

JUL 10 2008

NOT FOR PUBLICATION

HAROLD S. MARENUS, CLERK  
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 No. AZ-08-1028-CMoD
	)	
ALFONSO PATION RODRIGUEZ and	)	Case No. 03-bk-12360-EWH
IRMA R. RODRIGUEZ,	)	Adv. No. 07-ap-00276-EWH
	)	
Debtors.	)	
<hr/>		
STATE OF ARIZONA, on behalf of the	)	
Peoria Police Department,	)	
	)	
Appellant,	)	<b><u>MEMORANDUM</u></b> <sup>1</sup>
v.	)	
	)	
ALFONSO PATION RODRIGUEZ; IRMA R.	)	
RODRIGUEZ,	)	
	)	
Appellees.	)	
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Argued by Video Conference and Submitted  
on June 20, 2008

Filed - July 10, 2008

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

Honorable Eileen W. Hollowell, Bankruptcy Judge, Presiding

Before: CARROLL,<sup>2</sup> MONTALI and DUNN, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> Honorable Peter H. Carroll, Bankruptcy Judge for the Central District of California, sitting by designation.

1 The State of Arizona, on behalf of the Peoria Police  
2 Department ("State"), appeals an order granting summary judgment in  
3 an adversary proceeding in favor of Alfonso Patton Rodriguez and  
4 Irma R. Rodriguez ("Debtors") which declared an Order of Forfeiture  
5 and Remission dated October 18, 1995 ("Forfeiture Order"), obtained  
6 by the State without seeking relief from the stay in the Debtors'  
7 prior chapter 13 case, void as a matter of law. We AFFIRM.

8 I. FACTS

9 On June 21, 1994, the State commenced an in rem action<sup>3</sup>  
10 pursuant to A.R.S. §§ 13-2314(L)<sup>4</sup> and 13-4311<sup>5</sup> to effect the

11 \_\_\_\_\_  
12 <sup>3</sup> Case No. CV 94-09493, styled In the Matter of the Real  
13 Property Located at 7458 West Brown, Peoria, Arizona, as More  
14 Particularly Described in Appendix One, et al., in the Superior  
Court of the State of Arizona in and for the County of Maricopa  
("Forfeiture Action").

15 <sup>4</sup> A.R.S. § 13-2314(L) states:

16 "A civil action authorized by this section, including  
17 proceedings pursuant to chapter 39 of this title, is remedial  
18 and not punitive and does not limit and is not limited by any  
19 other previous or subsequent civil or criminal action under  
this title or any other provision of law. Civil remedies  
provided under this title are supplemental and not mutually  
exclusive."

20 A.R.S. § 13-2314(L) (emphasis added). The Forfeiture Order recites  
that forfeiture is authorized "[p]ursuant to City of Tempe v.  
21 Dimitriou, 175 Ariz. 237, 854 P.2d 1223 (App. 1993), and A.R.S. 13-  
22 2314(L)," and that "the forfeiture of the property in this matter  
is remedial in nature and not punitive." Forfeiture Order, p.2,  
1.3-6.

23 <sup>5</sup> A.R.S. § 13-4311 provides, in pertinent part:

24 "A. If a forfeiture is authorized by law, it shall be ordered  
25 by a court on an action in rem brought by the state pursuant  
26 to a notice of pending forfeiture or a verified complaint for  
27 forfeiture. The state may serve the complaint in the manner  
provided by § 13-4307 or by the Arizona rules of civil  
procedure.

28 B. A civil in rem action may be brought by the state in  
addition to or in lieu of the civil and criminal in personam

(continued...)

1 forfeiture of certain real and personal property seized by the  
2 State during the investigation and prosecution of alleged criminal  
3 activity by the Debtors. The Forfeiture Action included the  
4 Debtors' principal residence located in Peoria, Arizona  
5 ("Residence").

6 On May 15, 1995, Debtors filed a voluntary petition under  
7 chapter 13 of the Bankruptcy Code<sup>6</sup> in Case No. 2:95-bk-04066-CGC,  
8 styled In re Alfonso Patien Rodriguez and Irma R. Rodriguez,  
9 Debtors, in the United States Bankruptcy Court, District of Arizona  
10 ("1995 Case").<sup>7</sup> Although the bankruptcy case was pending on the  
11 petition date, the State did not seek relief from the automatic  
12 stay to continue prosecution of the Forfeiture Action against the  
13 Residence and other seized property. The State, however, was not  
14 given notice of the filing of the Debtors' bankruptcy petition nor  
15 did it learn of the Debtors' bankruptcy prior to dismissal of the  
16 case six months later.

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17  
18 <sup>5</sup>(...continued)  
19 forfeiture procedures set forth in §§ 13-4312 and 13-4313 or  
20 the uncontested civil forfeiture procedures set forth in § 13-  
21 4309. Judicial in rem forfeiture proceedings are in the  
nature of an action in rem and are governed by the Arizona  
rules of civil procedure unless a different procedure is  
provided by law.

22 A.R.S. § 13-4311 (A) & (B) (emphasis added).

23 <sup>6</sup> Unless otherwise indicated, all chapter, section and rule  
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 as  
25 enacted and promulgated prior to the effective date (October 17,  
26 2005) of the relevant provisions of the Bankruptcy Abuse Prevention  
and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. 109-8, 119  
Stat. 23 (2005), and to the Federal Rules of Bankruptcy Procedure,  
Rules 1001-9037.

27 <sup>7</sup> The record indicates that the Debtors are serial filers.  
28 This petition was the third of twelve chapter 13 petitions filed by  
the Debtors, either individually or jointly, between January 4,  
1994 and June 4, 2004.

1 On October 18, 1995, the Forfeiture Order was entered in the  
2 Forfeiture Action which, in pertinent part, found probable cause  
3 for seizure of the Residence and ordered that the Residence "be  
4 forfeited to the State of Arizona on behalf of the Peoria Police  
5 Department, subject to any outstanding liens."<sup>8</sup> Debtors did not  
6 appeal the Forfeiture Order.

7 On November 22, 1995, the Debtors' chapter 13 case was  
8 dismissed. On December 5, 1995, the State recorded the Forfeiture  
9 Order in the Maricopa County Recorder's Office but took no further  
10 action to enforce the order for a period in excess of 10 years.

11 On July 15, 2003, the Debtors filed their eleventh chapter 13  
12 petition in Case No. 2:03-bk-12360-EWH, styled In re Alfonso Pation  
13 Rodriguez and Irma R. Rodriguez, Debtors ("2003 Case").<sup>9</sup> While the  
14 case was pending, the State undertook to enforce the Forfeiture  
15 Order by again recording the Forfeiture Order in the Maricopa  
16 County Recorder's Office on December 26, 2006, and serving a  
17 written notice dated April 5, 2007, demanding that the Debtors  
18 vacate the Residence not later than May 7, 2007.

19 On May 3, 2007, Debtors filed a complaint in Adversary No. 07-  
20 ap-00276-EWH, styled Alfonso Pation Rodriguez and Irma R. Rodriguez  
21 v. State of Arizona, on behalf of the Peoria Police Department,  
22 alleging that the Forfeiture Order was unenforceable as having  
23 expired pursuant to A.R.S. § 12-1611<sup>10</sup> and that the State violated  
24 the automatic stay in the 2003 Case by recording the Forfeiture

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25 <sup>8</sup> Forfeiture Order, p.3, 1.9-11.

26 <sup>9</sup> Debtors confirmed a plan in the case on July 26, 2004, and  
27 received a discharge on January 8, 2008.

28 <sup>10</sup> A.R.S. § 12-1611 states:

A judgment may be renewed by action thereon at any time within  
five years after the date of the judgment.

1 Order on December 26, 2006, and issuing the eviction notice. On  
2 August 8, 2007, the State moved for summary judgment arguing that  
3 the Forfeiture Order was valid because A.R.S. § 12-1611 is  
4 inapplicable to criminal proceedings resulting in forfeiture of  
5 property. The State further asserted that enforcement of the  
6 Forfeiture Order did not violate the automatic stay in the 2003  
7 Case because the Residence did not constitute property of the  
8 estate, reasoning that the Debtors had lost their interest in the  
9 Residence at the time the Forfeiture Order was entered on October  
10 18, 1995.

11 Without conceding the inapplicability of A.R.S. § 12-1611 to  
12 the Forfeiture Order, Debtors filed a cross-motion for summary  
13 judgment on September 8, 2007, arguing for the first time that the  
14 Forfeiture Order was obtained in violation of the automatic stay in  
15 the 1995 Case and was void as a matter of law. The State responded  
16 to the Debtors' cross-motion, asserting that the Forfeiture Action  
17 supplemented the criminal proceedings against the Debtors and  
18 therefore, was excepted from the automatic stay under § 362(b)(4)  
19 as an exercise of the government's police or regulatory power.

20 After a hearing on April 2, 2007, the bankruptcy court issued  
21 a memorandum decision granting Debtors' cross-motion for summary  
22 judgment and finding that "[b]ecause the State did not obtain  
23 relief from the automatic stay, the Forfeiture Order violated the  
24 § 362(a) stay and was void."<sup>11</sup>

25 On January 18, 2008, an Order was entered in the adversary  
26 proceeding granting Debtors' cross motion for summary judgment and  
27 denying all other relief. The State timely filed a notice of  
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<sup>11</sup> Rodriguez v. Arizona (In re Rodriguez), 2008 WL 192963, at \*6 (Bankr. D. Ariz. Jan. 18, 2008).

1 appeal on January 28, 2008.

2 II. JURISDICTION

3 The bankruptcy court had jurisdiction under 28 U.S.C. § 1334  
4 and 28 U.S.C. § 157(b) (1) and (b) (2) (B). We have jurisdiction  
5 under 28 U.S.C. § 158.

6 III. ISSUE

7 The sole issue before the court is whether it was error to  
8 grant the Debtors' cross-motion for summary judgment based upon a  
9 finding that the Forfeiture Order was obtained in violation of the  
10 automatic stay and was void as a matter of law.

11 IV. STANDARDS OF REVIEW

12 We review a grant of summary judgment de novo. Patterson v.  
13 Int'l Bhd. Of Teamsters, Local 959, 121 F.3d 1345, 1348 (9th Cir.  
14 1997). In viewing the evidence in the light most favorable to the  
15 nonmoving party, we must determine whether there are any genuine  
16 issues of material fact and whether the applicable substantive law  
17 was applied correctly by the bankruptcy court. City of Vernon v.  
18 S. Cal. Edison Co., 955 F.2d 1361, 1365 (9th Cir. 1992). If the  
19 record before the bankruptcy court, including all "pleadings,  
20 depositions, answers to interrogatories, and admissions on file,  
21 together with any affidavits" establish that there are no triable  
22 issues and that "the moving party is entitled to judgment as a  
23 matter of law, summary judgment will be upheld." Gertsch v.  
24 Johnson & Johnson Corp. (In re Gertsch), 237 B.R. 160, 165 (9th  
25 Cir. BAP 1999).

26 V. DISCUSSION

27 A. The Automatic Stay.

28 Section 362(a) states, in pertinent part:

1 Except as provided in subsection (b) of this section, a  
2 petition filed under section 301, 302, or 303 of this title, .  
3 . . operates as a stay, applicable to all entities, of -

4 (1) the commencement or continuation, including the  
5 issuance or employment of process, of a judicial,  
6 administrative, or other action or proceeding against the  
7 debtor that was or could have been commenced before the  
8 commencement of the case under this title, or to recover  
9 a claim against the debtor that arose before the  
10 commencement of the case under this title;

11 (2) the enforcement, against the debtor or against  
12 property of the estate, of a judgment obtained before the  
13 commencement of the case under this title; [and]

14 (3) any act to obtain possession of property of the  
15 estate or of property from the estate or to exercise  
16 control over property of the estate; . . . .

17 11 U.S.C. § 362(a)(1)-(3) (emphasis added). "The automatic stay is  
18 self-executing, effective upon the filing of the bankruptcy  
19 petition." Gruntz v. Los Angeles (In re Gruntz), 202 F.3d 1074,  
20 1081 (9th Cir. 2000). It is "effective against the world,  
21 regardless of notice." Morris v. Peralta (In re Peralta), 317 B.R.  
22 381, 389 (9th Cir. BAP 2004); see 3 Collier on Bankruptcy ¶ 362.02,  
23 at 362-12.11 (15th ed. rev. 2008) ("Formal service of process is not  
24 required, and no particular notice need be given in order to  
25 subject a party to the stay."). One of its primary functions "is  
26 to preserve property for use in the reorganization of the debtor  
27 and to prevent the dismemberment of the estate." Hillis Motors,  
28 Inc. v. Haw. Auto Dealers' Ass'n, 997 F.2d 581, 586 (9th Cir.  
1993).

29 B. Exceptions to The Automatic Stay.

30 Section 362(b) currently provides, in pertinent part, that the  
31 filing of a bankruptcy petition does not operate as a stay -

32 (4) under paragraph (1), (2), (3), or (6) of subsection (a) of

1 this section, of the commencement or continuation of an action  
2 or proceeding by a governmental unit . . . to enforce such  
3 governmental unit's . . . police and regulatory power,  
4 including the enforcement of a judgment other than a money  
5 judgment, obtained in an action or proceeding by the  
6 governmental unit to enforce such governmental unit's . . .  
7 police or regulatory power; . . .

8 11 U.S.C. § 362(b) (4). Section 362(b) (4) was amended in 1998 "by  
9 combining §§ 362(b) (4) and (5) and expanding the scope of the  
10 exception to cover proceedings 'to obtain possession of property of  
11 the estate . . . or to exercise control over property of the  
12 estate.'" United States v. Klein (In re Chapman), 264 B.R. 565,  
13 570 (9th Cir. BAP 2001) (quoting SEC v. Brennan, 230 F.3d 65, 74  
14 (2d Cir. 2000)). Section 362(b) (5) was deleted effective October  
15 21, 1998. Because the automatic stay is one of the fundamental  
16 debtor protections under bankruptcy law, the exceptions to the  
17 automatic stay set forth in § 362(b) are narrowly construed to  
18 bolster its effectiveness. See, e.g., Hillis Motors, 997 F.2d at  
19 590 ("Exceptions to the automatic stay should be read narrowly.");  
20 Stringer v. Huet (In re Stringer), 847 F.2d 549, 552 (9th Cir.  
21 1988) ("Exemptions to the stay . . . should be read narrowly to  
22 secure the broad grant of relief to the debtor.").

23 C. Civil and Criminal Forfeiture.

24 Forfeiture statutes are either criminal or civil. Criminal  
25 forfeiture involves an in personam action directed against the  
26 person connected with the property and charged with a violation of  
27 the law. United States v. Lazarenko, 476 F.3d 642, 647 (9th Cir.  
28 2007) ("Criminal forfeiture operates in personam against a  
defendant to divest him of his title to proceeds from his unlawful  
activity as a consequence of his criminal conviction."). Civil  
forfeiture is an in rem proceeding targeting only the property



1 sought to be forfeited, and is separate and distinct from any  
2 related criminal proceeding. See United States v. One 1985  
3 Mercedes, 917 F.2d 415, 419 (9th Cir. 1990) (“[C]ivil forfeitures  
4 are in rem proceedings in which the ‘guilt’ at issue is the ‘guilt’  
5 of the property seized.”). Because the two proceedings are not  
6 mutually exclusive, the government may pursue a civil forfeiture  
7 even if the criminal forfeiture was unsuccessful either because the  
8 owner was not charged with a crime or was acquitted. See United  
9 States v. Dunn, 802 F.2d 646, 647-48 (2d Cir. 1986) (holding that  
10 the remedies of criminal and civil forfeiture under 21 U.S.C. § 853  
11 and 21 U.S.C. § 881, respectively, are not mutually exclusive).

12 Criminal forfeiture actions are excepted from the automatic  
13 stay under the plain language of § 362(b)(1) which specifically  
14 excepts criminal proceedings “against the debtor.” 11 U.S.C.  
15 § 362(b)(1). This conclusion is bolstered by the legislative  
16 history of § 362(b)(1) which states that “bankruptcy laws are not a  
17 haven for criminal offenders, but are designed to give relief from  
18 financial over-extension.” H.R. Rep. No. 95-595, at 342 (1977),  
19 reprinted in 1978 U.S.C.C.A.N. 5963, 6299.

20 The State’s Forfeiture Order was obtained pursuant to  
21 Arizona’s civil forfeiture statute.<sup>12</sup> Prior to § 362(b)’s amendment  
22 in 1998, courts were divided as to whether civil forfeiture  
23 proceedings were excepted from the stay under § 362(b)(4) or (5).  
24 Compare James v. Draper (In re James), 940 F.2d 46, 51 (3d Cir.  
25 1991); Boricua Motors Leasing Corp. v. Puerto Rico, 154 B.R. 834,  
26 835-36 (D. Puerto Rico 1993); and Brewer v. United States (In re

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28 <sup>12</sup> See supra notes 4 & 5. In Arizona, a judicial in personam  
forfeiture proceeding is governed by A.R.S. § 13-4312. The State  
did not proceed against the Debtors under A.R.S. § 13-4312.

1 Brewer), 209 B.R. 575, 577 (Bankr. S.D. Fla. 1996) (holding that  
2 civil forfeiture actions were excepted from the stay under  
3 § 362(b)(4)), with United States v. One Parcel of Real Property  
4 Commonly Known As Star Route Box 1328, Glenwood, Washington County,  
5 Or., 137 B.R. 802, 804 (D. Or. 1992); Ga. v. Bell (In re Bell), 215  
6 B.R. 266, 274 (Bankr. N.D. Ga. 1997); and Weaver v. City of  
7 Knoxville (In re Thomas), 179 B.R. 523, 528 (Bankr. E.D. Tenn.  
8 1995) (determining that civil forfeiture actions violate § 362(a)(3)  
9 and are not excepted under § 362(b)(4)).

10 While conceding that the Forfeiture Action "was in the nature  
11 of a civil proceeding,"<sup>13</sup> the State points to James and its  
12 progeny,<sup>14</sup> arguing that the Forfeiture Order is valid because the  
13 continuation of its Forfeiture Action against the Debtors'  
14 Residence in the 1995 Case was ancillary to a criminal proceeding  
15 against the Debtors and permitted by § 362(b)(4). In James, the  
16 Third Circuit Court of Appeals concluded that a civil forfeiture  
17 action fit within § 362(b)(4)'s police power exception, reasoning  
18 that "[a] civil forfeiture action is an action by a governmental  
19 unit to enforce its police or regulatory power to combat the  
20 problem of illicit drugs" and that § 362(b)(4) excepts "the  
21 commencement or continuation" of such actions. 940 F.2d at 51. In  
22 so holding, James did not harmonize the plain language of  
23 §§ 362(a)(1) and 362(b)(4) and apply narrowly § 362(b)(4)'s

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25 <sup>13</sup> Reply Brief, p.1.

26 <sup>14</sup> The State also cites Goff v. Oklahoma (In re Goff), 159  
27 B.R. 33 (Bankr. N.D. Okla. 1993) which, in fact, supports the  
28 position articulated by the Debtors. In Goff, the court concluded  
that the civil forfeiture action before it was "not an exercise of  
'police or regulatory power[]'" nor "excepted from the automatic  
stay. . . ." Id. at 41.

1 exception only to actions directed against the debtor stayed by  
2 § 362(a)(1). We decline to follow James because it is contrary to  
3 established Ninth Circuit precedent and is not binding on this  
4 court. Hillis Motors, 997 F.2d at 591 (“There is no governmental  
5 powers exception to section 362(a)(3) . . . .”).<sup>15</sup>

6 In Chapman, we considered the question of whether a civil  
7 forfeiture action by the United States against property of the  
8 debtor, seized in connection with the debtor’s arrest and criminal  
9 prosecution on charges stemming from the manufacture and  
10 distribution of marijuana prior to the filing of his chapter 7  
11 petition on July 14, 1999, was excepted from the automatic stay.  
12 264 B.R. at 567. We held that the United States was not stayed  
13 from proceeding to judgment in the forfeiture action under the  
14 current version of § 362(b)(4). Id. at 572. In so holding, we  
15 concluded that § 362(b)(4) allows a governmental unit to “obtain a  
16 money judgment or a judgment for possession,” including a judgment  
17 in a civil forfeiture action without violating § 362(a)(3), but  
18 prohibits a governmental unit from “enforc[ing] a money judgment  
19 without obtaining relief from the automatic stay in the bankruptcy  
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21 <sup>15</sup> Indeed, the Ninth Circuit in Hillis Motors adopted the  
22 Eighth Circuit’s narrow construction of the “police power”  
23 exceptions afforded by § 362(b)(4) and (5), stating:

24 Even if the precise wording of the various provisions of the  
25 stay and their exceptions were not controlling, we would still  
26 hold that the governmental powers exceptions do not apply  
27 here. We agree with the Eighth Circuit that the terms ‘police  
28 or regulatory power’ as used in those exceptions refer to the  
enforcement of state laws affecting health, morals, and safety  
but not regulatory laws that directly conflict with the  
control of the res or property by the bankruptcy court.

28 Hillis Motors, 997 F.2d at 591 (quoting In re Missouri v. U.S.  
Bankruptcy Court for the E.D. of Ark., 647 F.2d 768, 776 (8th Cir.  
1981), cert. denied, 454 U.S. 1162 (1982)) (footnote omitted).

1 court." Id. at 571.

2 As we pointed out in Chapman, a governmental unit would not  
3 have been permitted to commence or continue an in rem civil  
4 forfeiture action prior to § 362(b)(4)'s amendment in 1998.<sup>16</sup> Id.  
5 ("With the addition of (a)(3) to § 362(b)(4) . . . , an in rem  
6 action is excepted from the stay."). When the 1995 Case was  
7 commenced, § 362(b)(4) permitted a governmental unit to commence or  
8 continue an action against the debtor under its police or  
9 regulatory power notwithstanding § 362(a)(1), and § 362(b)(5)  
10 authorized a governmental unit to enforce a non-money judgment  
11 against the debtor or property of the estate under its police or  
12 regulatory power notwithstanding § 362(a)(2).<sup>17</sup> Because neither  
13 § 362(b)(4) or (5) exempted a governmental unit, in the proper  
14 enforcement of its police or regulatory power, from obtaining  
15

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16 <sup>16</sup> Section 362(b) was amended by the Chemical Weapons  
17 Convention Implementation Act of 1998, part of the Omnibus  
18 Consolidated and Emergency Supplemental Appropriations Act, 1999  
19 [hereinafter Chemical Weapons Convention], Pub. L. No. 105-277,  
20 § 603, 112 Stat. 2681-886 (1998).

19 <sup>17</sup> "Paragraphs (4) and (5) formerly read:

20 (b) The filing of a petition . . . does not operate as a stay  
21 -

22 (4) under subsection (a)(1) of this section, of the  
23 commencement or continuation of an action or proceeding  
24 by a governmental unit to enforce such governmental  
25 unit's police or regulatory power;

24 (5) under subsection (a)(2) of this section, of the  
25 enforcement of a judgment, other than a money judgment,  
26 obtained in an action or proceeding by a governmental  
27 unit to enforce such governmental unit's police or  
28 regulatory power[.]"

27 11 U.S.C. § 362(b)(4)&(5), amended by Chemical Weapons Convention,  
28 supra note 16, at § 603, 112 Stat. 2681-886.

1 possession of or exercising control over property of the estate  
2 prior to the 1998 amendment, the State's act of continuing the  
3 Forfeiture Action and obtaining the Forfeiture Order while the 1995  
4 Case was pending violated the automatic stay under § 362(a)(3).  
5 See Hillis, 997 F.2d at 591; Chapman, 264 B.R. at 571.

6 D. Impact of the Relation-Back Doctrine.

7 The State points to the relation-back doctrine, arguing that  
8 the actual forfeiture of the Residence preceded the filing of the  
9 1995 Case because it related back to the commission of the crime.  
10 Under the relation-back doctrine, a "[f]orfeiture relates back to  
11 the time of the criminal acts giving rise to the forfeiture."  
12 Lazarenko, 476 F.3d at 647. However, forfeiture does not  
13 automatically vest title to property in the government. The  
14 relation back doctrine is inapplicable until a judgment of  
15 forfeiture is entered. United States v. Buena Vista Ave., 507 U.S.  
16 111, 123-29 (1993); United States v. Real Property at 2659  
17 Roundhill Dr., Alamo, CA, 194 F.3d 1020, 1027 (9th Cir. 1999).  
18 Until a judgment of forfeiture is entered, "someone else owns the  
19 property" and a third party may acquire an interest in the property  
20 and "invoke any defense available to the owner of the property  
21 before the forfeiture is decreed." Buena Vista, 507 U.S. at 127.

22 Because the filing of the 1995 case preceded entry of the  
23 Forfeiture Order, the relation back doctrine does not affect the  
24 result in this case. The filing of the bankruptcy petition in the  
25 1995 Case created an estate comprised of all legal and equitable  
26 interests of the Debtors in property as of the commencement of the  
27 case. 11 U.S.C. § 541; see United States v. Whiting Pools, 462  
28 U.S. 198, 205 (1983). The Debtors' interest in the Residence, not

1 adjudicated as forfeited prior to bankruptcy, was property of the  
2 estate subject to the jurisdiction of the bankruptcy court. The  
3 State's action in proceeding with the Forfeiture Action to judgment  
4 without authorization from the bankruptcy court was not permitted  
5 by § 362(b)(4)'s police power exception and violated the stay under  
6 § 362(a)(3).<sup>18</sup>

7 E. The Forfeiture Order was Entered in Violation of the Automatic  
8 Stay and is Void.

9 In the Ninth Circuit, actions taken in violation of the  
10 automatic stay, including judicial proceedings, are void ab initio.  
11 Gruntz, 202 F.3d at 1082 n.6; Schwartz v. United States (In re  
12 Schwartz), 954 F.2d 569, 571 (9th Cir. 1992) (“[V]iolations of the  
13 automatic stay are void, not voidable.”); Phoenix Bond & Indem. Co.  
14 v. Shamlin (In re Shamlin), 890 F.2d 123, 125 (9th Cir. 1989)  
15 (“Judicial proceedings in violation of th[e] automatic stay are  
16 void.”). Actions in violation of the stay are void for all  
17 purposes and are not validated by dismissal of the bankruptcy case.  
18 See 40235 Washington Street Corp. v. Lusardi, 177 F.Supp.2d 1090,

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20 <sup>18</sup> “[S]ection 362(d) ‘gives the bankruptcy court wide latitude  
21 in crafting relief from the automatic stay, including the power to  
22 grant retroactive relief from the stay.’” Nat’l Env’tl. Waste Corp.  
23 v. City of Riverside (In re Nat’l Env’tl. Waste Corp.), 129 F.3d  
24 1052, 1054 (9th Cir. 1997) (quoting Schwartz v. United States (In  
25 re Schwartz), 954 F.2d 569, 572 (9th Cir. 1992)). In determining  
26 whether to annul the stay retroactively, bankruptcy courts apply a  
27 “balancing of the equities” test and weigh certain nondispositive  
28 factors, including “(1) whether the creditor was aware of the  
bankruptcy petition; and (2) whether the debtor engaged in  
unreasonable or inequitable conduct, or prejudice would result to  
the creditor.” Nat’l Env’tl. Waste, 129 F.3d at 1055; see Fjeldsted  
v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (9th Cir. BAP 2003)  
(identifying other factors to be considered by the court in  
divining “the debtor’s and creditor’s good faith, the prejudice to  
the parties, and the judicial or practical efficacy of annulling  
the stay”). The State, however, did not seek retroactive relief  
from the automatic stay.

1 1104 (S.D. Cal. 2001), aff'd on other grounds, 329 F.3d 1076 (9th  
2 Cir. 2003), cert. denied, 540 U.S. 983 (2003) ("The violations  
3 remain ineffective even if the underlying bankruptcy case is  
4 dismissed."); Richard v. City of Chicago, 80 B.R. 451, 454 (N.D.  
5 Ill. 1987) (holding that a debtor's voluntary dismissal of his  
6 chapter 13 petition did not "resurrect a sale that [was] legally  
7 void" as having been conducted in violation of the automatic stay).  
8 Because the State did not obtain relief from the stay in the 1995  
9 Case to continue the Forfeiture Action, we conclude that the  
10 bankruptcy court did not err in holding that the Forfeiture Order  
11 violated the automatic stay and was void.<sup>19</sup>

12 CONCLUSION

13 We hold that the bankruptcy court correctly resolved the issue  
14 by summary judgment. Because there are no triable issues of fact  
15 and the bankruptcy court correctly applied the applicable  
16 substantive law, we AFFIRM.

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27 <sup>19</sup> The fact that the State did not receive specific notice of  
28 the Debtors' 1995 Case does not alter this result. See Peralta,  
317 B.R. 389 ("Since the automatic stay is effective against the  
world, regardless of notice, acts in violation of the stay are  
automatically void ab initio.").