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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NOT FOR PUBLICATION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

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In re:	)	BAP No. CC-04-1434-MaTK
	)	
MERAN HAMILTON,	)	Bk. No. LA 04-24924-AA
	)	
Debtor.	)	
_____	)	
	)	
MERAN HAMILTON,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MEMORANDUM<sup>1</sup></b>
	)	
CHO CHO HERNANDEZ,	)	
	)	
Appellee.	)	
_____	)	

Argued and Submitted on May 12, 2005  
at Pasadena, California

Filed - August 1, 2005

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

Honorable Alan M. Ahart, Bankruptcy Judge, Presiding.

\_\_\_\_\_  
Before: MARLAR, TCHAIKOVSKY<sup>2</sup> and KLEIN, Bankruptcy Judges.

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

<sup>2</sup> Hon. Leslie J. Tchaikovsky, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

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1 **INTRODUCTION**

2  
3 In this appeal, a chapter 13<sup>3</sup> debtor seeks to reverse the  
4 bankruptcy court's order granting relief from the automatic stay  
5 on the debtor's residence. The court granted the motion because  
6 the property had been sold at a pre-petition foreclosure sale, and  
7 therefore debtor was not the owner when the case was filed.  
8 Because debtor was no longer the owner of the property, debtor had  
9 no equity in the residence and it was not necessary to an  
10 effective reorganization. As the bankruptcy court did not abuse  
11 its discretion, we AFFIRM.

12  
13 **FACTS**

14  
15 Meran Hamilton ("Hamilton") was the record title owner of  
16 real property located at 7514 West 90th Street, Los Angeles,  
17 California ("Property"). The first and second deeds of trust on  
18 the Property were held by Chase Manhattan Mortgage Company  
19 ("Chase"), and the third deed of trust was held by Beneficial.

20 Prior to the petition date, both of the Chase deeds of trust  
21 were in non-judicial foreclosure proceedings, with a combined  
22 trustee's sale date set for July 6, 2004. Hamilton retained  
23 Allstate Home Loans ("Allstate") to negotiate a postponement of  
24 the Chase foreclosures so that Hamilton could obtain refinancing  
25 and cure the Chase defaults. On June 25, 2004, Chase faxed a  
26 letter to Allstate's representative stating that the Chase  
27 representative had "instructed [the] foreclosure dept. to postpone

28  

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<sup>3</sup> Unless otherwise indicated, all chapter, section and  
rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330,  
and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 the foreclosure sale until 7/9/04 on the above loan."  
2 Importantly, the fax referenced only loan number 15944648, which  
3 was one of the two notes held by Chase.

4 However, the foreclosure sale on Chase's *second* deed of trust  
5 went forward, and took place on July 6, 2004. The Property was  
6 sold to Cho Cho Hernandez ("Hernandez") for \$120,157.86, subject  
7 to the senior Chase deed of trust in the amount of \$435,093.93.  
8 The Trustee's Deed Upon Sale was recorded with the Los Angeles  
9 County Recorder's Office on July 16, 2004.

10 Hamilton filed his Chapter 13 petition on July 8, 2004. On  
11 August 4, 2004, Hernandez filed a Motion for Relief from the  
12 Automatic Stay, in order to forcibly evict Hamilton and his  
13 family, on two grounds: (1) under § 362(d)(1) for cause because  
14 Hernandez acquired the Property at a pre-petition foreclosure sale  
15 and thereafter timely recorded the Trustee's Deed Upon Sale; and  
16 (2) under §§ 362(d)(2)(A) and (B) because Hamilton had no equity  
17 in the Property and because the Property was not necessary to an  
18 effective reorganization.

19 On the date scheduled for the hearing on the Motion for  
20 Relief, Hamilton responded, asserting the Property was necessary  
21 for an effective reorganization and that the title was in dispute.  
22 On the same date, Hamilton filed an adversary proceeding against  
23 Chase, Hernandez, Lonestar Mortgagee Services and Allstate to  
24 avoid the pre-petition transfer of the Property. The record  
25 reflects that at the hearing on the Motion for Relief, the  
26 bankruptcy judge was made aware of the recently filed adversary  
27 proceeding.

28 Also on the same date, Hernandez's Motion for Relief was

1 heard by the bankruptcy court. The Court granted the Motion for  
2 Relief pursuant to §§ 362(d)(1) and (2).

3  
4 **ISSUES**

- 5
- 6 1. Whether cause existed under § 362(d)(1) for the Court to  
7 grant relief from the stay to allow appellee to proceed  
8 with an unlawful detainer action against Hamilton, even  
9 though Hamilton had a pending adversary proceeding to  
10 avoid the transfer to Hernandez?
- 11
- 12 2. Whether cause existed under § 362(d)(2) for the Court to  
13 grant relief from the stay to allow appellee to proceed  
14 with an unlawful detainer action against Hamilton, even  
15 though Hamilton had a pending adversary proceeding to  
16 avoid the transfer to Hernandez?

17  
18 **STANDARD OF REVIEW**

19

20 The panel reviews the bankruptcy court's order granting a  
21 motion for relief from the automatic stay for abuse of discretion.  
22 In re Berg, 192 B.R. 557, 560 (9th Cir. BAP 1996). Under the  
23 abuse of discretion standard, the panel will not reverse unless it  
24 is "definitely and firmly convinced that the bankruptcy court  
25 committed a clear error of judgment." Warrick v. Birdsell (In re  
26 Warrick), 278 B.R. 182, 184 (9th Cir. BAP 2002).

1 **DISCUSSION**

2  
3 Hamilton argues that the unique circumstances of the case  
4 compelled a denial of the Motion for Relief from the Automatic  
5 Stay. Hamilton asserts that (1) Hernandez's title to the Property  
6 was flawed because it was obtained as the result of the misleading  
7 acts and misrepresentations of Chase and that Hamilton had filed  
8 an adversary proceeding seeking to quiet title prior to the  
9 hearing on the Motion for Relief from Stay; (2) the Property was  
10 necessary for an effective reorganization; and (3) there was  
11 equity in the Property.

12 Hernandez maintains that the title to the Property had passed  
13 to her at the time of the bankruptcy filing, and therefore the  
14 bankruptcy court had cause to grant the Motion. Hernandez also  
15 asserts that Hamilton did not provide a plausible rationale for  
16 his preferential and fraudulent transfer theories. Finally,  
17 Hernandez argues that there was cause to grant the Motion for  
18 Relief because the Property was not necessary for an effective  
19 reorganization and Hamilton did not have any equity in the  
20 Property, since Hamilton had been divested of title when the  
21 foreclosure sale occurred and Hernandez's money had been paid to  
22 the foreclosing creditor.

23  
24 **A. Section 362(d)(1)**

25  
26 Section 362(d)(1) provides that a bankruptcy court can grant  
27 relief from the stay "for cause, including lack of adequate  
28 protection of an interest in property of such party in interest."

1 "Cause" has no clear definition and is determined on a case-by-  
2 case basis. In re MacDonald, 755 F.2d 715, 717 (9th Cir. 1985).  
3 California Civil Code § 2924h(c) provides, in pertinent part:  
4 "[T]he trustee's sale shall be deemed final upon the acceptance of  
5 the last and highest bid, and shall be deemed perfected as of  
6 8 a.m. on the actual date of sale if the trustee's deed is  
7 recorded within 15 calendar days after the sale. . . ." The  
8 foreclosure sale took place on July 6, 2004, at which point  
9 Hernandez presumptively gained legal and equitable title to the  
10 Property. Hernandez filed the Trustee's Deed Upon Sale on July  
11 16, 2004, within the 15 day relation-back period allowed by the  
12 statute. Therefore, because the timely recordation retroactively  
13 vests title as of 8:00 a.m. on the date of the sale, Hernandez  
14 held both legal and equitable title to the Property as of 8 a.m.  
15 on July 6, 2004, two days before Hamilton filed for bankruptcy.  
16 In re Bebensee-Wong, 248 B.R. 820, 823 (9th Cir. BAP 2000)  
17 (pursuant to § 2924h(c), the trustee's sale becomes perfected at 8  
18 a.m. on the day of the sale. When the trustee's sale is held  
19 before the debtor files bankruptcy, perfection is deemed to have  
20 occurred before the filing, even if the buyer of the property  
21 records post-petition.). See also In re Engles, 193 B.R. 23 (S.D.  
22 Cal. 1996) ("This fifteen day window effectively provides  
23 purchasers with a guarantee that even if a deed is not recorded  
24 until day fifteen, they will still hold title superior to those  
25 who record first, including debtors or their trustees in  
26 bankruptcy").  
27 Since Hernandez presumptively held title to the Property as  
28 of July 6, 2004, Hamilton's interest in the Property was

1 eliminated pre-petition. The Property did not become property of  
2 his estate under § 541 because Hamilton had no interest in the  
3 Property as of the date of filing his bankruptcy petition. Butner  
4 v. United States, 440 U.S. 48 (1979) (property rights are  
5 determined by reference to state law). Since the Property was not  
6 property of Hamilton's bankruptcy estate, it was not subject to  
7 the automatic stay. Therefore, the bankruptcy court had "cause"  
8 for lifting the automatic stay under § 362(d)(1), in order to  
9 enable Hernandez to proceed with eviction.

10 However, the limitations of the lift stay procedure must be  
11 made clear. Relief from stay merely authorizes the putative owner  
12 to pursue an unlawful detainer proceeding in a nonbankruptcy court  
13 of competent jurisdiction. Since the bankruptcy court was correct  
14 in lifting the stay, it is now possible for Hernandez to pursue an  
15 unlawful detainer proceeding. On the other hand, Hamilton is free  
16 to contest the validity of the foreclosure sale under California  
17 law. This stay relief litigation does not affect the ability of  
18 Hamilton to rely on state law in defense of the merits of an  
19 unlawful detainer proceeding. But that collateral dispute is not  
20 necessarily pertinent to stay relief proceedings.

21 As to Hamilton's adversary proceeding against Chase,  
22 Hernandez, Lonestar Mortgagee Services and Allstate, which seeks  
23 to avoid the pre-petition transfer of the Property, it is not  
24 permissible to use a stay relief motion to resolve such underlying  
25 substantive questions. Johnson v. Righetti (In re Johnson), 756  
26 F.2d 740 (9th Cir. 1985) ("Stay litigation is limited to issues of  
27 the lack of adequate protection, the debtor's equity in the  
28 property, and the necessity of the property to an effective

1 reorganization. Hearings on relief from the automatic stay are  
2 thus handled in a summary fashion. The validity of the claim or  
3 contract underlying the claim is not litigated during the hearing.  
4 The action seeking relief from the stay is not the assertion of a  
5 claim which would give rise to the right or obligation to assert a  
6 counterclaim. Thus, the state law governing contractual  
7 relationships is not considered in stay litigation." [citations  
8 omitted]).

9 Therefore, addressing the underlying claims of Hamilton's  
10 adversary proceeding is unnecessary. All that is material here is  
11 that a foreclosure sale occurred in circumstances that  
12 presumptively passed valid title to Hernandez, which property  
13 Hamilton continued to occupy. Hamilton's possessory interest in  
14 the Property was protected by the automatic stay, and it is solely  
15 this possessory interest that was the appropriate subject for stay  
16 relief.

17

18 **B. Section 362(d)(2)**

19

20 Section 362(d)(2) provides relief from the automatic stay  
21 when the debtor has no equity in the property and the property is  
22 not necessary to an effective reorganization. Both elements of  
23 the test must be met. See, e.g., In re Egea, 167 B.R. 226 (Bankr.  
24 D.Kan. 1994).

25

26 1. Debtor has No Equity in the Property

27

28 The party requesting relief from the stay has the burden of



1 proof on the issue of the debtor's equity in the property.  
2 Section 362(g). Hamilton asserts that Hernandez did not meet her  
3 burden in proving that Hamilton did not have equity in the  
4 Property. Hernandez claims that equity is defined as "the value,  
5 above all secured claims against the property, that can be  
6 realized from the sale of the property for the benefit of the  
7 unsecured creditors." Stephens Industries, Inc. v. McClung, 798  
8 F.2d 386, 392 (6th Cir. 1986); In re Mellor, 734 F.2d 1396, 1400  
9 n.2 (9th Cir. 1984). Hernandez contends that after deducting  
10 Hamilton's secured claims and the homestead exemption, there would  
11 be nothing left for any unsecured creditors. The Ninth Circuit  
12 has held that equity is "the amount or value of a property above  
13 the total liens or charges." Stewart v. Gurley, 745 F.2d 1194,  
14 1196 (9th Cir. 1984) (citations omitted).

15 But both parties are missing the point. Here, Hamilton did  
16 not have equity in the Property at the time of filing his  
17 bankruptcy petition because, as stated above, *he no longer held*  
18 *the title* to the Property as of the date of filing. The Property  
19 was purchased by Hernandez prior to Hamilton's bankruptcy filing.  
20 Thus any equity that Hamilton had in the Property before the  
21 foreclosure sale was lost when Hernandez purchased it. Therefore,  
22 Hamilton did not have any equity in the Property for purposes of  
23 stay relief analysis.

24

25 2. The Property is Not Necessary for an Effective  
26 Reorganization

27 Hamilton asserts that the Property is necessary for an  
28 effective reorganization because he lives in the Property with his

1 wife and two minor sons. Again, because Hamilton did not own the  
2 Property as of the date of filing his bankruptcy petition, the  
3 property cannot be necessary for Hamilton's effective  
4 reorganization.

5  
6 **CONCLUSION**  
7

8 The bankruptcy court did not abuse its discretion in lifting  
9 the automatic stay under §§ 362(d)(1) and (2). There was cause  
10 for lifting the stay because Hernandez recorded the Trust Deed  
11 within the fifteen days allowed by § 2924h, thereby legally  
12 divesting Hamilton of title before Hamilton filed bankruptcy.  
13 Hamilton had no interest in the Property as of the date of the  
14 filing of his petition. For the same reasons, the bankruptcy  
15 court did not abuse its discretion in lifting the stay under  
16 § 362(d)(2) because Hamilton lacked equity in the Property and the  
17 Property was not necessary to an effective reorganization since  
18 Hamilton did not have a sufficient interest in the Property as of  
19 the petition date. Without ownership, the Property could not  
20 support an effective reorganization. Therefore, we AFFIRM the  
21 bankruptcy court's decision granting relief from the automatic  
22 stay.<sup>4</sup>  
23  
24  
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27 <sup>4</sup> Our decision is limited to the question whether the  
28 appellee should be allowed to pursue an unlawful detainer action  
in a court of competent jurisdiction and expresses no view about  
the merits of such litigation, the ultimate viability of the  
appellee's title, or the validity of the adversary proceeding  
filed by the debtor.