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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. AZ-08-1333-DuJuPa
)	
SABRA ALBRITTON,)	Bk. No. 08-12559-JMM
)	
Debtor.)	
_____)	
SABRA ALBRITTON,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
COUNTRYWIDE HOME LOANS, INC.;)	
STANLEY J. KARTCHNER,)	
Chapter 7 Trustee,)	
)	
Appellee.)	
_____)	

Argued and Submitted on February 17, 2010
at Tucson, Arizona

Filed - March 2, 2010

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

Honorable James M. Marlar, Chief Bankruptcy Judge, Presiding

Before: DUNN, JURY and PAPPAS, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 The debtor, Sabra Albritton, appeals the bankruptcy court
2 decision to grant Countrywide Home Loans Inc.'s ("Countrywide")
3 motion for relief from stay ("Motion").² Because the debtor did
4 not provide us with transcripts of the hearings on the Motion,
5 precluding us from conducting an informed review of the
6 bankruptcy court's determinations, we AFFIRM.

7
8 **FACTS**

9 Two years before filing for bankruptcy, the debtor executed
10 a promissory note, which was secured by a deed of trust
11 encumbering real property located in Sierra Vista, Arizona (the
12 "Property"). The debtor later lost the Property to foreclosure.³

13 The debtor filed her chapter 7 petition on September 18,
14 2008. She did not list the Property as her mailing address on
15 her voluntary petition or as an asset on her schedules.

16 Countrywide, as assignee of the deed of trust, filed its
17 Motion to foreclose on the Property, to evict the debtor and/or
18 "successors of [the] [d]ebtor" from the Property and "to obtain
19 ownership, possession and control of the Property."⁴ The debtor
20 filed a response to the Motion, contending that the Property was

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22
23 ² Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

25 ³ The debtor noted on her Statement of Financial Affairs
26 ("SOFA") that the Property had been sold at a foreclosure sale
some six months before the petition date.

27 ⁴ Countrywide did not cite § 362(d) in the Motion as the
28 basis for relief from stay; it simply requested that the
bankruptcy court "vacate" the stay imposed under § 362(a).

1 not subject to relief from stay because she had no interest in
2 the Property as she had "lost both [t]itle and [p]ossession" at a
3 trustee's sale on April 18, 2008. She further argued that,
4 because it was neither a holder in due course nor the beneficiary
5 of the note, Countrywide was not entitled to seek relief from
6 stay. She also contended that the deed of trust was not a valid
7 or enforceable contract as it was signed "void by void."

8 At the November 17, 2008 preliminary hearing on the Motion,
9 the debtor stated that she did not own the Property. The
10 bankruptcy court granted the Motion, noting that the Property was
11 not property of the estate, that the Property had no equity for
12 the bankruptcy estate, and that the debtor could "fight [the
13 matter] in state court."⁵

14 Another hearing was held on the Motion on December 8, 2008.⁶
15 At the hearing, counsel for Countrywide reported that the
16 trustee's sale had been completed; he requested that the stay be
17 lifted to complete the eviction process. The bankruptcy court
18 granted the Motion.

21 ⁵ According to the minute entry of the November 17, 2008
22 hearing, the bankruptcy court directed counsel for Countrywide to
23 submit an order on the Motion. It appears from the docket,
however, that no order was entered.

24 ⁶ It is not clear from the record or the docket why another
25 hearing on the Motion was set. We assume that the December 8,
26 2008 hearing was set because, on November 17, 2008, the debtor
27 filed another response to the Motion. In the second response,
28 the debtor objected to the notice of the preliminary hearing,
contending that counsel for Countrywide did not mail the notice
on November 7, 2008, as stated on the proof of service, but on
November 12, 2008. She also asserted the same arguments she made
in the first response.

1 On April 27, 2009, the bankruptcy court entered the order
2 granting relief from stay.⁷ The debtor timely appeals.⁸

3
4 **JURISDICTION**

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

7
8 **ISSUE**

9 Whether the bankruptcy court abused its discretion in
10 granting Countrywide relief from stay.

11
12 **STANDARDS OF REVIEW**

13 We review the bankruptcy court's decision to grant relief
14 from stay for abuse of discretion. Gruntz v. County of Los
15 Angeles (In re Gruntz), 202 F.3d 1074, 1084 n.9 (9th Cir.
16 2000)(en banc). To determine whether the bankruptcy court abused
17 its discretion, we conduct a two-step inquiry: (1) we review de
18 novo whether the bankruptcy court "identified the correct legal
19 rule to apply to the relief requested" and (2) if it did, whether

20
21 ⁷ The order provided, somewhat confusingly, that the stay
22 was terminated as to Countrywide with respect to the Property
23 Loan Servicing LP [was] the current beneficiary and Sabra
24 Albritton [had] an interest in"

25 The order also did not state the specific statutory grounds
26 on which the bankruptcy court granted relief from stay; it simply
27 stated that the stay imposed by § 362(a) was terminated.

28 ⁸ The debtor filed a notice of appeal on December 15, 2008,
several months before the bankruptcy court entered the order
granting relief from stay. Though premature, the notice of
appeal is considered timely under Rule 8002(a).

1 the bankruptcy court's application of the legal standard was
2 illogical, implausible or "without support in inferences that may
3 be drawn from the facts in the record." United States v.
4 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009).

6 DISCUSSION

7 We begin by emphasizing that, because the bankruptcy court's
8 decision to grant relief from stay rests on factual findings, see
9 In re Fischer, 136 B.R. 819, 824 (D. Alaska 1992), we review its
10 decision for abuse of discretion. Cf. Rabkin v. Ore. Health Sci.
11 Univ., 350 F.3d 967, 977 (9th Cir. 2003)(abuse of discretion is
12 "a plain error, discretion exercised to an end not justified by
13 the evidence, a judgment that is clearly against the logic and
14 effect of the facts as are found.")(internal quotations and
15 citation omitted). As we earlier explained, our determination as
16 to abuse of discretion focuses on whether the bankruptcy court
17 identified the correct legal standard and, if it did, whether it
18 applied the legal standard illogically, implausibly or without
19 support from inferences properly drawn from the facts in the
20 record.

21 The debtor, as appellant, has the responsibility to provide
22 an adequate record on appeal. Kritt v. Kritt (In re Kritt),
23 190 B.R. 382, 387 (9th Cir. BAP 1995). She also bears the burden
24 of demonstrating that the bankruptcy court's factual findings are
25 clearly erroneous. Id. "Appellants should know that an attempt
26 to reverse the [bankruptcy] court's findings of fact will require
27 the entire record relied upon by the [bankruptcy] court be
28 supplied for review." Id. (internal quotations and citation
omitted).

1 We have discretion to dismiss an appeal or summarily affirm
2 a bankruptcy court's ruling if the appellant does not provide a
3 sufficient record to enable us to conduct an informed review.
4 Kyle v. Dye (In re Kyle), 317 B.R. 390, 393 (9th Cir. BAP 2004),
5 aff'd 170 Fed. Appx. 457 (9th Cir. 2006). Failure to provide a
6 transcript may, but need not, result in dismissal or summary
7 affirmance. Id. Exercising our discretion, we may disregard
8 such a defect and decide the appeal on the merits. Id. Before
9 exercising such discretion, however, we first should consider
10 whether we can conduct an informed review with the record
11 provided. Id.

12 On appeal, the debtor sets forth the same arguments she made
13 before the bankruptcy court. But the record before us is
14 incomplete because we do not have transcripts of the relevant
15 hearings. Without the transcripts, we cannot review the bases
16 for the bankruptcy court's determinations. See Kyle, 317 B.R. at
17 393. We do not know what legal standard(s) the bankruptcy court
18 applied nor the documents and evidence on which it relied in
19 granting relief from stay.⁹

22
23 ⁹ The minute entries suggest the factual bases on which the
24 bankruptcy court may have granted relief from stay. The minute
25 entry for the November 17, 2008 hearing states that there was no
26 equity in the Property for the bankruptcy estate and that the
27 Property was not property of the estate, both of which may
28 provide grounds sufficient to grant relief from stay under
§ 362(d)(1) or (d)(2). The minute entry for the December 8, 2008
hearing states that the trustee's foreclosure sale was complete
and that the stay needed to be lifted to complete the eviction
process, which may constitute sufficient grounds for relief from
stay under § 362(d)(1).

1 The debtor contends that Countrywide was not entitled to
2 seek relief from stay because it did not hold the original
3 promissory note.¹⁰ Because we do not have transcripts of the
4 hearings in the record before us, we do not know how the debtor
5 made this argument before the bankruptcy court, beyond the
6 arguments made in her written opposition, nor how the bankruptcy
7 court addressed it.

8 The debtor also argues that the bankruptcy court "made
9 light" of the fact that the original deed of trust was signed
10 "void by void," which made it invalid or unenforceable.
11 Reviewing the deed of trust, promissory note and adjustable rate
12 rider attached to the Motion as exhibits, we note that all three
13 documents appear to have been signed by a Josh Albritton as the
14 debtor's "attorney in fact." Each page of all three documents
15 appears to have been initialed in the same way. We further note
16 that the signature on the deed of trust was acknowledged by a
17 notary public. Comparing the signatures on all three documents,
18 arguably they had not been signed "void by void" but by Josh
19 Albritton. But again, because we do not have transcripts of the
20 hearings, we do not know how the debtor made this argument to the
21 bankruptcy court, beyond what was stated in her written
22 opposition, nor how the bankruptcy court addressed it.

23
24
25 ¹⁰ At oral argument, counsel for Countrywide conceded that
26 Countrywide was not a holder of the promissory note. Counsel for
27 Countrywide speculated that because Countrywide was the servicer
28 for the promissory note and deed of trust before foreclosure, it
was obligated by contract to aid in obtaining possession of the
Property. We express no opinion as to whether Countrywide was a
holder or a beneficiary of the promissory note.

1 In short, it is impossible for us to conduct a meaningful,
2 informed review as to whether the bankruptcy court's findings
3 support its grant of relief from stay. Nothing in the record
4 before us provides insight into the bankruptcy court's
5 considerations - the legal standards it identified and applied
6 and the findings it made to support its ruling. The debtor fails
7 to demonstrate that the bankruptcy court made clearly erroneous
8 factual findings, thereby abusing its discretion in granting the
9 Motion.

10 Moreover, the debtor does not demonstrate how the bankruptcy
11 court's decision to grant relief from stay even harmed her. The
12 debtor repeatedly asserted before the bankruptcy court that she
13 held no interest in the Property. At oral argument, the debtor
14 confirmed that she held neither a possessory nor an ownership
15 interest in the Property. Because the debtor had no interest in
16 the Property, the debtor arguably suffered no harm from the
17 bankruptcy court terminating the stay.¹¹ Thus, even if the
18 bankruptcy court erred in granting the Motion (and we do not
19 conclude that it did), it was harmless error.

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24 ¹¹ Additionally, the stay only protects property of the
25 bankruptcy estate, which includes a debtor's legal or equitable
26 interests in property. See §§ 362(a), 541(a). As the debtor
27 herself points out, because she had no interest in the Property,
28 it was not property of the estate. In such circumstances, the
stay would not have protected the Property against a creditor's
efforts to obtain ownership, possession and control of it,
although the stay could protect a debtor's possessory interest.

CONCLUSION

Because the debtor did not provide us with transcripts of the hearings on the Motion in the record on appeal, we cannot review the findings the bankruptcy court made in support of its decision granting Countrywide relief from stay. We cannot conclude that the bankruptcy court abused its discretion in granting the Motion. Accordingly, we AFFIRM.