

FEB 04 2011

SUSAN M SPRAUL, CLERK  
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.	)	<b>OPINION</b>
		)	
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: SALTZMAN<sup>1</sup>, HOLLOWELL and KIRSCHER, Bankruptcy Judges.

<sup>1</sup> 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).<sup>2</sup> 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 <sup>2</sup> 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.<sup>4</sup>

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       <sup>4</sup> 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),<sup>5</sup> 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).<sup>6</sup> As a  
14

---

15 <sup>5</sup> 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 <sup>6</sup> 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 . . . .”).<sup>7</sup>

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 <sup>7</sup> 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),<sup>8</sup> section 303 of the "Consumer Bankruptcy Reform Act of  
15  
16

---

17  
18 <sup>8</sup> 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)<sup>9</sup> and section  
2 362(c)(3)(A) (adopted by BAPCPA)<sup>10</sup> 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 <sup>9</sup> 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 <sup>10</sup> 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.