

**SEP 26 2006**

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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.	AZ-05-1116-SBMo
7	JAMES M. SMITH,	)	Bk. No.	95-06077-PHX-RTB
8	Debtor.	)	Adv. No.	00-00539-PHX-RTB
9	_____	)		
10	JAMES M. SMITH,	)		
11	Appellant,	)		
12	v.	)	<b>O P I N I O N</b>	
13	SIDNEY LACHTER; SANDRA	)		
14	LACHTER,	)		
15	Appellees.	)		
	_____	)		

Argued and Submitted on January 20, 2006  
at Phoenix, Arizona

Filed - September 26, 2006

Appeal from the United States Bankruptcy Court  
for the District of Arizona

Hon. Redfield T. Baum, Sr., Chief Bankruptcy Judge, Presiding

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Before: SMITH, BRANDT, and MONTALI, Bankruptcy Judges.

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1 SMITH, Bankruptcy Judge:  
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3 James M. Smith ("Debtor") appeals a declaratory judgment  
4 entered on May 20, 2005, which determined that a state court  
5 judgment held by Sidney and Sandra Lachter ("Lachters") was  
6 timely renewed. We REVERSE and REMAND.

7 **I. FACTS<sup>1</sup>**

8 This matter is reminiscent of that old Beatles' standard,  
9 "The Long and Winding Road," a brooding song about a road that  
10 never ends.<sup>2</sup> One can only hope that, with this opinion, the end  
11 of the road is indeed in sight.

12 Neepawa Enterprises, Ltd. obtained a judgment in state court  
13 ("Judgment") against Debtor in April 1987 and assigned its rights  
14 thereunder to the Lachters. Pursuant to an Arizona law that  
15 requires judgments be renewed every five years, the Lachters  
16 timely renewed the Judgment on March 6, 1992.<sup>3</sup>

17 \_\_\_\_\_  
18 <sup>1</sup> This appeal is related to a prior appeal decided by this  
19 panel in Smith v. Lachter (In re Smith), 293 B.R. 220 (9th Cir.  
20 BAP 2003) ("Smith II") and a subsequent Arizona Supreme Court  
21 decision, Lachter v. Smith (In re Smith), 101 P.3d 637 (Ariz.  
22 2004) ("Smith Ariz.").

23 <sup>2</sup> Paul McCartney/John Lennon, circa 1970:

24 *The long and winding road  
25 That leads to your door  
26 Will never disappear  
27 I've seen that road before. . . .*

28 <sup>3</sup> Under Arizona law, a judgment creditor may renew a  
judgment by filing a renewal affidavit within ninety days prior  
to the five year expiration of the entry of judgment. Ariz. Rev.  
Stat. ("A.R.S.") § 12-1612(B). Additional and successive renewal  
affidavits may be made following the same formality. A.R.S.  
§ 12-1612(E). Thus, in the normal course of things, the deadline  
(continued...)

1 Debtor filed a chapter 13<sup>4</sup> petition on July 13, 1995, which  
2 was subsequently converted to a chapter 7. Debtor received his  
3 discharge on November 12, 1996.

4 On September 27, 1996, the Lachters filed a complaint to  
5 determine the dischargeability of the Judgment under § 523(a)(2).  
6 The bankruptcy court entered a non-dischargeability judgment in  
7 favor of the Lachters on November 24, 1998.<sup>5</sup> We affirmed the  
8 bankruptcy court's ruling in Smith v. Lachter (In re Smith), 242  
9 B.R. 694 (9th Cir. BAP 1999) ("Smith I").

10 On November 7, 1997, eight months after the March 6, 1997  
11 statutory deadline for renewing the Judgment, the Lachters filed  
12 another renewal ("November 1997 renewal").<sup>6</sup> Nearly three years  
13 later, on August 29, 2000, the Lachters filed a second complaint  
14 in the bankruptcy court, this time seeking a determination that  
15 the November 1997 renewal was timely. On cross motions for  
16 summary judgment, the bankruptcy court concluded that the  
17 November 1997 renewal was timely under § 108(c)(2)<sup>7</sup>, finding that

18 <sup>3</sup>(...continued)  
19 to file the next renewal would have been March 6, 1997.

20 <sup>4</sup> Absent contrary indication, all "Code," chapter and  
21 section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
22 1330, prior to its amendment by the Bankruptcy Abuse Prevention  
23 and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23,  
as the case from which these appeals arise was filed before its  
effective date (generally October 17, 2005).

24 <sup>5</sup> A minute entry/order was entered prior to the final  
judgment on October 24, 1997.

25 <sup>6</sup> On December 5, 1997, the Lachters filed a supplement to  
26 the affidavit, attaching the bankruptcy court's signed minute  
27 order/entry declaring the debt non-dischargeable.

28 <sup>7</sup> Section 108 provides, in relevant part:

(continued...)

1 the last date to renew was tolled until the entry of the non-  
2 dischargeability judgment, i.e., November 24, 1998. Debtor once  
3 again appealed to this panel.

4 In Smith II, we determined that the bankruptcy court erred  
5 by applying § 108(c)(2), rather than § 108(c)(1).<sup>8</sup> In other  
6 words, we held that § 108(c)(1) produced the "later" deadline for  
7 filing the renewal. In so doing, we presumed that Arizona law  
8 provided for a suspension of the requirement to file a renewal  
9 during the pendency of the bankruptcy, and therefore calculated  
10 that the Lachters had until July 6, 1998, to renew the Judgment.<sup>9</sup>  
11 Smith II, 293 B.R. at 226.

12 <sup>7</sup>(...continued)

13 (c) [I]f applicable nonbankruptcy law . . . fixes a  
14 period for commencing or continuing a civil action in a  
15 court other than a bankruptcy court on a claim against  
16 the debtor . . . and such period has not expired before  
17 the date of the filing of the petition, then such  
18 period does not expire until the later of -

19 (1) the end of such period, including any suspension of  
20 such period occurring on or after the commencement of  
21 the case; or

22 (2) 30 days after notice of the termination or  
23 expiration of the stay under § 362 . . . as the case  
24 may be, with respect to such claim.

25 11 U.S.C. § 108(c).

26 <sup>8</sup> We concluded that the bankruptcy court improperly  
27 interpreted § 108(c)(2) to toll the renewal deadline to the date  
28 of the entry of the non-dischargeability judgment rather than  
simply 30 days following the termination of the stay. Smith II,  
293 B.R. at 224.

30 <sup>9</sup> We determined that a stay was in effect for 487 days,  
i.e., from the petition date (July 13, 1995) until Debtor  
received his discharge (November 12, 1996). Smith II, 293 B.R.  
at 226. As a result, we arrived at the July 6, 1998 deadline by  
adding 487 days to the March 6, 1997 expiration date of the  
Judgment (March 6, 1997 + 487 days = July 6, 1998). Id.

1 We were, however, concerned about the efficacy of the  
2 November 1997 renewal in light of the presumed tolling period and  
3 the requirement under A.R.S. § 12-1612(E) that a renewal  
4 affidavit of judgment be filed within 90 days prior to the  
5 expiration of the judgment. If the expiration of the deadline to  
6 renew the Judgment was tolled to July 6, 1998, could the renewal  
7 be filed earlier than April 7, 1998? Uncertain of the answer, we  
8 remanded the matter to the bankruptcy court for clarification and  
9 suggested that the question might be appropriate for  
10 certification to the Arizona Supreme Court. Id. at 227.

11 On April 30, 2004, the bankruptcy court certified two  
12 questions to the Arizona Supreme Court:

- 13 A) When a pending bankruptcy case is  
14 unresolved and the time period under  
15 Arizona law to file the required  
16 affidavit of renewal of judgment has  
17 passed, under what circumstances, if  
18 any, is the time period under A.R.S.  
19 § 12-1551 extended or otherwise changed  
20 to allow the judgment creditor to file a  
21 timely affidavit of renewal of judgment?
- 22 B) Were either of the affidavits of renewal  
23 of judgment filed by the Lachters timely  
24 filed?<sup>10</sup>

25 Smith Ariz., 101 P.3d at 638.

26 As to the first question, the Arizona Supreme Court  
27 responded that a "judgment creditor's inability to enforce a  
28 judgment during the initial or a subsequent statutory five-year  
29 period, whether because of a bankruptcy stay or other reasons,  
30 does not extend the deadline imposed by A.R.S. §§ 12-1551 and 12-  
31 1612 to file a renewal affidavit." Smith Ariz., 101 P.3d at 639.

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32 <sup>10</sup> By the word "either," we assume the bankruptcy court is  
33 referring to either the November 1997 filing of the renewal  
34 affidavit or its supplement filed on December 5, 1997.

1 It reasoned that the filing of an affidavit of renewal was merely  
2 a ministerial act intended to notify parties in interest of the  
3 existence of a judgment, and did not serve as a vehicle for  
4 enforcing the judgment. Id. Thus, the court concluded, the act  
5 of renewing a judgment was unaffected by a pending bankruptcy  
6 case. Id.

7 In addressing the second question, the Arizona court,  
8 “start[ing] from the premise that the BAP ha[d] ruled as a matter  
9 of federal law that § 108(c)(1) extended the time for filing the  
10 renewal affidavit”, held that the November 1997 renewal was  
11 timely even though the filing date was more than 90 days prior to  
12 July 6, 1998. Id. at 640. Expanding on our analysis of  
13 § 108(c)(1) in Smith II, the court explained that a renewal  
14 affidavit of judgment filed any time from December 6, 1996 (90  
15 days prior to the original March 6, 1997 deadline) to the  
16 extended deadline of July 6, 1998 would be timely. Id. Based on  
17 these findings of the Arizona court, the bankruptcy court entered  
18 a declaratory judgment in favor of the Lachters.

19 Debtor appeals.

## 20 **II. ISSUE ON APPEAL**

21 Whether the bankruptcy court erred in determining that the  
22 Lachters timely renewed the Judgment.

## 23 **III. JURISDICTION**

24 Federal subject matter jurisdiction is founded under 28  
25 U.S.C. §§ 1334(b) and 157(b). We have appellate jurisdiction  
26 over final orders pursuant to 28 U.S.C. §§ 158(b)(1) and (c)(1).

## 27 **IV. STANDARD OF REVIEW**

28 We review a bankruptcy court’s legal conclusions, including

1 its interpretation of the Bankruptcy Code and state law, de novo.  
2 Roberts v. Erhard (In re Roberts), 331 B.R. 876, 880 (9th Cir.  
3 BAP 2005).

#### 4 V. DISCUSSION

5 Debtor contends that because the Arizona Supreme Court  
6 determined that the statutory time to renew a judgment is not  
7 tolled by a pending bankruptcy, the bankruptcy court erred when  
8 it entered judgment in favor of the Lachters. Accordingly, the  
9 November 1997 renewal should be deemed untimely. We agree,  
10 however, understanding why this is so requires a close  
11 examination of applicable federal and state law.

12 A. The November 1997 renewal affidavit was untimely because the  
13 time for renewing the Judgment was not extended under  
14 § 108(c)(1).

15 Section 108(c) applies to the renewal of state court  
16 judgments. Smith II, 293 B.R. at 223; Spirtos v. Moreno (In re  
17 Spirtos), 221 F.3d 1079, 1080-81 (9th Cir. 2000). The time for  
18 renewing a state court judgment does not expire until the later  
19 of the applicable state law period or thirty days after the  
20 termination of the automatic stay. 11 U.S.C. § 108(c)(1) &  
21 (c)(2); Smith II, 293 B.R. at 224-25. So, what was the  
22 applicable period under state law in this case?

23 In Smith II, we interpreted Arizona law as tolling the time  
24 for filing a renewal affidavit during the pendency of a  
25 bankruptcy case. 293 B.R. at 225-26. We did not, however, enjoy  
26 the benefit of the Arizona Supreme Court's analysis of the issue.  
27 Subsequent to Smith II, the Arizona court ruled unequivocally  
28 that "[u]nder Arizona law, the time to file an affidavit of

1 renewal of judgment is not changed or extended by the pendency of  
2 a bankruptcy case.” Smith Ariz., 101 P.3d at 640.<sup>11</sup> In matters  
3 of state law, we are compelled to defer to the interpretation  
4 given such law by the state’s highest court. See Marcus v.  
5 McKesson Drug Co. (In re Mistura, Inc.), 22 B.R. 60, 62 (9th Cir.  
6 BAP 1982). Accordingly, we find that Arizona state law did not  
7 suspend the time for the Lachters to file the renewal affidavit  
8 during the pendency of the bankruptcy case.

9 As we observed in Smith II, the phrase “suspension of such  
10 period” referenced in § 108(c)(1) refers to “either state or  
11 federal nonbankruptcy law.” 293 B.R. at 225. As a result,  
12 § 108(c)(1) does not operate without regard to existing  
13 nonbankruptcy law to stop the running of any periods of  
14 limitation. Id.; see also Rogers v. Corrosion Prods., Inc., 42  
15 F.3d 292, 297 (5th Cir. 1995); Aslanidis v. U.S. Lines, Inc., 7  
16 F.3d 1067, 1073 (2d Cir. 1993) (“The reference in § 108(c)(1) to  
17 ‘suspension’ of time limits clearly does not operate in itself to  
18 stop the running of a statute of limitations; rather, this  
19 language merely incorporates suspensions of deadlines that are  
20 expressly provided in other federal or state statutes.”). We

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21  
22 <sup>11</sup> We note that the Arizona court’s conclusion is based in  
23 part on its view that, unlike the enforcement of a judgment, the  
24 automatic stay is not implicated by the “ministerial” act of  
25 filing the renewal affidavit. Morton v. Nat. Bank of New York  
26 City (In re Morton), 866 F.2d 561, 564 (2nd Cir. 1989) (automatic  
27 stay does not apply to the filing of an extension of a statutory  
28 lien); accord Wussler v. Silva (In re Silva), 215 B.R. 73, 77  
(Bankr. D. Idaho 1997) (the filing of an application for renewal  
of judgment pursuant to California law is not a violation of the  
automatic stay). But see In re Lobherr, 282 B.R. 912, 917  
(Bankr. C.D. Cal. 2002) (the filing of a renewal application  
pursuant to California law violates the automatic stay). We  
declined to address the issue in Smith II. 293 B.R. at 223.



1 have previously rejected the minority view to the contrary.  
2 Smith II, 293 B.R. at 226 n.7. Absent state law suspending the  
3 time for filing the renewal affidavit, the original limitation  
4 date of March 6, 1997 applied. No additional time was afforded  
5 under § 108(c)(1).<sup>12</sup>

6 The Lachters did not file an affidavit of renewal until  
7 November 11, 1997, more than eight months after the renewal  
8 deadline of March 6, 1997. We therefore conclude that the  
9 bankruptcy court erred in finding that the renewal was timely  
10 filed.<sup>13</sup>

11 B. The Arizona Supreme Court's statement that the November 1997  
12 renewal was timely based on assumptions made by this panel  
13 in Smith II does not render the renewal timely.

14 In Smith II, we erroneously presumed that Arizona law might  
15 provide a tolling period for the renewal of a judgment upon the  
16 filing of a bankruptcy petition. The second question posed to  
17 the Arizona court regarding the efficacy of a renewal filed more  
18 than 90 days prior to the expiration date of the judgment  
19 reflected that erroneous possibility. The Arizona court was  
20 careful to point out that its response was narrowly premised on  
21 the BAP's ruling "as a matter of federal law that § 108(c)(1)

22 <sup>12</sup> In Smith II, we held that because the stay terminated as  
23 of November 12, 1996, when Debtor received his discharge, the  
24 deadline to renew the Judgment under § 108(c)(2) was December 12,  
25 1996 (30 days after the expiration of the stay). Smith II, 293  
26 B.R. at 226. Under § 108(c)(1), the Judgment would expire on  
March 6, 1997. As the "later" of the two dates under § 108(c)  
was the original March 6, 1997 date, our conclusion that  
§ 108(c)(1) is the applicable subsection remains unchanged.

27 <sup>13</sup> As in Smith II, we need not decide whether a renewal of  
28 judgment is a violation of the automatic stay under § 362 as the  
issue necessary to the disposition of the appeal before us.

1 extended the time for filing the renewal affidavit in this case"  
2 for 487 days and that, "under these circumstances[,]" the  
3 November 1997 renewal would have been timely. Smith Ariz., 101  
4 P.3d at 640. The Arizona court's response to a specific  
5 question, itself based upon a flawed assumption, does not  
6 undermine or contradict its clear finding that nothing in A.R.S.  
7 §§ 12-1551 and 12-1612 provide for a suspension of the time for  
8 filing a renewal of judgment during the pendency of a bankruptcy  
9 case.

#### 10 **VI. CONCLUSION**

11 For the foregoing reasons, we REVERSE the judgment entered  
12 by the bankruptcy court finding that the Lachters had timely  
13 renewed the Judgment and REMAND for entry of judgment in favor of  
14 Debtor.