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

ORDERED PUBLISHED

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

6	In re:)	BAP No. NC-10-1154-SaHki
)	
7	JAMES BIGELOW RESWICK, JR.)	Bk. No. 09-32489
)	
8	Debtor.)	
9	_____)	
10	JAMES BIGELOW RESWICK, JR.)	
)	
11	Appellant,)	
)	
12	v.)	OPINION
)	
13	NATALIA RESWICK,)	
)	
14	Appellee.)	
15	_____)	

Argued and Submitted on October 20, 2010
at San Francisco, California

Filed - February 4, 2011

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable Dennis Montali, Bankruptcy Judge, Presiding

Cheryl Christine Rouse, Law Offices of Rouse & Bahlert, San
Francisco, CA, for Appellant.
Stephen Benda, Law Offices of Stephen Benda, for Appellee.

Before: SALTZMAN¹, HOLLOWELL and KIRSCHER, Bankruptcy Judges.

¹ Hon. Deborah J. Saltzman, Bankruptcy Judge for the
Central District of California, sitting by designation.

1 SALTZMAN, Bankruptcy Judge:

2 This appeal arises from the bankruptcy court's order denying
3 the debtor's motion for damages for violation of the automatic
4 stay under 11 U.S.C. § 362(k)(1).² The debtor contended that his
5 ex-wife's postpetition garnishment of his wages violated the
6 stay. His ex-wife argued - and the bankruptcy court agreed -
7 that because the case was the debtor's second case within a year,
8 the stay fully expired 30 days after the second case was filed
9 pursuant to section 362(c)(3)(A), and accordingly the wage
10 garnishment did not violate the stay. For the reasons discussed
11 below, we AFFIRM the bankruptcy court's order denying the
12 debtor's motion for damages.

13 **I. FACTS**

14 Appellant James Bigelow Reswick, Jr. (the "Debtor")
15 initially filed a voluntary chapter 13 petition on March 23,
16 2009. The case was dismissed for non-payment on June 29, 2009.
17 The Debtor filed a second voluntary chapter 13 petition (the
18 "Second Case") on August 25, 2009 (the "Second Petition Date").
19 The parties agree that because the Second Case was filed within a
20 year of the earlier case's dismissal, section 362(c)(3) applied,
21 terminating the automatic stay unless the bankruptcy court
22 extended the stay on motion of a party in interest after a
23

24 ² Unless otherwise indicated, all chapter, section and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
27 enacted and promulgated as of October 17, 2005, the effective
28 date of most of the provisions of the Bankruptcy Abuse Prevention
and Consumer Protections Act of 2005 ("BAPCPA"), Pub. L. 109-8,
119 Stat. 23.

1 hearing held within the first 30 days following the Second
2 Petition Date. No motion was filed, and as a result, the
3 automatic stay terminated on September 24, 2009.

4 On October 2, 2009, Natalia Reswick ("Reswick"), the
5 Debtor's ex-wife, initiated wage garnishment proceedings against
6 the Debtor's post-petition earnings to collect a February 2008
7 Superior Court judgment.

8 On March 15, 2010, the Debtor filed a motion for damages for
9 violation of the automatic stay under section 362(k)(1), seeking
10 reimbursement of the \$4,444.32 already garnished by Reswick plus
11 attorneys' fees, emotional distress and punitive damages in the
12 amount of \$54,750.00. His motion was based on his contention
13 that the automatic stay terminated only as to him and not as to
14 the estate.

15 The bankruptcy court held a hearing on the motion on April
16 2, 2010 and took the matter under advisement to consider whether
17 the automatic stay terminated in its entirety on the 30th day
18 after the Second Petition Date, or whether the stay remained in
19 place to prohibit acts against property of the estate. On April
20 15, 2010, the bankruptcy court denied the Debtor's motion on the
21 grounds that the automatic stay terminated in its entirety on
22 September 24, 2009, and accordingly, the wage garnishment
23 commenced on October 2, 2009 did not violate the stay. The
24 Debtor filed this timely appeal on April 29, 2010.

25 **II. JURISDICTION**

26 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
27 §§ 1334 and 157(b)(2)(A) and (G). We have jurisdiction over this
28 appeal pursuant to 28 U.S.C. § 158.

1 property and property of the estate), Reswick did not violate the
2 stay by initiating wage garnishment proceedings on October 2,
3 2009.

4 The bankruptcy court agreed with Reswick. The court's order
5 noted that there are two lines of cases addressing the scope of
6 termination of the stay under section 362(c)(3)(A) and concluded:
7 "[h]aving considered the opposing lines of authority, the court
8 agrees with the persuasive reasoning set forth in In re Daniel,
9 404 B.R. 318 (Bankr. N.D. Ill. 2009), and holds that the
10 automatic stay terminated in its entirety on the 30th day after
11 the petition date." (Emphasis added.)

12 The bankruptcy court adopted the minority - but better-
13 reasoned - interpretation.

14 B. The Two Interpretations Of Section 362(c)(3)(A)

15 The relevant bankruptcy code provision, section
16 362(c)(3)(A), provides:

17 (3) [I]f a single or joint case is filed by or against
18 debtor who is an individual in a case under chapter 7,
19 11, or 13, and if a single or joint case of the debtor
20 was pending within the preceding 1-year period but was
dismissed, other than a case refiled under a chapter
other than chapter 7 after dismissal under section
707(b)--

21 (A) the stay under subsection (a) with respect to any
22 action taken with respect to a debt or property securing
23 debt or with respect to any lease shall terminate with
respect to the debtor on the 30th day after the filing of
the later case.

24 11 U.S.C. § 362(c)(3)(A) (emphasis added).

25 This appeal centers around how the phrase "with respect to
26 the debtor" limits the termination of the automatic stay "with
27 respect to any action taken with respect to a debt or property
28 securing debt or with respect to any lease" for a repeat filer.

1 Two distinct interpretations of section 362(c)(3)(A) have
2 developed since the provision was added to the bankruptcy code as
3 part of BAPCPA in 2005.

4 The majority interpretation finds the phrase "with respect
5 to the debtor" to be both critical and unambiguous, and concludes
6 that on the 30th day after the petition date, the automatic stay
7 terminates only with respect to the debtor and the debtor's
8 property, but not as to property of the estate. See, e.g.,
9 Holcomb v. Hardemann (In re Holcomb), 380 B.R. 813 (10th Cir. BAP
10 2008); Jumpp v. Chase Home Finance, LLC (In re Jumpp), 356 B.R.
11 789 (1st Cir. BAP 2006); In re Pope, 351 B.R. 14 (Bankr. D.R.I.
12 2006); In re Murray, 350 B.R. 408 (Bankr. S.D. Ohio 2006); In re
13 Brandon, 349 B.R. 130 (Bankr. M.D.N.C. 2006); Bankers Trust Co.
14 of Cal. v. Gillcrese (In re Gillcrese), 346 B.R. 373 (Bankr. W.D.
15 Pa. 2006); In re Williams, 346 B.R. 361 (Bankr. E.D. Pa. 2006);
16 In re Harris, 342 B.R. 274 (Bankr. N.D. Ohio 2006); In re Jones,
17 339 B.R. 360 (Bankr. E.D.N.C. 2006); In re Moon, 339 B.R. 668
18 (Bankr. N.D. Ohio 2006); In re Johnson, 335 B.R. 805 (Bankr. W.D.
19 Tenn. 2006). Although these decisions state that the court need
20 not read beyond the phrase "with respect to the debtor" to
21 discern its meaning, see, e.g., Jones, 399 B.R. at 363 ("Section
22 362(c)(3)(A) provides that the stay terminates 'with respect to
23 the debtor.' How could that be any clearer?"), these decisions
24 arguably do read beyond the phrase because they find that the
25 stay terminates with respect to the debtor and to any property of
26 the debtor that is not property of the estate. Id. at 362; see
27 also Holcomb, 380 B.R. at 816 ("[W]e conclude that the language
28 of § 362(c)(3)(A) terminates the stay only as to the debtor and

1 the debtor's property."); Jumpp, 356 B.R. at 797 ("Section
2 362(c)(3)(A) provides for a partial termination of the stay.").

3 The minority interpretation urges that the phrase "with
4 respect to the debtor" must be analyzed in the context of section
5 362(c)(3) as a whole. See In re Jupiter, 344 B.R. 754 (Bankr.
6 D.S.C. 2006), expanded upon in In re Daniel, 404 B.R. 318 (Bankr.
7 N.D. Ill. 2009), and adopted in two subsequent decisions
8 including the order on appeal here. Using this analysis, these
9 courts conclude that section 362(c)(3)(A) terminates the
10 automatic stay in its entirety (i.e., with respect to the debtor,
11 the debtor's property and property of the estate). Id. at 329;
12 Jupiter, 344 B.R. at 759; In re Furlong, 426 B.R. 303, 307
13 (Bankr. C.D. Ill. 2010). They construe "the remaining language
14 of 'with respect to the debtor' to define which debtor is
15 effected by this provision, with reference to section 362(c)(3)."
16 Jupiter, 344 B.R. at 759. Because section 362(c)(3) begins by
17 referencing either a "single or joint case," the language "with
18 respect to the debtor" in section 362(c)(3)(A) simply
19 distinguishes between the debtor and the debtor's spouse. Id.;
20 Daniel, 404 B.R. at 326. The courts found further support in the
21 legislative history of section 362(c)(3)(A), noting its intent to
22 address the perceived abuse of successive filings. Id. at 327;
23 Jupiter, 344 B.R. at 761. See also In re Curry, 362 B.R. 394
24 (Bankr. N.D. Ill. 2007) (interpreting section 362(c)(3)(A) to
25 terminate the automatic stay in its entirety is consistent with
26 history aimed at discouraging successive bankruptcy filings).

27 The two interpretations are fundamentally different. Under
28 the majority approach, it is unnecessary to do more than consider

1 the language of the phrase "with respect to the debtor." "Viewed
2 in isolation, the language itself is unambiguous." Jumpp, 356
3 B.R. at 793. The minority approach does not expressly determine
4 that the language is ambiguous but reads "with respect to the
5 debtor" in context with section 362(c)(3) as a whole and then
6 looks to the provision's legislative history to support their
7 reading. Because reading the phrase in context, rather than in
8 isolation, better comports with principles of statutory
9 construction, the minority interpretation is more persuasive.
10 And while we recognize the desire to be cautious in designating
11 statutory text as "ambiguous," we believe that such a designation
12 is appropriate here. Our interpretation of section 362(c)(3)(A)
13 finds support in the legislative history.

14 C. Principles of Statutory Construction Support Reading "with
15 respect to the debtor" With All Of Section 362(c)(3)

16 Statutory interpretation begins with the language of the
17 statute. "[W]hen the statute's language is plain, the sole
18 function of the courts—at least where the disposition required by
19 the texts is not absurd—is to enforce it according to its terms."
20 Lamie v. United States Tr., 540 U.S. 526, 534 (2004), quoting
21 Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530
22 U.S. 1, 6 (2000). A court must consider "the language itself,
23 the specific context in which that language was used, and the
24 broader context of the statute as a whole." Robinson v. Shell
25 Oil Co., 519 U.S. 337, 341 (1997). The Supreme Court has
26 expanded upon this premise:

27 The definition of words in isolation however, is not
28 necessarily controlling in statutory construction. A
word in a statute may or may not extend to the outer

1 limits of its definitional possibilities.
2 Interpretation of a word or phrase depends upon
3 reading the whole statutory text, considering the
4 purpose and context of the statute, and consulting any
5 precedents or authorities that inform the analysis.

6 Dolan v. U.S. Postal Service, 546 U.S. 481, 486 (2006); see also
7 Boise Cascade Corp.v. U.S. E.P.A., 942 F.2d 1427, 1432 (9th Cir.
8 1991) (courts "must interpret statutes as a whole, giving effect
9 to each word and making every effort not to interpret a provision
10 in a manner that renders other provisions of the same statute
11 inconsistent, meaningless, or superfluous").

12 Here, the Debtor argues that a phrase within section
13 362(c) (3) (A) - "with respect to the debtor" - is both critical
14 and unambiguous, as found by the majority interpretation.
15 Reswick argues that the statutory phrase "with respect to the
16 debtor" must not be read in isolation, but rather in the context
17 of the whole statutory provision. Reswick's argument is more
18 consistent with principles of statutory construction. When read
19 in isolation, "with respect to the debtor" may appear
20 unambiguous; however, when read within the context of section
21 362(c) (3) - a provision which begins with the phrase "if a single
22 or joint case of the debtor was pending within the preceding 1-
23 year period" and goes on to discuss the stay of any action taken
24 "with respect to a debt or property securing debt or with respect
25 to any lease" - the phrase must be examined more closely to give
26 the full provision meaning.

27 1. Interpreting section 362(c) (3) (A) as terminating the
28 stay only with respect to the debtor and the debtor's
property renders section 362(c) (3) internally inconsistent

1 and eliminates its practical impact

2 The Debtor argues that section 363(c) (3) (A) terminates the
3 stay only with respect to the debtor personally. No court
4 decision has adopted this narrow interpretation. The majority
5 interpretation holds that "with respect to the debtor" limits
6 termination of the stay to the debtor and any property of the
7 debtor that is not estate property. See, e.g., Holcomb, 380 B.R.
8 at 816; Jumpp, 356 B.R. at 796-97.⁴

9 These two interpretations - both of which find that section
10 362(c) (3) (A) does not terminate the stay with respect to estate
11 property - suffer from the same flaw. Interpreting "with respect
12 to the debtor" as a distinction regarding property (i.e., the
13 stay terminates with respect to the debtor personally and to non-
14 estate property, but not as to estate property) renders section
15 362(c) (3) (A) internally inconsistent. Section 362(c) (3) (A)
16 begins as follows: "the stay under subsection (a) with respect to
17 any action taken with respect to a debt or property securing debt
18 or with respect to any lease shall terminate..." 11 U.S.C.
19 § 362(c) (3) (A) [emphasis added]. If the phrase "with respect to
20 the debtor" meant that the automatic stay only terminated as to
21 the debtor personally and as to non-estate property, the opening
22 clause of section 362(c) (3) (A) would be surplusage. There would
23 be no reason for section 362(c) (3) (A) to reference actions "with
24 respect to a debtor or property securing debt or with respect to
25 any lease" if the interpretation of the Debtor and the majority

26
27 ⁴ At oral argument, counsel for the Debtor argued, somewhat
28 inconsistently with the briefing submitted, that the stay
terminates with respect to the debtor and the debtor's property.

1 were correct.

2 The Debtor's interpretation, and the majority
3 interpretation, would also render section 362(c)(3)(A) devoid of
4 any practical effect. Very few creditors would seek to pursue
5 only the debtor personally, or only property of the debtor.
6 Indeed, this interpretation would provide no meaningful relief to
7 creditors in chapter 13 cases, where repeat filings are most
8 prevalent. Creditors in a chapter 13 case could take no action
9 against property that the debtor owned at the time the case was
10 commenced, because it is property of the estate under section
11 541(a)(1),⁵ and they could take no action against property that
12 the debtor acquired post-petition because it would also
13 constitute property of the estate under section 1306(a).⁶ As a
14

15 ⁵ Section 541(a)(1) provides, in relevant part, that the
16 bankruptcy estate is comprised of "all legal or equitable
17 interests of the debtor in property as of the commencement of the
18 case." 11 U.S.C. § 541(a)(1).

18 ⁶ Section 1306(a) provides:

19 Property of the estate includes, in addition,
20 to the property specified in section 541 of
21 the this title --

22 (1) all property of the kind specified in such
23 section that the debtor acquires after the
24 commencement of the case but before the case
25 is closed, dismissed, or converted to a case
26 under chapter 7, 11, or 12 of this title,
27 whichever occurs first; and

28 (2) earnings from services performed by the
debtor after the commencement of the case but
before the case is closed, dismissed, or
converted to a case under chapter 7, 11, or 12
of this title, whichever occurs first.

11 U.S.C. § 1306(a).

1 result, a party such as Reswick in this case would have any
2 efforts to collect a judgment thwarted by a repeat filing.

3 The interpretation that the Debtor urges us to adopt also
4 makes section 362(c)(3)(A) difficult to reconcile with section
5 362(c)(3)(B), which provides the mechanism to extend the
6 automatic stay in the case of a repeat filer. Section
7 362(c)(3)(B) permits a party in interest, upon notice and a
8 hearing, to seek a continuation of the automatic stay beyond the
9 30-day period if the movant can demonstrate that the case was
10 filed "in good faith as to the creditors to be stayed." 11
11 U.S.C. § 362(c)(3)(B). This provision specifically allows a
12 "party in interest," not just the debtor, to seek an extension of
13 the automatic stay. Section 362(c)(3)(C) goes on to list certain
14 circumstances in which clear and convincing evidence is needed to
15 establish good faith. Property of the estate would have to be
16 subject to the stay termination for any party other than the
17 debtor to have sufficient reason to file the motion. See
18 Jupiter, 344 B.R. at 760. "It seems illogical that Congress
19 would enact a provision which both requires moving parties to
20 meet a high burden of proof and which requires the courts to hear
21 these matters on an expedited basis, only to have both the
22 process and the end result meaningless and of no utility if
23 property of the estate remains protected by the automatic stay,
24 notwithstanding a termination of the automatic stay under
25 § 362(c)(3)(A)." Id.; see also In re Jones, 339 B.R. 360, 364
26 (Bankr. E.D.N.C. 2006) ("If § 362(c)(3)(A) only applies with
27 respect to the debtor, the argument is that only the debtor would
28 be interested in extending the stay. It is true that if

1 § 362(c)(3)(A) only applies with respect to the debtor, it is
2 unlikely that anyone other than the debtor would seek an
3 extension”).⁷

4 Finally, in assessing the statutory construction of the
5 majority interpretation, we note that it does not simply find
6 that the stay terminates with respect to the debtor personally,
7 even though a “plain language” interpretation of “with respect to
8 the debtor” might dictate such a result (as the Debtor argued in
9 his brief). Instead, the majority interpretation finds that the
10 stay terminates “with respect to the debtor and the debtor’s non-
11 estate property,” which somewhat undermines the persuasiveness of
12 their “plain language” argument.

13 2. The better reading interprets section 362(c)(3)(A)
14 as distinguishing between the debtor and a
15 joint-filing spouse

16 Rather than reading “with respect to the debtor” as a
17 distinction between property, the minority interpretation
18 persuasively reads the phrase as a distinction regarding persons
19 in the context of multiple bankruptcy filings. The most
20 plausible and least troublesome reading of “with respect to the
21 debtor” places its meaning in the context of joint cases filed by
22 _____

23 ⁷ We also note, as did the court in Jupiter, that the
24 majority interpretation creates an inconsistency with subsection
25 362(j), which allows a party in interest to request an order
26 confirming that the stay has terminated under subsection (c).
27 “This provision would be inconsistent with § 362(c)(3)(A), if it
28 does not effect a wholesale termination of the stay, because
§ 362(j) does not carve out exceptions for property that remains
protected by the stay and summarily allows parties to confirm
that the stay has been terminated under § 362(c).” Jupiter, 344
B.R. at 760.

1 a married couple. Daniel, 404 at 326. See also Jupiter, 344
2 B.R. at 759; In re Parker, 336 B.R. 678, 680-81 (Bankr. S.D.N.Y.
3 2006). The beginning of section 362(c)(3) states: "if a single
4 or joint case is filed by or against debtor . . ." 11 U.S.C.
5 § 362(c)(3). Keeping this introduction in mind, "with respect to
6 the debtor" in section 362(c)(3)(A) is best interpreted as
7 meaning that the stay terminates as to a repeat-filing debtor,
8 but not as to the debtor's spouse who is not a repeat filer.

9 Interpreting "with respect to the debtor" as distinguishing
10 between a debtor and his or her spouse is consistent with the
11 distinction made at the beginning of section 362(c)(3), which
12 provides: "if a single or joint case is filed by or against
13 debtor who is an individual in a case under chapter 7, 11, or 13,
14 and if a single or joint case of the debtor was pending within
15 the preceding 1-year period" 11 U.S.C. § 362(c)(3)
16 [emphasis added]. Reading "with respect to the debtor" in the
17 very next subsection as distinguishing between a debtor and the
18 debtor's spouse is entirely consistent with the references to "a
19 single or joint case" at the beginning of section 362(c)(3).
20 Because section 362(c)(3)'s opening phrase recognizes that some
21 repeat filing cases are filed by single debtors while others are
22 filed by joint debtors, the phrase "with respect to the debtor"
23 logically refers to whom (i.e. the serial filing spouse)
24 termination of the automatic stay applies under section
25 362(c)(3)(A), not to which property the termination applies -
26 particularly given that section 362(c)(3)(A) specifically
27 references "the stay under subsection (a) with respect to any
28 action taken with respect to a debt or property securing such

1 debt or with respect to any lease.”

2 Not only is this interpretation the only one which lends
3 meaning and clarity to both the introductory phrase of section
4 362(c) (3) and section 362(c) (3) (A) as a whole, it is also
5 consistent with other provisions of the bankruptcy code. The
6 Daniel court identified multiple bankruptcy code provisions that
7 clearly distinguish “the debtor” from the “the debtor’s spouse.”
8 Daniel, 404 B.R. at 325, see, e.g., 11 U.S.C. §§ 101(10A),
9 707(b) (7) and 1325(b).

10 D. The Legislative History of Section 362(c) (3) (A) Supports An
11 Interpretation That The Stay Terminates In Its Entirety For A
12 Repeat Filer

13 Many courts have found the language of section 362(c) (3) (A)
14 confusing and “have grappled with interpreting this provision.”
15 Curry, 362 B.R. at 397. The decision relied upon by the
16 bankruptcy court here, In re Daniel, found four separate
17 plausible interpretations of section 362(c) (3) (A). See also In
18 re Paschal, 337 B.R. 274, 277 (Bankr. E.D.N.C. 2006) (“The
19 language of the statute is susceptible to conflicting
20 interpretations, and if read literally, would apply to virtually
21 no cases at all. In sum, it’s a puzzler.”); In re Baldassarro,
22 338 B.R. 178, 182 (Bankr. D.N.H. 2006) (language of section
23 362(c) (3) (A) is “very poorly written”); In re Charles, 332 B.R.
24 538, 541 (Bankr. S.D. Tex. 2005) (“[T]he relevant provisions in
25 the Act are, at best, particularly difficult to parse out and, at
26 worst, virtually incoherent.”). While many of the courts
27 following the majority approach interpret section 362(c) (3) (A) to
28 be poorly drafted and confusing, they do not look to the history

1 of the provision for clarification, instead focusing on the
2 "unambiguous" language of five words within section 362(c)(3)(A):
3 "with respect to the debtor."

4 The Daniel court noted that given the overall complexity of
5 the BAPCPA revisions to section 362(c)(3), the concept of
6 terminating the stay "with respect to the debtor" "might" be
7 ambiguous. Daniel, 404 B.R. at 327. Similarly, the Jupiter
8 court noted that "this new subsection is imperfectly drafted, may
9 be subject to multiple interpretations, and therefore considered
10 ambiguous." Jupiter, 344 B.R. at 761. Despite a reluctance to
11 explicitly find section 362(c)(3)(A) ambiguous, both of these
12 courts looked to the provision's history as guidance.

13 The mere fact that courts disagree on the meaning of a
14 statutory provision does not render that provision ambiguous.
15 Similarly, a provision is not ambiguous simply because multiple
16 courts observe that it is poorly drafted. But where, as here,
17 the two lines of interpretation are so distinct, and a "plain
18 meaning" reading of a statutory provision (or a portion of the
19 provision) has the effect of reading out language written
20 elsewhere in the provision while reading in new qualifications
21 that are written nowhere, it is appropriate to conclude that the
22 provision is ambiguous:

23 A statute is ambiguous when it is capable of being
24 understood by reasonably informed persons in two or more
25 different senses. In analyzing a statutory text, the
26 court must avoid interpreting words in isolation.
27 "[B]ecause words can have alternative meanings depending
28 on context, we interpret statutes, not by viewing
individual words in isolation, but rather by reading the
relevant statutory provisions as a whole." This approach
reflects the understanding that a provision that may seem
ambiguous in isolation often becomes clear when
considered against the statutory scheme or vice versa.

1 Ileto v. Glock, Inc., 421 F.Supp.2d 1274, 1285-86 (C.D. Cal.
2 2006) (internal citations omitted; quoting Leisnoi, Inc. v.
3 Stratman, 154 F.3d 1062, 1066 (9th Cir. 1998); citing Int'l Ass'n
4 of Machinists & Aerospace Workers v. BF Goodrich Aerospace
5 Aerostructures Group, 387 F.3d 1046, 1051-52 (9th Cir. 2004)).

6 When statutory language is ambiguous, a court may look to
7 the legislative history behind that statute. See Fla. Power &
8 Light Co. v. Lorian, 470 U.S. 729, 737 (1985) (when a statute is
9 ambiguous, the court may seek guidance in the relevant
10 legislative history); Barstow v. IRS (In re MarkAir, Inc.), 308
11 F.3d 1038, 1043 (9th Cir. 2002) citing Merkel v. Commissioner,
12 192 F.3d 844, 848 (9th Cir. 1999) (“[I]f the statute is ambiguous,
13 we consult the legislative history, to the extent that it is of
14 value, to aid in our interpretation.”); N.W. Forest Res. Council
15 v. Glickman, 82 F.3d 825, 834 (9th Cir. 1996) (“Where a statute is
16 ambiguous, we may look to legislative history to ascertain its
17 purpose.”).

18 The legislative history of section 362(c)(3)(A) supports our
19 interpretation that the automatic stay terminates in its entirety
20 30 days after the petition date for a repeat filer.

21 For many years, successive bankruptcy filings have caused
22 significant problems within the bankruptcy system and for
23 creditors seeking to pursue state law remedies. “Abusive debtors
24 file multiple bankruptcy petitions solely to take advantage of
25 the automatic stay.” Robert Lefkowitz, The Filing of a
26 Bankruptcy Petition in Violation of 11 U.S.C. § 109(g): Does it
27 Invoke the Automatic Stay?, 26 Cardozo L. Rev. 297, 297-98
28 (2005) (introductory discussion addressing general abuse of the

1 automatic stay by serial filers). "These 'serial filers' seek
2 only to delay creditor action." Id. at 298. The Congressionally
3 created National Bankruptcy Review Commission addressed the issue
4 of successive filers abusing the power of the automatic stay.
5 See Daniel, 404 B.R. at 327; Bankruptcy Reform Act of 1994, Pub.
6 L. No. 103-394, 108 Stat. 4106, §§ 602-03 (Oct. 22, 1994). After
7 investigating, "[t]he Commission responded to this problem by
8 suggesting that the automatic stay not go into effect in certain
9 successive" bankruptcy filings. Daniel, 404 B.R. at 327.
10 Shortly thereafter, both the House and Senate Judiciary
11 Committees created draft bankruptcy reform provisions to
12 implement the Commission's suggestion. Section 121 of "The
13 Bankruptcy Reform Act of 1998" (drafted by the House Judiciary
14 Committee),⁸ section 303 of the "Consumer Bankruptcy Reform Act of
15
16

17
18 ⁸ Section 121 of "The Bankruptcy Reform Act of 1998"
provided:

19
20 If a single or joint case is filed by or
21 against an individual debtor under chapter 7,
22 11, or 13, and if a single or joint case of
23 that debtor was pending within the previous 1-
24 year period but was dismissed, other than a
25 case refiled under a chapter other than
26 chapter 7 after dismissal under section 707(b)
of this title, the stay under subsection (a)
with respect to any action taken with respect
to a debt or property securing such debt or
with respect to any lease will terminate with
respect to the debtor on the 30th day after
the filing of the later case.

27 Bankruptcy Reform Act of 1998, H.R. 3150, 105th Cong. § 121
28 (1998).

1 1998" (drafted by the Senate Judiciary Committee)⁹ and section
2 362(c)(3)(A) (adopted by BAPCPA)¹⁰ all contain essentially
3 identical language.

4 The legislative history demonstrates that Congress intended
5 to deter successive bankruptcy filings by imposing stricter

6
7 ⁹ Section 303 of the "Consumer Bankruptcy Reform Act of
8 1998" provided:

9 The stay under subsection (a) with respect to
10 any action taken with respect to a debt or
11 property securing such debt or with respect to
12 any lease shall terminate with respect to the
13 debtor on the 30th day after the filing of the
14 later case if (A) a single or joint filed case
15 is filed by or against an individual debtor
16 under chapter 7, 11, or 13; and (B) a single
17 or joint case of that debtor (other than a
18 case refiled under a chapter other than
19 chapter 7 after dismissal under section
20 707(b)) was pending during the preceding year
21 but was dismissed.

22 Consumer Bankruptcy Reform Act of 1998, S. 1301, 105th
23 Cong. § 303 (1998).

24 ¹⁰ Section 362(c)(3)(A) provides:

25 [I]f a single or joint case is filed by or
26 against debtor who is an individual in a case
27 under chapter 7, 11, or 13, and if a single or
28 joint case case of the debtor was pending
within the preceding 1-year period but was
dismissed, other than a case refiled under a
chapter other than chapter 7 after dismissal
under section 707(b)--(A) the stay under
subsection (a) with respect to any action
taken with respect to a debt or property
securing debt or with respect to any lease
shall terminate with respect to the debtor on
the 30th day after the filing of the later
case.

11 U.S.C. § 362(c)(3)(A).

1 limitations on the power of the automatic stay as subsequent
2 bankruptcy cases are filed. In Curry, the court noted that
3 "Section 302 of BAPCPA added section 362(c)(3) and 362(c)(4) to
4 the Bankruptcy Code" and this section of BAPCPA legislation was
5 specifically titled "Discouraging Bad Faith Repeat Filings."
6 Curry, 362 B.R. at 401. "Section 302 of the Act amends section
7 362(c) of the Bankruptcy Code to terminate the automatic
8 stay . . ." Id., citing H.R. Rep. No. 109-31(I) at 69-70 (2005).
9 The Curry court reasoned that "[t]he legislative history does not
10 support the notion that termination of the automatic stay [in
11 section 362(c)(3)(A)] was only a partial and extremely limited
12 termination . . ." Id. at 401-02. We agree. The history of
13 section 362(c)(3)(A) indicates that Congress intended it to deter
14 second filings. For this provision to have its intended effect,
15 it must be interpreted as terminating the automatic stay in its
16 entirety.

17 Section 362(c)(4) further evidences this Congressional
18 intent and provides support for our interpretation of section
19 362(c)(3). Section 362(c)(4) provides that where a debtor
20 commences a third bankruptcy filing (i.e., the debtor had two
21 pending cases within the previous year that were dismissed), the
22 automatic stay "shall not go into effect upon the filing of the
23 later case." 11 U.S.C. § 362(c)(4)(A)(i). In contrast to the
24 second filing, where the automatic stay goes into effect but then
25 terminates on the 30th day after the petition date if an
26 extension is not requested, for a third filing, the stay does not
27 go into effect at all. In Nelson v. George Wong Pension Trust
28 (In re Nelson), 391 B.R. 437 (9th Cir. BAP 2008), this panel

1 noted that section 362(c)(4)(A)(i) does not differentiate between
2 protecting the debtor, property of the debtor or property of the
3 estate, because after a third filing, no stay will go into effect
4 and thus there is no need to make such a distinction. In dicta,
5 the Nelson court highlighted that “[c]learly, Congress could, and
6 did, intend the consequences of repeat filings to be different,
7 and potentially more severe, as the number of successive filings
8 increase.” Nelson, 391 B.R. at 452.

9 There is ample legislative history, and subsequent case law
10 interpreting that history, to support our interpretation in
11 conjunction with the intent to curb the problem of repeat
12 bankruptcy filings: the more times a debtor files, the more
13 difficult it becomes for that debtor to take advantage of the
14 automatic stay. On a debtor’s first filing, the debtor has full
15 advantage of the automatic stay. On the debtor’s second filing
16 within a year, the stay terminates in its entirety 30 days after
17 the second case is filed, unless a motion to continue the stay is
18 made and a hearing held within the 30-day period – but if the
19 debtor’s spouse is not a repeat filer, the spouse is not
20 penalized. And on the debtor’s third filing within a year, there
21 is no automatic stay at all. The alternative reading of section
22 362(c)(3)(A) would leave no meaningful consequence for a debtor
23 filing a second case within a year and would not advance the goal
24 of deterring a debtor’s second filing, because there are very few
25 practical situations in which a creditor would take action
26 against a debtor or non-estate property. Any interpretation of
27 section 362(c)(3)(A) other than one terminating the stay in its
28 entirety “would be contrary to the clear legislative history,

1 would do little to discourage bad faith, successive filings, and
2 would create, rather than close, a loophole in the bankruptcy
3 system by allowing these debtors to receive the principal benefit
4 of the automatic stay - protection of property of the estate.”
5 Jupiter, 344 B.R. at 762.

6 The purpose of section 362(c) (3) (A) is to discourage
7 multiple filings. Therefore, the interpretation of the language
8 “with respect to the debtor” should not undermine the purpose of
9 the provision, but rather be consistent with Congressional
10 intent.

11 VI. CONCLUSION

12 For the reasons set forth above, section 362(c) (3) (A)
13 terminates the automatic stay in its entirety on the 30th day
14 after the petition date. Here, the automatic stay fully
15 terminated on September 24, 2009. As a result, Reswick’s wage
16 garnishment proceedings, commenced on October 2, 2009, did not
17 violate the automatic stay. We AFFIRM.