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

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

1 In re: ) BAP No. NC-12-1470 PaDJu  
2 )  
3 MOHAMED S. ALAKOZAI, and ) Bk. No. 12-43746-WJL  
4 DEBRA ANN ALAKOZAI, )  
5 )  
6 Debtors. )  
7 )  
8 \_\_\_\_\_ )  
9 DEBRA A. ALAKOZAI, )  
10 )  
11 Appellant, )  
12 ) O P I N I O N  
13 v. )  
14 )  
15 CITIZENS EQUITY FIRST CREDIT )  
16 UNION, )  
17 )  
18 Appellee. )  
19 )  
20 \_\_\_\_\_ )

Submitted Without Oral Argument<sup>1</sup>

Filed - October 2, 2013

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

Honorable William J. Lafferty, Bankruptcy Judge, Presiding

Appearances: Phyllis Voisenat on the brief for appellant Debra  
Ann Alakozai; James E. Burbott on the brief for  
appellee Citizens Equity First Credit Union.

Before: PAPPAS, DUNN and JURY, Bankruptcy Judges.

<sup>1</sup> After examining the briefs and record, in an order entered July 2, 2013, the Panel unanimously determined that this appeal is suitable for submission without oral argument pursuant to Fed. R. Bankr. P. 8012. See Ninth Circuit BAP R. 8012-1.

1 PAPPAS, Bankruptcy Judge:

2

3 Appellant Debra Ann Alakozai ("Mrs. Alakozai") appeals the  
4 bankruptcy court's order granting a motion for relief from the  
5 automatic stay filed by creditor Citizens Equity First Credit  
6 Union ("CEFCU"). The stay relief order permitted CEFCU to  
7 continue its prosecution of an unlawful detainer action in state  
8 court to remove Mrs. Alakozai and her husband, Mohamed S. Alakozai  
9 ("Mr. Alakozai", and collectively "the Alakozais" ), from their  
10 home following a foreclosure. We agree with the bankruptcy court  
11 that an in rem order entered in a prior bankruptcy case was  
12 effective as to the real property in question, and thus the  
13 automatic stay did not prohibit the foreclosure, even though it  
14 occurred during the pendency of a later bankruptcy case filed by  
15 Mrs. Alakozai. As a result, the bankruptcy court's grant of stay  
16 relief in favor of CEFCU in this later bankruptcy case was proper.  
17 We therefore AFFIRM.

18

#### FACTS

19 Mrs. Alakozai and Mr. Alakozai, at all relevant times, were  
20 spouses. On June 22, 2005, Mr. Alakozai executed a promissory  
21 note secured by a deed of trust on real property located in  
22 Dublin, California ("the Property"). The payee on the note and  
23 the beneficiary of the deed of trust was Valley Credit Union,  
24 CEFCU's predecessor in interest.<sup>2</sup> Mrs. Alakozai's name does not  
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26 <sup>2</sup> The beneficiary and original lender was Valley Credit  
27 Union, which merged with CEFCU in May 2011. CEFCU was the  
28 surviving entity and, via the merger, was assigned all of Valley  
Credit Union's existing contractual rights and obligations.  
Although Mrs. Alakozai raised a standing issue regarding CEFCU,  
the bankruptcy court rejected her challenge. She has not  
challenged CEFCU's standing in this appeal.

1 appear in the deed of trust; however the payments on the secured  
2 debt were made from community property funds. It is undisputed  
3 that, as a result of the payments, Mrs. Alakozai acquired a  
4 community property interest in the Property.

5 When Mr. Alakozai defaulted on the note payments, the credit  
6 union caused a default notice to be recorded, and a trustee's sale  
7 was scheduled. Following this default, the Alakozais filed  
8 several bankruptcy cases, all in the Northern District of  
9 California.

10 On December 4, 2008, Mr. Alakozai filed a chapter 13<sup>3</sup>  
11 petition commencing Case No. 08-47190 (the "First Case"). No plan  
12 was confirmed, and this case was dismissed on May 28, 2009.

13 On January 9, 2010, Mr. Alakozai and Mrs. Alakozai filed a  
14 joint chapter 7 petition commencing Case No. 10-40236 (the "Second  
15 Case"). The Alakozais received a discharge in the Second Case on  
16 April 9, 2010.

17 On April 16, 2010, the Alakozais filed a chapter 13 petition,  
18 Case No. 10-44319 (the "Third Case"). Again, no plan was  
19 confirmed, and that case was dismissed on September 22, 2010.

20 On November 15, 2010, Mr. Alakozai filed yet another chapter  
21 13 petition initiating Case No. 10-73176 (the "Fourth Case"). In  
22 that case, on December 28, 2010, the credit union filed an "In Rem  
23 Motion for Relief from the Automatic Stay" in which it sought  
24 relief from the stay to foreclose the deed of trust on the  
25 Property under § 362(d)(4). The motion was ultimately granted on  
26 January 26, 2011, and in the order, the bankruptcy court specified  
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28 <sup>3</sup> Unless otherwise indicated, all chapter and section  
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
"Rule" references are to the Federal Rules of Bankruptcy  
Procedure.

1 that the order was binding on Mr. Alakozai, and as to the  
2 Property, for 180 days from the date of entry of the order (the  
3 "In Rem Order"). The In Rem Order was not appealed. On February  
4 22, 2011, the bankruptcy court dismissed the Fourth Case.  
5 Approximately one month later, the In Rem Order was recorded in  
6 the Alameda County Recorder's Office.

7 On July 20, 2011, Mrs. Alakozai filed yet another chapter 13  
8 petition commencing Case No. 11-47681 (the "Fifth Case"). Later  
9 that same day, a trustee's sale to foreclose the deed of trust  
10 occurred at which CEFCU purchased the Property. The Fifth Case  
11 was dismissed by the bankruptcy court the following month without  
12 confirming a plan. When the Alakozais did not vacate the  
13 Property, CEFCU initiated an unlawful detainer action against them  
14 in California state court on September 16, 2011.

15 The Alakozais filed the joint chapter 13 case from which this  
16 appeal arises, Case No. 12-43746 (the "Sixth Case"), on April 27,  
17 2012. Because the unlawful detainer action was pending at the  
18 time of the filing of the Sixth Case, on May 9, 2012, CEFCU filed  
19 a stay relief motion seeking to continue prosecution of the state  
20 court action to recover possession of the Property. Mrs. Alakozai  
21 not only opposed the motion, but also commenced an adversary  
22 proceeding for declaratory and injunctive relief, as well as  
23 cancellation of the deed from the trustee's sale of the Property.  
24 In connection with the stay relief motion, the bankruptcy court  
25 requested briefing regarding whether CEFCU had violated the  
26 automatic stay when the Property was sold at the trustee's sale  
27 occurring during the pendency of the Fifth Case. The issue was  
28 briefed by both parties, and during the hearing on the stay relief

1 motion held on August 22, 2012, the bankruptcy court considered  
2 the status of the In Rem Order in the Fourth Case. Ultimately,  
3 the bankruptcy court decided to grant the stay relief motion  
4 allowing CEFCU to continue with the unlawful detainer action in  
5 state court. An order was entered on August 27, 2012 (the "Stay  
6 Relief Order").

7 Mrs. Alakozai, only, filed a timely appeal on September 10,  
8 2012.

9 **JURISDICTION**

10 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
11 and 157(b)(2)(G). We have jurisdiction under 28 U.S.C. § 158.

12 **ISSUE ON APPEAL**

13 Whether the bankruptcy court abused its discretion when it  
14 granted stay relief to CEFCU to continue the unlawful detainer  
15 action in state court against the Alakozais.

16 **STANDARD OF REVIEW**

17 We review an order granting relief from stay for abuse of  
18 discretion. Edwards v. Wells Fargo Bank, N.A. (In re Edwards),  
19 454 B.R. 100, 104 (9th Cir. BAP 2011); Veal v. Am. Home Mortg.  
20 Servicing, Inc. (In re Veal), 450 B.R. 897, 915 (9th Cir. BAP  
21 2011). This standard has two parts. First, we consider whether  
22 the bankruptcy court applied the correct legal standard; and  
23 second, we must decide whether those factual findings supporting  
24 the legal analysis were clearly erroneous. In re Edwards, 454  
25 B.R. at 104 (citing United States v. Hinkson, 585 F.3d 1247, 1261-  
26 62 (9th Cir. 2009) (en banc)).

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1 DISCUSSION

2 **A. In rem stay relief.**

3 A broad stay automatically arises upon the filing of a  
4 bankruptcy petition. § 362(a). That stay prohibits, inter alia,  
5 the commencement or continuation of legal actions against a debtor  
6 which arose prepetition, § 362(a)(1); any act to enforce a lien  
7 against property of the debtor or a bankruptcy estate,  
8 § 362(a)(4), (5); as well as most any other activities to enforce  
9 or collect a prebankruptcy claim against the debtor. Gruntz v.  
10 Cnty of L.A. (In re Gruntz), 202 F.3d 1074, 1081-82 (9th Cir.  
11 2000). Ordinarily, the automatic stay remains in effect until the  
12 bankruptcy case is closed, dismissed, or a discharge is granted.  
13 § 362(c)(2); Ung v. Boni (In re Boni), 240 B.R. 381, 384 (9th Cir.  
14 BAP 1999).

15 Actions taken by creditors in violation of the automatic stay  
16 are void. Griffin v. Wardrobe (In re Wardrobe), 559 F.3d 932, 934  
17 (9th Cir. 2009); Schwartz v. United States (In re Schwartz), 954  
18 F.2d 569, 571 (9th Cir. 1992). However, on request of a party,  
19 following notice and a hearing, the automatic stay may be  
20 terminated, annulled, modified or conditioned by the bankruptcy  
21 court. § 362(d).

22 Occasionally, debtors have resorted to filing tactical,  
23 serial bankruptcy cases to prevent creditors from enforcing liens  
24 against their property. In 2005, Congress fashioned special  
25 relief for creditors when § 362(d)(4) was added to the Bankruptcy  
26 Code under BAPCPA. That provision permits the bankruptcy court to  
27 grant so-called "in rem" relief from the automatic stay to the  
28 creditor to address schemes using bankruptcy to thwart legitimate

1 foreclosure efforts through one or more transfers of interest in  
2 real property or, as was apparently the situation here, multiple  
3 bankruptcy filings affecting the subject in rem property. The  
4 text of § 362(d)(4), in effect when the bankruptcy court entered  
5 that order in this case, stated:

6 (d) On request of a party in interest and after notice  
7 and a hearing, the court shall grant relief from the  
8 stay . . . such as by terminating, annulling, modifying,  
9 or conditioning such stay - . . .

10 (4)with respect to a stay of an act against real  
11 property under subsection (a), by a creditor whose claim  
12 is secured by an interest in such real property, if the  
13 court finds that the filing of the petition was part of  
14 a scheme to delay, hinder, or defraud creditors that  
15 involved either--

16 (A) transfer of all or part ownership of, or  
17 other interest in, such real property without  
18 the consent of the secured creditor or court  
19 approval; or

20 (B) multiple bankruptcy filings affecting such  
21 real property.

22 If recorded in compliance with applicable State laws  
23 governing notices of interests or liens in real property, an  
24 order entered under paragraph (4) shall be binding in any  
25 other case under this title purporting to affect such real  
26 property filed not later than 2 years after the date of the  
27 entry of such order by the court, except that a debtor in a  
28 subsequent case under this title may move for relief from  
such order based upon changed circumstances or for good cause  
shown, after notice and a hearing.

§ 362(d)(4).

As can be seen from the language of the statute, a creditor  
seeking relief from the stay in a bankruptcy case pursuant to  
§ 362(d)(4) must prove that (1) the debtor engaged in a scheme,  
(2) to delay, hinder or defraud the creditor, and (3) which  
involved either the transfer of property without the creditor's  
consent or court approval or multiple filings. In re Lee, 467  
B.R. 906, 920 (6th Cir. BAP 2012). If proven, the bankruptcy

1 court may enter an order authorizing the creditor relief from the  
2 stay that is "binding in any other case under this title  
3 purporting to affect such real property filed not later than 2  
4 years after the date of the entry of such order by the court  
5 . . . ." For § 362(d)(4) relief to be effective, the order  
6 granting relief must be recorded "in compliance with applicable  
7 laws governing notices of interests or liens in real property."

8 Id.

9 In this appeal, Mrs. Alakozai has not challenged that a  
10 § 362(d)(4) stay relief order was entered by the bankruptcy court  
11 in the Fourth Case, or that the In Rem Order was recorded in the  
12 Alameda County Recorder's Office in compliance with California  
13 state law.

14 An order entered under § 362(d)(4) has serious implications.  
15 By seeking relief under § 362(d)(4), the creditor requests  
16 specific prospective protection against not only the debtor, but  
17 also every non-debtor, co-owner, and subsequent owner of the  
18 property. First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC.  
19 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 871 (9th  
20 Cir. BAP 2012). In BAPCPA, Congress gave "teeth" to the two-year  
21 bar under § 362(d)(4) by adopting a new exception to the automatic  
22 stay in § 362(b)(20) to prevent parties from filing another  
23 bankruptcy case to reimpose the stay and frustrate a secured  
24 creditor's enforcement efforts:

25 (b) The filing of a petition . . . does not operate as  
26 a stay -

27 (20) under subsection (a), of any act to  
28 enforce any lien against or security interest  
in real property following entry of the order  
under subsection (d)(4) as to such real  
property in any prior case under this title,

1 for a period of 2 years after the date of the  
2 entry of such an order, except that the  
3 debtor, in a subsequent case under this title,  
4 may move for relief from such order based upon  
5 changed circumstances or for other good cause  
6 shown, after notice and a hearing.

7 § 362(b)(20). Under this exception to the automatic stay, then,  
8 if the bankruptcy court enters a stay relief order as to real  
9 property under § 362(d)(4), the filing of a subsequent bankruptcy  
10 case will not operate to stay the enforcement of a lien against  
11 that real property during the period that such recorded order  
12 remained in effect. In re First Yorkshire Holdings, Inc., 470  
13 B.R. at 870 ("If the court's order granting relief under  
14 § 362(d)(4) is recorded in compliance with applicable state law,  
15 it is binding in any other bankruptcy case filed in the next two  
16 years purporting to affect the same real property. See  
17 § 362(d)(4), § 362(b)(20)."); In re Abdul Muhaimin, 343 B.R. 159,  
18 169 (Bankr. D. Md. 2006) (applying §§ 362(b)(20) and (d)(4), the  
19 bankruptcy court noted that an in rem stay relief order "would  
20 nullify the ability of the Debtor and any other third party with  
21 an interest in the property to obtain the benefits provided by the  
22 automatic stay in future bankruptcy cases for a period of two  
23 years.").

24 **B. Disposition of the issues.**

25 We apply this legal framework to the following undisputed  
26 facts in this appeal: (1) Mr. Alakozai filed a chapter 13 petition  
27 on November 15, 2010; (2) on December 28, 2010, CEFUCU filed a  
28 motion for relief from the automatic stay under § 362(d)(4),  
specifically requesting in rem relief against the Property;  
(3) after a hearing, the bankruptcy court granted the relief

1 requested in the motion in an order entered on January 27, 2011;  
2 (4) the In Rem Order was not appealed and is, therefore, final;  
3 (5) on March 25, 2011, the In Rem Order was recorded in the  
4 Alameda County Recorder's Office; (6) on July 20, 2011, Mrs.  
5 Alakozai filed a chapter 13 petition; and (7) later the same day,  
6 the deed of trust on the Property was foreclosed, and CEFCU  
7 purchased the Property, at the trustee's sale. Based on these  
8 facts, we confidently conclude that, because of the bankruptcy  
9 court's In Rem Order, the automatic stay arising when Mrs.  
10 Alakozai filed her chapter 13 petition on July 20, 2011 did not  
11 prohibit the trustee's sale conducted later that same day. §  
12 362(b)(20), (d)(4).

13 Mrs. Alakozai's sole argument in this appeal is that the  
14 bankruptcy court in the Sixth Case erred by granting CEFCU relief  
15 from the stay to continue the unlawful detainer action because the  
16 foreclosure occurring during the Fifth Case was a stay violation,  
17 and therefore, void. Mrs. Alakozai contends that the In Rem Order  
18 was invalid because the bankruptcy court in the Fourth Case  
19 allegedly failed to make the necessary findings of fact to support  
20 stay relief under § 362(d)(4). But this argument comes way too  
21 late to carry any weight.

22 Mrs. Alakozai's challenge to the adequacy of the factual  
23 findings made by the bankruptcy court to support its entry of the  
24 In Rem Order in the Fourth Case amounts to a collateral attack on  
25 a final order of a federal court. An order granting relief from  
26 stay is a final order. Samson v. W. Capital Partners, LLC (In re  
27 Blixseth), 684 F.3d 865, 866 n.1 (9th Cir. 2012) ("The grant or  
28 denial of a motion for relief from the automatic stay is a final

1 order."). There was no appeal of the In Rem Order, and its  
2 finality was therefore not subject to challenge. A final order of  
3 a federal court may not be collaterally attacked. Watts v.  
4 Pinckney, 752 F.2d 406, 410 (9th Cir. 1985) ("res judicata bars a  
5 collateral attack on a final judgment"); Heritage Pac. Fin., LLC  
6 v. Machuca (In re Machuca), 483 B.R. 726, 733 (9th Cir. BAP 2012);  
7 Woods & Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R. 721,  
8 731 (9th Cir. BAP 2008). Mrs. Alakozai cannot now assault the  
9 legitimacy of the In Rem Order as a final order.

10 Mrs. Alakozai points out that she was not a debtor in her  
11 husband's bankruptcy case in which the In Rem Order was granted  
12 and entered. Along these lines, the parties expend considerable  
13 effort in their briefing discussing Mrs. Alakozai's "privity" to  
14 her husband for purposes of enforcing the In Rem Order. However,  
15 such a debate is of no moment to the operation of § 362(d)(4) and  
16 § 362(b)(20). An order entered under § 362(d)(4) binds any party  
17 asserting an interest in the affected property, including every  
18 non-debtor, co-owner, and subsequent owner of the property. In re  
19 First Yorkshire Holdings, Inc., 470 B.R. at 871. Under the Code,  
20 stay relief granted under § 362(d)(4) is effective as to anyone  
21 holding any interest in the Property, whether or not they are in  
22 privity with the debtor. Moreover, under § 362(b)(20), the  
23 automatic stay in a subsequent bankruptcy case simply does not  
24 operate to prohibit a creditor from taking action to enforce a  
25 lien that is the subject of a § 362(d)(4) order. In other words,  
26 Mrs. Alakozai was bound by the terms of the In Rem Order even  
27 though she was not a debtor in the Fourth Case, and the automatic  
28 stay arising from the filing of the Fifth Case did not invalidate

1 the trustee's sale of the Property. As a result, the sale was  
2 valid, and the bankruptcy court properly concluded that CEFCU was  
3 entitled to stay relief in the Sixth Case to continue with the  
4 unlawful detainer action.

5 **CONCLUSION**

6 We conclude that the bankruptcy court did not abuse its  
7 discretion in granting relief from stay to CEFCU to continue the  
8 unlawful detainer action as to the Property. The order of the  
9 bankruptcy court is AFFIRMED.

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