

NOV 17 2005

NOT FOR PUBLICATION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**

6	In re)	BAP No. CC-04-1460-BMaMc
)	
7	JOHN MATTHEW ELLIS,)	
)	Bk. No. LA-02-12542-BB
8	Debtor.)	
	_____)	
9	JOHN MATTHEW ELLIS,)	
)	
10	Appellant,)	
)	
11	v.)	M E M O R A N D U M¹
)	
12	KHUSROW ROOHANI,)	
)	
13	Appellee.)	
14	_____)	

Argued and Submitted on September 28, 2005 at
Pasadena, California

Filed - November 17, 2005

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

Honorable Sheri Bluebond, Bankruptcy Judge, Presiding

Before: BRANDT, MARLAR and McMANUS², Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

² Hon. Michael S. McManus, Chief Bankruptcy Judge for the Eastern District of California, sitting by designation.

1 Approximately one week after John Ellis ("debtor" or "Ellis") filed
 2 his petition for chapter 11³ relief, a secured creditor foreclosed and
 3 sold real property in which Ellis claimed an interest, without obtaining
 4 relief from stay. The buyer then sold the property to appellee Khusrow
 5 Roohani, after which Ellis' case was dismissed for bad faith.

6 Ellis then filed a quiet title action in Nevada state court, which
 7 held that the sale was a § 362(a) violation and void; Roohani appealed
 8 that order. More than two years post-petition, the bankruptcy court
 9 reopened the case on Roohani's motion, and granted his motion to annul
 10 the stay.

11 Ellis timely appealed the order annulling the stay. Meanwhile, on
 12 appeal, the state court judgement was reversed and vacated. Roohani
 13 then sold the property to a third party. The appeal is moot and Ellis
 14 lacks standing. We DISMISS.

15 16 I. FACTS

17 This appeal concerns the post-petition sale of a 4.96 acre parcel
 18 of undeveloped land in Clark County, Nevada (the "Property").

19 Ellis' wife, Debra Escano, and her sister inherited the Property in
 20 1998. Escano bought out her sister's interest and refinanced, but
 21 defaulted on the loan to the secured creditor, FSDRH Trust. In an
 22 effort to forestall a nonjudicial foreclosure action by Nevada Trust
 23 Deed Services, Inc. ("NTDS"), Escano filed three bankruptcy cases in
 24 2000-01, all of which were dismissed, the last on 31 January 2002.⁴

25
 26 ³ Absent contrary indication, all chapter and section
 27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330; all
 "Rule" references are to the Federal Rules of Bankruptcy Procedure.

28 ⁴ Chapter 7, LA-00-27423, dismissed 19 October 2000; Chapter
 13, LA-01-19658, dismissed 29 May 2001; and Chapter 13, LA-01-47301,
 dismissed 31 January 2002.

1 On 3 January 2002, while her third case was pending, Escano
2 executed a grant deed to herself and Ellis as joint tenants, which was
3 recorded with the Clark County, Nevada, Recorder on 28 January 2002.
4 One day after the deed was recorded, Ellis filed a "face sheet" or
5 "skeleton" chapter 11 petition. Ellis had previously filed a chapter 13
6 case on 20 February 2001, LA-01-14318, which was dismissed less than
7 three months later for failure to make plan payments, with a 180-day bar
8 to refiling. That case did not involve the Property, as he then had no
9 interest in it.

10 In his schedules in the chapter 11, of which we take judicial
11 notice as they were omitted from the excerpts of record on appeal, Ellis
12 claimed a "fee interest" in the Property, which he valued at \$890,000.
13 He listed FSDRH Trust as having a secured claim of \$405,450.

14 On 6 February 2002, approximately one week after Ellis's petition,
15 and after dismissal of Escano's third case, NTDS held its nonjudicial
16 foreclosure sale. Unlimited Holdings, Inc. ("UHI"), the successor
17 beneficiary of a note and deed of trust on a loan made by FSDRH Trust to
18 Escano, purchased the Property for \$174,682.95, and recorded a Trustee's
19 Deed upon sale on 12 February 2002, and a corrected deed on 27 February
20 2002. On 22 April 2002, UHI sold the Property to Roohani for \$800,000,
21 apparently in his capacity as trustee of the Khusrow Roohani Family
22 Trust.

23 The next day, the bankruptcy court, finding bad faith, granted the
24 U.S. Trustee's contested motion to dismiss Ellis' case with a 180-day
25 bar to refiling. Order of Dismissal, 23 April 2002. The case was
26 closed in May 2002, and there was no action in the bankruptcy case for
27 over two years.

28

1 In July of 2002, Ellis and Escano filed a quiet title action
2 against NTDS, UHI, and Roohani in District Court, Clark County, Nevada,
3 asserting that the automatic stay was violated by the post-petition
4 foreclosure sale to UHI and later transfer to Roohani. On cross-motions
5 for summary judgment, the state court ruled that the sale of the
6 Property was void as a § 362 violation:

7
8 This transfer [Escano to Ellis/Escano] also took place
9 under the Bankruptcy Court's protection. Defendants could have
10 challenged the transfer when they were notified of the Ellis
11 Chapter 11 bankruptcy, however, Defendants did not challenge
12 the stay. Instead Defendants chose not to avail themselves of
13 that opportunity. This Court finds that automatic stay was in
14 effect on February 6, 2002 when the foreclosure took place .

15

16 Therefore, the Trustee's sale having taken place on a
17 date when the automatic stay was in place, this Court finds
18 that the Trustee sale is void ab initio.

19 All parties seem to agree and the Court finds that
20 Defendant Roohani is a good faith purchaser who did not know
21 about the bankruptcy or the automatic stay. [D]espite
22 Roohani's good faith, the property still belongs to Ellis and
23 Escano as this Court has found the Foreclosure sale to be void
24 ab initio.

25 Decision and Order Re Plaintiff's Motion for Summary Judgment and
26 Defendant's Counter-Motion for Summary Judgment, No. 453664, 5 November
27 2003 ("Summary Judgment Order") at 9-11. The State Court also concluded
28 that it "has no ability to lift a bankruptcy stay." Id. at 9. Roohani
29 appealed the Summary Judgment Order.

30 Eight months after entry of the summary judgment, in July 2004, the
31 bankruptcy court granted Roohani's motion to reopen the chapter 11 case,
32 and Roohani, joined by NTDS, moved to annul the stay. Ellis objected,
33 arguing prejudicial delay in requesting annulment and that annulment was
34 unwarranted on a balancing of equities test. The court continued the
35 motion to allow Roohani the opportunity to justify his delay.

1 Roohani filed a Supplemental Memorandum and Affidavit in which he
2 averred that he had previously purchased the two adjacent parcels, so
3 that he owned almost 15 contiguous acres, which he intended to sell to
4 a developer. He also denied having notice of Ellis' bankruptcy and
5 claimed interest in the Property, and was unaware that the foreclosure
6 was a stay violation. To explain the delay, he outlined his defense of
7 the State Court litigation, the appeal, and a failed mediation from June
8 2003 to June 2004, and finally returning to bankruptcy court to seek
9 annulment. After a contested hearing, the bankruptcy court found:

10 [A]lthough there was some delay here, a significant amount of
11 delay, I think that delay has been explained. . . . I could
12 understand why they might have proceeded the way that they
13 did, and I don't think it was an attempt to drag their feet or
14 to refrain from coming to seek relief from . . . the
15 appropriate court.

16 But more significantly here too, I don't see a prejudice
17 of the kind that I think would be necessary here to make the
18 delay meaningful. So the delay all by itself is not
19 necessarily problematic if it hasn't created problems as a
20 result, and I don't really see a problem created here or a
21 prejudice created here for the Debtor by virtue of the delay,
22 and certainly the Debtor could have brought this to this
23 Court's attention as well sooner

24 Transcript, 2 September 2004, at 2-3. The court granted the annulment
25 with regard to the Property, such that no automatic stay arose
26 as of the commencement of this bankruptcy case with regard to
27 the Property and, therefore, that no conduct of any person or
28 entity in exercising any rights or remedies with regard to the
Property or with regard to the Debtor in connection with the
Property could constitute a violation of the automatic stay.

Order, 2 September 2004.

 Ellis appealed the annulment order, but sought no Rule 8005 stay
pending appeal. Thereafter, Roohani moved in State Court to vacate the
Summary Judgment Order, based on the annulment. The State Court granted
that motion in February 2005, vacated its prior order, entered summary
judgment quieting title in favor of Roohani, and expunged the lis

1 pendens. Ellis did not appeal. In March 2005, Roohani sold the
2 Property to Richmond American of Nevada, Inc., which is not a party to
3 this appeal. Ellis has not contested the validity of that sale.

4 In January 2005, Roohani moved to dismiss this appeal as moot, and
5 in March renewed that motion, citing Algeran, Inc. v. Advance Ross
6 Corp., 759 F.2d 1421, 1423 (9th Cir. 1985) (comprehensive change in
7 circumstances renders it inequitable for the court to consider the
8 merits) and In re Onouli-Kona Land Co., 846 F.2d 1170, 1171-72 (9th Cir.
9 1988) ("mootness rule [applies] regardless of whether a purchaser has
10 taken irreversible steps following the sale"). Ellis opposed the
11 motion. Our motions panel denied both motions, "without prejudice to
12 Appellee renewing his mootness claim in his brief." Order Denying
13 Motion for Reconsideration, 1 June 2005.

14 15 **II. ISSUES**

- 16 A. Whether this appeal should be dismissed as moot.
17 B. Whether this appeal should be dismissed for lack of standing.
18

19 **III. JURISDICTION**

20 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334 and
21 § 157(a), (b) (1), and (b) (2) (G) and (K). Although we conclude we lack
22 jurisdiction over this appeal, our jurisdiction over bankruptcy appeals
23 generally is under 28 U.S.C. § 158(c).

24 Roohani has raised the issue of mootness but not standing. We have
25 an independent duty to consider jurisdictional issues. In re Aheong,
26 276 B.R. 233, 238-39 (9th Cir. BAP 2002).

1 **IV. DISCUSSION**

2 A. Mootness

3 Article III of the U.S. Constitution limits the judicial power of
4 federal courts to cases in which an actual controversy exists. There is
5 no justiciable case or controversy presented for appeal if the matter
6 has become moot.

7 The general rule of mootness focuses on the court's ability to
8 fashion effective relief. In re Baker & Drake, Inc., 35 F.3d 1348,
9 1351-52 (9th Cir. 1994); In re Sierra Pacific Broadcasters, 185 B.R.
10 575, 576 n.3 (9th Cir. BAP 1995); In re Gotcha Int'l, L.P., 311 B.R.
11 250, 253-55 (9th Cir. BAP 2004).

12 "Even in cases where the court had jurisdiction at one point in
13 time, changed circumstances may cause an appeal to become moot." Goelz
14 and Watts, California Practice Guide: Federal Ninth Circuit Civil
15 Appellate Practice, Ch. 10-E, 10:177 (citation omitted). That has
16 occurred here: the State Court, in an unappealed final judgment, has
17 cancelled the deed conveying the Property to Ellis, and entered summary
18 judgment quieting title in Roohani's name. And we must give that
19 judgment preclusive effect:

20 When the bankruptcy court has lifted the stay, federal courts
21 have given subsequent state decisions full faith and credit,
22 'as they have by law or usage in the courts of such State.'
23 28 U.S.C. § 1738; see [In re Highway Truck Drivers & Helpers
24 Local Union #107], 888 F.2d [293,] 299 [(3d Cir. 1989)]
25 (holding that, once the stay was lifted, the state court was
26 free to proceed and its decision on the merits was binding on
the bankruptcy court, but noting that the proceedings would
have been void if bankruptcy court consent had not been
obtained). In non-core proceedings that do not implicate
substantive rights granted under title 11 or affect the
administration of the bankruptcy case, the normal rules of
preclusion, including the Rooker-Feldman doctrine, apply.

27 In re Gruntz, 202 F.3d 1074, 1084 (9th Cir. 2000) (en banc). See also
28 In re Diamond, 285 F.3d 822 (9th Cir. 2002) (affirming the bankruptcy

1 court in giving preclusive effect to a state court judgment entered
2 after relief from stay), and In re Mirzai, 271 B.R. 647, 655 (C.D. Cal.
3 2001), aff'd, 36 Fed. Appx. 619 (9th Cir. 2002) (because bankruptcy
4 court lifted the stay, subsequent state court judgment did not violate
5 the stay and must be given full faith and credit).

6 We cannot render effective relief. Even if the foreclosure sale
7 were void under In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992), and
8 we were to reverse, we cannot undo the transfer to an entity not a party
9 to this appeal.

10
11 B. Standing

12 For the same reason, Ellis lacks standing: as he no longer has an
13 interest in the Property, reversal of the annulment order would not
14 benefit him. He therefore lacks an economic interest in the outcome of
15 the appeal and is not a person aggrieved:

16 An appellant is aggrieved if "directly and adversely affected
17 pecuniarily by an order of the bankruptcy court"; in other
18 words, the order must diminish the appellant's property,
increase its burdens, or detrimentally affect its rights.

19 In re P.R.T.C., Inc., 177 F.3d 774, 777 (9th Cir. 1999), quoting In re
20 Fondiller, 707 F.2d 441, 442 (9th Cir. 1983).

21 We cannot fashion effective relief, as Ellis did not obtain a stay
22 pending appeal, and in addition to the Property's transfer to a third
23 party, the Nevada court's judgment voiding the deed under which Ellis
24 claimed his interest and quieting title in Roohani is entitled to full
25 faith and credit.

1 **V. CONCLUSION**

2 Accordingly, this appeal is moot. Moreover, because Ellis has no
3 remaining interest in the Property, he no longer has standing to
4 prosecute this appeal.

5 We DISMISS for lack of jurisdiction.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28