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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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In re:	)	BAP Nos.	CC-08-1001-PaPeK
	)		CC-08-1003-PaPeK
DENNIS GREGORY NELSON and	)		CC-08-1004-PaPeK
BARBARA BACON NELSON,	)		(Related Appeals)
	)		
Debtors.	)	Bk. No.	SA 07-12744-RK
	)		
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	)	Adv. No.	SA 07-01373-RK
DENNIS GREGORY NELSON and	)		
BARBARA BACON NELSON,	)		
	)		
Appellants,	)		
	)		
v.	)	<b>OPINION</b>	
	)		
GEORGE WONG PENSION TRUST;	)		
AMERICAN MORTGAGE SERVICES;	)		
AMRANE COHEN, Chapter 13	)		
Trustee,	)		
	)		
Appellees.	)		
	)		
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Argued and Submitted on  
May 15, 2008 at Pasadena, California

Filed - June 26, 2008

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

Honorable Robert N. Kwan, Bankruptcy Judge, Presiding

\_\_\_\_\_  
Before: PAPPAS, PETERSON<sup>1</sup> and KLEIN, Bankruptcy Judges

\_\_\_\_\_  
<sup>1</sup> Hon. John L. Peterson, United States Bankruptcy Judge for  
the District of Montana, sitting by designation.

1 PAPPAS, Bankruptcy Judge:

2  
3 These related appeals require us to consider whether there is  
4 ambiguity in the provision of 11 U.S.C. § 362(c)(4)(A)(i)<sup>2</sup> such  
5 that the automatic stay is not automatically in effect upon the  
6 filing of a third case by individual debtors who have been debtors  
7 in two prior cases within the previous year. The bankruptcy court  
8 entered two orders under § 362(c)(4)(A)(ii) confirming that no  
9 stay was in effect, and entered an order dismissing the debtors'  
10 adversary proceeding which sought a determination that appellee's  
11 postpetition foreclosure sale was invalid as a violation of the  
12 automatic stay.

13 Perceiving no ambiguity in the statute, we AFFIRM the order  
14 dismissing the adversary proceeding but DISMISS as moot the  
15 appeals from the § 362(c)(4)(A)(ii) orders because the bankruptcy  
16 case has been dismissed.

17  
18 **FACTS**

19 Appellant debtors Gregory and Barbara Nelson refinanced their  
20 residence in Fullerton, California (the "Property"), with American  
21 Mortgage Services ("AMS") in 2004. The Nelsons fell behind in  
22 their obligation to AMS due to a combination of a significant  
23 increase in mortgage payments and the unemployment of Barbara  
24 Nelson. To obtain the wherewithal to cure the arrearage to AMS,  
25 the appellants obtained a second mortgage from the George Wong  
26

27 \_\_\_\_\_  
28 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Pension Trust ("Wong") in January 2006. Wong recorded a Notice of  
2 Default in May 2006.

3 On September 28, 2006, the Nelsons filed their first chapter  
4 13 petition, acting pro se.<sup>3</sup> On November 13, 2006, the bankruptcy  
5 court granted the U.S. Trustee's motion to dismiss the case  
6 because the Nelsons did not submit evidence that they had attended  
7 credit counseling before filing the petition. §§ 109(h)(1),  
8 521(i)(1).

9 Thereafter, Wong recorded a Trustee's Notice of Sale of the  
10 Property, which was first published on December 14, 2006. On  
11 December 19, 2006, the Nelsons filed a second chapter 13  
12 petition;<sup>4</sup> this time they were represented by counsel, G. Thomas  
13 Leonard ("Leonard").

14 In the second bankruptcy case, the Nelsons proposed four  
15 different chapter 13 plans between December 2006 and August 2007.  
16 Their second bankruptcy case was dismissed by the bankruptcy court  
17 on August 29, 2007, for failure to confirm a plan.

18 The Nelsons admit in pleadings filed in the bankruptcy court  
19 that "when the debtors, Dennis Nelson and Barbara Nelson, learned  
20 that there was a foreclosure sale set for September 1, 2007, they  
21 filed their third Chapter 13 bankruptcy [case] on August 31, 2007,  
22 Pro Se."<sup>5</sup> The Nelsons allege that they immediately notified Wong  
23 of the filing of the third bankruptcy petition.

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26 <sup>3</sup> Bankr. C.D. Cal. Case No. SA-06-11705-RK.

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27 <sup>4</sup> Bankr. C.D. Cal. Case No. SA-06-12398-RK.

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<sup>5</sup> Thus, the Nelsons' third bankruptcy petition was filed  
nine months and eighteen days after dismissal of their first  
petition.

1 A non-judicial trustee's foreclosure sale of the Property was  
2 conducted on September 7, 2007 (the "Foreclosure Sale"), at which  
3 Wong purchased their residence. A trustee's deed conveying it to  
4 Wong was recorded on September 24, 2007. Wong served a three-day  
5 notice to vacate the Property on the Nelsons on September 27,  
6 2007.

7 On October 17, 2007, Wong filed an unlawful detainer action  
8 against the Nelsons in California Superior Court, Orange County,  
9 seeking possession of the Property. Wong v. Nelson, Case No. 30-  
10 2007/00022618 (the "Unlawful Detainer Action"). The Nelsons filed  
11 an answer to the Unlawful Detainer Action on October 31, 2007.

12 The Nelsons also commenced an adversary proceeding in the  
13 bankruptcy court against Wong.<sup>6</sup> Their complaint alleged that the  
14 Foreclosure Sale was void as having been conducted in violation of  
15 the automatic stay, that the sale should be set aside and the  
16 trustee's deed canceled, that sums paid by Wong to AMS in  
17 satisfaction of the first mortgage should be returned to Wong, and  
18 that the AMS first mortgage should be reinstated with any  
19 arrearages to be cured through the Nelsons' chapter 13 plan.

20 On November 9, 2007, the Nelsons filed a "Motion to Reimpose  
21 the Automatic Stay/Alternatively [for] Order Confirming Sale Was  
22 Stayed" (the Nelsons' "Stay Motion") in their bankruptcy case. In  
23 the Nelsons' Stay Motion, they sought either an order determining  
24 that the automatic stay was in effect on the date of the  
25 Foreclosure Sale, or an order retroactively imposing the stay  
26 pursuant to § 105(a).

27 \_\_\_\_\_  
28 <sup>6</sup> On October 1, 2007, Leonard appeared as attorney for the  
Nelsons in the third bankruptcy case, and represented them in all  
further proceedings in that case and this appeal.

1           On November 13, 2007, Wong filed a "Motion for Order  
2 Confirming Termination of Stay Under 11 U.S.C. § 362(j) or That No  
3 Stay Is in Effect Under 11 U.S.C. § 362(c)(4)(A)(ii)" (Wong's "No-  
4 Stay Motion") in the bankruptcy case. The No-Stay Motion  
5 represents that, because the Unlawful Detainer Action was pending  
6 in state court against the Nelsons, a "comfort order" from the  
7 bankruptcy court was needed to clarify for the state court that  
8 the automatic stay was not in effect at the time of the  
9 Foreclosure Sale.

10           Then, on November 14, 2007, Wong filed a Motion to Dismiss  
11 the adversary proceeding pursuant to FED. R. CIV. P. 12(b)(6), made  
12 applicable in bankruptcy cases by Rule 7012. As maintained in the  
13 No-Stay Motion, Wong argued in the Motion to Dismiss that the  
14 Nelsons had filed their third bankruptcy petition within a year in  
15 which their two prior bankruptcy cases were pending and dismissed  
16 and, therefore, no automatic stay was in effect as a result of the  
17 third bankruptcy filing at the time of the Foreclosure Sale.

18           The bankruptcy court conducted a hearing on Wong's No-Stay  
19 Motion on December 11, 2007. The Nelsons and Wong appeared  
20 through counsel. Although the hearings on the Nelsons' Stay  
21 Motion and Wong's Motion to Dismiss the adversary proceeding were  
22 scheduled to occur the following day, the parties agreed that a  
23 determination of a single critical issue by the bankruptcy court,  
24 whether the automatic stay was in effect at the time of the  
25 Foreclosure Sale, was dispositive as to all three motions. Tr.  
26 Hr'g 2:1 - 8:3 (December 11, 2007). With the consent of the  
27 parties, the bankruptcy court agreed to rule on all three motions  
28 at the hearing on December 11, 2007. After considering the

1 arguments of the parties, the bankruptcy court ruled that there  
2 was no automatic stay in effect at the time of the Foreclosure  
3 Sale, because "the conditions under 362(c)(4)[(A)(i)] were met."  
4 Tr. Hr'g 12:12-13.

5 On December 19, 2007, the bankruptcy court entered an order  
6 granting Wong's No-Stay Motion, providing in part that "[t]he  
7 Court hereby confirms that no automatic stay pursuant to 11 U.S.C.  
8 Section 362 arose as to Movant upon the filing of the [third  
9 bankruptcy case] on August 31, 2007, and that no stay is now in  
10 effect, pursuant to 11 U.S.C. Section 362(c)(4)(A)(ii)." Also on  
11 December 19, 2007, the court entered orders denying the Nelsons'  
12 Stay Motion and dismissing the adversary proceeding. In denying  
13 the Nelsons' Stay Motion, the bankruptcy court ruled that "there  
14 was no stay in effect upon the filing of this third Petition by  
15 the Nelsons within one year pursuant to 11 U.S.C. Section  
16 362(c)(4)."

17 On December 20, 2007, Wong and the Nelsons entered into a  
18 stipulation (the "Stipulation") for entry of a judgment in the  
19 Unlawful Detainer Action. In the Stipulation, the Nelsons agreed  
20 to surrender possession of the Property, and the parties agreed  
21 that "A Writ of Possession for possession only may issue upon  
22 entry of the judgment herein."

23 The Nelsons filed timely appeals of the orders entered by the  
24 bankruptcy court granting Wong's No-Stay Motion, denying the  
25 Nelsons' Stay Motion and dismissing the adversary proceeding, on  
26 December 27, 2007.

27 On January 25, 2008, the bankruptcy court dismissed the  
28 Nelsons' third bankruptcy case at a continued hearing on plan

1 confirmation because they had not made required plan payments.<sup>7</sup>

2  
3 **JURISDICTION**

4 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
5 §§ 1334 and 157(b) (2) (A)&(G). The Panel has jurisdiction over the  
6 appeals pursuant to 28 U.S.C. § 158.

7  
8 **ISSUES**

- 9 1. Whether the appeals are moot.  
10 2. Whether the bankruptcy court erred in ruling that no  
11 automatic stay was in effect at the time of the Foreclosure  
12 Sale.

13  
14 **STANDARDS OF REVIEW**

15 Mootness is a question of law reviewed de novo. S. Or.  
16 Barter Fair v. Jackson County, Or., 372 F.3d 1128, 1133 (9th Cir.  
17 2004).

18 We review the bankruptcy court's interpretation of the  
19 Bankruptcy Code de novo. Bankr. Receivables Mgmt. v. Lopez (In re  
20 Lopez), 345 F.3d 701, 705 (9th Cir. 2003).

21 A bankruptcy court's decision to dismiss an adversary  
22 proceeding pursuant to FED. R. CIV. P. 12(b) (6) for failure to  
23 state a claim is reviewed de novo. Busetto Foods, Inc. v. Laizure  
24 (In re Laizure), 349 B.R. 604, 606 (9th Cir. BAP 2006). Such a

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<sup>7</sup> On February 22, 2008, Wong moved to dismiss the appeal of  
27 the order denying the Nelsons' Stay Motion, BAP No. CC-08-1003,  
28 arguing that the appeal had been filed in bad faith and was moot;  
Wong sought sanctions for a frivolous appeal. Our motions panel  
denied Wong's motion without prejudice to reasserting its  
arguments before the merits panel.

1 motion to dismiss should only be granted if the complaint fails to  
2 allege facts raising "a right to relief above the speculative  
3 level . . . ." Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1959  
4 (2007).

5  
6 **DISCUSSION**

7 I.

8 Mootness

9 Because the underlying bankruptcy case has been dismissed and  
10 the case dismissal was not appealed, Wong contends that the  
11 Nelsons can not be afforded any effective relief via these  
12 appeals.<sup>8</sup> Alternatively, because the Nelsons stipulated to  
13 surrender possession of the Property to Wong, and to the entry of  
14 a judgment in the Unlawful Detainer Action, Wong argues that the  
15 Nelsons effectively abandoned their appeal rights.

16 As discussed below, the Panel concludes that the appeal from  
17 the bankruptcy court's order dismissing the adversary proceeding  
18 is not moot because, if the Panel were to reverse the bankruptcy  
19 court's decision, the Nelsons could be afforded some relief.  
20 Therefore, whether the Foreclosure Sale violated the automatic  
21 stay is an issue that is properly decided by the Panel. On the  
22 other hand, Wong is correct that because the Nelsons' bankruptcy  
23 case has been dismissed, the Nelsons' appeals of the two orders  
24 entered in that bankruptcy case are moot.

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25  
26 <sup>8</sup> Wong does not specify in its appellate brief which orders  
27 on appeal it contends are moot. As noted above, Wong's pre-  
28 argument motion for dismissal of these appeals focused on the  
appeal of the order denying the Nelsons' Stay Motion. Here, we  
first consider whether the appeal in the adversary proceeding is  
moot, before examining the status of the appeals of the bankruptcy  
case orders.

1 A.

2 The test for prudential mootness of an appeal is whether the  
3 appellate court can grant the appellant any effective relief in  
4 the event that it decides the matter on the merits in its favor.  
5 Pilate v. Burrell (In re Burrell), 415 F.3d 994, 998 (9th Cir.  
6 2005). If it cannot grant effective relief, the appellate court  
7 lacks jurisdiction and must dismiss the appeal. Church of  
8 Scientology v. United States, 506 U.S. 9, 12 (1992); Pub. Util.  
9 Comm'n v. FERC, 100 F.3d 1451, 1458 (9th Cir. 1996). If it can  
10 grant such relief, the matter is not moot. Garcia v. Lawn, 805  
11 F.2d 1400, 1402 (9th Cir. 1986).

12 Wong argues in very general terms that the dismissal of the  
13 Nelsons' third bankruptcy case, and their failure to appeal or to  
14 seek a stay of that dismissal, prevents this Panel from granting  
15 any effective relief to the Nelsons. Implicit in this argument is  
16 that dismissal of the bankruptcy case deprives the Panel of  
17 jurisdiction over the appeals, and that it lacks authority to  
18 reverse the bankruptcy court's orders and to remand these matters  
19 to the bankruptcy court for entry of orders holding that the  
20 Foreclosure Sale was conducted in violation of the automatic stay,  
21 and thus was void.

22 With respect to the bankruptcy court's decision to dismiss  
23 the adversary proceeding, the case law is to the contrary. Both  
24 the Ninth Circuit and this Panel have held that an adversary  
25 proceeding may survive the dismissal of the underlying bankruptcy  
26 case. In Davis v. Courington (In re Davis), 177 B.R. 907 (9th  
27 Cir. BAP 1995), the Panel held that, although the underlying  
28 bankruptcy case was dismissed, the bankruptcy court retained

1 discretionary subject matter jurisdiction over an adversary  
2 proceeding to enforce the automatic stay. The Davis Panel based  
3 its ruling on earlier Ninth Circuit precedents holding that the  
4 bankruptcy court has discretion to retain or decline to exercise  
5 jurisdiction over pending adversary proceedings following  
6 dismissal of the bankruptcy case. Carraher v. Morgan Elec., Inc.  
7 (In re Carraher), 971 F.2d 327, 328 (9th Cir. 1992); Beneficial  
8 Trust Deeds v. Franklin (In re Franklin), 802 F.2d 324, 326-27  
9 (9th Cir. 1986).

10 In one opinion, the Ninth Circuit ruled that a bankruptcy  
11 court retained jurisdiction following dismissal of the bankruptcy  
12 case to remedy violations of the automatic stay. 40235 Washington  
13 St. Corp. v. Lusardi, 329 F.3d 1076, 1080 (9th Cir. 2003).  
14 Relying on Lusardi, Davis and other precedents, the Panel recently  
15 described it as "settled" that the bankruptcy court has  
16 jurisdiction to remedy violations of the automatic stay after  
17 dismissal of the bankruptcy case. Johnson v. TRE Holdings, LLC  
18 (In re Johnson), 346 B.R. 190, 194 (9th Cir. BAP 2006).<sup>9</sup>

19  
20  
21 <sup>9</sup> To be precise, neither the Ninth Circuit nor the Panel  
22 presume that the bankruptcy court's jurisdiction over adversary  
23 proceedings is retained after dismissal of the bankruptcy case.  
24 Especially in contests involving state law claims founded upon the  
25 bankruptcy court's "related-to" jurisdiction, the Ninth Circuit  
26 requires the bankruptcy court to consider factors of judicial  
27 economy, convenience, fairness and comity before retaining  
28 jurisdiction of adversary proceedings after dismissal of the  
29 bankruptcy case. Carraher, 971 F.2d at 328; Linkway Invest. Co.  
30 v. Olsen (In re Casamont Investors, Ltd.), 196 B.R. 517 (9th Cir.  
31 BAP 1996). However, where the adversary proceeding relates to the  
32 status or enforcement of the automatic stay, or other strictly  
33 bankruptcy law questions, the basis for the bankruptcy court's  
34 retention of jurisdiction is much stronger. Davis, 177 B.R. at 913  
35 n.3 ("The bankruptcy court should exercise great care, however, in  
36 abstaining from proceedings arising under title 11, because of the  
37 court's expertise in such matters.").

1 Here, the Nelsons' complaint in the adversary proceeding  
2 alleged that Wong willfully violated the automatic stay. Since  
3 the gravamen of the complaint was Wong's alleged violation of the  
4 stay, under Ninth Circuit and BAP precedent, if we reverse the  
5 dismissal of the adversary proceeding, we can remand to the  
6 bankruptcy court with instructions that it provide appropriate  
7 relief. While it is doubtful that the bankruptcy court could  
8 "undo" the Foreclosure Sale and restore the parties to the status  
9 quo ante, upon remand the Nelsons could seek to recover any actual  
10 damages they have suffered as a result of the alleged stay  
11 violation, together with their attorneys' fees and costs, and, if  
12 appropriate, punitive damages, all pursuant to § 362(k).<sup>10</sup> Because  
13 a potential award of money damages could constitute effective  
14 relief for Wong's alleged willful violation of the stay, the  
15 appeal of the dismissal of the adversary proceeding is not moot.

16 In Suter v. Goedert, 504 F.3d 982 (9th Cir. 2007), the Ninth  
17 Circuit explained that the "party asserting mootness 'has the  
18 heavy burden of establishing that there is no effective relief  
19 remaining for a court to provide.'" Id. at 986, quoting Or.  
20 Advocacy Ctr. v. Mink, 322 F.3d 1101, 1116-17 (9th Cir. 2003).  
21 Wong has not satisfied its heavy burden of persuading the Panel  
22 that the Nelsons have no possible recourse in the adversary  
23 proceeding were the Panel to reverse the dismissal.

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24  
25 <sup>10</sup> This Code provision specifies, in pertinent part, that "an  
26 individual injured by any willful violation of a stay provided by  
27 this section shall recover actual damages, including costs and  
28 attorneys' fees, and, in appropriate circumstances, may recover  
punitive damages." § 362(k)(1); see Ozenne v. Bendon (In re  
Ozenne), 337 B.R. 214, 216 n.2 and 222 (9th Cir. BAP 2006)  
(remanding to bankruptcy court for determination of damages for  
willful violation of stay under § 362(h), but noting that had the  
case been filed post-BAPCPA [as in this appeal], similar damages  
would be awarded under § 362(k)(1)).

1 B.

2 Wong makes an additional argument regarding mootness.  
3 Pointing to the Stipulation and judgment entered in the Unlawful  
4 Detainer Action, Wong contends that because the Nelsons agreed to  
5 vacate the Property and surrender it to Wong, the Nelsons  
6 indicated a clear intent not to pursue any further remedies with  
7 respect to the Property, and that the appeals should therefore be  
8 dismissed.

9 Wong's argument and reading of the Stipulation and judgment  
10 in the state court action assume too much. The Nelsons, by  
11 stipulating to entry of a judgment in state court, did not agree  
12 to forego these appeals, all of which were commenced after they  
13 entered into the Stipulation.

14 Wong's state court action was to recover possession of the  
15 Property via unlawful detainer, not to quiet title. As the  
16 California Supreme Court has explained, "a judgment in unlawful  
17 detainer usually has very limited res judicata effect and will not  
18 prevent one who is dispossessed from bringing a subsequent action  
19 to resolve questions of title or to adjudicate other legal and  
20 equitable claims between the parties." Vella v. Hudgins, 572 P.2d  
21 28, 30 (Cal. 1977). Further, there is no indication that the  
22 parties in this case intended the Stipulation and judgment to  
23 settle questions of title. Instead, the Nelsons agreed in the  
24 Stipulation that "[a] Writ of Possession for possession only may  
25 issue upon entry of the judgment herein." Because of the limited  
26 nature of the remedy sought by Wong in the Unlawful Detainer  
27 Action, and the narrow scope of the Nelsons' agreement in the  
28

1 Stipulation, it is clear that the Nelsons did not intend to forego  
2 their right to appeal the bankruptcy court's orders.

3 For these reasons, we conclude that the Nelsons' appeal of  
4 the bankruptcy court's order dismissing the adversary proceeding  
5 (BAP No. CC-08-1001) is not moot.

6 C.

7 In contrast, the Nelsons' appeals of the two orders entered  
8 by the court in their bankruptcy case are moot. The Nelsons' Stay  
9 Motion sought alternative relief, either a determination that the  
10 stay was in effect on the date of the Foreclosure Sale or an order  
11 retroactively imposing the stay under § 105(a). The bankruptcy  
12 court denied both alternatives. In the order granting Wong's No-  
13 Stay Motion, the bankruptcy court confirmed that no stay was in  
14 effect pursuant to § 362(c)(4)(A)(ii).

15 Review of orders entered in the administration of a  
16 bankruptcy case, since dismissed, is usually a fruitless pursuit.  
17 Moreover, because the Nelsons can obtain effective relief in the  
18 adversary proceeding if the Panel decides to reverse and remand  
19 the action to the bankruptcy court, the Panel's review of the  
20 bankruptcy court's orders entered in the dismissed case is all the  
21 more a useless endeavor. While the legal issue raised in each of  
22 these appeals is the same as that raised by the appeal from  
23 dismissal of the adversary proceeding, and since the bankruptcy  
24 case has been dismissed and that order is now final, we conclude  
25 that the Panel can grant no effective relief to the Nelsons in  
26 these appeals. The Nelsons' appeals in Nos. CC-08-1003 and CC-08-  
27 1004 are moot and will be dismissed.

28

1 II.

2 Section 362(c)(4)(A)

3 The bankruptcy court ruled that, "[w]hen the third  
4 [bankruptcy] case was filed, no automatic stay arose because . . .  
5 the conditions under 362(c)(4)(a) were met." Tr. Hr'g 12:12-16.  
6 Based on that conclusion, the bankruptcy court dismissed the  
7 adversary proceeding, implicitly holding that the Nelsons'  
8 complaint failed to state a claim upon which relief could be  
9 granted.

10 The parties do not dispute the factual predicate relied upon  
11 by the bankruptcy court for invocation of § 362(c)(4)(A)(i): that  
12 when the Nelsons filed their chapter 13 petition on August 31,  
13 2007, they had had two bankruptcy cases pending within the  
14 previous year that had been dismissed, and that the Foreclosure  
15 Sale occurred early in September 2007. The Nelsons, however,  
16 challenge the bankruptcy court's interpretation of  
17 § 362(c)(4)(A)(i), and its ruling that no automatic stay was in  
18 effect at the time of the Foreclosure Sale.

19 The bankruptcy court did not provide an extensive discussion  
20 of the reasons for its ruling. But under these facts, we do not  
21 believe detailed findings of fact and conclusions of law were  
22 required. Simply put, the bankruptcy court's interpretation and  
23 application of the clear terms of the statute to the undisputed  
24 facts were correct.

25 A.

26 Statutory interpretation of bankruptcy legislation begins  
27 with the language of the statute: "When the statute's language is  
28 plain, the sole function of the courts - at least where the

1 disposition required by the text is not absurd - is to enforce it  
2 according to its terms." Lamie v. United States Tr., 540 U.S.  
3 526, 534 (2004) (quoting Hartford Underwriters Ins. Co. v. Union  
4 Planters Bank, N.A., 530 U.S. 1, 6 (2000)).

5 The relevant Bankruptcy Code provision, § 362(c)(4)(A),  
6 provides:

7 (i) if a single or joint case is filed by or  
8 against a debtor who is an individual under this title,  
9 and if 2 or more single or joint cases of the debtor  
10 were pending within the previous year but were  
11 dismissed, other than a case refiled under section  
12 707(b), the stay under subsection (a) shall not go into  
13 effect upon the filing of the later case; and

14 (ii) on request of a party in interest, the court shall  
15 promptly enter an order confirming that no stay is in  
16 effect[.]

17 Examining the words of the statute is the first principle of  
18 statutory interpretation. Mallard v. U.S. Dist. Ct., 490 U.S.  
19 296, 300 (1989). Section 362(c)(4)(A)(i) may be parsed into four  
20 phrases:

21 • "[I]f a single or joint case is filed by or against a debtor  
22 who is an individual under this title . . . ." From these  
23 words, the reader should understand that this subsection  
24 applies only to single or joint bankruptcy cases filed by or  
25 against individuals, and not cases filed by or against  
26 entities such as corporations or partnerships. In re  
27 Montoya, 333 B.R. 449, 455 n.9 (Bankr. D. Utah 2005) (finding  
28 that the term "individual" as used in post-BAPCPA code  
section § 362(c) excludes corporations and businesses).  
Here, the Nelsons, who are individuals, commenced their third  
bankruptcy case when they filed a joint bankruptcy petition.  
Thus, the Nelsons' third case falls within the scope of this

1 provision.

2 • "and if 2 or more single or joint cases of the debtor were  
3 pending within the previous year but were dismissed . . . ."

4 The Nelsons admit they had two joint chapter 13 cases  
5 pending, both of which were dismissed, in the year before  
6 they filed their third chapter 13 petition.

7 • "other than a case refiled under section 707(b) . . . ." The  
8 parties do not dispute the meaning or application of this  
9 phrase, nor do the Nelsons argue that this provision helps  
10 them. Because neither of the Nelsons' previous two cases was  
11 dismissed for "abuse" under § 707(b), this exception to the  
12 operation of this subsection does not apply.<sup>11</sup>

13 • "the stay under subsection (a) shall not go into effect upon  
14 the filing of the later case[.]"

15 The "subsection (a)" referred to in this phrase is § 362(a).  
16 That subsection, one of the most critical to the implementation of  
17 the policies of the Code, provides that the filing of a bankruptcy  
18 petition automatically operates as a stay against a broad array of  
19 creditor activities. In particular, subsections(a)(3) and (4)  
20 prohibit any act to create, perfect, or enforce any lien against  
21 property of the estate, or to create, perfect, or enforce against

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22  
23 <sup>11</sup> While of no import in this appeal, we parenthetically note  
24 the apparent drafting error in this phrase. Section 707(b)  
25 provides the grounds for dismissal or conversion of a case for  
26 abuse of chapter 7 and makes no reference to any "refiling"  
27 procedure. A parallel phrase in § 362(c)(3) would appear to  
28 supply the words missing in this provision: "other than a case  
refiled under a chapter other than chapter 7 after dismissal under  
section 707(b)." If this exception were an issue, the Panel could  
refer to another section of a statute to supply terminology when  
its use in the other section helps make the ambiguous term clear.  
See United Sav. Ass'n v. Timbers of Inwood Forest Assocs. Ltd.,  
484 U.S. 365, 371 (1988).

1 property of the debtor any lien to the extent such lien secures a  
2 claim that arose before the commencement of the case under the  
3 Bankruptcy Code. These stay provisions, if effective in the  
4 Nelsons' third bankruptcy case, would have protected the Property  
5 against Wong's foreclosure efforts. However, as the statute  
6 provides, if the conditions of subsection (c)(4)(A) are satisfied,  
7 the § 362(a) stay "shall not go into effect" upon the filing of a  
8 third bankruptcy petition.

9 B.

10 The Nelsons argue that ambiguity in § 362(c)(4)(A) results  
11 from its placement in the Code, rather than from its language. In  
12 their view, because this provision is found in subsection (c)  
13 which deals, generally, with the duration of the automatic stay,  
14 and not in subsection (b), where many exceptions to the operation  
15 of the automatic stay appear, Congress must have intended that  
16 some sort of stay arise when the Nelsons filed their third  
17 bankruptcy case. The Nelsons reconcile the placement of this  
18 provision in subsection (c) by arguing that Congress must have  
19 intended that it was only the automatic stay provisions of  
20 § 362(a) relating to property of the debtor that did not go into  
21 effect, but that the stay did indeed arise to protect property of  
22 their bankruptcy estate when they filed their third petition.<sup>12</sup>

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23  
24 <sup>12</sup> This account of the Nelsons' argument on appeal is  
25 probably more generous than justified from reading their briefs.  
26 Their Opening Brief at 11 suggests that the automatic stay  
27 (without qualification) went into effect on the filing of their  
28 third petition, but that the stay was subject to termination. The  
Nelsons note that § 362(b) contains over twenty subsections  
detailing situations in which no stay goes into effect upon  
commencement of a bankruptcy case. Since the provision relied  
upon by Wong and the bankruptcy court, § 362(c)(4)(A)(i), instead  
appears in subsection (c), which generally deals with the duration  
of the stay, the Nelsons suggest that Congress intended that an  
(continued...)

1 Since the Property was property of the estate on the date of the  
2 Foreclosure Sale, the Nelsons argue that sale violated the  
3 automatic stay, and should therefore be invalidated.

4 Of course, the Nelsons' interpretation of the Code ignores  
5 the precise language employed by Congress. To accept the Nelsons'  
6 position, a reader must somehow convert the phrase in  
7 § 362(c)(4)(A)(i) providing that the § 362(a) automatic stay  
8 "shall not go into effect" to one providing that "the stay arises  
9 and is in effect, but may be terminated."

10 Further, although the Nelsons are correct that § 362(b)  
11 governs exceptions to the stay, there is no reason why the  
12 (4)(A)(i) exception must appear in subsection (b). Indeed, there  
13 is at least one good reason why it is not found in § 362(b).  
14 Section 362(c)(4)(B) sets forth "an explicit substantive right and  
15 statutory procedure . . . for a party in interest to seek the  
16 imposition of the stay, without the need to invoke the court's  
17 injunctive power under section 105." Alan N. Resnick & Henry J.  
18 Sommer, 3 COLLIER ON BANKRUPTCY ¶ 362.06[4] (15th ed. rev. 2006).  
19 Section 362(b) provides no "self-contained" procedure for imposing  
20 a stay if one of the exceptions apply. In other words, placing  
21 the provisions in subsection (c)(4) in (b) could very well have  
22 required rewriting or amendment of the statute.

23

24

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25 <sup>12</sup>(...continued)  
26 unqualified stay went into effect on filing the third petition but  
27 that it could be terminated by the bankruptcy court. However, the  
28 Nelsons' Reply Brief at 2-3, seems to concede that, upon  
commencement of a third case, "there is 'no stay' as to acts  
against the individual debtors. The purpose behind 11 U.S.C.  
§ 362[(c)(4)(A)] is apparently to discourage multiple filings. By  
not imposing the protection provided by the automatic stay this  
apparent purpose is met."

1 C.

2 The Nelsons cite no authority to support their interpretation  
3 of the Code. They acknowledge in their Opening Brief that they  
4 are not aware of any published cases which interpret 11 U.S.C.  
5 § 362(c)(4)(A)(i).

6 Our research has not located any decisions in which a court  
7 engaged in a detailed textual examination of § 362(c)(4)(A)(i)  
8 before concluding that no stay arises in a third bankruptcy case  
9 filed within one year. However, there are numerous reported  
10 decisions which, like the bankruptcy court in this appeal, simply  
11 rule that, where the factual predicate of § 362(c)(4)(A)(i) is  
12 satisfied, no stay arises with the filing of the third petition.  
13 See, e.g., Dixon v. Fed. Nat'l Mortg. Ass'n (In re Dixon), 2006 WL  
14 3371500 \* 2 (S.D. Tex. 2006); Payen v. HSBC Mortg. Serv. (In re  
15 Payen), 2008 WL 545001 \* 1 (Bankr. D. Md. 2008); In re Ferguson,  
16 376 B.R. 109, 118 (Bankr. E.D. Pa. 2007); In re Schroeder, 356  
17 B.R. 812, 812-13 (Bankr. M.D. Fla. 2006); In re Ortiz, 355 B.R.  
18 587, 590 (Bankr. S.D. Tex. 2006); In re McBride, 354 B.R. 95, 100  
19 (Bankr. D.S.C. 2006); In re Winters, 2006 WL 3392890 \* 1 (Bankr.  
20 W.D. Va. 2006). In contrast, we have located no reported  
21 decisions in which a court determined that a stay was in effect  
22 when the factual conditions of § 362(c)(4)(A)(i) applied.

23 Further, many of the published decisions, in interpreting  
24 other provisions of the Code, point to the clarity of  
25 § 362(c)(4)(A)(i). For example, two appellate opinions contrast  
26 the clear meaning of § 362(c)(4)(A)(i) with possible ambiguities  
27 in the language found in § 362(c)(3)(A), the Code provision  
28 limiting the duration of the automatic stay in cases where the

1 debtor has had one prior pending case in the previous year.<sup>13</sup> In  
2 one, the First Circuit BAP notes:

3 With respect to debtors with two or more prior cases,  
4 section 362(c)(4)(A)(i) clearly provides that "the stay  
5 under subsection (a) shall not go into effect upon the  
6 filing of the later case." 11 U.S.C. § 362(c)(4)(A)(i)  
7 . . . . Sections 362(c)(4)(A)(i) and 362(c)(3)(A) were  
8 both added by BAPCPA, and we are unconvinced that the  
9 significant difference in language between the two  
10 sections reveals a Congressional intent to say the very  
11 same thing.

12 Jump v. Chase Home Fin., LLC (In re Jump), 356 B.R. 789, 795-96  
13 (1st Cir. BAP 2006) (emphasis added). The Tenth Circuit BAP  
14 similarly observes:

15 According to these courts, the automatic stay terminates  
16 under § 362(c)(3)(A) only with respect to the debtor and  
17 the debtor's property but not as to property of the  
18 estate. [citations omitted] These courts reason that if  
19 Congress meant to terminate the stay in its entirety, it  
20 would have done so in plain language as it did in  
21 § 362(c)(4)(A)(i).

22 Holcomb v. Hardeman (In re Holcomb), 380 B.R. 813, 816 (10th Cir.  
23 BAP 2008) (emphasis added).

24 Other courts consider § 362(c)(4)(A)(i) to be unambiguous.  
25 See e.g., In re Curry, 362 B.R. 394, 399 (Bankr. N.D. Ill.  
26 2007) ("Section 362(c)(4)(A)(i) thereby provides in no uncertain

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27 <sup>13</sup> Section 362(c)(3)(A) provides:

28 (3) if a single or joint case is filed by or  
against a debtor who is an individual in a  
case under chapter 7, 11, or 13, and if a  
single or joint 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 such 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[.]

1 terms that the automatic stay does not come into effect at all  
2 upon the filing of a debtor's third bankruptcy case within a one  
3 year period.") (emphasis added). Another court wrote: "Congress,  
4 in terminating aspects of the automatic stay in § 362(c)(3)(A),  
5 chose language that is so vastly different than the  
6 straightforward language it used when it terminated all  
7 protections of the stay in § 362(c)(4)(A)(i)." In re Paschal, 337  
8 B.R. 274, 279 (Bankr. E.D.N.C. 2006) (emphasis added). See also  
9 King v. Wells Fargo Bank, N.A. (In re King), 362 B.R. 226, 232  
10 (Bankr. D. Md. 2007) ("Section 362(c)(4)(A)(i) is unambiguous on  
11 its face[.]"); In re Murray, 350 B.R. 408, 413-14 (Bankr. S.D.  
12 Ohio 2006) ("There is no ambiguity in the relevant text of this  
13 provision [§ 362(c)(4)] and the plain meaning reading does not  
14 produce a result demonstrably at odds with the expressed intent of  
15 Congress."); In re Harris, 342 B.R. 274, 279 (Bankr. N.D. Ohio  
16 2006) ("Had Congress intended § 362(c)(3)(A) to completely  
17 terminate the automatic stay, it could have used the same  
18 straightforward language it used in § 362(c)(4)(A)(i).").

19 As can be seen, not only is there no decisional authority for  
20 the Nelsons' construction of § 362(c)(4)(A)(i), it is doubtful  
21 that, if the issue were to be presented, a court would endorse  
22 their interpretive approach.

23 D.

24 The Nelsons' holistic examination of § 362(c)(4)(A)(i) is not  
25 inconsistent with a plain meaning analysis. See Kokoszka v.  
26 Belford, 417 U.S. 642, 650 (1974) ("When interpreting a statute,  
27 the court will not look merely to a particular clause in which  
28 general words may be used, but will take in connection with it the

1 whole statute.") (internal quotation marks omitted). However, the  
2 Nelsons' analysis proves unsatisfactory.

3 While not completely clear, the Nelsons apparently suggest  
4 that examination of all of the various provisions in § 362 reveals  
5 that two distinct types of stay automatically arise upon the  
6 filing of a bankruptcy petition: one stay that protects property  
7 of the debtor, and another that shields property of the bankruptcy  
8 estate. The Nelsons urge that, under § 362(c)(4)(A)(i), only one  
9 type of stay does not go into effect in a third bankruptcy case:  
10 that which protects property of the debtor. They reason,  
11 therefore, that the stay protecting property of the estate does  
12 arise upon a third filing, and shielded the Property from the  
13 Foreclosure Sale.

14 The Nelsons' fundamental analysis of the facets of the  
15 automatic stay is, as far as it goes, correct.<sup>14</sup> Other provisions  
16 of the Bankruptcy Code distinguish between the automatic stay as  
17 applied to property of the debtor and property of the estate. For

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18  
19 <sup>14</sup> For example, upon the filing of a bankruptcy petition,  
20 § 362(a)(1) stays actions "against the debtor." Section 362(a)(2)  
21 stays enforcement of judgments against "the debtor or against  
22 property of the estate." Section 362(a)(3) stays actions to  
23 obtain possession of "property of the estate." Section 362(a)(4)  
24 prohibits actions to create or perfect liens "against property of  
25 the estate." Section 362(a)(5) stays actions involving  
26 prepetition liens against "property of the debtor." Section  
27 362(a)(6) stays collection actions "against the debtor." Section  
28 362(a)(7) enjoins setoff of "any claim against the debtor." And  
§ 362(a)(8) stays Tax Court litigation of certain prepetition tax  
liabilities of a debtor.

25 While not important here, arguably, there are three, not two,  
26 different aspects to the § 362(a) automatic stay: the stay against  
27 actions against property of the debtor can be further subdivided  
28 into protections against "in personam" actions against the debtor  
(such as law suits to collect debts) and prohibitions against "in  
rem" actions taken against identifiable property of the debtor  
that is not property of the estate (such as attempts to repossess  
a debtor's exempt property).

1 example, § 362(c) (1) terminates the stay protecting property of  
2 the estate when it is no longer property of the estate, whereas  
3 § 362(c) (2) provides that the stay continues as to “any other act  
4 under subsection (a)” (i.e., acts against the debtor, personally,  
5 or against property of the debtor) until a case is closed,  
6 dismissed, or a discharge is granted or denied. And § 521(a) (6),  
7 another new provision of BAPCPA, differentiates between property  
8 of the estate and property of the debtor in terminating the  
9 automatic stay where the debtor does not reaffirm or redeem  
10 property within 45 days after the meeting of creditors. See  
11 Jumpp, 356 B.R. at 794 (discussing differences in operation in  
12 §§ 362(c) (1) and (c) (2), 521(a) (6), as well as other provisions of  
13 the Code, regarding termination of the stay as to property of the  
14 debtor and property of the estate).

15 In other words, the Nelsons are correct that this is evidence  
16 that Congress has, in some instances, indicated its intent to  
17 distinguish between the stay of enforcement against a debtor’s  
18 property and that of the bankruptcy estate. However, the Nelsons’  
19 attempted leap of logic from this correct premise to their  
20 conclusion that § 362(c) (4) (A) (i) operates only to prevent  
21 operation of the automatic stay solely as to property of the  
22 debtor, and not as to property of the estate, falls short.

23 The Nelsons’ argument is burdened by numerous deficiencies.  
24 As noted above, the Nelsons have supplied no authority, nor even  
25 reasoned argument, why § 362(c) (4) (A) (i) should be read to apply  
26 only to property of the debtor. There is no language in  
27 § 362(c) (4) (A) (i) that limits the stay in § 362(a). Rather, the  
28 statute states that “the stay under subsection (a) shall not go

1 into effect upon the filing of the later case." (Emphasis added).  
2 Statutory interpretation does not allow us to go beyond or limit  
3 the "ordinary or natural meaning" of the statute's words. FDIC v.  
4 Meyer, 510 U.S. 471, 476 (1994). Courts that have had an  
5 opportunity to comment on § 362(c)(4)(A)(i) have observed that all  
6 aspects of the automatic stay are interdicted by  
7 § 362(c)(4)(A)(i), not just the stay against taking acts against  
8 property of the debtor. Holcomb, 380 B.R. at 816 ("[I]f Congress  
9 meant to terminate the stay in its entirety, it would have done so  
10 in plain language as it did in § 362(c)(4)(A)(i)) (emphasis added);  
11 Curry, 362 B.R. at 399 ("Section 362(c)(4)(A)(i) thereby provides  
12 in no uncertain terms that the automatic stay does not come into  
13 effect at all upon the filing of a debtor's third bankruptcy case  
14 within a one year period.") (emphasis added); Paschal, 337 B.R. at  
15 279 ("362(c)(3)(A) is not as broad as § 362(c)(4)(A)(i) and . . .  
16 all of the protections of the automatic stay are not eliminated by  
17 § 362(c)(3)(A)") (emphasis added); Harris, 342 B.R. at 279 ("Had  
18 Congress intended § 362(c)(3)(A) to completely terminate the  
19 automatic stay, it could have used the same straightforward  
20 language it used in § 362(c)(4)(A)(i).") (emphasis added).

21 Secondly, while the Nelsons seem to argue that we should look  
22 to § 362(c)(3)(A) for guidance as to the distinction between the  
23 stay of enforcement against property of the Nelsons and property  
24 of the estate, neither the Ninth Circuit, this Panel, nor any of  
25 the circuit Courts of Appeals has yet ruled that § 362(c)(3)(A)  
26 only operates to terminate the stay against the debtor, not the

27  
28

1 stay against property of the estate.<sup>15</sup> But even if § 362(c)(3)(A)  
2 does distinguish between stays against the debtor and property of  
3 the estate, we cannot simply import an interpretation of  
4 § 362(c)(3) into (c)(4). To do so would violate a basic principle  
5 of statutory interpretation, which advises that when Congress uses  
6 particular language in one place in a statute, and does not use  
7 that language in another place, the omission should be deemed  
8 intentional. Keene Corp. v. United States, 508 U.S. 200, 208  
9 (1993); Russello v. United States, 464 U.S. 16, 23 (1983) ("Where  
10 Congress includes particular language in one section of a statute  
11 but omits it in another section of the same Act, it is generally  
12 presumed that Congress acts intentionally and purposely in the  
13 disparate inclusion or exclusion.") (quoting United States v. Wong,  
14 472 F.2d 720, 722 (5th Cir. 1972)).

15 Moreover, these two subsections of § 362(c), while both  
16 limiting the operation of the automatic stay in "repeat"  
17 bankruptcy cases, are aimed at distinctly different debtors.<sup>16</sup>

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19 <sup>15</sup> We acknowledge that the First Circuit BAP, in Jumpp, and  
20 many bankruptcy courts hold that § 362(c)(3)(A) applies only to  
21 termination of the stay against property of the debtor. We  
express no opinion concerning this issue.

22 <sup>16</sup> Plainly read, these provisions are fundamentally  
23 different. Subsection (c)(4)(A) applies where three or more  
24 bankruptcy cases have been pending within one year, whereas  
25 subsection (c)(3)(A) operates in cases where only two bankruptcy  
26 cases have been pending in the same year. The former provides  
27 that no stay arises, the latter provides that there is a stay, but  
28 that it terminates in 30 days, unless extended by the bankruptcy  
court upon request of an interested party, supported by a proper  
showing. Finally, subsection (c)(3)(A) provides that the stay  
"shall terminate with respect to the debtor," the apparent source  
for many courts to determine that (c)(3)(A) only applies to  
property of the debtor and not property of the estate. But such a  
limiting phrase does not appear in connection with (c)(4)(A).  
Instead, (c)(4)(A) provides that "the stay under subsection (a)

(continued...)

1 Jumpp, 356 B.R. at 796 (“[W]e are unconvinced that the significant  
2 difference in language between the two sections reveals a  
3 Congressional intent to say the very same thing. Rather, the  
4 language indicates an intent to differentially penalize previous  
5 filers based on the number of previous cases.”); Paschal, 337 B.R.  
6 at 279 (“[Section] 362(c)(3)(A) is not as broad as  
7 § 362(c)(4)(A)(i).”). Clearly, Congress could, and did, intend  
8 the consequences of repeat filings to be different, and  
9 potentially more severe, as the number of successive filings  
10 increases.<sup>17</sup>

11 Finally, the Nelsons advance a public policy argument that  
12 “[i]f § 362(c)(A)(4)(i) (sic) is interpreted as [Wong suggests],  
13 no matter how much equity was in the property of the estate,  
14 creditors could foreclose to the detriment of other creditors  
15 without any supervision by the courts or the Chapter 7 (sic)  
16 Trustee.”<sup>18</sup> While loss of the protection of the automatic stay in  
17 a third bankruptcy case may indeed prove detrimental to creditors  
18 in some situations, the Nelsons’ argument fails to acknowledge  
19 that, under § 362(c)(4)(B), upon the prompt request of the trustee  
20 or other interested party, the bankruptcy court may impose a stay  
21

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22 <sup>16</sup>(...continued)  
23 shall not go into effect . . . .” As noted above, the various  
24 aspects of the automatic stay described in § 362(a) prohibit  
25 creditor actions against the debtor, property of the debtor, and  
26 property of the estate.

27 <sup>17</sup> For a recent discussion of the controversies regarding  
28 interpretation of § 362(c)(3), as well as the legislative history  
of the BAPCPA amendments to § 362(c), see Laura B. Bartell,  
Staying the Serial Filer - Interpreting the New Exploding Stay  
Provisions of § 362(c)(3) of the Bankruptcy Code, 82 AM. BANKR.  
L.J. 2, 201-227 (2008).

<sup>18</sup> The Nelsons’ Opening Br. at 15.

1 against creditor action if the bankruptcy filing was made in good  
2 faith.

3 Moreover, in a case subject to § 362(c)(4)(A)(i), while  
4 property of the estate is not immune to enforcement of creditor  
5 interests, the estate's interest in that property is not  
6 extinguished or abandoned. Since it continues to constitute  
7 property of the estate, if a secured creditor forecloses on and  
8 sells the property, all proceeds from the sale not necessary to  
9 satisfy liens must be returned to the estate. Catalano v. Comm'r,  
10 279 F.3d 682, 686-87 (9th Cir. 2002).<sup>19</sup>

11 Finally, even if we were to find some merit in the Nelsons'  
12 public policy argument against enforcement of a statute, such  
13 arguments must necessarily fail in the face of an unambiguous  
14 statute. As our Court of Appeals cautions us, "[i]f the changes  
15 imposed by BAPCPA arose from poor policy choices that produced  
16 undesirable results, it is up to Congress, not the courts, to

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18 <sup>19</sup> There is an intriguing question, about which the Panel  
19 expresses no view, whether a chapter 7 trustee may, under  
20 appropriate facts, avoid the post-petition involuntary transfer of  
21 property of the estate effected by a creditor's foreclosure sale  
22 in a case in which, because of § 362(c)(4), no automatic stay was  
23 in effect, by arguing that the transfer was "not authorized under  
24 [title 11] or by the court." § 549(a)(2)(B). See also Rule 6001  
25 ("Any entity asserting the validity of a transfer under § 549 of  
26 the Code shall have the burden of proof."). Since § 362(c)(4) is  
27 quite new, there is no case law examining this issue. In  
28 contrast, there is authority that a creditor's post-bankruptcy  
foreclosure sale is immune from assault by a trustee under  
§ 549(a) because the bankruptcy court's grant of relief from the  
automatic stay under § 362(d) "authorizes" such a sale. See  
Martin v. North Penn Savings & Loan (In re Martin), 253 B.R. 346,  
351 (M.D. Pa. 2000); Matheson v. Powell (In re Matheson), 84 B.R.  
435, 436 (Bankr. N.D. Tex. 1987). See also Alan N. Resnick &  
Henry J. Sommer, 5 COLLIER ON BANKRUPTCY ¶ 549.04[4] (15th ed. rev.  
2007) ("Transfers authorized by the bankruptcy court, such as  
foreclosure sales pursuant to an order granting relief from stay,  
. . . would also not be within the avoiding powers of the trustee  
[under § 549].").

1 amend the statute. See Lamie, 540 U.S. at 542.” Maney v.  
2 Kagenveama (In re Kagenveama), 2008 WL 2278681 (9th Cir. 2008).

3 E.

4 In sum, the Nelsons do not dispute that § 362(c)(4)(A)(i) was  
5 applicable in their third bankruptcy case because the Nelsons had  
6 two bankruptcy cases pending within the same year in which their  
7 third case was filed, and the two prior cases were dismissed for  
8 reasons other than under § 707(b). Section 362(c)(4)(A)(i)  
9 unambiguously specifies that “the stay under [§ 362(a)] shall not  
10 go into effect upon the filing of the [third] case.” There is  
11 neither authority nor logical reason to infer that Congress  
12 intended that only the stay protecting property of the debtor did  
13 not arise when the Nelsons filed their third case. A plain  
14 reading analysis of § 362(c)(4)(A)(i) dictates that no stay arose.  
15 Accordingly, the bankruptcy court correctly ruled that “no  
16 automatic stay pursuant to 11 U.S.C. Section 362 arose as to  
17 [Wong] upon the filing of the [third bankruptcy] case on August  
18 31, 2007, and that no stay is now in effect, pursuant to 11 U.S.C.  
19 Section 362(c)(4)(A)(ii).” The bankruptcy court did not err in  
20 dismissing the Nelsons’ adversary complaint for failure to state a  
21 claim.

22 **CONCLUSION**

23 We AFFIRM the order of the bankruptcy court in BAP No. 08-  
24 1001 dismissing the adversary proceeding for failure to state a  
25 claim. However, we DISMISS the Nelsons’ appeals in BAP Nos. 08-  
26 1003 and 08-1004 from the orders entered in that case as moot.

27

28