

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

MARY CUMMINS-COBB,

Debtor.

Case No. 2:17-bk-24993-RK

Chapter 7

Adv. No. 2:18-ap-01066-RK

ORDER DENYING (1) DEFENDANT'S EX PARTE MOTION TO STAY PROCEEDINGS RELATING TO THE JUDGMENT IN THE ADVERSARY PROCEEDING AND THE APPEAL IN THE ADVERSARY PROCEEDING AND THE BANKRUPTCY CASE; AND (2) APPLICATION FOR ORDER SHORTENING TIME

KONSTANTIN KHIONIDI, AS TRUSTEE OF THE COBBS TRUST,

Plaintiff,

vs.

MARY CUMMINS-COBB,

Defendant.

On March 17, 2020, Defendant Mary Cummins-Cobb filed an application for order shortening time (Docket No. 155), a declaration in support of the application for

1 order shortening notice (Docket No. 156), and an ex parte motion to stay the
2 proceedings related to the judgment in the adversary proceeding and to the appeal in
3 the adversary proceeding and in the bankruptcy case (Docket No. 154). On March 18,
4 2020, Plaintiff Konstantin Khionid, as the Trustee of the Cobbs Trust, filed an opposition
5 to the motion to stay.
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7 Having considered Defendant's application for order shortening time, the
8 declaration in support of the application, her ex parte motion for stay and Plaintiff's
9 opposition thereto, the court hereby DENIES the motion for stay and related request for
10 a hearing on shortened notice for the reasons stated in the opposition and for the
11 reasons stated below.
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13 In *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011), the Ninth Circuit
14 articulated four factors the court must consider when evaluating whether to issue a stay
15 pending appeal: (1) whether the stay applicant has made a strong showing that he is
16 likely to succeed on the merits; (2) whether the applicant will be irreparably injured
17 absent a stay; (3) whether issuance of the stay will substantially injure the other parties
18 interested in the proceeding; and (4) where the public interest lies. *Id.* citing *Nken v.*
19 *Holder*, 556 U.S. 418 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770 (1987)). The first
20 two factors are the most critical factors. *Id.*
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22 Defendant has not made a sufficient showing for a stay pending appeal of the
23 final judgment entered on the fourth claim for relief. On February 13, 2020, Debtor filed
24 a notice of appeal (Docket No. 121) relating to the court's order denying defendant's
25 motion for summary judgment and granting partial summary judgment in favor of non-
26 moving plaintiff on his fourth claim for relief under 11 U.S.C. § 523(a)(6) (Docket No.
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1 117). The court entered a final judgment on Plaintiff's fourth cause of action of his
2 adversary complaint on March 5, 2020 (Docket No. 146). Defendant's motion for stay
3 pending appeal does not address these factors, and specifically, Defendant has not
4 made a strong showing that she is likely to succeed on the merits of any claim and has
5 not articulated an irreparably injured absent a stay pending appeal, and therefore, the
6 motion for stay pending appeal must be denied as to the final judgment on the fourth
7 claim for relief.
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9 As to Defendant's request for stay of appeal as to Plaintiff's remaining claims, the
10 court notes that Plaintiff's motion to dismiss causes of action one through three of
11 Plaintiff's adversary complaint seeking denial of Defendant's discharge pursuant to 11
12 U.S.C. § 727(a) ("motion to dismiss") (Docket No. 144) is still pending, and there is no
13 final order as to these claims upon which an appeal may be taken. If Defendant seeks
14 a stay pending appeal as to these claims, the request for stay pending appeal is
15 premature and must be denied. Likewise, as to these other claims for relief, Defendant
16 has not made a strong showing that she is likely to succeed on the merits of any claim
17 and has not articulated an irreparably injury absent a stay pending appeal.
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19 For the foregoing reasons, Defendant's request for a stay pending appeal and
20 related request for an order shortening time are denied for the lack of good cause. To
21 the extent that Defendant seeks a stay of the appeal of the final judgment on the fourth
22 claim for relief, this court lacks jurisdiction to stay the appeal pending before the
23 appellate court because that court has jurisdiction over the appeal, and she will need to
24 request such relief from that court (either the Bankruptcy Appellate Panel or the District
25 Court).
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1 To the extent that Defendant seeks a stay of the adversary proceeding and the
2 bankruptcy case, such request is denied for lack of good cause.

3 IT IS SO ORDERED.

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24 Date: March 19, 2020



Robert Kwan
United States Bankruptcy Judge