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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

1 In re: ) BAP No. AK-06-1358-ZRB  
2 )  
3 BRENDA GENARO, ) Bk. No. 06-00198  
4 )  
5 Debtor. )  
6 )  
7 )  
8 )  
9 BRENDA GENARO, )  
10 )  
11 Appellant, )  
12 )  
13 v. ) **MEMORANDUM**<sup>1</sup>  
14 )  
15 WELLS FARGO BANK, N.A., )  
16 )  
17 Appellee. )  
18 )

Argued and Submitted on April 5, 2007  
at Anchorage, Alaska

Filed May 14, 2007

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

Honorable Donald MacDonald IV, Chief Bankruptcy Judge, Presiding

Before: ZIVE,<sup>2</sup> RIMEL<sup>3</sup> and BRANDT, 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 9<sup>th</sup> Cir. BAP Rule 8013-1.

<sup>2</sup>Hon. Gregg W. Zive, Chief Bankruptcy Judge for the District of Nevada, sitting by designation.

<sup>3</sup>Hon. Whitney Rimel, Bankruptcy Judge for the Eastern District of California, sitting by designation.

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**I**

Debtor/Appellant, Brenda Genaro ("Genaro"), raises one issue on appeal: whether the bankruptcy court correctly applied 11 U.S.C. § 362(c)(3)<sup>4</sup> to rule that the automatic stay had terminated thirty days after Genaro had filed her petition, when she had been a debtor in a prior case that had been dismissed less than a year earlier, and she took no action to continue the stay within the thirty days allowed by statute.

**II**

**FACTS**

Genaro filed a Chapter 13 bankruptcy petition March 24, 2006, in the District of Alaska, case number 06-0075. That case was dismissed May 2, 2006. The dismissal was not pursuant to § 707(b). Genaro filed a subsequent Chapter 13 bankruptcy petition June 9, 2006, giving rise to the present case.<sup>5</sup> Creditor/Appellee, Wells Fargo Bank, N.A., ("Wells Fargo") asserts that it has a lien on or security interest in Genaro's residence. On July 28, 2006, more than thirty days after that petition was filed, Wells Fargo filed a motion pursuant to § 362(j) to confirm that the stay had terminated automatically by operation of § 362(c)(2). Genaro filed an objection to the motion on August 17, 2006. A hearing was originally set for

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<sup>4</sup>Unless otherwise indicated, all statutory references are to U.S.C. Title 11.

<sup>5</sup>The case out of which this appeal arises was Genaro's fifth bankruptcy filing. Genaro filed a Chapter 7 case in 2000, which resulted in a discharge; a Chapter 13 in 2001 which was dismissed in 2002; a second Chapter 13 in 2003 which was dismissed in 2004; a third Chapter 13 filed May 2, 2006, dismissed in 2006; and the current case filed June 9, 2006.

1 August 29, 2006, but was rescheduled to September 12, 2006. One  
2 day prior to the hearing, on September 11, 2006, Genaro filed a  
3 motion for continuation of the automatic stay. On September 13,  
4 2006, the bankruptcy court issued an Order, Memorandum, and  
5 Judgment confirming that the stay had terminated pursuant to  
6 § 362(c)(3). Genaro moved for reconsideration of the court's  
7 orders on September 20, 2006, and the court denied her request on  
8 September 22, 2006. Genaro filed her notice of appeal September  
9 29, 2006.

### 10 III

#### 11 STANDARD OF REVIEW

12 The bankruptcy court's legal conclusions, including its  
13 interpretation of the Bankruptcy Code, are reviewed de novo.  
14 Roberts v. Erhard (In re Roberts), 331 B.R. 876, 880 (9<sup>th</sup> Cir. BAP  
15 2005).

### 16 IV

#### 17 DISCUSSION

##### 18 A. 11 U.S.C. § 362(c)(3)

19 The statute, in pertinent part, states as follows:

20 (c) Except as provided in subsections (d), (e), (f),  
21 and (h) of this section -

22 (3) if a single or joint case is filed by or against  
23 debtor who is an individual in a case under chapter 7,  
24 11, or 13, and if a single or joint case of the debtor  
25 was pending within the preceding 1-year period but was  
26 dismissed, other than a case refiled under a chapter  
27 other than chapter 7 after dismissal under section  
28 707(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 (B) on the motion of a party in interest for  
2 continuation of the automatic stay and upon notice and  
3 a hearing, the court may extend the stay in particular  
4 cases as to any or all creditors (subject to such  
5 conditions or limitations as the court may then impose)  
6 after notice and a hearing completed before the  
7 expiration of the 30-day period only if the party in  
8 interest demonstrates that the filing of the later case  
9 is in good faith as to the creditors to be stayed; . . .

6 Among other things, the automatic stay prevents the  
7 enforcement of liens and security interests against a debtor's  
8 property. § 362(a)(4).

9  
10 **B. The Bankruptcy Court Properly Determined that the Stay**  
11 **Terminated Thirty Days after the Petition was filed in the**  
12 **Instant Case.**

12 **1. Plain Meaning of the Statute<sup>6</sup>**

13 Statutory interpretation begins with the plain language of  
14 the statute. U.S. v. Hanousek, 176 F.3d 1116, 1120 (9<sup>th</sup> Cir.  
15 1999). The Supreme Court directs that "where, as here, the  
16 statute's language is plain, the sole function of the courts is  
17 to enforce it according to its terms." See United States v. Ron  
18 Pair Enterprises, Inc., 489 U.S. 235, 241 (1989) (citation  
19 omitted).

20 Particular phrases of a statute must be construed in light  
21 of the overall purpose and structure of the whole statutory  
22 scheme. Hanousek, 176 F.3d at 1120 (citing United States v.  
23 Lewis, 67 F.3d 225, 228 (9<sup>th</sup> Cir. 1995)). "When we look to the  
24 plain language of a statute in order to interpret its meaning, we  
25 do more than view words or sub-sections in isolation. We derive  
26 meaning from context, and this requires reading the relevant  
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28 <sup>6</sup>The parties do not dispute the meaning of the statute.

1 statutory provisions as a whole." Id. (quoting Carpenters Health  
2 & Welfare Trust Funds v. Robertson (In re Rufener Constr.), 53  
3 F.3d 1064, 1067 (9th Cir.1995)).

4 In reading § 362(c)(3) as a whole, the meaning is clear: if  
5 a debtor files a bankruptcy petition that is dismissed within one  
6 year of the filing of a subsequent petition, and where no motion  
7 and hearing to extend the duration of the automatic stay is  
8 completed within thirty days from the filing of the subsequent  
9 petition, the stay automatically terminates on the thirtieth day  
10 after the filing of the subsequent petition.

11 In the present case, there is no dispute that Genaro was a  
12 debtor in a Chapter 13 case that was dismissed within one year  
13 prior to the filing of the present case. As indicated in the  
14 facts above, Genaro was a debtor in a Chapter 13 case filed March  
15 24, 2006. That case was dismissed May 2, 2006. The petition in  
16 her present case was filed June 9, 2006, a little over one month  
17 after the prior dismissal. Genaro did not file a motion to  
18 continue the stay until September 11, 2006, ninety-four days  
19 after the filing of her Chapter 13 petition in the instant case.  
20 Section 362(c)(3)(B) mandates that the motion and hearing be  
21 completed within thirty days. Genaro did not satisfy this  
22 requirement.

23 Genaro, however, contends that the statute should not apply  
24 to her because her current filing was not in bad faith.<sup>7</sup> However,  
25 a showing that the latest bankruptcy filing is in good faith is  
26 only one of two requirements for continuing the automatic stay.

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28 <sup>7</sup>Neither party asserts Genaro acted with subjective bad faith.

1 The statute requires not only a showing of good faith, but that  
2 the party desiring that the stay remain in effect make that  
3 showing at a hearing "completed within the 30-day period." As  
4 indicated above, the statutory scheme set forth in § 362(c)(3)(B)  
5 was not satisfied by Genaro.

6 Wells Fargo also notes that "[t]he fact that Congress may  
7 not have foreseen all of the consequences of a statutory  
8 enactment is not a sufficient reason for refusing to give effect  
9 to its plain meaning." Union Bank v. Wolas, 502 U.S. 151, 158  
10 (1991). In other words, Wells Fargo argues that the plain  
11 meaning of the statute must be given effect despite the fact that  
12 good faith filers who fail to extend the stay within thirty days  
13 may be harmed by the lifting of the stay. That is a correct  
14 statement of the law: the statute is clear, and the court's job  
15 is to apply it as written. Ron Pair Enterprises, Inc., 489 U.S.  
16 at 241. Therefore, regardless of Genaro's good faith, because  
17 she did not complete a motion and hearing to continue the stay  
18 within thirty days of filing her petition in the instant case,  
19 § 362(c)(3)(A) and (B) served to terminate the automatic stay in  
20 the present case on the thirtieth day after she filed her  
21 petition.

## 22 23 **2. Pro Se Litigants**

24 Pro se litigants are not excused from compliance with the  
25 rules. Warrick v. Birdsell, 278 B.R. 182, 187 (9<sup>th</sup> Cir. BAP 2002)  
26 (debtor's status as pro se litigant did not excuse her failure to  
27 understand and follow bankruptcy court rule governing time for  
28 appeal, particularly in light of fact that she held law degree

1 and also ran paralegal firm); Zivkovic v. Southern California  
2 Edison Co., 302 F.3d 1080, 1087 (9<sup>th</sup> Cir. 2002) (pro se litigant's  
3 good faith mistake as to deadline for demanding a jury trial not  
4 sufficient to grant relief to allow the untimely demand); Briones  
5 v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9<sup>th</sup> Cir. 1997)  
6 (noting that pro se litigants are not excused from following  
7 court rules); King v. Atiyeh, 814 F.2d 565, 567 (9<sup>th</sup> Cir. 1987)  
8 (pro se litigants must follow same rules of procedure that govern  
9 other litigants); Faretta v. California, 422 U.S. 806, 834 (1975)  
10 (noting in a criminal context that the right of self-  
11 representation is not a license to disregard relevant rules of  
12 procedural and substantive law).

13 Genaro argues that her present bankruptcy case was not a  
14 repeat filing within the intent of § 362(c)(3) and that she is a  
15 layperson who should not be held to strict compliance with the  
16 requirements of the statute. Being a layperson does not excuse  
17 Genaro from the requirements of the statute, especially in light  
18 of the fact that she has an extensive history of representing  
19 herself in bankruptcy. Pro se litigants must follow the same  
20 rules that govern other litigants. Pro se litigants are not  
21 excused from following bankruptcy court rules and certainly not  
22 from following substantive law.

23 Here, § 362(c)(3)(B) gave Genaro thirty days to request that  
24 the stay remain in effect. Her failure to do so is not excused  
25 because she is pro se.

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1 **C. Denial of Reconsideration**

2 Genaro also appealed the bankruptcy court's order denying  
3 reconsideration in her notice of appeal, but she neither included  
4 any of the relevant papers in her excerpts of record, as required  
5 by Rule 8009 (b), Fed. R. Bankr. App., nor made any reference to  
6 it in her brief, much less presented any argument for its  
7 reversal. Although this panel frequently overlooks the former  
8 deficiency for pro se appellants and takes judicial notice of the  
9 pertinent items in the bankruptcy court's docket, In re Blumer,  
10 95 B.R. 143, 146 (9<sup>th</sup> Cir. BAP 1988); In re Joseph, 208 B.R. 55,  
11 58 (9<sup>th</sup> Cir. BAP 1997), ordinarily, the panel does not consider  
12 matters on appeal that are not specifically and distinctly argued  
13 in appellant's opening brief. In re Jodoin, 209 B.R. 132, 143  
14 (9<sup>th</sup> Cir. BAP 1997); see also Laboa v. Calderon, 2224 F.3d 972,  
15 981 n. 6 (9<sup>th</sup> Cir. 2000) (issues not specifically and distinctly  
16 argued in the opening brief are deemed waived). Without any  
17 argument at all we are handicapped; accordingly we deem any issue  
18 regarding the order denying reconsideration waived.

19 **V**

20 **CONCLUSION**

21 Genaro had the opportunity to show that the filing was not  
22 the type of abusive, repetitive filing that § 362(c)(3) serves to  
23 prevent. Genaro failed to avail herself of that opportunity  
24 within thirty days. Instead, ninety-four days after the filing  
25 of the petition Genaro finally moved to have the stay continued  
26 in effect. She did so too late, and the bankruptcy court  
27 properly confirmed that the automatic stay terminated thirty days  
28 after Genaro filed her bankruptcy petition in the present case.



1 § 362(c)(3)(A) and (B); § 362(j). Additionally, Genaro has not  
2 shown any error in the bankruptcy court's denial of her motion  
3 for reconsideration.

4       Accordingly, we AFFIRM.

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