



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
January 27, 2026

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 25-11208-MKN
)	Chapter 7
T-SHACK, INC.,)	
)	
Debtor.)	Date: December 24, 2025
)	Time: 2:30 p.m.
)	

**ORDER ON MOTION FOR STAY PENDING APPEAL OF THE ORDER
ANNULLING THE AUTOMATIC STAY¹**

On December 24, 2025, the court heard the Motion for Stay Pending Appeal of the Order Annulling the Automatic Stay (“Stay Motion”) brought in the above-referenced Chapter 7 proceeding. Appearances were made by Michael J. Harker, Esq., on behalf of debtor T-Shack, Inc. (“T-Shack”), Melanie D. Morgan, Esq., on behalf of creditor Newrez LLC dba Shellpoint Mortgage Servicing (“Shellpoint”), and Brian D. Shapiro, Chapter 7 trustee (“Trustee Shapiro”). After arguments were presented, the matter was taken under submission.

BACKGROUND

On April 5, 2022, T-Shack commenced a voluntary Chapter 11 reorganization proceeding, denominated Case No. 22-11197 (“First Bankruptcy”). On May 4, 2022, T-Shack filed its schedules of assets and liabilities (“Schedules”). On its property Schedule “A/B,” T-Shack listed eight parcels of real property having the following addresses: 3400 Cabana Drive,

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure.

1 #2027, Las Vegas, Nevada 89122 (“Cabana Property”); 1417 Hialeah Drive, Unit B, Las Vegas,
2 Nevada 89119 (“Hialeah Property”); 874 Ripple Way, Las Vegas, Nevada 89110 (“Ripple
3 Property”); 8679 Tom Noon Avenue, #201, Las Vegas, Nevada 89178; 5155 W. Tropicana
4 Avenue, Unit 2010, Las Vegas, Nevada 89103 (“Tropicana 2010 Property”); 5155 W. Tropicana
5 Avenue, Unit 2042, Las Vegas, Nevada 89103; 5155 W. Tropicana Avenue, Unit 2050, Las
6 Vegas, Nevada 89103 (“Tropicana 2050 Property,” and collectively with the Tropicana 2010
7 Property, the “Tropicana Properties”); and 5388 Swenson Street, Las Vegas, Nevada 89119. On
8 January 23, 2025, that proceeding was dismissed when the court granted a contested motion
9 brought by the Office of the United States Trustee. In that First Bankruptcy, T-Shack neither
10 proposed nor confirmed a Chapter 11 plan of reorganization.

11 On March 5, 2025, T-Shack filed another voluntary Chapter 11 proceeding (“Second
12 Bankruptcy”).

13 On March 19, 2025, T-Shack filed its schedules of assets and liabilities (“Schedules”)
14 along with its statement of financial affairs. (ECF No. 21). In its property Schedule “A/B,” T-
15 Shack listed five of the eight parcels of real property previously scheduled in the First
16 Bankruptcy: the Cabana Property, the Hialeah Property, the Ripple Property, and the Tropicana
17 Properties.

18 On April 30, 2025, Shellpoint filed a motion for relief from stay with respect to the
19 Hialeah, Ripple, and Tropicana 2010 Property. (ECF No. 42).

20 On June 17, 2025, the Office of the United States Trustee (“UST”) filed a motion to
21 dismiss the Chapter 11 reorganization proceeding or to convert it to a Chapter 7 liquidation
22 (“Conversion Motion”). (ECF Nos. 86 and 87). The motion was noticed to be heard on July 30,
23 2025. (ECF No. 88). Creditor Shellpoint joined in the motion. (ECF No. 93). On July 16,
24 2025, T-Shack filed opposition. (ECF No. 94).

25 On July 30, 2025, the Conversion Motion as well as various continued matters were
26 heard, including the Shellpoint motion for relief from stay. The Conversion Motion was granted,
27 and the other matters raised during the Chapter 11 proceeding were denied without prejudice in
28 light of the conversion to Chapter 7.

1 On August 6, 2025, an order was entered granting the Conversion Motion (“Conversion
2 Order”). (ECF No. 114). Trustee Shapiro was appointed to administer the case. A Notice of
3 Chapter 7 Bankruptcy Case was entered and served on all creditors and parties in interest. (ECF
4 No. 116). The Conversion Order was never appealed, nor was a stay of the Conversion Order
5 ever sought or obtained.

6 On September 2, 2025, Shellpoint filed a renewed motion under Sections 362(d)(1, 2, and
7 4) seeking to annul the automatic stay and granting in rem relief as to three specific properties
8 (“Renewed Motion”).² (ECF No. 128). The Renewed Motion also requested that relief from
9 stay be granted in rem and that sanctions be entered against T-Shack and its counsel. The
10 Renewed Motion was noticed to be heard on October 22, 2025. (ECF No. 131).

11 On October 8, 2025, T-Shack filed an opposition to the Renewed Motion, to which was
12 attached seven exhibits (“Renewed Opposition”). (ECF No. 145). On the same date, T-Shack
13 filed supporting declarations of its counsel, Michael Harker, and its principal, Ray Zajac.³ (ECF
14 No. 146).

15 On October 15, 2025, Shellpoint filed a reply in support of the Renewed Motion
16 (“Reply”). (ECF No. 147). In that reply, Shellpoint specifically objected to T-Shack’s standing
17 to oppose the Renewed Motion inasmuch as the proceeding was converted to Chapter 7. See
18 Reply at 4:8 to 5:22.

19 On October 22, 2025, the Renewed Motion was called and heard by the court. Trustee
20 Shapiro did not file an opposition or any response to the Renewed Motion, nor did he appear at
21 the hearing. Counsel appeared for Shellpoint as well as for T-Shack. T-Shack’s counsel
22 represented that Trustee Shapiro did not oppose T-Shack’s attempt to respond to the Renewed
23 Motion, but no evidence to support that representation was offered, nor did such evidence appear

24 ² The real property parcels encompassed by the Renewed Motion are the Hialeah
25 Property, the Ripple Property, and the Tropicana 2010 Property. The Renewed Motion also
26 sought sanctions against the Debtor and its counsel.

27 ³ The Declaration of Ray Zajac consists of the principal’s attestation to a narrative history
28 of T-Shack’s dealings with Shellpoint that is attached to the declaration. That narrative consists
of 10 pages of assertions, allegations, opinions, and hearsay, all or most of which are not
supported by documents or matters for which judicial notice may be taken.

1 in the record. At the time the Renewed Motion was presented, the Conversion Order had not
2 been appealed or stayed. Moreover, T-Shack was no longer a debtor in possession, no
3 reorganization of T-Shack was requested, no reorganization of T-Shack was in prospect, Trustee
4 Shapiro held the legal rights and interests of the bankruptcy estate, and Trustee Shapiro had not
5 presented any objection, response, or opposition to the Renewed Motion. After having reviewed
6 and considered the Renewed Motion, the court granted the relief requested under Sections
7 362(d)(1), 362(d)(2), and 362(d)(4), including Shellpoint’s request to annul the automatic stay.

8 On November 24, 2025, an order was entered granting the Renewed Motion, including
9 annulment of the automatic stay, but deferred consideration of Shellpoint’s request for sanctions
10 (“Annulment Order”). (ECF No. 154).

11 On December 2, 2025, T-Shack filed a notice of appeal from the Annulment Order.
12 (ECF No. 157). On the same date, T-Shack filed the instant Stay Motion accompanied by the
13 declaration of its principal (“Zajac Declaration”).⁴ (ECF Nos. 158 and 159).

14 On December 16, 2025, an order was entered shortening time so that the Stay Motion
15 could be heard on December 24, 2025, at 2:30 p.m. (ECF No. 173 and 174).⁵

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20 ⁴ The declarant attests, *inter alia*, that he is the principal of T-Shack and that he believes
21 all property taxes and homeowner association (“HOA”) fees have been paid for the subject
22 properties. See Zajac Declaration at ¶¶ 3, 4, and 5. He expresses his beliefs and opinions that he
has standing to object to the Renewed Motion, and that he will suffer financially if Shellpoint is
permitted to complete foreclosure sales. Id. at ¶¶ 6, 7, 8, and 16.

23 ⁵ On December 17, 2025, after the Chapter 11 was converted to Chapter 7, T-Shack,
24 rather than Trustee Shapiro, filed a complaint against Shellpoint in the Eighth Judicial District
25 Court for Clark County, Nevada, denominated Case No. A-25-935283-C (“State Court Action”).
26 See Exhibit “G” to Shellpoint Opposition, *infra*. The complaint is framed as three causes of
27 action: declaratory relief, preliminary and permanent injunctive relief, and for punitive damages
28 (“State Court Complaint”). It appears, however, that all three causes of action are based on
conduct that originated prior to the commencement of the Second Bankruptcy. If so, all of the
causes of action would be property of bankruptcy estate under the control of Trustee Shapiro
rather than T-Shack.

1 On December 19, 2025, Trustee Shapiro filed his response to the instant Stay Motion.
2 (ECF No. 175).⁶

3 On December 22, 2025, Shellpoint filed its opposition (“Shellpoint Opposition”) to the
4 Stay Motion, to which are attached Exhibits “A” through “H.” (ECF No. 176).⁷

5 DISCUSSION

6 T-Shack seeks a stay of the Annulment Order pending its appeal but does not specify an
7 applicable statutory basis or applicable rule providing such relief. See Stay Motion, *passim*. The
8 request appears to be brought under Bankruptcy Rule 8007(a). See FED.R.BANKR.P.
9 8007(a)(1)(A) (“Ordinarily, a party must move first in the bankruptcy court for the following
10 relief: (A) a stay of the bankruptcy court’s judgment, order, or decree pending appeal....”). The
11 Ninth Circuit Court of Appeals has described the traditional standard for a stay pending appeal as
12 follows:

13 We decide whether to issue a stay by considering four factors, reiterated by
14 the Supreme Court in *Nken v. Holder*, 556 U.S. 418, 129 S.Ct. 1749, 173
15 L.Ed.2d 550 (2009): (1) whether the stay applicant has made a strong
16 showing that he is likely to succeed on the merits; (2) whether the applicant
17 will be irreparably injured absent a stay; (3) whether issuance of the stay will
18 substantially injure the other parties interested in the proceeding; and (4)
19 where the public interest lies.⁸ *Id.* at 434 (quoting *Hilton v. Braunskill*), 481
20 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987)). The first two factors

19 ⁶ Trustee Shapiro confirms that he did not oppose the Renewed Motion. As a result,
20 Trustee Shapiro represents that he takes no position on T-Shack’s instant Stay Motion.

21 ⁷ Exhibit “A” is a copy of a deed of trust encompassing the Tropicana 2010 Property.
22 Exhibit “B” is a copy of the foreclosure deed on the Tropicana 2010 Property. Exhibit “C” is a
23 copy of the deed of trust against the Ripple Property. Exhibit “D” is a copy of the foreclosure
24 deed on the Ripple Property. Exhibit “E” is a copy of the deed of trust on the Hialeah Property.
25 Exhibit “F” is a copy of the foreclosure deed on the Hialeah Property. Exhibit “G” is a copy of
26 the State Court Complaint. See note 5, *supra*. Exhibit “H” is a copy of a Notice of Lis Pendens
27 filed by T-Shack in connection with the State Court Action.

28 ⁸ Bankruptcy Rule 8007(a)(1)(A) authorizes a stay of an order pending appeal, while
Bankruptcy Rule 8007(e) authorizes the court to suspend the entire case pending appeal. The
standard for a stay pending appeal appears to be the same under Bankruptcy Rules 8007(a) and
(e). See 10 COLLIER ON BANKRUPTCY, ¶ 8007.12 n.4 (Richard Levin and Henry J. Sommer, eds.,
16th ed.) (“It has been held that the standards governing a stay under subdivision (e) are the same
as those governing a stay under subdivision (a).”).

1 “are the most critical,” and we only reach the last two “[o]nce an applicant
satisfies the first two factors.” *Id.* at 434-35, 129 S.Ct. 1749.⁹

2 The requirement that an applicant for a stay make a “strong showing” may be
3 explained at least in part by the fact that “[a] stay is not a matter of right, even
4 if irreparable injury might otherwise result.” *Id.* at 433, 129 S.Ct. 1749
5 (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672, 47 S.Ct. 222,
6 71 L.Ed. 463 (1926)). Indeed “[a] stay is an intrusion into the ordinary
7 processes of administration and judicial review.” *Id.* at 427, 129 S.Ct. 1749
8 (quotation marks omitted). Issuing a stay is therefore “an exercise of judicial
discretion” not to be issued “reflexively,” but rather based on the
9 circumstances of the particular case. *Id.* at 427, 433, 129 S.Ct. 1749. “The
party requesting a stay bears the burden of showing that the circumstances
10 justify an exercise of that discretion.” *Id.* at 433-34, 129 S.Ct. 1749.

11 Sierra Club v. Trump, 929 F.3d 670, 687-88 (9th Cir. 2019). See Rojas-Espinosa v. Bondi, 160
12 F.4th 991, 996 (9th Cir. 2025).

13 In this instance, T-Shack appeals from the Annulment Order which granted relief from
14 stay under Section 362(d)(1), 362(d)(2), and 362(d)(4).¹⁰ The form of relief included annulment
15 of the automatic stay as specifically authorized under Section 362(d). See 11 U.S.C. §362(d)
16 (“On request of a party in interest and after notice and a hearing, the court shall grant relief from
17 stay..., such as by terminating, annulling, modifying, or conditioning such stay....”). A review
of the Stay Motion, however, reveals that the merits of the Renewed Motion that resulted in the

18 ⁹ In Planned Parenthood Monte Mar, Inc. v. Ford, 2025 WL 1210968 (D. Nev. Apr. 25,
19 2025), the court acknowledged the four traditional factors for a stay pending appeal, and also
20 observed as follows: “The first two factors – likelihood of success and irreparable injury – are
21 the most critical, and courts only reach the remaining factors if those two are satisfied...The
22 Ninth Circuit has a ‘sliding scale’ approach to the first factors...’ On one end of the continuum,
23 the proponent must show a ‘strong likelihood of success on the merits’ and at least ‘the
possibility of irreparable injury to the [proponent] if preliminary relief is not granted.’...On the
other end of the continuum, a moving party must show either ‘a high degree of irreparable injury,
or that the balance of equities otherwise tips sharply in their favor.’” *Id.* at *2 (emphasis added).

24 ¹⁰ If relief from stay is granted with respect to any real property under Section 362(d)(4),
25 there is the equivalent of a “hanging paragraph” at the end of Section 362(d) providing that an
26 order entered under Section 362(d)(4) “...shall be binding in any other case under [the
27 Bankruptcy Code] purporting to affect such real property filed not later than 2 years after the
28 date of the entry of such order by the court...” In other words, the relief from stay granted under
Section 362(d)(4) is in rem (as to the real property) rather than in personam (as to the bankruptcy
petitioner).

1 Annulment Order are simply ignored.¹¹

2 In its Renewed Motion that resulted in the Annulment Order, Shellpoint argued that relief
3 from stay for cause under Section 362(d)(1) was appropriate. See Renewed Motion at 9:23 to
4 17:3.¹² It also asserted that relief from stay under Section 362(d)(2) was appropriate because the
5 bankruptcy schedules filed by T-Shack reflected that there was no equity in the subject real
6 properties¹³ and the conversion to a Chapter 7 liquidation meant that the properties were not
7 necessary to an effective reorganization. See Renewed Motion at 17:4-20. Shellpoint also
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9 ¹¹ Under Section 362(g), Shellpoint had the burden of proof on T-Shack's equity in the
10 subject properties while the respondent to a relief from stay motion has the burden of proof on all
11 other issues. There was no dispute that the First Bankruptcy commenced on April 5, 2022, and
12 was dismissed on January 23, 2025. There is no dispute that all of the parcels of real property
13 encompassed by the Second Bankruptcy were also scheduled as assets in the First Bankruptcy.
14 There is no dispute that T-Shack spent approximately 1,024 days in the First Bankruptcy without
15 ever proposing or confirming a Chapter 11 plan of reorganization. There is no dispute, that at
16 the time the UST filed its Conversion Motion on June 17, 2025, T-Shack still had not filed a
17 proposed plan of reorganization and disclosure statement in the Second Bankruptcy.

18 ¹² Shellpoint alleged that the residential loan secured by the Tropicana 2010 Property had
19 been in default since July 2011 and that T-Shack had acquired the property at an HOA lien
20 foreclosure sale in December 2013 for \$10,100. See Renewed Motion at 4:23-27. Shellpoint
21 also alleged that the residential loan secured by the Ripple Property had been in default since
22 July 2009 and that T-Shack had acquired the property at an HOA lien foreclosure sale in
23 December 2019 for \$7,844. Id. at 5:20 to 6:2. Shellpoint also alleged that the residential loan
24 secured by the Hialeah Property had been in default since April 2011 and that T-Shack acquired
25 the property at an HOA lien foreclosure sale in November 2013 for \$10,100. Id. at 6:20-23.
26 Shellpoint maintains that as a result of a series of Nevada federal judgments, the HOA lien
27 foreclosure sales did not invalidate any of the deeds of trust securing the subject residential
28 loans. See Renewed Motion at 4:22 to 7:5, citing *Ditech Financial LLC v. T-Shack, Inc., et al.*,
Case No. 2:16-cv-02812-JAD (D. Nev.), judgment entered February 25, 2020 as docket number
43 and affirmed by Ninth Circuit on June 14, 2021 [Tropicana 2010 Property]; *Ditech Financial
LLC v. T-Shack, Inc., et al.*, Case No. 2:16-cv-02808-JAD (D. Nev.) judgment entered March 13,
2020 as docket number 79 and affirmed by Ninth Circuit on June 14, 2021 [Ripple Property];
and *Ditech Financial LLC v. T-Shack, Inc., et al.*, Case No. 2:16-cv-02615-RFB (D.Nev.0
judgment entered March 4, 2020, as docket number 63 and affirmed by Ninth Circuit on June 14,
2021 [Hialeah Property]. In other words, the deeds of trust securing the residential loans on the
Tropicana 2010, Ripple, and Hialeah parcels remain subject to enforcement through foreclosure.

¹³ See Renewed Motion at 5:10-18 (Tropicana 2010 Property - \$11,091.47 negative
equity); id. at 6:3-19 (Ripple Property - \$4,627.71 negative equity); id. at 7:15-19 (Hialeah
Property - \$4,543.24 negative equity).

1 maintained that in rem relief under Section 362(d)(4) was appropriate because the two successive
2 Chapter 11 filings within three years evidenced a scheme to delay, hinder, or defraud creditors.
3 See Renewed Motion at 17:21 to 18:22. While there is no question that T-Shack filed a written
4 opposition to the Renewed Motion accompanied by declarations of its counsel and its principal,
5 T-Shack does not explain in its current Stay Motion why it was likely to succeed on the merits of
6 the Renewed Motion or the merits of its appeal of the Annulment Order. Thus, even if
7 Shellpoint's objection to T-Shack's standing was not warranted, T-Shack does not address any of
8 the relevant merits underlying the issuance of the Annulment Order.¹⁴

9 Similarly, T-Shack's assertion of irreparable injury is belied by its own business model.
10 According to its principal, T-Shack obtained twelve parcels of residential real property in 2013 at
11 HOA auctions for the going price at that time. See "History of the T-Shack bankruptcy"
12 attached to the Zajac Declaration. It asserts that it was willing to sell the residential parcels in
13 the First Bankruptcy and split the net proceeds with the lienholder. Id. Because T-Shack
14 acknowledges that any foreclosures by Shellpoint permitted by the Annulment Order will result
15 in monetary losses rather than loss of any irreplaceable interests, its alleged injuries are not
16 irreparable.¹⁵

17 The injury to Shellpoint arguably is also monetary rather than irreparable. But

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19 ¹⁴ Even though Shellpoint argued that there was no equity in any of the subject properties,
20 see note 13, supra, T-Shack offered no evidence of an equity cushion sufficient to provide
21 adequate protection of Shellpoint's interest under Section 362(d)(1). T-Shack argued that it
22 provided adequate protection payments during the First Bankruptcy, see Renewed Opposition at
23 6:2-8, but did not offer to make adequate protection payments to Shellpoint during the Second
24 Bankruptcy. Even though Shellpoint argued that T-Shack lacked equity in the subject properties,
25 T-Shack could not argue that the properties were necessary to an effective reorganization under
26 Section 362(d)(2) because it never appealed or obtained a stay of the Conversion Order.
27 Moreover, even though T-Shack argued it "is not a serial filer," see Renewed Opposition at 6:14-
28 18, it did not address under Section 362(d)(4) whether the Second Bankruptcy was part of a
scheme to delay or hinder the lenders that were secured by the same properties encompassed by
the First Bankruptcy for nearly three years.

¹⁵ Because the Stay Motion does not even address the merits of the Renewed Motion and
has not demonstrated irreparable injury if the Annulment Order is not stayed, T-Shack has failed
to satisfy either end of the continuum encompassed by the sliding scale standard. See discussion
at note 9, supra.

1 irreparable injury is not the inquiry. This factor asks whether a stay of the Annulment Order will
2 result in substantial injury to the other parties. There is no dispute that the deeds of trust
3 securing the loan held by Shellpoint were not eliminated by the HOA foreclosure sales through
4 which T-Shack obtained title to the subject properties. T-Shack does not contest that the
5 scheduled payments on each of the underlying loans have been in default for multiple years.
6 There is no dispute that Shellpoint's efforts to enforce the deeds of trust were delayed by T-
7 Shack in two voluntary Chapter 11 proceedings, neither of which resulted in a confirmed plan of
8 reorganization. There is no dispute that T-Shack continues to pursue litigation against Shellpoint
9 even if the asserted claims appear to be property of the bankruptcy estate. In this instance, a stay
10 of the Annulment Order will create further and continuing uncertainty for Shellpoint in the
11 pursuit of its remedies with respect to the subject properties. Under the facts appearing in this
12 proceeding, the court concludes that substantial injury to Shellpoint will result from staying the
13 Annulment Order while on appeal.

14 For similar reasons, a stay of the Annulment Order is not in the public interest. T-Shack
15 availed itself of an opportunity under Nevada law to obtain residential properties at a deep
16 discount through HOA lien sales. The effect of those HOA sales on the deeds of trust securing
17 the loans now held by Shellpoint was fully litigated, and the residential lenders prevailed before
18 the federal district court. T-Shack appealed that determination and the residential lenders
19 prevailed before the Ninth Circuit. T-Shack then filed for Chapter 11 protection to prevent the
20 lenders' enforcement of their loans secured by the deeds of trust. T-Shack failed to confirm or
21 even propose a plan of reorganization during the First Bankruptcy. After the First Bankruptcy
22 was commenced on April 5, 2022, T-Shack still did not propose a plan of reorganization in the
23 Second Bankruptcy before the Conversion Motion was filed by the UST on June 17, 2025. In
24 other words, T-Shack has fully availed itself of the judicial process to profit from a financial
25 opportunity apparently available under Nevada law. It has lost at every significant turn. As
26 previously mentioned, a "stay [of an order] is not a matter of right even if irreparable injury
27 might otherwise result."

28 Based on the foregoing, the court concludes that T-Shack has failed to satisfy any of the

1 factors applicable to the Stay Motion. Thus, even if T-Shack is correct in its assertion that it has
2 standing to object to the Renewed Motion, it still has failed to demonstrate it is entitled to a stay
3 of the Annulment Order pending appeal. The arguments raised by T-Shack in favor of standing,
4 however, also are unpersuasive.

5 T-Shack asserts that it has standing to object to the Renewed Motion despite being
6 removed as a Chapter 11 debtor in possession as a result of the Conversion Order. It argues it is
7 a “person of interest” despite conversion of the case to Chapter 7 and that it maintains standing
8 “when an order effects discharge, exemption or estate property.” T-Shack Stay Motion at 4:24-
9 26. In support of its person of interest argument, T-Shack cites, partially cites, or attempts to cite
10 seven cases, entitled or apparently entitled In Re Mandel no. 17-40392 (5th Cir.); In Re Pena no.
11 19-60029 (9th Cir. 2020); In Re Rundlett 136 B.R. 376 (Bankr. S.D. N.Y. 1992); In Re Schwartz,
12 954 F.2d 569 (9th Cir. 1992); Higher Authority Law v. Segal 571 U.S. 415 (2014); In re Lee 462
13 B.R. 906 (6th Cir. BAP 212); and In re Koeberer (9th Cir. BAP 2021). See T-Shack Stay Motion
14 at 5:3 to 6:13.¹⁶ The cases mentioned, however, are not persuasive based on the instant record.

15 In Mandel, the Fifth Circuit allowed a former Chapter 11 individual debtor to appeal a
16 post-conversion bankruptcy order that allowed certain priority administrative expenses that were
17 based on possibly nondischargeable claims. 641 Fed.App’x at 403-404. Because the order
18 potentially impacted the debtor’s discharge of individual debts, he had direct pecuniary interest
19 in the order. In a subsequent published decision, see Matter of Dean, 18 F.4th 842 (5th Cir. 2021),
20 the circuit characterized Mandel as being “specifically related to whether a debt would be
21 discharged.” 18 F.4th at 845. In the current case, T-Shack seeks a stay of the Annulment Order
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23 ¹⁶ The incomplete and haphazard case citations make it difficult to discern the legal basis
24 for any of T-Shack’s arguments. The incomplete citation to “In re Lee” leads to nowhere
25 especially without so much as a year in which the decision may have been entered, if any.
26 Notwithstanding that it is T-Shack’s burden to make “a strong showing that he is likely to
27 succeed on the merits,” the court has attempted to locate the cryptically referenced authorities.
28 Mandel appears to be found at 641 Fed.Appx. 400 (5th Cir. 2016), Pena at 974 F.3d 934 (9th Cir.
2020), Rundlett at 136 B.R. 376 (Bankr. S.D. N.Y. 1992), Schwartz at 954 F.2d 569 (9th Cir.
1992), Law v. Siegel at 571 U.S. 415 (2014), and Koeberer at 632 B.R. 680 (B.A.P. 9th Cir.
2021).

1 and has not challenged the Conversion Order. Inasmuch as T-Shack is ineligible for a Chapter 7
2 discharge under Section 727(a)(1), the decision in Mandel is neither applicable nor persuasive.

3 In Pena, an individual debtor who previously filed a Chapter 11 proceeding that was
4 converted to Chapter 7, applied to recover from the bankruptcy court's registry certain unclaimed
5 rental proceeds derived from encumbered real property. 974 F.3d at 937. The bankruptcy court
6 denied the Chapter 7 debtor's application and he appealed to the BAP. The bankruptcy court's
7 ruling was affirmed by the BAP which determined that the rental proceeds were property of the
8 bankruptcy estate that had not been abandoned by the Chapter 7 trustee. As a result, the debtor
9 had no interest in the funds. Id. at 938. On further appeal, the Ninth Circuit determined that the
10 Chapter 7 debtor had standing as a "person aggrieved" to appeal the BAP ruling. Id. This
11 determination was hardly surprising because the BAP's ruling clearly determined that the former
12 debtor had no ability to seek the rental proceeds in the court's registry as unclaimed funds under
13 28 U.S.C. § 2042. Id. at 940.

14 In Rundlett, several lenders filed an involuntary Chapter 7 petition against an individual
15 debtor who converted the proceeding to Chapter 11. After the debtor filed a proposed Chapter
16 11 plan and disclosure statement, the lenders moved to convert the case to Chapter 7 because,
17 *inter alia*, the debtor had no source of unencumbered income on which to propose a viable plan.
18 136 B.R. at 379-81. While the individual debtor had standing to oppose conversion to Chapter 7,
19 the lender's motion was granted. The court did not address at all whether the individual debtor
20 had standing to assert any control over legal or equitable interests held by the trustee of the
21 converted bankruptcy estate.

22 In Schwartz, the individual debtors filed a voluntary Chapter 11 proceeding. During the
23 Chapter 11, the Internal Revenue Service ("IRS") imposed a penalty assessment against the
24 debtors based on unpaid corporate withholding taxes. The IRS was unaware of the bankruptcy at
25 the time and did not obtain relief from stay. The Chapter 11 was dismissed without a discharge.
26 Thereafter, the individual debtors filed a Chapter 13 proceeding. Debtors successfully asserted
27 in their Chapter 13 that the penalty assessment was void as a violation of the automatic stay. On
28 appeal, the BAP disagreed, holding that acts in violation of the automatic stay are voidable rather

1 than void. On further appeal, the Ninth Circuit agreed with the bankruptcy court that the penalty
2 assessment was void ab initio. 954 F.2d at 571. Nothing about the Schwartz proceeding
3 involved former debtors asserting control over property of the bankruptcy estate or asserting
4 legal interests reserved to a bankruptcy trustee. Moreover, nothing in the proceeding addressed
5 the standing of a former debtor in possession to object to relief sought by creditors of the
6 bankruptcy estate.

7 In Siegel, the voluntary Chapter 7 debtor claimed a residential homestead exemption.
8 The assigned Chapter 7 trustee sought to surcharge the exemption on the basis of the debtor's
9 misconduct. Over the debtor's objection, the bankruptcy court granted the surcharge. That
10 decision was affirmed by the BAP and the Ninth Circuit. On the debtor's further appeal, the
11 Supreme Court reversed, concluding that the bankruptcy court did not have statutory or inherent
12 authority to surcharge or deny an exemption on a ground not specified under bankruptcy law.
13 571 U.S. at 423-428. Nothing about the decision in Siegel discusses whether a former Chapter
14 11 debtor in possession has standing to assert legal or equitable interests of the bankruptcy estate
15 after conversion to Chapter 7.

16 In Koeberer, the Chapter 7 debtors sought to sanction a certain creditor for violating the
17 automatic stay by pursuing certain post-bankruptcy litigation. 632 B.R. at 686. As Section
18 362(k) expressly permits sanctions to be sought by "an individual injured by any willful violation
19 of a stay provided by this section," the individual debtors clearly had independent standing to
20 pursue the statutory remedy. The BAP affirmed the bankruptcy court's finding of an automatic
21 stay violation and its denial of damages, but reversed and remanded on its denial of cost and
22 attorney's fees. Id. at 686-692. Nothing about the decision in Koeberer suggests that a former
23 Chapter 11 debtor in possession has standing to assert legal or equitable interests of the
24 bankruptcy estate after conversion to Chapter 7.

25 In essence, the purported cases cited by T-Shack (perhaps except for the last, In re Lee
26 decision), do not support a conclusion that it is likely to succeed on the merits of its assertion of
27 standing.

1 Because T-Shack also has not demonstrated a likelihood of success as to the substantive
2 merits of the Renewed Motion, nor that it will suffer irreparable injury, a stay of the Annulment
3 Order is unwarranted.

4 **IT IS THEREFORE ORDERED** that the Motion for Stay Pending Appeal of the Order
5 Annulling the Automatic Stay filed by T-Shack, Inc., Docket No. 158, be, and the same hereby
6 is, **DENIED**.

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9 Copies sent via CM/ECF ELECTRONIC FILING

10 Copies sent via BNC to:
11 T-SHACK, INC.
12 ATTN: OFFICER OR MANAGING AGENT
13 405 COUNTY RD 25
14 MANTADOR, ND 58058-4026

15 T-SHACK, INC.
16 ATTN: OFFICER OR MANAGING AGENT
17 5155 W. TROPICANA AVE., UNIT 2050
18 LAS VEGAS, NV 89103

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