief from the automatic bankruptcy
 9 stay to permit judicial enforcement of the *Price* Judgment.

10
 11 **MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM**
 12 **AUTOMATIC STAY**

13 **I. JURISDICTION AND VENUE**

14 This Court has jurisdiction to decide this motion pursuant to 28 U.S.C. §§ 157 and 1334.
 15 This is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(G). Venue is proper in this Court
 16 pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested in this Motion is predicated on 11
 17 U.S.C. § 362(d) and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

18 **II. BACKGROUND**

19 **A. The *Price* Judgment**

20 Movant George O.J. Baker is one of more than 250 former tenants of single room
 21 occupancy (“SRO”) housing units in downtown Stockton who were displaced from their
 22 residences as a result of Stockton’s code enforcement activities designed to vacate and/or
 23 demolish eleven SRO hotels and properties. Declaration of Hilton S. Williams in Support of
 24 Motion For Relief From Automatic Stay (“Williams Decl.”) at ¶ 3; Exh. A (Order Granting
 25 Preliminary Injunction, *Price* Action Dkt. No. 83 (May 2, 2002) at 4). On January 10, 2002, Mr.
 26 Baker and five other displaced low-income individuals joined with Movant Interfaith Council of
 27 San Joaquin (formerly Stockton Metro Ministry, Inc.) (collectively, “*Price* Judgment Creditors”)
 28 to file suit in the United States District Court for the Eastern District of California against the

1 City, the Stockton Redevelopment Agency, the Stockton City Council, the Stockton Department
2 of Housing and Redevelopment, and certain city officials, alleging violations of state and federal
3 redevelopment, relocation assistance, and fair housing laws. *Id.* at ¶ 4; Exh. B (Settlement
4 Agreement at 1-2).

5 The Court (Karlton, J.) entered judgment against the Stockton Redevelopment Agency
6 and the City of Stockton (“Defendants”) pursuant to the parties’ Settlement Agreement in January
7 2006. *Id.* at ¶ 5; Exh. C (Judgment Pursuant to Settlement Agreement, *Price* Action Dkt. No. 313
8 (Jan. 13, 2006) (“*Price* Judgment”). The *Price* Judgment requires the Defendants to engage in a
9 series of activities which would result in two significant outcomes. First, it binds Defendants to
10 ensure the construction of 340 units of lower income housing to replace residences demolished as
11 part of the redevelopment activities (“Replacement Unit Obligation”). *Id.* at ¶ 4; Exh. B
12 (Settlement Agreement, Section IV). Second, it requires the Defendants to establish a restricted
13 fund in the amount of approximately \$1.45 million for distribution by a special master over a
14 five-year period to persons displaced by Defendants’ activities (“Relocation Assistance Fund”).
15 *Id.* at ¶ 4; Exh. B (Settlement Agreement, Section III). At the expiration of the five-year period,
16 which should have occurred on January 9, 2011, the City was required to deposit the remaining
17 balance of the Relocation Assistance Fund into a restricted fund under control of the Stockton
18 Redevelopment Agency to be used exclusively for construction of housing units for extremely
19 low income individuals and families. *See id.* at 6.¹

20 **B. Effective February 1, 2012, California Dissolved Its Redevelopment Agencies**

21 On June 29, 2011, California Governor Jerry Brown signed into law an immediate budget
22 bill, Assembly Bill (“AB”) x 1 26, which dissolved all existing California Redevelopment
23 Agencies, effective February 1, 2012, and established “successor agencies” to perform necessary
24 functions to “wind down” the redevelopment agency’s affairs. *See* AB 26, Part 1.85, June 29,
25 2011,² codified at Health & Safety Code §§34161 et seq.; *see also California Redevelopment*

26 ¹ The *Price* Judgment Creditors maintain that Defendants breached this and other provisions of the Settlement
27 Agreement prior to January 2011 as set forth in Plaintiffs’ notice of breach to Defendants dated December 30, 2010.
Williams Decl. at ¶ 6; Exh. D. Accordingly, the *Price* Judgment Creditors reserve their right to resolve the alleged
breach pursuant to the terms of the Settlement Agreement.

28 ² Available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/abx1_26_bill_20110629_chaptered.html.

1 *Association v. Matosantos*, 53 Cal. 4th 231 (2011). To effect the dissolution, the redevelopment
2 agency's assets, functions and obligations (including existing court judgments) were transferred
3 to the successor agency. Cal. Health & Safety Code § 34173.

4 On August 23, 2011, by Resolution No. 11-0251, the City passed a resolution stating that
5 it would serve as Successor Agency to the Stockton Redevelopment Agency ("Successor
6 Agency"), and would assume the Stockton Redevelopment Agency's housing functions.³ On
7 February 1, 2012, the assets and obligations of the Stockton Redevelopment Agency – including
8 the balance of the restricted Relocation Assistance Fund and the Agency's duty to complete the
9 remaining replacement housing units – transferred to the City as Successor Agency.

10 The Successor Agency is a separate and distinct public entity from the City of Stockton.
11 Cal. Health & Safety Code § 34173(g). Thus, even if a municipality established itself as the
12 successor agency to its dissolved redevelopment agency, (as did the City here), as a matter of law
13 the municipality and the successor agency are separate, stand-alone legal entities.

14 **C. The City's AB 506 Process And Application For Chapter 9 Bankruptcy**
15 **Protection**

16 The City initiated the early neutral evaluation process mandated by AB 506 for a
17 municipality contemplating the filing of a Chapter 9 proceeding by letter dated February 29,
18 2012. In response, the Price Judgment Creditors opted-in to the early neutral evaluation process
19 by letter dated March 13, 2012. The Price Judgment Creditors participated fully in the early
20 neutral evaluation process, including in group meetings and one-on-one sessions with the City. It
21 is a matter of public record that the City was not able to reach agreements with its various
22 creditors – including the Price Judgment Creditors – sufficient to avoid seeking protection under
23 Chapter 9 of the U.S. Bankruptcy Code.

24 **D. Movants Asked The City To Stipulate To Relief From The Automatic**
25 **Bankruptcy Stay, And The City Declined**

26 On November 21, 2012, the Price Judgment Creditors requested that the City stipulate to
27 relief from the Automatic Stay because (1) the Replacement Unit Obligation is not a debt subject
28 to discharge under the Bankruptcy Code, and (2) the Relocation Assistance Fund and its attendant

³ See <http://www.stocktongov.com/government/departments/econDev/redev.html>

1 obligations belong to the Successor Agency – not to the City – and thus are not properly included
2 among the City’s assets and obligations in these proceedings. Williams Decl. at ¶ 7; Exh. E.

3 On November 26, 2012, the City declined to stipulate to relief from the automatic stay
4 and, accordingly, the Price Judgment Creditors filed this Motion. *Id.*

5 **E. Outstanding Obligations Under The Price Judgment**

6 **1. Replacement Housing Units**

7 There is no dispute that the Defendants have not met their obligation to create 340 low-
8 income housing units pursuant to the *Price* Judgment. Defendants have received credit for 161
9 replacement housing units. Defendants, including the City, remain obligated to ensure
10 construction of the remaining 179 lower income housing units pursuant to the terms of the
11 Settlement Agreement. Williams Decl. at ¶ 4; Exh. B. The City’s outstanding obligation is an
12 equitable one: to exercise its broad land use powers to ensure that the outstanding units are
13 constructed and made available to lower-income households. *See* Cal. Gov’t Code §65580
14 (California legislature finds that local governments “have a responsibility to use the powers
15 vested in them” to facilitate the development of housing).

16 **2. Relocation Fund**

17 There is also no dispute that as of January 9, 2011, the Defendants had yet to pay out over
18 \$1 million from the Relocation Assistance Fund. Moreover, the Successor Agency is bound by a
19 judgment under California law to segregate any remaining Relocation Assistance Fund into a
20 restricted fund to be used exclusively for construction of housing units for extremely low income
21 individuals and families.

22 Put simply, because the Price Judgment contains equitable obligations (replacement units)
23 and obligations that are to be fulfilled by a separate legal entity, the Successor Agency (relocation
24 fund), and for the additional reasons discussed below, neither of the obligations under the *Price*
25 Judgment is properly dischargeable through these bankruptcy proceedings. Accordingly,
26 Movants are entitled to relief from the automatic stay for cause in order to pursue enforcement of
27 the *Price* Judgment.
28

1 **III. MOVANTS ARE ENTITLED TO RELIEF FROM THE STAY FOR CAUSE**

2 Section 362(d) of the Bankruptcy Code provides that a bankruptcy court may lift the
3 automatic stay “for cause”:

4 On request of a party in interest and after notice and a hearing, the
5 court shall grant relief from the stay provided under subsection (a)
6 of this section, such as by terminating, annulling, modifying, or
7 conditioning such stay – (1) for cause, including the lack of
adequate protection of an interest in property of such party in
interest;

8 11 U.S.C. § 362(d)(1).

9 The Bankruptcy Code does not define “cause,” and courts therefore decide motions for
10 relief from stay on a case-by-case basis. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir.
11 1990). The term “cause” as used in § 362(d)(1) “is a broad and flexible concept which permits a
12 bankruptcy court, as a court of equity, to respond to inherently fact-sensitive situations.” *In re A
13 Partners, LLC*, 344 B.R. 114, 127 (Bankr. E.D. Cal. 2006) (citations omitted). The bankruptcy
14 court has broad discretion in granting relief from stay for cause under Section 362(d). *Groshong
15 v. Sapp (In re Mila, Inc.)*, 423 B.R. 537, 542 (9th Cir. B.A.P. 2010). In the Ninth Circuit, courts
16 determining whether to modify or lift an automatic stay consider such factors as: (1) interference
17 with the bankruptcy; (2) good or bad faith of the debtor, (3) injury to the debtor and other
18 creditors if the stay is modified; (4) injury to the movant if the stay is not modified; and (5) the
19 relative portionality of the harms from modifying or continuing the stay.” *In re A Partners, LLC*,
20 344 B.R. at 127 (citations omitted).

21 In this case, cause exists to grant Movants relief from the automatic stay because (1) the
22 Replacement Unit Obligation is not a debt subject to discharge under the Bankruptcy Code, and
23 (2) the Relocation Assistance Fund and its attendant obligations belong to the Successor Agency
24 – not to the City – and thus are not properly included among the City’s assets and obligations in
25 these proceedings. And finally, any analysis of the *A Partners* factors favors granting relief from
26 the automatic stay here.

1 **A. The Replacement Unit Obligation Is Not a Debt Subject to Discharge Under**
2 **the Bankruptcy Code**

3 The Bankruptcy Code defines “debt” as “liability on a claim.” 11 U.S.C. § 101(12). It
4 defines a “claim,” in turn, as either a “right to payment” or a “right to an equitable remedy for
5 breach of performance *if such breach gives rise to a right to payment[.]*” *Id.* § 101(5)(A), (B)
6 (emphasis added). A right to equitable relief that requires only non-monetary action by a debtor
7 thus does not give rise to a claim and does not create a debt as defined by the Code. *See, e.g.,*
8 *U.S. v. Apex Oil Co., Inc.* 579 F.3d 734, 736 (7th Cir. 2009) (government’s claim to injunction
9 requiring debtor’s successor to clean up contaminated site was not a claim discharged in prior
10 owner’s bankruptcy because government was not entitled to demand payment of cleanup costs in
11 lieu of cleanup action); *In re Ben Franklin Hotel Assoc.*, 186 F.3d 301, 306-07 (3rd Cir. 1999)
12 (finding a right to enforcement of a partnership interest in a “unique business opportunity” not to
13 be a claim within the meaning of the Code because no monetary alternative existed); *In re Gilpin*,
14 391 B.R. 210 (B.A.P. 6th Cir. 2008) (right to enforce noncompete agreement was not a claim
15 because compliance would not require payment of money by the debtor); *In re Torwico*
16 *Electronics, Inc.*, 8 F.3d 146, 150 (3rd Cir. 1993) (finding an order to abate ongoing pollution not
17 to be a claim under the Bankruptcy Code).

18 *Apex Oil* is especially instructive. In that case, the Environmental Protection Agency
19 (“EPA”) won an injunction from the district court requiring Apex to clean up a site where an
20 underground oil plume was contaminating ground water and emitting hazardous fumes. 579 F.3d
21 at 735. Apex argued on appeal that the government’s claim to an injunction was discharged in a
22 prior bankruptcy proceeding. *Id.* The Seventh Circuit held that the EPA’s claim to an injunction
23 was not dischargeable in bankruptcy because it did not entitle the EPA to a money judgment if
24 Apex failed to comply. *Id.* at 736-37. It did not matter that Apex would need to spend 150
25 million dollars to hire another company to perform the cleanup. The court rejected Apex’s
26 argument that the cost of complying with an equitable decree should be deemed a monetary
27 claim, and hence dischargeable. That proposition, according to the court, was inconsistent with
28

1 the Bankruptcy Code’s definition of a “claim” because the cost to Apex was not the same thing as
2 a “right to payment” belonging to the EPA:

3 Almost every equitable decree imposes a cost on the defendant, whether the
4 decree requires him to do something . . . [or] to refrain from doing something.
5 The logic of Apex’s position is thus that every equitable claim is dischargeable in
6 bankruptcy unless there is a specific exception in the Code. That is inconsistent
with the Code’s creation in 11 U.S.C. § 101(5)(B) of only a limited right to the
discharge of equitable claims.

7 *Id.* at 737.

8 The Replacement Unit Obligation is an equitable decree requiring the City to take action.
9 The Settlement Agreement does not contemplate a monetary alternative in lieu of building the
10 requisite 340 housing units. As emphasized in *Apex Oil*, the fact that the City may incur costs to
11 assist with construction of those units does not transform the obligation into a claim dischargeable
12 in bankruptcy.

13 As in the *Apex* case, breach of the City’s obligation to build replacement units here will
14 not “give[] rise to a right to payment” to the *Price* Judgment Creditors. Accordingly, the
15 Replacement Unit Obligation does not fall within the subset of equitable claims that are
16 dischargeable under 11 U.S.C. § 101(5)(B).

17 **B. The Relocation Assistance Fund Belongs to the Successor Agency, Not to the**
18 **City, and Therefore Cannot Be Discharged in These Proceedings.**

19 Under AB x1 26 and AB 1484, the city or county that originally authorized the creation of
20 a redevelopment agency is called the “sponsoring entity.” Cal. Health & Safety Code §34171(n).
21 The City is the “sponsoring entity” for the now defunct Stockton Redevelopment Agency.
22 However, the City as sponsoring entity is not the same public entity as the City as Successor
23 Agency and the sponsoring entity does not assume the assets and liabilities of the successor
24 agency:

25 A successor agency is a *separate public entity* from the public
26 agency that provides for its governance and the two entities shall
27 not merge. The liabilities of the former redevelopment agency shall
28 not be transferred to the sponsoring entity and *the assets shall not*
become assets of the sponsoring entity.

1 Cal. Health & Safety Code 34173(g) (emphasis added). The Relocation Assistance Fund and its
2 attendant obligations were assets and liabilities of the Stockton Redevelopment Agency that were
3 transferred to the Successor Agency pursuant to AB 26 and AB 1484. Accordingly, the
4 Relocation Assistance Fund is not the City's property but rather the property of the separate
5 public entity known as the Successor Agency.

6 Both logic and black-letter law dictate that property that does not belong to the debtor
7 does not become part of the debtor's bankruptcy estate. "The initiation of a bankruptcy case
8 creates an estate that includes all legal and equitable interests *of the debtor* in property as of the
9 date of the filing of the petition." *In re Lucas*, 300 B.R. 526, 533 (B.A.P. 10th Cir. 2003)
10 (holding that property held by the debtor for another in a constructive trust is not a debt owed by
11 the debtor) (emphasis added). Thus, because under ABx1 26 and AB 1484 the Relocation
12 Assistance Fund did not become property of the City, the Fund is not part of the City's
13 bankruptcy estate and should be exempted from the automatic stay in these proceedings.

14 **C. The A Partners Factors Support Entry Of An Order Granting Relief From**
15 **Stay Here**

16 Finally, courts balance specific factors in assessing whether to order relief from stay,
17 which include: (1) interference with the bankruptcy; (2) the debtor's good or bad faith; (3)
18 detriment to the debtor and other creditors; (4) injury to the movant; and (5) the relative
19 portionality of the harms. *In re A Partners, LLC*, 344 B.R. at 127.⁴ Here, any analysis of the *A*
20 *Partners* factors favors entering an order granting relief from the automatic stay to allow the
21 *Price Judgment* to be enforced.

22 First, there will be no interference with this bankruptcy proceeding. Judge Karlton
23 retained jurisdiction over enforcement of the *Price Judgment*, is familiar with the proceedings,
24 and can dispose of the compliance issues efficiently. Moreover, the City in its capacity as the
25 Successor Agency is unrelated to the City in its capacity as debtor in these proceedings, and to the

26 ⁴ Courts have articulated various approaches to considering whether to order relief from stay. *See e.g., In re Sonnox*
27 *Industries, Inc.*, 907 F. 2d 1280 (2d Cir, 1990)(citing *In re Curtis*, 40 B.R. 795 (Bankr.D.Utah 1984))(listing twelve
28 factors and evaluating four); *In re Hakim*, 212 B.R. 632 (Bankr. N.D. Cal. 1997)(discussing cases that have applied
tests ranging from four factors to twelve factors depending on the nature of the request for relief). Here, given the
enforcement posture in connection with the requested relief and the Court that issued the opinion, the five *A Partners*
factors are analogous.

1 extent the City is obligated under the Price Judgment, its involvement is related primarily to the
2 fulfillment of its equitable obligations as discussed above.

3 Second, the City and the Stockton Redevelopment Agency agreed to entry of the *Price*
4 Judgment more than six years ago. These obligations are not merely contractual – they are
5 memorialized by a California judgment. Accordingly, the City in both its role as a municipal
6 entity and as the Successor Agency should be held accountable for its conduct and its failure to
7 discharge its court-ordered obligations.

8 Third, relief from stay would cause little detriment to the debtor and other creditors
9 because the Relocation Assistance Fund was required to be set aside and protected for exclusive
10 use as specified in the *Price* Judgment. Accordingly, unless the City or the city in its role as
11 Successor Agency failed to discharge its obligations in good faith, the funds are already
12 segregated and protected. In addition, the equitable obligations to which the City is bound should
13 not significantly affect its financial creditors in these bankruptcy proceedings.

14 Fourth, unless relief is granted, there will be more injury heaped on the poor, homeless,
15 and displaced people in addition to the passage of more than six years without the benefit of the
16 rights and benefits to which they are entitled under the *Price* Judgment. These people need this
17 assistance desperately, and the continuing failure to discharge these obligations will further
18 compound the difficult financial situations of the beneficiaries of the *Price* Judgment.

19 And finally, without relief from stay to allow Judge Karlton to address the issues
20 associated with the long-overdue enforcement of the *Price* Judgment, the matter will remain
21 unresolved for years pending closure of these bankruptcy proceedings. That type of continuing
22 harm in denying the benefits of a legitimate California judgment in favor of poor, displaced, and
23 homeless people would be orders of magnitude more severe than whatever hardship the City and
24 the City in its role as Successor Agency may experience in appearing before Judge Karlton to
25 explain its failures to discharge their court-ordered obligations.

26 Accordingly, weighing the *A Partners* factors further supports a finding of cause here to
27 order relief from the automatic stay.

28

