

Fwd: WB & M, Inc., Counsel File 10-0130 Bankruptcy Court Case No. 2:17-bk-22092DS

William Brownstein <brownsteinlaw.bill@gmail.com>
To: Zina.Cheng@lacity.org
Cc: William Harold Brownstein <Brownsteinlaw.bill@gmail.com>

Tue, Nov 21, 2017 at 12:41 PM

----- Forwarded message -----

From: **William Brownstein** <brownsteinlaw.bill@gmail.com>
Date: Tue, Nov 21, 2017 at 3:38 PM
Subject: WB & M, Inc., Counsel File 10-0130 Bankruptcy Court Case No. 2:17-bk-22092DS
To: Zina Cheng <Zina.Chent@lacity.org>
Cc: Michael Gonzales <mgonzales@gonzaleslawgroup.com>, William Harold Brownstein <Brownsteinlaw.bill@gmail.com>, Nancy Murakami <nancy@centralescrow.com>, Oh Steve Yoonsik <steveyoonsikoh@gmail.com>, "Kenneth G. Lau, (USTP)" <Kenneth.G.Lau@usdoj.gov>

November 21, 2017

Dear Ms. Cheng:

Attached is a self explanatory letter regarding the above-referenced case. Please do not violate the automatic stay and take any pending hearings off the City Counsel's calendar and confirm the same with me.

Thank you.

William H. "Bill" Brownstein

--

PLEASE NOTE NEW ADDRESS AND FAX NUMBER:

WILLIAM H. BROWNSTEIN & ASSOCIATES,
Professional Corporation
11755 WILSHIRE BOULEVARD, SUITE 1250
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Fair Debt Collection Practices Act NOTICE: As mandated by Congress, we are a federally designated Debt Relief Agency under the United States Bankruptcy Laws. For the last thirty-one years we have assisted and continue to assist with finding solutions to debt problems, including, where appropriate, assisting with the filing of petitions for relief under the United States Bankruptcy Code. Unless otherwise noted, nothing in this transmission constitutes an electronic signature. This email may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

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 **11212017 Letter to City.pdf**

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WILLIAM H. BROWNSTEIN*
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THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION



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EVELINE H. BROWNSTEIN
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11755 WILSHIRE BOULEVARD, SUITE 1250, LOS ANGELES, CALIFORNIA 90025-1540

November 21, 2017

VIA EMAIL:

ZINA.CHENG@LACITY.ORG

AND FAX: (213) 978-1040

Zina Cheng, Esq.
City of Los Angeles
Counsel and Public Services Division
200 North Spring Street
Los Angeles, CA 90012

Re: WB & M, Inc., United States Bankruptcy Court for the Central District
of California, Case No. 2:17-bk-22092DS (the "Bankruptcy Case")
Counsel File No. 10-0130
DIR-2009-1885(RV)(PA2) Counsel District Eight

Dear Ms. Cheng:

William H. Brownstein & Associates, Professional Corporation (the "Firm") has been employed as bankruptcy counsel for WB & M, Inc., d/b/a the Liquor Bank store (the "Debtor"), who, on October 1, 2017, filed a voluntary petition under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and for all times thereafter it has remained in possession pursuant to 11 U.S.C. §§1107(a) and 1108.

I was recently been informed that the Planning and Land Management (PLUM) Committee of the Los Angeles City Counsel (the "City") has set a public hearing which affects Debtor's continued ability to operate for November 21, 2017 at 2:30 p.m. Such action is stayed pursuant to 11 U.S.C. §362(a) and I demand that the hearing be taken off calendar.

I base this demand on the provisions of 11 U.S.C. § 362(a) which provides in pertinent part that except as provided in § 362(b), a petition filed under 11 U.S.C. §§ 301, 302, or 303 operates as a stay, **applicable to all entities**, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under Title 11, or to recover a claim against the debtor that arose before the commencement of the case under Title 11, or any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

Section 362 of the Code (11 U.S.C. § 362) operates as a stay, applicable to all

Zina Cheng, Esq.

City of Los Angeles

Counsel and Public Services Division

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November 21, 2017

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entities of: (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; (3) any act to obtain possession of property of the estate or of property from the estate.

In re Scott Housing System, Inc., 1988 U.S. Dist. LEXIS 11119 (U.S.D.C. S.D.Ga. 1988), the District Court for the Southern District of Georgia found that the automatic stay under 11 U.S.C. § 362(a)(3) is applicable to preserve the status quo until a Debtor has the opportunity to familiarize itself with the various rights and interests involved and with the property available for distribution.

The automatic stay is one of the most fundamental debtor protection devices provided by the Bankruptcy Code. The filing of a petition in bankruptcy triggers the automatic stay of 11 U.S.C. § 362, which is extremely broad in scope, and, except for limited exceptions set forth in 11 U.S.C. § 362(b), applies to almost any type of formal or informal action or proceeding against the property of the estate. 11 U.S.C. § 362(a)(3) provides that the filing of a petition operates against all entities as a stay of any act to obtain possession of property of the estate or of property from the estate **or to exercise control over property of the estate**, conduct that the City if it proceeds will take. This provision is intended to preserve the status quo until the trustee has had the opportunity to familiarize himself with the various rights and interests involved and with the property available for distribution. *Id at* LEXIS 11119.

In this case, where the City commenced an action to enforce its zoning ordinance, such conduct might be viewed as an act "to exercise control over property of the estate," in violation of 11 U.S.C. § 362(a)(3).

11 U.S.C. § 541 defines the property of the bankruptcy estate, which is subject to the bankruptcy court's in rem jurisdiction. *Commodity Futures Trading Comm'n v. Co Petro Mktg. Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983). The Debtor's business which includes its use permit constitute property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a)(1). *Traders State Bank of Poplar v. Mann Farms, Inc. (In re Mann Farms, Inc.)*, 917 F.2d 1210, 1214 (9th Cir. 1990); *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 707 (9th Cir. 1986). The continued operation of the Debtor is clearly property of the estate that will be affected if the City proceeds with its action.

Zina Cheng, Esq.

City of Los Angeles

Counsel and Public Services Division

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Furthermore, property of the estate is determined from the time the petition is filed and is broadly defined to include "all legal or equitable interests of the debtor" in property "wherever located and by whomever held." 11 U.S.C. § 541(a)(1). See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05 (1983) (scope of 11 U.S.C. § 541(a)(1) is intentionally broad). Statutory zoning rights existing at the time of filing are included as property of the estate and, therefore, they are subject to the protections afforded under 11 U.S.C. § 362. See *In re Rocky Mountain Trucking Co., Inc.*, 47 B.R. 1020, 1021 (D.Colo. 1985); *In re REA Central Regional Services, Inc.*, 39 B.R. 738, 740 (Bankr.C.D.Ill. 1984); *In re Island Club Marina, Ltd.*, 38 B.R. 847, 852-54 (Bankr.N.D. Ill. 1984); *Matter of IDH Realty, Inc.*, 16 B.R. 55, 58 (Bankr. E.D.N.Y. 1981); *R.S. Pinellas Motel Partnership v. Ramada Inns, Inc.*, 2 B.R. 113, 118 (Bankr.M.D.Fla. 1979). The enforcement or assertion of a restrictive zoning provision because of the postpetition suspension of a nonconforming use is an act to exercise control over property of the estate. As an act to control the debtor's property, such enforcement or assertion is subject to the stay under 11 U.S.C. § 362(a)(3). See *Rocky Mountain Trucking, supra*, at 1021. *Id.* at LEXIS 11119.

Furthermore, a post-filing action, whether pending or commenced post-filing, changing use of a property is not an act of enforcement, **and is subject to the stay.** *In re IDH Realty, Inc.*, 16 B.R. 55, (Bank Ct. EDNY 1981).

The lack of any standing for the City to disregard the automatic stay is further supported by the fact that even if the argument for enactment and enforcement of the zoning statutes could be stretched to qualify as urgent protection of the public welfare, the municipal exemption is inapplicable if the proceeding would result in the taking of property from the estate. *Colonial Tavern, Inc. v. Byrne*, 420 F. Supp. 44 (D.Mass.1976); See also 11U.S.C. §§ 362(a)(3), (b)(4); COLLIER ON BANKRUPTCY para. 362.05(4) (15th ed. 1980). As all the property of the Debtor, including statutory zoning rights are part of the estate, the loss of those rights without a prior hearing before this Court would effectuate an improper taking from the debtor's estate. 11 U.S.C. § 541; *R. S. Pinellas Motel Partnership v. Ramada Inns Inc.*, 2 B.R. 113, 5 B.C.D. 1292 (Bkrcty.M.D.Fla. 1979), *Id.* at 57 and 58.

For the foregoing reasons the automatic stay prevents the continuation of any act against the Debtor and I demand that the hearing set to take place at 2:30 p.m. today be taken off calendar and that no further action be taken without obtaining appropriate relief from the Federal Bankruptcy Court.

If the City decides to disregard this demand the Debtor will take all appropriate action including, but not limited, to seeking compensatory and punitive damages and injunctive relief.

WILLIAM H. BROWNSTEIN & ASSOCIATES,

PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

Zina Cheng, Esq.

City of Los Angeles

Counsel and Public Services Division

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November 21, 2017

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If you have any questions please feel free to contact me.

Very truly,



William H. Brownstein, President

William H. Brownstein & Associates, Professional Corporation

Encl.

WHB: slf.

cc: WB & M, Inc., d/b/a the Liquor Bank

Michael Gonzalez, Esq.

United States Department of Justice, Office of United States Trustee

United States Bankruptcy Court
Central District of California

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 10/01/2017 at 5:18 PM and filed on 10/01/2017.

WB & M, Inc.

3600 STOCKER STREET
LOS ANGELES, CA 90008
(323) 296-7467
Tax ID / EIN: 26-1709128
dba **THE LIQUOR BANK**



The case was filed by the debtor's attorney:

William H Brownstein

11755 Wilshire Boulevard
Suite 1250
Los Angeles, CA 90025-1540
310-458-0048

The case was assigned case number 2:17-bk-22092-DS to Judge Deborah J. Saltzman.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page www.cacb.uscourts.gov or at the Clerk's Office, 255 East Temple Street,, Los Angeles, CA 90012.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Kathleen J. Campbell
Clerk, U.S. Bankruptcy Court

PACER Service Center

Transaction Receipt

| 10/01/2017 17:30:35 | | | |
|------------------------|----------------------|-------------------------|------------------|
| PACER Login: | WBrowns476:2659908:0 | Client Code: | The Liquor Barn |
| Description: | Notice of Filing | Search Criteria: | 2:17-bk-22092-DS |
| Billable Pages: | 1 | Cost: | 0.10 |