

OCT 12 2005

**IN THE UNITED STATES BANKRUPTCY COURT** U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA  
**FOR THE DISTRICT OF ARIZONA**

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| 1  |                                   |   |   |
| 2  |                                   |   |   |
| 3  |                                   |   |   |
| 4  | In re:                            | ) | Chapter 11                              |
| 5  | EDWARD KILE,                      | ) | No. 4-04-bk-02237-JMM                   |
| 6  | _____                             | ) | Adv. No. 4-05-ap-00009-JMM              |
|    | Debtor.                           | ) |   |
| 7  | M. KENNETH MUDGE, et ux., et al., | ) | <b>MEMORANDUM DECISION RE</b>           |
| 8  | Plaintiffs,                       | ) | <b>DISCHARGE OF INTERPLEADING PARTY</b> |
| 9  | vs.                               | ) | (Opinion to Post)                       |
| 10 | EDWARD KILE, et ux., et al.,      | ) |   |
| 11 | _____                             | ) |   |
|    | Defendants.                       | ) |   |

12 Statewide Group, Inc. has filed a motion to be discharged as the interpleading party, and  
13 to be awarded its fees and costs associated therewith. The Debtor objects. The court, after consideration  
14 of the adversary and administrative files herein, now rules.

15 This adversary complaint, filed by Statewide, seeks to have the court determine the  
16 rightful parties to excess trustee's sale proceeds, and, having joined into the action all parties claiming  
17 an interest thereto, be discharged.

18 The Debtor objects, claiming that (1) Statewide may be liable for violating statutory duties  
19 pursuant to Cal. Civ. P. Code § 2924; (2) Statewide did not act quickly enough after the sale and with due  
20 diligence; and (3) Statewide's fees are unreasonable.

21 The court first notes that Edward Kile, the Debtor and a Defendant, has never answered  
22 the complaint in this matter, nor asserted any interest in the proceeds. Nor has he filed a cross-claim or  
23 counterclaim asserting, in this or any other action, any violations of California law as a basis for  
24 holding Statewide liable on any legal theory. Two parties (Statewide and Mudge) have filed

1 applications for entry of default against the Debtor.<sup>1</sup> Therefore, having failed to appropriately plead in  
2 this matter, Mr. Kile's standing is non-existent. In either event, having failed to file a responsive pleading  
3 to Statewide's interpleader complaint for nine months, the Debtor's bare assertions of statutory liability  
4 are without merit, and are not issues for this court to resolve.

5 As for Mr. Kile's assertion that Statewide did not react quickly enough, suffice it to say  
6 that the court disagrees. Statewide had always been forthcoming in this complicated affair, and has acted  
7 at all times in a timely manner. The interpleader was filed on January 12, 2005, after much litigation over  
8 ownership drew Statewide into the bramble bush of Debtor's legal entanglements.

9 As for the Debtor's final objection concerning the reasonableness of Statewide's fees, the  
10 court notes that, but for the Debtor's efforts to obfuscate title issues, this matter would have ended long  
11 ago. Statewide's fees are not unreasonable, in view of the convoluted history of this case.

12 Accordingly, the Debtor's objection to Statewide's fee request, and its request to be  
13 discharged of further liability and to be dismissed as an active party in this case, is OVERRULED.

14 Statewide's motion is GRANTED, and it shall be awarded \$9,443.17 for its attorneys' fees  
15 and costs incurred herein.

16  
17 DATED: October 12, 2005.

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20 \_\_\_\_\_  
21 JAMES M. MARLAR  
22 UNITED STATES BANKRUPTCY JUDGE  
23  
24  
25

26  
1 See, docket Nos. 29 and 33.

1 COPIES served as indicated below this 12  
2 day of October, 2005, upon:

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