

1 Case 10-26166-lbr Doc 42 Entered 11/23/10 11:38:42

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3 Entered on Docket

4 November 23, 2010

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6 Hon. Linda B. Riegler
United States Bankruptcy Judge

7
8 KIMBERLY P. STEIN, ESQ. E-filed on November 23, 2010
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20 Attorneys for the People of the State of California

21
22 **UNITED STATES BANKRUPTCY COURT**

23 **DISTRICT OF NEVADA**

24 IN RE:
25 Robert A. Reed,

26
27 Debtor

Case No.: 10-26166-lbr
Chapter 7

Hearing Date: November 16, 2010
Hearing Time: 10:00 a.m.

1 **ORDER GRANTING MOTION OF THE PEOPLE OF THE STATE OF CALIFORNIA FOR**
2 **DETERMINATION THAT THE CIVIL ENFORCEMENT ACTION FILED IN STATE**
3 **COURT IS EXEMPT FROM THE AUTOMATIC STAY, OR, IN THE ALTERNATIVE, FOR**
4 **RELIEF FROM THE AUTOMATIC STAY; and ORDER DENYING DEBTOR’S MOTION**
5 **TO ENFORCE AUTOMATIC STAY AND MOTION TO ENJOIN CALIFORNIA**
6 **DEPARTMENT OF CORPORATIONS FROM SEEKING EXEMPTION FROM STAY IN**
7 **CALIFORNIA STATE COURT**

8 The above-referenced matters came for hearing on November 16, 2010 at 10:00 a.m. The
9 People of the State of California (the “State”) were represented by Attorney Alex Calero, Esq.,
10 Corporations Counsel of the California Department of Corporations, who appeared telephonically,
11 and by Kimberly P. Stein, Esq., Chief of Enforcement and Legal Counsel of the Securities Division
12 of the Office of the Nevada Secretary of State, who appeared in person as local counsel. The Debtor
13 was represented by counsel from Deluca & Associates.

14 Having considered the various pleadings on file and the motions submitted by the parties and
15 oral argument for and against the relief requested and for good cause appearing:

16 The Court finds that Debtor’s Motion to Enforce Automatic Stay is moot because the State
17 has filed its Motion with this Court for exemption and/or relief from the stay.

18 The Court also considered an oral motion by the State to strike Debtor’s Opposition to the
19 State’s Motion as a fugitive document. Said Opposition was filed with the Court at 9:00 p.m. on
20 November 15, 2010. The Opposition was unsigned and appears to have been written by a non-
21 attorney. The Court finds that the filing of this Opposition, at such a late time and date, was intended
22 to delay the hearing on the State’s Motion.

23 The Court finds that the injunctive relief requested by the State is brought pursuant to the
24 State’s police and regulatory powers and is therefore exempt from the automatic stay by the Police
25 and Regulatory Powers exemption of the Bankruptcy Code. This Court makes no determination as to
26 whether the ancillary relief of civil penalties and restitution is exempted from the automatic stay. To
27 the extent that the ancillary relief is not exempt from the automatic stay, this Court finds that any
28 judgment obtained by the State at trial would not be dischargeable under 11 U.S.C. §523(a)(19). As
such, the addition of the ancillary relief prayed for does not detract from or minimize the importance
of the civil enforcement action or otherwise abrogate the Police and Regulatory Powers exemption.

1 The California state trial court in which the civil enforcement action is pending is in a better position
2 to determine the need for the relief prayed for by the State.

3 THEREFORE, IT IS HEREBY ORDERED that Debtor's Motion to Enforce Automatic Stay
4 is DENIED;

5 IT IS FURTHER ORDERED that the Debtor's Opposition to the State's Motion is stricken;

6 IT IS FURTHER ORDERED that the State's Motion for a determination that the automatic
7 stay does not apply to the civil enforcement action against Debtor is GRANTED. To the extent that
8 any of the relief sought by the State is not exempt from the automatic stay, this Court hereby LIFTS
9 THE STAY as to those causes of action and/or remedies.

10 IT IS SO ORDERED.

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12 Submitted by:

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In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

The court has waived the requirement of approval under LR 9021.

No parties appeared or filed written objections, and there is no Trustee appointed in this case.

I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below:

APPROVED/DISAPPROVED:

FAILED TO RESPOND
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APPROVED/DISAPPROVED:

FAILED TO RESPOND
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Trustee
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