



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:
Maryna Koval

Case No.: 1:21-bk-11170-MT

CHAPTER 13

**NOTICE OF TENTATIVE RULING RE MOTION
FOR ORDER CONFIRMING NO STAY IN
EFFECT UNDER § 362(c)(4)(A)(ii)**

Debtor(s).

Date: November 10, 2021
Time: 10:00 a.m.
Courtroom: 302 (via ZoomGov.com)

At the above date and time, the Court held a hearing on the Motion for Order Confirming No Stay in Effect under § 362(c)(4)(A)(ii) (the "Motion"), filed by Roel Enterprises, Inc. Appearances are as noted on the record for the hearing. At the hearing, the Court adopted its tentative ruling on the Motion. A copy of the Court's tentative ruling is attached to this cover page.

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2 On May 26, 2021, Debtor and Anatoliy Chizmar ("Chizmar") filed this chapter 13 case.
3 Chizmar had two previous bankruptcy cases that were not filed jointly with Debtor Koval, which
4 were dismissed within the previous year. The First Ch. 13, 20-12138-MT, was a chapter 13 that
5 was filed on 12/2/2020 and dismissed on 2/24/2021 at confirmation. The Second Ch. 13, 21-
6 10304-MT, was a chapter 13 that was filed on 2/24/2021, the same day as the dismissal of the
7 First Ch. 13, and dismissed with a 180-day bar to re-filing on 5/25/21/2021. The Order
8 dismissing the case with a bar was entered on 5/27/2021 (21-10304, ECF doc. 51). This is
9 Debtor Koval's first bankruptcy filing.

7 Before the Second Ch. 13 was formally dismissed by the Order, ECF doc. 51, Chizmar
8 and Debtor filed this joint case in the U.S. Bankruptcy Court for the Southern District of
9 California, then assigned case no. 21-02169-MM13. After hearing argument on Chizmar and
10 Debtor's jointly filed Motion to Impose a Stay under 362, U.S. Bankruptcy Judge Margaret Mann
11 denied the Motion as to Chizmar, and stated that "The court's ruling does not have any impact
12 on any automatic stay that may have been triggered by the filing of Maryna Koval's first
13 bankruptcy, as that issue is not before the court." Minute Order Denying Motion to Impose Stay,
14 21-11170-MT, ECF doc. 26. Thereafter, Judge Mann entered an Order Transferring Venue to
15 this Court, ECF doc. 27, to "protect the interest of justice against forum shopping[.]"

12 Movant Roel Enterprises ("Movant") seeks an order confirming that no stay arose in this
13 case under 362(c)(4)(A)(ii). Movant is the assignee of the original lender, Jacqueline Stein.
14 Motion, Ex. P. Movant's predecessor held a second position deed of trust on real property at
15 5725 Lemona Ave, Van Nuys, CA 91411 (the "Property") that secured a \$100,000 loan taken by
16 Chizmar on or about June 6, 2019. Decl. of Yuri Stein ISO Motion, Ex. F. Movant's
17 predecessor foreclosed on the Property on June 29, 2021, and then transferred her interest to
18 Movant. Id., Ex. P. Movant argues that because there were two single or joint cases filed by or
19 against Chizmar that were pending but dismissed within the year preceding the petition date in
20 this case, no stay arose in this case as to Chizmar's property. Debtor opposes the Motion,
21 arguing that the Property is community property under California law because it was purchased
22 during her marriage and that it is necessary for her reorganization. She states in her declaration
23 that her name does not appear on the title for the Property or on the loan. Decl. of Maryna
24 Koval ISO Opp., ¶ 3.

20 Debtor's spouse was a co-debtor in this case until the Court dismissed him because it
21 imposed a 180-day bar on him for re-filing. It was represented to the Court in the hearing on the
22 OSC issued in this case related to Chizmar's barred status (ECF doc. 31) that Debtor and
23 Chizmar were not living together and that he (Chizmar) was living and working in San Diego.

22 The relevant Bankruptcy Code provision, § 362(c)(4)(A), provides:

23 (i) if a single or joint case is filed by or against a debtor who is an individual
24 under this title, and if 2 or more single or joint cases of the debtor were pending
25 within the previous year but were dismissed, other than a case refiled under
26 section 707(b), the stay under subsection (a) shall not go into effect upon the
27 filing of the later case; and

27 (ii) on request of a party in interest, the court shall promptly enter an order
28 confirming that no stay is in effect[.]

1 The Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") in In re Nelson, held
2 that § 362(c)(4)(A)(i) unambiguously specifies that "the stay under [§ 362(a)] shall not go into
3 effect upon the filing of the [third] case" and that where the factual predicate of § 362(c)(4)(A)(i)
4 is satisfied, no stay arises with the filing of the third petition. Nelson v. George Wong Pension
5 Trust (In re Nelson), 391 B.R. 437 (B.A.P. 9th Cir. 2008). The chapter 13 debtors in Nelson did
6 not dispute that they had previously had two bankruptcy cases pending and dismissed within
7 the year before their third bankruptcy case. Id. at 446. Instead, they argued
8 that § 362(c)(4)(A)(i) was ambiguous as to whether the automatic stay was in effect as to
9 property of the estate but not property of the debtor because of its placement near
10 § 362(c)(3)(A). Id. The BAP noted that not only is the language of § 362(c)(4)(A)(i) facially
11 unambiguous, but also that the debtors' interpretation conflicts with the plain language: "To
12 accept [the debtors'] position, a reader must somehow convert the phrase in
13 § 362(c)(4)(A)(i) providing that the § 362(a) automatic stay 'shall not go into effect' to one
14 providing that 'the stay arises and is in effect, but may be terminated.'" Id. at 448.

9 Chizmar filed the single case, the First Ch. 13, 20-12138-MT, on 12/2/2020, later
10 dismissed on 2/24/2021. Chizmar then filed the single case, the Second Ch. 13, 21-10304-MT,
11 on 2/24/2021, the same day as the dismissal of the First Ch. 13, later dismissed with a 180-day
12 bar to re-filing on 5/26/2021. There is no argument that the statutory requirements of §
13 362(c)(4)(A)(i) are satisfied, in that there were "2 or more single or joint cases of the debtor" –
14 that is, Chizmar – that were pending and so it follows that no stay arose when this third, joint
15 petition was filed in the Southern District of California on May 26, 2021. There is no exception
16 that can be read into the statute to permit a stay if you add another debtor. When Congress
17 uses particular language in one place in a statute, and does not use that language in another
18 place, the omission should be deemed intentional." Id. The B.A.P. in Nelson also explained that
19 "Congress could, and did, intend the consequences of repeat filings to be different, and
20 potentially more severe, as the number of successive filings increases." Id. at 452.

16 For the reasons stated above, the Motion for Order Confirming No Stay is in Effect under
17 11 U.S.C. § 362(c)(4)(A)(ii) is GRANTED.

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25 Date: November 10, 2021

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25 Maureen A. Tighe
26 United States Bankruptcy Judge