

**NOV 08 2006**

**HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

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In re:	)	BAP Nos.	AZ-03-1047-PaDK
	)		AZ-03-1093-PaDK
MILIVOJ MARINKOVIC,	)		(consolidated)
	)		
Debtor.	)	Bk. No.	02-00378
	)		
_____	)	Adv. No.	02-00029
	)		
MILIVOJ MARINKOVIC,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
MIDLAND LOAN SERVICES, INC.,	)		
	)		
Appellee.	)		
_____	)		

Submitted on Briefs Without Oral Argument  
on October 19, 2006

Filed - November 8, 2006

Appeal from the United States Bankruptcy Court  
for the District of Arizona<sup>2</sup>

Honorable James M. Marlar, Bankruptcy Judge, Presiding.

\_\_\_\_\_  
Before: PAPPAS, DUNN and KLEIN, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> These appeals were reopened by order of the Panel on March 23, 2006, as instructed in the order of remand from the United States Court of Appeals for the Ninth Circuit on March 7, 2006.

1 **FACTS**

2 The facts in this chapter 11<sup>3</sup> case are complex. We only  
3 highlight those directly relevant to this appeal.<sup>4</sup>

4 Milivoj Marinkovic ("Marinkovic") and his wife, Eva ("Mrs.  
5 Marinkovic"), owned a 20-unit apartment complex (the "Property")  
6 in Tucson, Arizona. On March 6, 1997, they executed a promissory  
7 note and obtained a loan from Southern Pacific Thrift & Loan  
8 Association ("Southern Pacific") for \$189,000, secured by a deed  
9 of trust on the Property. On September 9, 1999, Southern Pacific  
10 assigned its interest in the note and deed of trust to La Salle  
11 National Bank ("La Salle"), as Trustee for J.P. Morgan Commercial  
12 Finance Corporation. La Salle appointed Midland Loan Services,  
13

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14 <sup>3</sup> Unless otherwise indicated, all chapter, section and rule  
15 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and  
16 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
17 in force prior to the effective date (October 17, 2005) of the  
18 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,  
19 Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23 ("BAPCPA").

20 <sup>4</sup> As a pro se litigant, we granted Appellant Marinkovic  
21 permission to file informal briefs. Even so, his Opening Brief  
22 and Reply Brief are largely incomprehensible and raise numerous  
23 issues not relevant in this appeal. His Excerpts of Record are  
24 also flawed, incomplete, contain mere snippets of information, and  
25 appear to present portions of documents that favor his position  
26 without explanation why full documents have not been provided.

27 Marinkovic is not alone in failing to comply with the  
28 standards for appellate submissions. Appellee, represented by  
counsel, cites to numerous documents in its Brief that are not  
included in either the Appellant's or Appellee's Excerpts of  
Record. Appellee did not include copies of some of its own  
pleadings filed in the bankruptcy court or transcripts or records  
from the numerous apparently relevant proceedings in which both  
parties have engaged in litigation concerning the Property.  
Appellee also failed to comply with BAP Rule 8009-(b)1(b)2 which  
requires all pages in submitted Excerpts of Record to be  
consecutively numbered.

Largely as a matter of necessity, we have consulted the  
records of our previous decisions concerning the disputes between  
these parties, and where required, we have examined documents in  
the bankruptcy court's record (Arizona Bankruptcy Case no. 02-  
0378-TUC-JMM).

1 Inc. ("Midland") as its agent and attorney-in-fact with respect to  
2 the Note and Deed of Trust.

3  
4 **The Default on the Note and Early Court Action in Arizona**

5 Following the assignment to La Salle, some time in 1999,  
6 Midland alleges that Marinkovic fell delinquent in his note  
7 payments. In November 1999, Marinkovic informed Midland that his  
8 son, Mel Marin ("Marin"), was his agent for purposes of the loan,  
9 and Marinkovic purported to transfer the Property to Marin as  
10 Trustee of Happy Trust Three (the "Family Trust"), a revocable  
11 living trust. There is no evidence in the record that any deed or  
12 other document was executed in 1999 formally transferring title to  
13 Marin or the Family Trust.

14 In July 2000, in a divorce action between Marinkovic and Mrs.  
15 Marinkovic, a California superior court ordered that the Property  
16 be sold as part of the community property settlement. However,  
17 the Property was not sold as required by the California superior  
18 court.

19 On February 12, 2001, Midland declared the loan in default,  
20 gave notice of its intent to conduct a trustee's sale of the  
21 Property, and filed a receivership action against Marinkovic in  
22 Pima County (Arizona) Superior Court. On March 6, 2001,  
23 Marinkovic executed a quitclaim deed that transferred ownership of  
24 the Property to the Family Trust. Marin attempted to prevent the  
25 trustee's sale by filing suit in the U.S. District Court for the  
26 District of Arizona. Marin v. La Salle Nat'l Bank et al., (D. Az.  
27 Case no. 01-00050). But on August 8, 2001, the district court  
28 dismissed Marin's lawsuit with prejudice because Marin was not a

1 party to the loan transaction. The Ninth Circuit later affirmed.  
2 Marin v. La Salle Nat'l Bank, (9th Cir. Case No. 01-17232, June  
3 13, 2002.).

4 The trustee's foreclosure sale was stayed when Marinkovic  
5 filed a chapter 13 bankruptcy case on August 22, 2001, in the  
6 Arizona bankruptcy court. His bankruptcy schedules indicated that  
7 he owned the Property. At a hearing on October 22, 2001, the  
8 bankruptcy court, sua sponte, dismissed the chapter 13 case  
9 because Marinkovic failed to file a plan. An order dismissing the  
10 case was entered on October 26, 2001. Marinkovic appealed, but  
11 requested no stay pending appeal. We affirmed the dismissal order  
12 of the bankruptcy court, Marinkovic v. Midland Loan Service, (9th  
13 Cir. BAP no. AZ-01-1544-KRyB, August 15, 2002).

14

15 **The Family Trust Bankruptcy Case in New York**

16 One day after the hearing at which the bankruptcy court  
17 dismissed Marinkovic's chapter 13 case, and three days before  
18 entry of the dismissal order, on October 23, 2001, Marin filed a  
19 chapter 11 case on behalf of the Family Trust in the bankruptcy  
20 court for the Northern District of New York. Case no. 01-66282  
21 (SDG) (the "Trust Bankruptcy Case"). The Family Trust's schedules  
22 filed in the Trust Bankruptcy Case assert that the Family Trust  
23 owned the Property in fee simple.

24 Midland filed a motion in the Trust Bankruptcy Case for  
25 relief from the automatic stay with respect to the Property so it  
26 could continue with the foreclosure proceedings. In the  
27 alternative, Midland asked that the Trust Bankruptcy Case be  
28 dismissed because it was a bad faith filing, or because the Family

1 Trust was not a business trust eligible for relief under chapter  
2 11. The U. S. Trustee joined Midland's motion to dismiss.

3 The bankruptcy court in the Trust Bankruptcy Case dismissed  
4 the case because the Family Trust was not eligible for relief  
5 under chapter 11. Although the court did not expressly rule on  
6 Midland's allegations of bad faith, the New York bankruptcy court  
7 noted that the Family Trust

8 was not created to make a profit [one of the  
9 legal requirements in New York for a business  
10 trust]. It was created for tax purposes and  
11 to keep . . . [Marin's] parents' property out  
12 of the hands apparently of his sister and to  
13 . . . divest his mother of property that was  
previously titled to her by the use of some  
ancient power of attorney, when that property  
was at the . . . very heart of a pending  
matrimonial action in the State of California.

14 Tr. Hr'g 234:17-24 (Trust Bankruptcy Case) (January 22, 2002).

15 Although Midland's motion for stay relief was mooted by the  
16 court's decision to dismiss the case, the New York bankruptcy  
17 court granted a limited version of Midland's request that the  
18 dismissal be with prejudice as to the re-imposition of the  
19 automatic stay on foreclosure of the Property. The bankruptcy  
20 court acknowledged Midland's concern that the Family Trust would  
21 immediately file another bankruptcy case

22 . . . in some other forum, in an effort to,  
23 once again, frustrate Midland's efforts to  
24 complete its foreclosure action of the Arizona  
25 property. This Court believes it has heard  
26 sufficient testimony today that it may invoke  
27 its general power pursuant to section 105 and  
provide that the dismissal of this case be  
with prejudice to the imposition of the  
automatic stay, vis-a-vis the [Property], in  
any subsequent bankruptcy case filed in any  
jurisdiction by Happy Trust Three.

28 Tr. Hr'g 236:1-9 (Trust Bankruptcy Case). However, the court

1 clarified that its order would only be effective for 180 days, and  
2 would only restrict filings by the Family Trust. Tr. Hr'g 236:10-  
3 17 (Trust Bankruptcy Case). The New York bankruptcy court  
4 implicitly recognized it lacked jurisdiction over other parties  
5 who might file bankruptcy petitions (i.e., Marinkovic), but the  
6 bankruptcy judge indicated he "would strongly suggest" that others  
7 not file for the purpose of imposing the stay on Midland's  
8 foreclosure proceedings. Tr. Hr'g 236:12 (Trust Bankruptcy Case).

9 The bankruptcy court directed Midland's counsel to prepare an  
10 order dismissing the case, which it entered on January 31, 2002.

11 The order included, inter alia, the following findings of fact:

- 12 1. . . . [the Family Trust] is not a business trust, and  
13 was not intended to be established as a business trust  
14 within the meaning of Section 2 of the General  
Associations Law of New York.
- 15 2. The Property . . . was not owned by [the Family Trust]  
16 at the time of its inception in 1999, and was not deeded  
17 [to the Family Trust] until March 2001, a time  
subsequent to the commencement by Midland of foreclosure  
proceedings against the Property.
- 18 . . . .
- 19 4. The Arizona chapter 13 filing of [Marinkovic] included  
20 the Property as an asset of that estate, despite the  
21 fact that title to the Property had passed by deed  
nearly six months before said individual bankruptcy  
proceeding was filed.
- 22 5. This chapter 11 case is the fifth judicial proceeding  
23 since February 2001 by [Marin and/or Marinkovic] to  
attempt to delay and prevent Midland's completion of its  
foreclosure and trustee's sale of the Property.
- 24 6. . . . [T]here is, as evidenced by the prior conduct of  
25 [Marin and Marinkovic] a substantial likelihood that  
26 [Family Trust] will file or cause to be filed further  
27 bankruptcy proceedings . . . for the purpose of further  
hindering and delaying Midland's efforts to complete its  
foreclosure and Trustee's sale of the Property.

28 The order dismissed the case with prejudice as discussed above.

1 Two other features of this order are noteworthy. The first  
2 decretal paragraph provides, "[it is] ORDERED, that this chapter  
3 11 case is dismissed as of this 25th day of January 2002."  
4 Second, the bankruptcy judge made changes to the terms of  
5 counsel's proposed order in his own handwriting, accompanied by  
6 his initials.<sup>5</sup>

7 Marin appealed the dismissal order to the United States  
8 District Court for the Northern District of New York. N.D.N.Y.  
9 Case no. 02-01518. The district court affirmed the bankruptcy  
10 court's order on December 19, 2002, and later, so did the Second  
11 Circuit. The Second Circuit's Summary Order provided that, "The  
12 [bankruptcy court's findings] were not clearly erroneous and they  
13 amply justify the bankruptcy court's conclusion that bankruptcy  
14 protection was not available." Mel M. Marin v. Midland Loan  
15 Services (In re Happy Trust Three), No. 03-5004 (2nd Cir.,  
16 December 7, 2004).

17 No stay was entered pending these appeals. On January 25,  
18 2002, the same day that the New York bankruptcy court's dismissal  
19 order was effective, the trustee under Midland's deed of trust  
20 conducted a foreclosure sale of the Property. A Trustee's Deed,  
21 recorded on January 29, 2002, conveyed the Property to the  
22 successful bidder at the sale, La Salle.

23 Also on January 25, 2002, Marin attempted to transfer an 86  
24 percent interest in the Property to Marinkovic and Mrs.

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25  
26 <sup>5</sup> The corrected and initialed entry appears on page 4 of the  
27 Order. The original text read: "ORDERED, that this Order is  
28 intended as an in rem order of relief, effective against the  
Property." The corrected entry reads: "ORDERED, that this Order  
is intended as an in rem order of dismissal, effective against the  
Property."

1 Marinkovic, and a nine percent interest to himself, leaving the  
2 Family Trust with a five percent interest in the Property.

3  
4 **Marinkovic's Chapter 11 Case in Arizona**

5 The day before the New York bankruptcy court entered its  
6 order of dismissal, on January 30, 2002, Marinkovic filed a  
7 chapter 11 petition in the Arizona bankruptcy court.

8 On February 25, 2002, now four weeks after the foreclosure  
9 sale, there was a hearing in Pima County Superior Court on  
10 Midland's motion to dismiss the receivership action, which action  
11 included a counterclaim by Marinkovic. The state court's minute  
12 order concerning that hearing states:

13 Mr. Marinkovic is present. . . . The Court  
14 notes that, on February 5, 2002, after having  
15 reviewed the file and received Defendant's  
16 Notice of Filing Bankruptcy, this Court called  
17 the Honorable James M. Marlar, U.S.  
18 [Bankruptcy] Judge for the District of  
19 Arizona, and advised him of this hearing.  
20 Judge Marlar orally lifted the Stay with  
21 respect to this Motion to Dismiss. . . . The  
22 Court notes that Mr. Mel M. Marin is not a  
23 party to this case; the Court will not  
24 consider the pleadings he has submitted. IT  
25 IS ORDERED that the Motion to Dismiss is  
26 granted.

27 The dismissal order in the receivership action did not  
28 specify whether it was with prejudice. Marinkovic did not timely  
29 appeal the state court dismissal order, and did not challenge the  
30 bankruptcy court's oral ruling for relief from the automatic stay  
31 in the chapter 11 case until 18 months later. On April 22, 2002,  
32 Marinkovic filed a motion in Pima County Superior Court to reopen  
33 the time to appeal the dismissal order in the receivership action,  
34 which was denied on June 7, 2002.



1           On February 26, 2002, Marinkovic commenced an adversary  
2 proceeding in the chapter 11 case to require Midland to turn over  
3 the Property. Marinkovic v. Midland Loan Servs., Inc., Bankr.  
4 D.Az. Adv. Pro. No. 02-0029. In his complaint, Marinkovic claimed  
5 to hold fee simple ownership of the Property. He also alleged  
6 that the Property was property of the chapter 11 bankruptcy  
7 estate. On March 22, 2002, Midland filed a motion for summary  
8 judgment (the "Summary Judgment Motion"). Marinkovic filed no  
9 opposition to this motion, but Marin filed various documents in  
10 opposition.

11           On April 18, 2002, the bankruptcy court appointed a chapter  
12 11 trustee, Randall Sanders. On May 20, 2002, the trustee filed a  
13 "Notice by Trustee of Substitution of Trustee as Plaintiff" in the  
14 adversary proceeding. There is no indication in the record that  
15 any party objected to the Trustee's Notice. A review of the  
16 dockets of both the chapter 11 case and the adversary proceeding  
17 reveals that the trustee did not oppose Midland's Summary Judgment  
18 Motion.

19           The bankruptcy court conducted a hearing on the Summary  
20 Judgment Motion on July 1, 2002. Marinkovic, the trustee,  
21 Midland and the U.S. Trustee were present and represented by  
22 counsel. Marin appeared as representative of the Family Trust.

23           The bankruptcy court granted the Summary Judgment Motion in a  
24 Memorandum Decision signed on August 2, 2002. The court made  
25 several rulings, including that:

26                   (1) . . . the January 25, 2002, Order of the  
27                   United States bankruptcy Court for the  
28                   Northern District of New York was, is and  
                 shall be deemed effective as of January 25,  
                 2002; (2) . . . the automatic stay applicable  
                 to the instant case shall be annulled as to

1 the property in favor of Midland; [and] (3) .  
2 . . that the trustee's sale, held on January  
3 25, 2002, effectively and completely  
4 eliminated all legal and equitable interests  
of the debtor and those claiming interests by,  
through or under him.

5 A Judgment embodying these rulings was entered on August 29,  
6 2002.<sup>6</sup>

### 8 **The Sale of the Property and Eviction of Marinkovic**

9 Although La Salle purchased the Property at the foreclosure  
10 sale on January 25, 2002, Marinkovic did not vacate the premises.  
11 On September 18, 2002, Midland served a "Notice of Termination of  
12 Rental Agreement" on Marinkovic, which demanded that he vacate the  
13 Property no later than October 31, 2002. Marinkovic did not do  
14 so. On November 18, 2002, Midland filed a motion to annul the  
15 automatic stay in the chapter 11 case in order to terminate  
16 Marinkovic's asserted right to possession of the Property. A  
17 hearing was held on Midland's motion on December 16, 2002, where  
18 Midland and the chapter 11 trustee were represented by counsel;  
19 Marinkovic and Marin were also present. The bankruptcy court  
20 granted Midland's motion to terminate the stay to allow Midland to  
21 recover possession of the Property, but the court declined to  
22 annul the stay to make it retroactive. The court entered an  
23 order consistent with this decision on December 16, 2002.

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25  
26 <sup>6</sup> The provisions of the Judgment as proposed by counsel were  
27 altered and initialed by the bankruptcy judge. The original text  
28 contained the phrase "and Randall Sanders, as Chapter 11 operating  
trustee, having appeared in opposition to the motion." The judge  
changed the wording to: "and Randall Sanders, as Chapter 11  
operating trustee, having appeared and made comments."

1 Marinkovic filed a timely appeal of the order terminating the  
2 stay on December 24, 2002.<sup>7</sup> That appeal, BAP AZ-03-1047, is one  
3 of those before us for decision here. On January 29, 2003, Marin  
4 filed an Emergency Motion with this Panel for stay pending appeal,  
5 attempting to prevent the sale of the Property to Magnolia  
6 Bearcat, LLC, an unrelated third party. This Panel denied the  
7 Emergency Motion on January 30, 2003, on the grounds that Marin  
8 had not demonstrated a probability of success on the merits and  
9 that he had no standing because he was not a party in the  
10 adversary proceeding.<sup>8</sup> On January 31, 2003, La Salle completed  
11 the sale of the Property to Magnolia Bearcat, LLC.

12 On March 13, 2003, the bankruptcy court terminated the stay  
13 to allow Magnolia Bearcat to pursue eviction proceedings in state  
14 court against Marinkovic. Marin filed a complaint against  
15 Magnolia Bearcat, Midland, La Salle, and related parties in Pima  
16 County Superior Court, no. C-20031459 (the "Magnolia Bearcat  
17 Litigation"). Marin's complaint alleged that the defendants were

18  
19 <sup>7</sup> This notice of appeal also addresses other judgments,  
20 orders and rulings. The Panel determined in a December 9, 2003,  
21 Order Denying Motion for Rehearing and Clarification; Order  
22 Consolidating Appeals; Order Setting Final Deadline for Completion  
23 of Record, BAP AZ-03-1047 & AZ-03-1093 (Consolidated), that  
24 Marinkovic's Notice of Appeal was untimely or fatally premature as  
25 to those other judgments, orders and rulings. It ordered that  
only the bankruptcy court's December 16, 2002 order terminating  
stay would be reviewed in this appeal, 03-1047. The Panel noted,  
however, that should Marinkovic prevail in his other pending  
appeal before us, 03-1093 (discussed infra), he may then have a  
right to reinstate his appeal of the other orders, judgments and  
rulings referenced in his notice of appeal.

26 <sup>8</sup> Order Denying Motion for Stay Pending Appeal (9th Cir.  
27 BAP, January 30, 2003). In addition to the reasons noted in the  
28 Panel's order of January 30, 2003, we note that Marin failed to  
first seek a stay from the bankruptcy court, as required by Fed.  
R. Bankr. P. 8005.

1 guilty of conversion and conspiracy to commit fraud arising from  
2 La Salle's purchase of the property at the foreclosure. The  
3 defendants filed a motion to dismiss the Magnolia Bearcat  
4 Litigation, which was granted on June 6, 2003. The superior court  
5 dismissed on the grounds of res judicata (claim and issue  
6 preclusion), explaining that Marin had filed and litigated related  
7 claims in two cases in the federal district court, two cases in  
8 Pima County Superior Court, and three actions in the bankruptcy  
9 court. Marin appealed the state court order of dismissal to the  
10 Arizona Court of Appeals, which affirmed the superior court on  
11 July 2, 2004.

12 Midland alleges that Marinkovic was thereafter evicted.<sup>9</sup> We  
13 find nothing in the record that casts any doubt on this assertion.

14

15 **Attempts to Amend August 29, 2002, Orders**

16 On September 6, 2002, Marinkovic filed a "Notice and Motion  
17 to Amend Orders of Aug 29th [granting Summary Judgment] and  
18 Joinder in Motions of Family Trustee." On November 26, 2002, the  
19 bankruptcy court issued a Memorandum Decision regarding pending  
20 motions, that included disposition of Marinkovic's September 6  
21 motion to amend the August 29 order. The court deemed the  
22 September 6 motion to be a motion for reconsideration under Fed.  
23 R. Civ. P. 59 and Fed. R. Bankr. P. 9023. The court determined  
24 that there was no legal basis to grant the motion. The court  
25 denied the motion in an order entered November 26, 2002.

26

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27 <sup>9</sup> Appellee's Answering Br. at 15, citing Marinkovic's  
28 Opening Br. to the Ninth Circuit, No. 05-15176, dated April 22,  
2005 at 6.

1 On December 16, 2002, Marin filed a "Notice of and Motion to  
2 Extend Time Within Which to File Notice of Appeal and Motion to  
3 Stay Judgments of November 26, 2002" ("Motion to Extend Time").  
4 The court conducted a hearing on Marin's Motion to Extend Time on  
5 January 7, 2003, and took the matter under advisement.

6 On February 3, 2003, the bankruptcy court issued its  
7 Memorandum Decision regarding Marin's Motion to Extend Time. The  
8 court observed that Rule 8002(c)(1) allows the court to extend the  
9 time for filing a notice of appeal by any party, unless the order  
10 or decree to be appealed falls into one of the six categories  
11 specified in the Rule. Subsection (A) of Rule 8002(c)(1)  
12 prohibits the bankruptcy court from extending the time to appeal  
13 an order granting relief from the automatic stay. The bankruptcy  
14 court explained:

15 Marin requested that the court extend the time  
16 to appeal the denial of his motion to  
17 reconsider the August 29, 2002 Judgment  
18 annulling the automatic stay under § 362. The  
19 Order denying the motion to reconsider was  
20 entered on November 26, 2002. Marin filed his  
21 motion to extend twenty days later on December  
22 16, 2002. Clearly, Marin is barred from  
23 appealing the original Judgment annulling the  
24 automatic stay, because the time to file such  
25 an appeal expired ten days after the motion to  
26 reconsider was denied, and the court cannot  
27 grant an extension even on the showing of  
28 "excusable neglect" under Rule  
8002(c)(1)(A).<sup>[10]</sup>

23 However, Marin is appealing the Order denying  
24 the motion to reconsider the Judgment granting  
25 relief from stay. The court is not aware of  
26 any case law, nor has Marin cited any, that  
27 stands for the proposition that a motion to  
28 reconsider a Judgment granting relief from the

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<sup>10</sup> The court noted elsewhere in its decision that Marin's motion conceded that "there is no appeal against the order of 8/29."

1 automatic stay should be treated differently  
2 than the original Judgment for purposes of  
3 granting an extension to the time to appeal  
4 under Rule 8002(c)(1)(A). To interpret the  
5 1997 amendment to subsection (c) as Marin  
6 would have it would clearly go against the  
7 underlying purpose for its enactment.  
8 Subsection (c)(1)(A) was promulgated so that  
9 the party which was granted a Judgment for  
10 relief from stay could rely on the finality of  
11 that Judgment and exercise its rights after  
12 the 10-day appeal period had run. Therefore,  
13 the court does not have the authority to  
14 extend the time to appeal the November 26,  
15 2002 Order.

9 The bankruptcy court also observed that even were it not  
10 prohibited by the Rules from entertaining Marin's request for an  
11 extension of time to appeal the Order denying reconsideration,  
12 Marin did not show "excusable neglect" as required by Rule  
13 8002(c)(2). Instead, the bankruptcy court found that Marin could  
14 and should have monitored the status of the adversary proceeding  
15 by referring to the docket, and the court rejected Marin's  
16 argument that he could not do so because he was in the military  
17 during the relevant time because Marin was a reservist, not on  
18 active duty, and therefore he was not entitled to the protection  
19 of the Soldiers and Sailors Civil Relief Act of 1940.

20 For all these reasons, on February 3, 2003, the bankruptcy  
21 court entered an order denying Marin's motion to extend time to  
22 appeal. Marin and Marinkovic jointly filed a Notice of Appeal on  
23 February 12, 2002. This appeal, BAP AZ-03-1093, is also before  
24 us.

25  
26 **The Court of Appeals' Decision and Remand to the BAP**

27 Marin and Marinkovic filed numerous motions with this Panel  
28 between 2003 and the present. Among the more critical rulings of

1 the Panel concerning these motions were:

2 (1) An order entered January 30, 2003, denying Marin's motion  
3 for a stay pending appeal, filed by Mel Marin, because he did  
4 not demonstrate a probability of success on the merits. This  
5 order also determined that Marin had no standing to appeal,  
6 or to prosecute, 03-1047 because he was not a party to the  
7 adversary proceeding below.

8 (2) Our Order Denying Motion for Rehearing and Clarification;  
9 Order Consolidating Appeals; Order Setting Final Deadline for  
10 Completion of Record entered on December 9, 2003. This order  
11 again concluded that Marin had no standing to appeal in 03-  
12 1047 or in 03-1093. It also consolidated these two appeals,  
13 and warned that they would be dismissed if Marinkovic did not  
14 comply with certain directions.

15 (3) The Order Dismissing Appeal for Failure to Prosecute,  
16 entered on November 2, 2004.

17 (4) The Order of January 4, 2005, which denied Marin's motion  
18 for reconsideration of the Order Dismissing Appeal. However,  
19 as discussed below, the Panel indicated its willingness to  
20 vacate the dismissal and hear the appeals if the Ninth  
21 Circuit remanded.

22 (5) And, after action by the Ninth Circuit, our Order After  
23 Remand: Vacating Dismissal and Reopening Appeals of March 23,  
24 2006.

25 On December 15, 2005, the United States Court of Appeals for  
26 the Ninth Circuit considered Marinkovic's appeal of our decision  
27 dismissing the appeals for failure to prosecute, and Marin's  
28 appeal of our decisions finding that he lacked standing to appeal.  
The court affirmed "the BAP's determination as to Marin's  
standing<sup>[11]</sup> and remanded to allow Marinkovic, as the sole  
appellant, to pursue his appeal." Marin v. Midland Loan Service,

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24 <sup>11</sup> The Ninth Circuit agreed with our decision denying  
25 standing to Marin because, even if Marin were a creditor, such  
26 creditors have no independent standing to appeal automatic stay  
27 decisions. As the Court of Appeals reaffirmed, "Section 362 is  
28 intended solely to benefit the debtor's estate," citing its  
earlier decision in Tilley v. Vucurevich (In re Pecan Groves of  
Az.), 951 F.2d 242, 245 (9th Cir. 1991). The court concluded that  
Marin failed to demonstrate that he had a legal interest that  
would require him to be joined as a necessary party. In re  
Marinkovic, 158 Fed. Appx. at 886.

1 Inc., Marinkovic v. Midland Loan Services. Inc., (In re  
2 Marinkovic), 158 Fed. Appx. 885 (9th Cir. 2005).<sup>12</sup>

3 The Court of Appeals remanded the appeals to us to vacate our  
4 dismissal for failure to prosecute and, in the court's words,  
5 "allow Marinkovic, as the sole appellant, to pursue his appeal."  
6 Id. at 885 (emphasis added).

### 7

### 8 **These Appeals**

9 Thus, after this protracted course of proceedings, our task  
10 is to review two orders of the Arizona bankruptcy court. One  
11 order, entered December 16, 2002, terminated the automatic stay in  
12 the chapter 11 case and allowed Midland to evict Marinkovic from  
13 the Property after the foreclosure sale. The other denied a  
14 request to extend the time to appeal the order declining to  
15 reconsider the August 29, 2002, stay relief order.

### 16

### 17 **JURISDICTION**

18 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
19 §§ 1334 and 157(b) (2) (A) and (G). We have jurisdiction pursuant  
20 to § 158(b) (1).

### 21

### 22 **ISSUES**

- 23 1. Whether the appeal of the order terminating the  
24 automatic stay to allow Midland to evict Marinkovic  
25 is moot.  
26 2. Whether the bankruptcy court erred in denying  
27 Marinkovic's motion to extend the time to appeal

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28 <sup>12</sup> Our citation to this unpublished decision, to reflect the  
status of this case, is authorized by Ninth Circuit Rule 36-3.



1 the order declining to reconsider the August 29,  
2 2002, stay relief order.<sup>13</sup>

3 **STANDARDS OF REVIEW**

4 The bankruptcy court's decision to grant relief from the  
5 automatic stay is reviewed for abuse of discretion. In re Umali,  
6 345 F.3d 818, 822 (9th Cir. 2003); First Fed. Bank v. Robbins (In  
7 re Robbins), 310 B.R. 626 (9th Cir. BAP 2004).

8 We review a bankruptcy court's denial of a motion for an  
9 extension of time to file a notice of appeal for abuse of  
10 discretion. Warrick v. Birdsell (In re Warrick), 278 B.R. 182, 184  
11 (9th Cir. BAP 2002); Nugent v. Betacom of Phoenix, Inc. (In re  
12 Betacom of Phoenix, Inc.), 250 B.R. 376, 379 (9th Cir. BAP 2000).

13  
14 **DISCUSSION**

15 I.

16 This appeal (AZ-03-1047) is moot.

17 Marinkovic's December 24, 2002, notice of appeal, that  
18 initiated AZ-03-1047, referenced and sought review of several

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<sup>13</sup> Marinkovic's Opening Brief failed to designate the issues  
21 on appeal. Ordinarily, failure to designate and argue the issues  
22 on appeal in the appellant's opening brief results in a waiver of  
23 those issues. Law Offices of Neil Vincent Wake v. Sedona Inst.  
24 (In re Sedona Inst.), 220 B.R. 74, 76 (9th Cir. BAP 1998).  
25 However, our Order of December 9, 2003, clarified that in these  
26 appeals we have jurisdiction to review (1) in AZ-03-1047, the  
27 December 16, 2002, order terminating the automatic stay to allow  
28 eviction of Marinkovic and (2) in AZ-03-1093, Marinkovic's  
challenge to the memorandum and order of February 3, 2003, denying  
an extension of time to file a notice of appeal from one of the  
court's orders entered November 26, 2002. Order Denying Motion for  
Rehearing and Clarification; Order Consolidating Appeals; Order  
Setting Final Deadline for Completion of Record, BAP Nos. AZ-03-  
1047 & 1093 (December 9, 2003). Appellee acknowledges these are  
the matters before the Panel. We thus have formulated the issues  
on appeal as presented above.

1 different judgments, orders and rulings of the Arizona bankruptcy  
2 court. However, as we determined in our December 9, 2003 order,  
3 we have jurisdiction only to consider the bankruptcy court's order  
4 of December 16, 2002, terminating the automatic stay to allow  
5 Midland to evict Marinkovic.

6 A short recap of the events that followed the bankruptcy  
7 court's entry of the order terminating the stay to allow Midland  
8 to evict Marinkovic is helpful:

9 (1) Marinkovic filed a timely appeal of the order terminating  
10 the stay.

11 (2) On January 29, 2003, Marin filed an Emergency Motion for  
12 stay pending appeal to prevent Midland from selling the Property.

13 (3) This Panel thereafter denied Marin's Emergency Motion.

14 (4) Neither Marin nor Marinkovic appealed this Panel's  
15 decision denying Marin's Emergency Motion.

16 (5) The Property was sold on January 31, 2003, by La Salle  
17 (the purchaser at the trustee's sale) to Magnolia Bearcat, LLC, an  
18 unrelated third party.

19 (6) The bankruptcy court then terminated the stay again on  
20 March 13, 2003, this time to allow Magnolia Bearcat to pursue a  
21 state court action to evict Marinkovic.

22 (7) Marin and Marinkovic sued Magnolia Bearcat in Arizona  
23 Superior Court, alleging that Magnolia Bearcat purchased the  
24 Property with knowledge of, and subject to, Marin's and  
25 Marinkovic's claims to the Property.

26 (8) The Arizona court dismissed all claims in that action,  
27 including those against Magnolia Bearcat.

28 (9) The Court of Appeals of Arizona affirmed the superior

1 court's dismissal.

2 (10) Marinkovic was evicted.

3 "This Panel can only address actual cases and controversies."  
4 Tennant v. Rojas (In re Tennant), 318 B.R. 860, 867 (9th Cir. BAP  
5 2004) (quoting Omoto v. Ruggera (In re Omoto), 85 B.R. 98, 99-100  
6 (9th Cir. BAP 1988)). "Bankruptcy's mootness rule 'developed from  
7 the general rule that the occurrence of events which prevent an  
8 appellate court from granting effective relief renders an appeal  
9 moot, and the particular need for finality in orders regarding  
10 stays in bankruptcy.'" Onouli-Kona Land Co. v. Estate of Richards  
11 (In re Onouli-Kona Land Co.), 846 F.2d 1170, 1172 (9th Cir. 1988)  
12 (quoting Algeran, Inc. v. Advance Ross Corp., 759 F.2d 1421, 1423  
13 (9th Cir. 1985)).

14 From the events chronicled above, it is clear that  
15 Marinkovic's appeal (AZ-03-1047) of the order allowing Midland to  
16 evict him from the Property is moot because, even were there merit  
17 to Marinkovic's position, the Panel can not grant any effective  
18 relief to Marinkovic.

19 No stay pending appeal was entered, and the Property has been  
20 transferred by Midland to an unrelated third party who is not a  
21 party to this appeal. It is therefore of no moment that, at the  
22 time the bankruptcy court made its decision and that Marinkovic  
23 filed this appeal, there was a live controversy; that controversy  
24 no longer exists.

25 It is an inexorable command of the United  
26 States Constitution that the federal courts  
27 confine themselves to deciding actual cases  
28 and controversies. See U.S. CONST. art. III,  
§ 2, cl. 1. For a case to fall within the  
parameters of our limited judicial power, "it  
is not enough that there may have been a live  
case or controversy when the case was decided

1 by the court whose judgment we are reviewing."  
2 Burke v. Barnes, 479 U.S. 361, 363, 93 L. Ed.  
3 2d 732, 107 S. Ct. 734 (1987). Rather, Article  
4 III requires that a live controversy persist  
5 throughout all stages of the litigation. See  
6 Steffel v. Thompson, 415 U.S. 452, 459 n.10,  
7 39 L. Ed. 2d 505, 94 S. Ct. 1209 (1974) ("an  
actual controversy must be extant at all  
stages of review, not merely at the time the  
complaint is filed"). Where this condition is  
not met, the case has become moot, and its  
resolution is no longer within our  
constitutional purview.

8 Gator.com Corp. v. L.L. Bean, Inc., 398 F.3d 1125, 1128-29 (9th  
9 Cir. 2005). The most common reason that a bankruptcy appeal  
10 becomes moot is when "events may occur that make it impossible for  
11 the appellate court to fashion effective relief." Focus Media,  
12 Inc. v. Nat'l Broadcasting Co. Inc. (In re Focus Media Inc.), 378  
13 F.3d 916, 922 (9th Cir. 2004) (citing Bennett v. Gemmill (In re  
14 Combined Metals Reduction Co.), 557 F.2d 179, 187 (9th Cir.  
15 1977)).

16 Marinkovic persists in asserting his ownership rights to the  
17 Property.<sup>14</sup> After the sale of the Property at the trustee's sale  
18

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19 <sup>14</sup> Marinkovic and Marin have not, however, asserted ownership  
20 in consistent terms in this case. In 1999, Marinkovic alleged  
21 that he transferred the Property to Family Trust, although he did  
22 not issue a deed until March 2001. In 2000, the California  
23 Superior Court determined that the Property was community property  
24 to be sold in the divorce settlement of Marinkovic and Mrs.  
25 Marinkovic, although that court order was not obeyed. Although he  
26 clearly had transferred title in March, several months later in  
27 his chapter 13 case, Marinkovic asserted ownership of the  
28 Property. Immediately after the chapter 13 case was dismissed,  
Marin filed a chapter 11 case for the Family Trust, in which he  
claimed ownership of the Property for the Family Trust. Once the  
Family Trust case was dismissed, Marin attempted to transfer 85  
percent of the Property to Marinkovic and Mrs. Marinkovic, five  
percent to himself, with six percent remaining in the Family  
Trust. Despite this attempted transfer, in his opposition to the  
instant appeal, Marin claimed full ownership of the Property in  
his personal capacity and that Marinkovic was his employee as  
manager of the Property. Then, in the litigation in the summer of  
2003 against Magnolia Bearcat, Marin and Marinkovic asserted joint  
ownership of the Property.

1 to La Salle, he refused to vacate the premises. The bankruptcy  
2 court then terminated the stay so that Midland could evict him.  
3 Before a state court eviction order was obtained, La Salle sold  
4 the Property to a third party, Magnolia Bearcat. The bankruptcy  
5 court then granted stay relief so that Magnolia Bearcat could  
6 pursue Marinkovic's eviction.

7         Simply put, even if the bankruptcy court had abused its  
8 discretion in granting Midland stay relief to evict Marinkovic  
9 from the Property, our reversal of that order would be of no  
10 significance given later events. As the Ninth Circuit has  
11 instructed, "Where an automatic stay is lifted, the debtor's  
12 failure to obtain a stay pending appeal renders an appeal moot  
13 after assets in which the creditor had an interest are sold." Sun  
14 Valley Ranches, Inc., v. Equitable Life Ass. Society of the U.S.  
15 (In re Sun Valley Ranches, Inc.), 823 F.2d 1373, 1374 (9th Cir.  
16 1987) (citations omitted).

17         Admittedly, in Sun Valley, the court acknowledged a potential  
18 exception to mootness where real property is sold to a creditor  
19 who is a party to the bankruptcy case. Id. at 1375, citing  
20 Matter of Springpart Assocs., 623 F.2d 1377 (9th Cir. 1981). As  
21 the court explained, where the court has jurisdiction over the  
22 third party, "it would not be impossible for the Court to fashion  
23 some sort of relief." Id.

24         However, this narrow exception to the mootness rule will not  
25 help Marinkovic. The Property was sold to Magnolia Bearcat, which  
26 is not a creditor or otherwise a party to the bankruptcy case and  
27 Magnolia Bearcat has evicted Marinkovic. Under these facts, we  
28 conclude that this appeal (AZ-03-1047) is moot because we can not

1 fashion any effective relief for Marinkovic.<sup>15</sup>

2  
3 II.

4 The bankruptcy court did not err by denying  
5 Marinkovic's motion to extend time to appeal.

6 A.

7 Two preliminary matters must be considered before addressing  
8 the merits of this appeal.

9 First, this appeal (AZ-03-1093) was filed by Marin, then  
10 joined by Marinkovic. In an Order accompanying this Memorandum,  
11 we deny reconsideration of our previous decision rejecting Marin's  
12 standing to appeal the bankruptcy court's order, or otherwise  
13 granting Marin some role in this appeal. Our approach is  
14 consistent with the Ninth Circuit's instructions in its remand  
15 that this appeal proceed with Marinkovic as "the sole appellant."

16 Second, like the first appeal, there is a serious question  
17 whether the issues in this appeal are also moot. To the extent  
18 that the real purpose of this appeal is to review Marinkovic's  
19 claim that he owns the Property, that effort is futile because, as  
20 discussed above, the Panel cannot grant that relief. However, in  
21 our December 9, 2003, Order, we indicated that if Marinkovic  
22 prevailed in this limited appeal, he might have the right to  
23 reinstate his appeal as to one or more of the other orders  
24 referenced in his December 24, 2002, notice of appeal. We are  
25 unable to determine from the record all the issues that were  
26 raised in connection with those other orders, or if they may

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27 <sup>15</sup> To the extent that there could be a lingering concern that  
28 Magnolia Bearcat purchased the Property as part of a conspiracy  
with Midland/La Salle, this challenge to the buyer's good faith  
has been fully litigated in the Arizona superior court, which  
dismissed any claims based on such theories.

1 implicate aspects of Marinkovic's bankruptcy case other than  
2 ownership of the Property. For that reason, we proceed to an  
3 examination of the merits of the second appeal.

4 B.

5 The authority allowing the bankruptcy courts to extend the  
6 time for filing a notice of appeal is found in Fed. R. Bankr. P.  
7 8002(c).<sup>16</sup> Under this Rule, the bankruptcy court may grant  
8 extensions of time to file a notice of appeal, unless the order to  
9 be appealed falls into one of six categories.

10 In this case, the bankruptcy court first determined that the  
11 motion to extend time amounted to a de facto attempt to extend the  
12 time to appeal its August 29, 2002, order terminating the  
13 automatic stay in favor of Midland. The bankruptcy court  
14 observed that, under Rule 8002(c)(1)(A), it lacks authority to  
15 grant any extension of time to appeal a stay relief order.

16 We have not previously examined, nor are we aware of any  
17 decisions considering, whether a motion to reconsider a judgment  
18 granting relief from the automatic stay should be treated any

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19  
20 <sup>16</sup> The Rule provides that:

21 (1) The bankruptcy judge may extend the time for  
22 filing the notice of appeal by any party, unless the  
23 judgment, order or decree appealed from: (A) grants  
relief from the automatic stay under § 362, § 922,  
§1201, or § 1301. . . .

24 (2) A request to extend the time for filing a  
25 notice of appeal must be made by written motion filed  
26 before the time for filing a notice of appeal has  
expired, except that such a motion filed not later than  
27 20 days after the expiration of the time for filing a  
notice of appeal may be granted upon a showing of  
28 excusable neglect. An extension of time for filing a  
notice of appeal may not exceed 20 days from the  
expiration of the time for filing a notice of appeal  
otherwise prescribed by this rule or 10 days from the  
date of entry of the order granting the motion.

1 differently than the original order for stay relief for purposes  
2 of granting an extension of time to appeal that order. Though  
3 there are no other cases to consult, the Panel finds no error in  
4 the bankruptcy court's conclusion that granting the motion for  
5 extension of time under these circumstances would frustrate the  
6 purposes of disallowing extensions of time to appeal certain types  
7 of orders in bankruptcy cases. This prohibition was added to Rule  
8 8002(c) by a 1997 amendment. According to the Advisory Committee  
9 Note for that amendment, there was an important purpose for this  
10 change to the Rule:

11           The sub-division is amended . . . to prohibit  
12           any extension of time to file a notice of  
13           appeal - even if the motion for an extension  
14           is filed before the expiration of the original  
15           time to appeal - if the order appealed from  
16           grants relief from the automatic stay,  
17           authorizes the sale or lease of property, use  
18           of cash collateral, obtaining of credit, or  
19           assumption or assignment of an executory  
20           contract or unexpired lease under § 365, or  
21           approves a disclosure statement or confirms a  
22           plan. These types of orders are often relied  
23           upon immediately after they are entered and  
24           should not be reviewable on appeal after the  
25           expiration of the original period under Rule  
26           8002(a) and (b).

27 10 COLLIER ON BANKRUPTCY, App. 8002[4] (15th ed. rev. 2005) (Emphasis  
28 added).

29           Stay relief, in this and most cases, is granted by the  
30 bankruptcy court for "cause." See § 362(d)(1) (providing that the  
31 bankruptcy court "shall grant relief from the stay . . . for cause  
32 . . ."). In other words, to obtain stay relief, a party must  
33 demonstrate that the continuation of the automatic stay impairs  
34 some rights or interests of the moving party. Extensions of time  
35 beyond the normal ten-day period to appeal an order denying



1 reconsideration of a stay relief order operate to, effectively,  
2 continue the very stay the court has ordered annulled or  
3 terminated. Under such circumstances, there is a real potential  
4 for prejudice to the party for whom stay relief has been granted.  
5 As a result, the policy promoted by the prohibition in the Rule on  
6 extension of time for appeal of stay relief orders, i.e., prompt  
7 finality, could be easily frustrated if, as Marinkovic contends,  
8 the prohibition were inapplicable to appeals from orders denying  
9 reconsideration of orders dealing with the automatic stay.

10 Under these odd circumstances, we conclude the bankruptcy  
11 court did not abuse its discretion in denying the motion for  
12 extension of time to appeal because it feared to do so would  
13 frustrate the purpose of the limitations imposed on extensions by  
14 Rule 8002(c)(1)(A).

15 C.

16 We visit more familiar territory in evaluating whether the  
17 bankruptcy court abused its discretion in determining, under these  
18 facts, that Marinkovic had not demonstrated "excusable neglect" in  
19 failing to file a timely appeal. As we discussed in In re  
20 Warrick, in our review, we consider the factors established in  
21 Pioneer Inv. Servs. Co. v. Brunswick Assocs., Ltd., 113 S.Ct.  
22 1489, 1498 (1993). 278 B.R. at 184. These include: the danger of  
23 prejudice to the non-movant if an extension is granted; the length  
24 of the delay in seeking the extension, and the potential impact on  
25 the judicial proceedings; and the reason for the delay in  
26 appealing and whether the movant acted in good faith. Id. Pioneer  
27 requires us to look at all of these factors and balance the  
28 equities. Id. at 395.

1           Regarding prejudice to the non-movant, it would be clearly  
2 prejudicial to Midland and La Salle<sup>17</sup> if an extension of time to  
3 appeal was granted because it would now call into question the  
4 effect of the annulment of the automatic stay entered some four  
5 years ago on August 29, 2002. The length of Marinkovic's delay in  
6 seeking an extension is also significant in this case in that the  
7 real target of this motion, the stay annulment order, was entered  
8 over three months before the motion to extend time was filed.  
9 Finally, regarding the effect of allowing an extension on judicial  
10 proceedings, granting the motion would undoubtedly require  
11 additional proceedings.

12           It is difficult to judge the movant's good faith in these  
13 circumstances. In Pioneer, the Supreme Court has instructed us to  
14 judge good faith based on all the circumstances of a case. Id. at  
15 395. We have noted above Marin's inconsistency in representations  
16 in several courts regarding ownership of the Property. We also  
17 note that two bankruptcy courts have questioned the purpose of  
18 Marin's/Marinkovic's procedural maneuvering in these cases. The  
19 New York bankruptcy judge dismissed the Family Trust bankruptcy,  
20 observing that the Family Trust was a sham, "created for tax  
21 purposes and to keep . . . [Marin's] parents' property out of the  
22 hands apparently of his sister and to . . . divest his mother of  
23 property that was previously titled to her." The Arizona  
24 bankruptcy court in this case described Marin's and Marinkovic's

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25  
26           <sup>17</sup> Although the court may or may not have been aware of the  
27 re-sale of the Property to Magnolia Bearcat on January 31, 2003,  
28 granting the motion would also be prejudicial to Magnolia Bearcat  
which also has the right to rely on the validity of its purchase  
of property known to be under supervision of the courts.

1 actions as "an ongoing shell game played through the court system  
2 . . . to avoid paying the primary obligation owed to Midland and  
3 perhaps other creditors. . . . This type of behavior of 'playing  
4 fast and loose with the courts' will not be condoned." Hamilton  
5 v. State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th Cir. 2001).  
6 We therefore can understand the serious doubts of the bankruptcy  
7 court concerning the good faith of Marin and Marinkovic in  
8 bringing this motion.

9 The bankruptcy court noted that Marin (and Marinkovic, too,  
10 for that matter) was fully capable of monitoring the court's  
11 docket to determine the status of entry of orders regardless of  
12 whether, as Marin suggested, the orders were not logged, or the  
13 adversary proceeding file not available to the public.<sup>18</sup> We agree  
14 with this conclusion. Thus, Marin and Marinkovic must provide an  
15 adequate excuse for their failure to timely appeal. They have not  
16 done so.

17 The bankruptcy court also did not abuse its discretion in  
18 declining to find that Marin's alleged military service entitled  
19 him to the protection of the Soldiers and Sailors Civil Relief Act  
20 of 1940.<sup>19</sup> The Panel has examined the cases cited by the

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21  
22 <sup>18</sup> Although the bankruptcy court did not charge Marin with  
23 the special knowledge of an attorney, the court was presumably  
24 aware from information in the record that Marin is an inactive  
25 member of the New York bar. Additionally, even pro se litigants  
26 are required to monitor the case dockets. In re Sweet Transfer &  
Storage, Inc., 896 F.2d 1189, 1193 (9th Cir. 1990).

27 <sup>19</sup> We note that on at least one occasion, Marin's military  
28 service duties did not prevent him from attending court. Marin  
alleged in his November 26, 2002, Opposition of Creditor to Motion  
of Bank for Eviction of Debtor, "Bank counsel already caused the  
present mess and one year delay by insisting on a hearing and then  
selling the property on January 25 [2002] when this soldier was on  
active military duty." The Transcript of Motion Hearing Before

(continued...)

1 bankruptcy court and notes that there are conflicts in those cases  
2 as to whether an individual on "active duty in the reserves" is  
3 entitled to protection under the act. Bowen v. United States, 292  
4 F.3d 1383, 1386 (Fed. Cir. 2002) (deals with National Guardsmen  
5 rather than active reserves). However, we cannot reverse unless  
6 we have a definite and firm conviction that the bankruptcy court  
7 below committed a clear error of judgment in the conclusions it  
8 reached upon a weighing of the relevant factors. The bankruptcy  
9 court was simply not persuaded that Marin's military activities  
10 prevented him from acting sooner, and we do not believe this  
11 conclusion represents an abuse of discretion.

12 The bankruptcy court adequately considered the Pioneer  
13 factors in this case, and in the exercise of its discretion,  
14 decided the motion for an extension of time should be denied. We  
15 agree.

#### 16 CONCLUSION

17 The orders of the bankruptcy court are AFFIRMED.  
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22  
23  
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26 <sup>19</sup>(...continued)

27 Honorable Stephen D. Gerling, United States Bankruptcy Judge, for  
28 January 25, 2002, shows that Marin was present in court on January  
25, 2002, and spoke on the record. Tr. Hr'g 3 (Appearance) & 4:25  
- 5:1 (verbally entering his appearance) (January 25, 2002).