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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:)	BAP No.	CC-14-1526
)		
DANNY WAYNE PRYOR,)	Bk. No.	2:09-bk-23842-BR
)		
Debtor.)	Adv. No.	2:09-bk-02291-BR
)		
)		
DANNY WAYNE PRYOR,)		
)		
Appellant,)		
)		
v.)	ORDER DENYING STAY	
)	PENDING APPEAL	
RW INVESTMENT COMPANY, INC.,)		
)		
Appellee.)		
)		

Before: TAYLOR and DUNN, Bankruptcy Judges.

The Panel has received and considered appellant's emergency motion for stay pending appeal.

This is an appeal from an order denying appellant's third motion for relief from the judgment that his debt to appellee is non-dischargeable under 11 U.S.C. § 523(a)(2). The underlying judgment was affirmed by both the BAP and the Ninth Circuit Court of Appeals. Appellee is in the process of executing on the judgment. It is this execution on the judgment that appellant seeks to stay.

The Panel considers four factors in determining a motion for

stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken v. Holder, 556 U.S. 418, 434 (2009).

'A stay is not a matter of right, even if irreparable injury might otherwise result.' Virginian R. Co., 272 U.S., at 672, 47 S. Ct. 222. It is instead 'an exercise of judicial discretion,' and '[t]he propriety of its issue is dependent upon the circumstances of the particular case.' Id., at 672-673, 47 S. Ct. 222; see Hilton, *supra*, at 777, 107 S. Ct. 2113 ('[T]he traditional stay factors contemplate individualized judgments in each case'). The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.

Nken v. Holder, 556 U.S. at 433-34.

"[A] proper showing regarding irreparable harm was, and remains, a necessary but not sufficient condition for the exercise of judicial discretion to issue a stay." Leiva-Perez v. Holder, 640 F.3d 962, 965 (9th Cir. 2011). An injury that can be made whole by payment of money is rarely, if ever, irreparable.

'The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.'

Sampson v. Murray, 415 U.S. 61, 90, (1974), quoting Virginia Petroleum Jobbers Assn. v. FPC, 259 F.2d 921, 925 (D.C. Cir.

1958). In the event appellant were to prevail on appeal, any money collected on the judgment could be ordered returned to appellant. Furthermore, as appellant points out in his motion, the trustee in his bankruptcy case filed a "no asset" report. This suggests appellant has few, if any, non-exempt assets on which appellee can levy.

The Panel concludes that appellant has not established that he is entitled to a stay. In particular, appellant has not established a sufficient likelihood of success on the merits to warrant a stay. Nor has appellant established irreparable injury will result from denial of a stay.

Therefore, the emergency motion for stay pending appeal is ORDERED DENIED.