





1 District of California Bankruptcy Case No. 2:10-29036-BR Docket No.  
2 24, Exhibit A. (Hereafter, filings in bankruptcy case no. 2:10-  
3 29036-BR will be referenced by their docket numbers only.) "On  
4 January 5th of 2010, a real estate agent who had just heard of the  
5 auction knocked on our door and told me that my house had been sold  
6 that morning, and he asked me if I am going to buy the property back  
7 or leave, and I was shocked." Id.

8 Mr. Baghdasarian filed a chapter 13<sup>3</sup> bankruptcy case, case  
9 no. 2:10-10330-EC ("First Bankruptcy Case"), in the afternoon at  
10 3:38 p.m. that same day. Docket No. 21.

11 A Trustee's Deed Upon Sale ("Trustee's Deed") transferring  
12 title to the Residence to SRT, the buyer at the foreclosure sale,  
13 was delivered and recorded on or about January 29, 2010. Docket  
14 No. 11, Exhibit A. It is not clear from the record when SRT became  
15 aware of the First Bankruptcy Case. SRT served a 3-Day Notice to  
16 Quit the Residence on Mr. Baghdasarian on or about February 3, 2010.  
17 Docket No. 11, Exhibit B. Thereafter, SRT filed an Unlawful  
18 Detainer-Eviction complaint ("Eviction Complaint" or "Eviction  
19 Action") against Mr. Baghdasarian on or about February 10, 2010, in  
20 the California Superior Court ("Superior Court"). Docket No. 11,  
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22 <sup>2</sup>(...continued)  
23 Manhattan Mrtg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir.  
24 BAP 2003).

25 <sup>3</sup> Unless otherwise specified, all chapter and section  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 Ex. C. SRT filed a motion for relief from stay in the First  
2 Bankruptcy Case on March 29, 2010, but it never was heard, as the  
3 First Bankruptcy Case was dismissed on April 14, 2010, based on  
4 Mr. Baghdasarian's failure to provide evidence that he had fulfilled  
5 the Bankruptcy Code's credit counseling requirement. See First  
6 Bankruptcy Case Docket Nos. 11 and 12, and § 109(h)(1).

7       Following the dismissal of the First Bankruptcy Case, SRT  
8 prosecuted the Eviction Complaint to trial ("Eviction Trial") on  
9 May 13, 2010, starting at 8:30 a.m. Docket No. 21, Exhibits O and  
10 P. Mr. Baghdasarian did not appear at the Eviction Trial, and SRT  
11 obtained a judgment ("Judgment") on the Eviction Complaint that was  
12 entered on May 13, 2010. See Docket No. 11. In the meantime,  
13 Mr. Baghdasarian had filed a new chapter 7 bankruptcy case ("Second  
14 Bankruptcy Case") on May 13, 2010, at or around 9:17 a.m. Id. SRT  
15 was made aware of the Second Bankruptcy Case the following day. Id.

16       On May 20, 2010, SRT filed a motion ("Motion") in the  
17 alternative, for relief from the stay under §§ 362(d)(1) and (2), or  
18 to annul the stay to validate the Judgment. Docket No. 11. A  
19 hearing ("Hearing") on the Motion was scheduled for June 2, 2010, at  
20 2:00 p.m. See Docket No. 13. Mr. Baghdasarian did not file an  
21 opposition to the Motion, but apparently, he appeared at the  
22 Hearing. See Docket No. 17. Neither party has provided a  
23 transcript of the Hearing in excerpts of record, and there is no  
24 transcript of the Hearing on the bankruptcy court's docket.  
25 Consequently, we cannot determine what was discussed at the Hearing,  
26 but we can conclude from the parties' subsequent filings that the

1 bankruptcy court stated its intention to grant the Motion at the  
2 Hearing.

3           On June 3, 2010, Mr. Baghdasarian filed a motion to convert  
4 the Second Bankruptcy Case from chapter 7 to chapter 13, and on  
5 June 10, 2010, he filed a motion to reconsider ("Motion to  
6 Reconsider") the bankruptcy court's ruling at the Hearing. See  
7 Docket Nos. 14 and 17. Mr. Baghdasarian subsequently filed exhibits  
8 in support of his Motion to Reconsider. See Docket No. 21. SRT  
9 filed an opposition to the Motion to Reconsider, noting that  
10 Mr. Baghdasarian based his motion on his argument that he was  
11 attempting to modify his loan when the foreclosure sale of the  
12 Residence took place, and such matter was not properly raised as an  
13 objection to a motion for relief from stay. See Docket No. 20.

14           On July 7, 2010, the bankruptcy court issued two orders:  
15 1) an order granting the Motion pursuant to §§ 362(d)(1) and (2),  
16 but not annulling the stay to validate the Judgment; and 2) an order  
17 denying the Motion to Reconsider, as Mr. Baghdasarian had shown "no  
18 good cause" for the relief requested. See Docket Nos. 22 and 23.  
19 Mr. Baghdasarian timely appealed both orders. See Docket No. 30.  
20 At some point thereafter, the Judgment apparently was vacated by the  
21 Superior Court.

22           On July 15, 2010, the bankruptcy court granted  
23 Mr. Baghdasarian's motion to convert the Second Bankruptcy Case to  
24 chapter 13, and Mr. Baghdasarian filed a chapter 13 plan requiring  
25 him to make plan payments in the amount of \$100 per month. See  
26 Docket Nos. 27 and 35.

1           On August 26, 2010, Mr. Baghdasarian filed a motion ("Stay  
2 Violation Motion") for an award of \$90,000 damages against SRT for  
3 violating the stay under § 362. See Docket No. 39. SRT filed an  
4 opposition to the Stay Violation Motion. See Docket No. 44.

5           On November 19, 2010, the chapter 13 trustee filed a motion  
6 to dismiss ("Motion to Dismiss") Mr. Baghdasarian's chapter 13 case  
7 because Mr. Baghdasarian had failed to make any plan payments. See  
8 Docket No. 47. Mr. Baghdasarian did not make up the missed plan  
9 payments or file any opposition to the Motion to Dismiss. See  
10 Docket No. 49.

11           On December 22, 2010, Mr. Baghdasarian filed a motion to  
12 reconvert ("Reconversion Motion") his Second Bankruptcy Case to  
13 chapter 7. However, he did not schedule his Reconversion Motion for  
14 hearing and did not serve it on his creditors. See Docket No. 50.

15           On January 10, 2011, the bankruptcy court entered an order  
16 ("Dismissal Order") dismissing the Second Bankruptcy Case on the  
17 trustee's Motion to Dismiss. See Docket No. 52. On January 24,  
18 2011, Mr. Baghdasarian filed a document entitled "Appeal from  
19 Debtor's Motion to Convert Case, [Denied] and Dismissal Chapter 13  
20 on Jan 11," which the bankruptcy court interpreted as a motion to  
21 reconsider the Dismissal Order. See Docket No. 56. On February 10,  
22 2011, the bankruptcy court entered an order ("Reconsideration  
23 Order"): 1) denying the Reconversion Motion; and 2) denying  
24 Mr. Baghdasarian's further motion to reconsider the Dismissal Order,  
25 based primarily on Mr. Baghdasarian's failure to schedule the  
26 Reconversion Motion for hearing on notice to creditors, but also

1 noting in the order that Mr. Baghdasarian admitted that he could not  
2 afford his chapter 13 plan payments. See Docket No. 57.  
3 Mr. Baghdasarian did not appeal the Dismissal Order or the  
4 Reconsideration Order.

5 On February 28, 2011, the bankruptcy court entered an order  
6 denying the Stay Violation Motion, noting that a hearing on the Stay  
7 Violation Motion had been scheduled for September 21, 2010, at which  
8 Mr. Baghdasarian did not appear. See Docket No. 59.

9 Mr. Baghdasarian did not appeal that order. There is no further  
10 activity on the Second Bankruptcy Case docket after March 2, 2011.

11 In his pleadings to this Panel, Mr. Baghdasarian indicates  
12 that a new judgment in favor of SRT was entered by the Superior  
13 Court in the Eviction Action on August 19, 2010, a writ of  
14 possession subsequently was issued, and he was evicted from the  
15 Residence on or about November 17, 2010. See Docket No. 56.

## 16 17 II. JURISDICTION

18 The bankruptcy court had subject matter jurisdiction pursuant  
19 to 28 U.S.C. §§ 1334 and 157(b)(2)(G) over these core proceedings.  
20 We have jurisdiction under 28 U.S.C. § 158.

## 21 22 III. ISSUES

23 1. Whether events subsequent to the entry of the orders on  
24 appeal have rendered this appeal moot.

25 2. Whether the bankruptcy court abused its discretion in  
26 granting the Motion and denying the Motion to Reconsider.

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IV. STANDARDS FOR REVIEW

We review a bankruptcy court's decision to grant a motion for relief from stay for an abuse of discretion. Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1084 n.9 (9th Cir. 2000) (en banc). We likewise review a bankruptcy court's denial of a motion for reconsideration for an abuse of discretion. Ta Chong Bank Ltd. v. Hitachi High Tech. Am., Inc., 610 F.3d 1063, 1066 (9th Cir. 2010); Zimmerman v. City of Oakland, 255 F.3d 734, 737 (9th Cir. 2001).

We apply a two-part test to determine whether the bankruptcy court abused its discretion. United States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc). First, we consider de novo whether the bankruptcy court applied the correct legal standard to the relief requested. Id. Then, we review the bankruptcy court's fact findings for clear error. Id. at 1262 & n.20. We must affirm the bankruptcy court's fact findings unless we conclude that they are "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in inferences that may be drawn from the facts in the record.'" Id.

We may affirm on any ground supported by the record. Shanks v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

V. DISCUSSION

A. Mootness

We do not treat mootness questions lightly, but we are mindful that if we cannot provide any effective relief in an appeal, the appeal is moot, and it must be dismissed. Church of Scientology

1 of Cal. v. United States, 506 U.S. 9, 12 (1992).

2 We consider two lines of authority in analyzing mootness  
3 issues. The doctrine of constitutional mootness is derived from  
4 Article III of the United States Constitution, which provides that  
5 the exercise of judicial power depends on the existence of a live  
6 case or controversy. DeFunis v. Odegaard, 416 U.S. 312, 316 (1974).  
7 The theory of constitutional mootness essentially recognizes  
8 Article III's prohibition against federal courts issuing advisory  
9 opinions, where a disposition can have no meaningful application.  
10 North Carolina v. Rice, 404 U.S. 244, 246 (1971). Constitutional  
11 mootness applies generally when events occur while an appeal is  
12 pending that make it impossible for the appellate tribunal to grant  
13 any effective relief to the parties before it. Church of  
14 Scientology of Cal. v. United States, 506 U.S. at 12.

15 In what can be characterized as a variation on the general  
16 constitutional mootness rule, equitable mootness "applies when  
17 appellants 'have failed and neglected diligently to pursue their  
18 available remedies to obtain a stay' and circumstances have changed  
19 so as to 'render it inequitable to consider the merits of the  
20 appeal.'" Darby v. Zimmerman (In re Popp), 323 B.R. 260, 271 (9th  
21 Cir. BAP 2005) (citation omitted).

22 Whether analyzed on constitutional or equitable mootness  
23 grounds, we conclude that this appeal must be dismissed as moot  
24 because there is no effective remedy that we can provide under the  
25 circumstances to Mr. Baghdasarian for the following reasons.

26 When the bankruptcy court entered its orders granting the

1 Motion and denying the Motion to Reconsider, the following  
2 conditions applied: Although SRT was the record title holder to the  
3 Residence property, the Judgment that it had obtained in the  
4 Eviction Action was void as having been entered while the automatic  
5 stay in Mr. Baghdasarian's Second Bankruptcy Case was in effect, and  
6 it subsequently was vacated. Mr. Baghdasarian filed a timely notice  
7 of appeal of the bankruptcy court's orders, but he did not apply for  
8 or obtain a stay of proceedings pending appeal either from the  
9 bankruptcy court or from this Panel.

10           Thereafter, based on information provided in  
11 Mr. Baghdasarian's submissions to this Panel, the Superior Court  
12 entered a new judgment in the Eviction Action in favor of SRT on  
13 August 19, 2010. A writ of possession subsequently was issued, and  
14 Mr. Baghdasarian was evicted from the Residence on November 17,  
15 2010.

16           In responding to this Panel's subsequent order requesting an  
17 explanation as to why this appeal was not moot, Mr. Baghdasarian  
18 argued that in the event the orders on appeal were reversed, he  
19 might be able to pursue a claim for damages against SRT for  
20 violation of the stay in his Second Bankruptcy Case. However, after  
21 this Panel issued a further order declining to dismiss the appeal  
22 but preserving consideration of mootness issues for the merits  
23 panel, Mr. Baghdasarian's Second Bankruptcy Case was dismissed, and  
24 his Stay Violation Motion was denied, without appeal of either  
25 disposition. If we were to proceed to reverse the bankruptcy  
26 court's orders on the Motion and the Motion to Reconsider, 1)

1 Mr. Baghdasarian already has been dispossessed from the Residence  
2 pursuant to a judgment issued by the Superior Court; 2) the  
3 bankruptcy court has denied damages to Mr. Baghdasarian against SRT  
4 for its alleged violations of the stay; and 3) there is no live case  
5 before the bankruptcy court for a remand. In these circumstances,  
6 there is no effective relief that we can grant to Mr. Baghdasarian  
7 in this appeal, and it must be dismissed as moot.

8 B. Relief from Stay

9 Even if we did not dismiss this appeal as moot, based on the  
10 limited record available for our review, we conclude that the  
11 bankruptcy court did not abuse its discretion in granting the  
12 Motion, in the way it did, or in denying the Motion to Reconsider  
13 for the following reasons.

14 Motions for relief from stay are by their nature very limited  
15 proceedings. Under the Federal Rules of Bankruptcy Procedure,  
16 motions for relief from stay are contested matters, brought by  
17 motion rather than through prosecution of a complaint in an  
18 adversary proceeding. See Rules 4001(a) and 9014(a). Deciding a  
19 motion for relief from stay entails consideration of the specific  
20 grounds for granting relief from stay set forth in § 362(d),  
21 generally whether "cause" is established; whether the debtor has  
22 equity in the subject property; and/or whether the subject property  
23 is necessary to an effective reorganization of the debtor's affairs.

24 Given the limited grounds for obtaining a motion for  
25 relief from stay, read in conjunction with the  
26 expedited schedule for a hearing on the motion, most  
courts hold that motion for relief from stay hearings  
should not involve an adjudication on the merits of

1 claims, defenses, or counterclaims, but simply  
2 determine whether the creditor has a colorable claim  
to the property of the estate.

3 Biggs v. Stovin (In re Luz Int'l), 219 B.R. 837, 842 (9th Cir. BAP  
4 1998)(emphasis added); see also Johnson v. Righetti (In re Johnson),  
5 756 F.2d 738, 740-41 (9th Cir. 1985) ("Hearings on relief from the  
6 automatic stay are . . . handled in a summary fashion. [citation  
7 omitted] The validity of the claim or contract underlying the claim  
8 is not litigated during the hearing."); Grella v. Salem Five Cent  
9 Sav. Bank, 42 F.3d 26, 33-34 (1st Cir. 1994):

10 [I]t is analogous to a preliminary injunction hearing,  
11 requiring a speedy and necessarily cursory  
12 determination of the reasonable likelihood that a  
13 creditor has a legitimate claim or lien as to a  
14 debtor's property. If a court finds that likelihood  
15 to exist, this is not a determination of the validity  
of those claims, but merely a grant of permission from  
the court allowing that creditor to litigate its  
substantive claims elsewhere without violating the  
automatic stay.

16 Cornell University Law School's Legal Information Institute defines  
17 a "colorable claim" as:

18 A plausible legal claim. In other words, a claim  
19 strong enough to have a reasonable chance of being  
20 valid if the legal basis is generally correct and the  
facts can be proven in court. The claim need not  
actually result in a win.

21 [http://topics.law.cornell.edu/wex/colorable\\_claim.](http://topics.law.cornell.edu/wex/colorable_claim)

22 SRT attached to the Motion a copy of the Trustee's Deed,  
23 transferring title to the Residence to SRT following the foreclosure  
24 sale and showing the Trustee's Deed as having been recorded on  
25 January 29, 2010. Mr. Baghdasarian did not file a written  
26 opposition to the Motion in advance of the Hearing, and because

1 there is no transcript of the Hearing available to us, we do not  
2 know what the parties argued at the Hearing.<sup>4</sup> However, included in  
3 the exhibits filed by Mr. Baghdasarian in support of the Motion to  
4 Reconsider was a copy of the document from the Los Angeles County  
5 Recorder's Office reflecting that the Trustee's Deed had been  
6 recorded on January 29, 2010. Accordingly, there is nothing in the  
7 record that indicates that Mr. Baghdasarian contested SRT's position  
8 that it purchased the Residence at the foreclosure sale on  
9 January 5, 2010, and was the grantee under the Trustee's Deed  
10 recorded on January 29, 2010.<sup>5</sup>

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12 <sup>4</sup> As a general matter, we have discretion to dismiss an appeal  
13 or summarily affirm a bankruptcy court's decisions if the appellant  
14 does not provide a sufficient record to allow us to conduct an  
15 informed review. See Kyle v. Dye (In re Kyle), 317 B.R. 390, 393  
16 (9th Cir. BAP 2004), aff'd, 170 Fed. Appx. 457 (9th Cir. 2006).  
17 "The settled rule on transcripts in particular is that failure to  
18 provide a sufficient transcript may, but need not, result in  
19 dismissal or summary affirmance and that the appellate court has  
20 discretion to disregard the defect and decide the appeal on the  
21 merits." (citations omitted) Id. We exercise that discretion in  
22 this appeal because the record, though limited, is adequate for us  
23 to make a reasonably informed decision on the issues presented.

24 <sup>5</sup> Under California law, a foreclosure generally is deemed  
25 complete on sale, even if the trustee's deed is not delivered until  
26 a later date. So long as the foreclosure sale is conducted  
"regularly and properly," it is presumed valid, and the execution  
and delivery of a trustee's deed evidencing the transfer of title is  
a mere ministerial act. See Millennium Rock Mortgage, Inc. v. T.D.  
Serv. Co., 179 Cal. App. 4th 804, 809, 102 Cal. Rptr. 3d 544, 548  
(2009); Ballengee v. Sadlier, 179 Cal. App. 3d 1, 4, 224 Cal. Rptr.  
301, 302 (1986). However, if there is a defect in procedure,  
unfairness or fraud leading up to the foreclosure sale, it is  
voidable. See, e.g., Millennium Rock Mortgage, Inc., 179 Cal. App.  
(continued...)

1           When state law foreclosure proceedings have been completed  
2 prepetition, courts typically find cause to grant relief from stay  
3 to allow the purchaser at the foreclosure sale to proceed with state  
4 law remedies to obtain possession of the subject property. See,  
5 e.g., *Bebensee-Wong v. Fed. Nat'l Mort. Ass'n (In re Bebensee-Wong)*,  
6 248 B.R. 820, 821 (9th Cir. BAP 2000); *LR Partners, L.L.C. v.*  
7 *Steiner (In re Steiner)*, 251 B.R. 137, 143 (Bankr. D. Ariz. 2000);  
8 *Davisson v. Engles (In re Engles)*, 193 B.R. 23, 25 (Bankr. S.D. Cal.  
9 1996).

10           Although we do not have the bankruptcy court's oral findings  
11 in support of its decision granting the Motion, the order granting  
12 the Motion specified that it was granted under § 362(d)(1), which  
13 requires "cause." The order granting the Motion also specified that  
14 it was granted under § 362(d)(2), which provides that relief from  
15 stay "shall" be granted "with respect to a stay of an act against  
16 property . . . if-(A) the debtor does not have any equity in such  
17 property; and (B) such property is not necessary to an effective  
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20           <sup>5</sup>(...continued)  
21 4th at 809, 102 Cal. Rptr. 3d at 548; *Angell v. Superior Ct.*, 73  
22 Cal. App. 4th 691, 700, 86 Cal. Rptr. 2d 657, 662-63 (1999); *Moeller*  
23 *v. Lien*, 25 Cal. App. 4th 822, 832, 30 Cal. Rptr. 2d 777, 783-84  
24 (1994); *Little v. CFS Serv. Corp.*, 188 Cal. App. 3d 1354, 1358-62,  
25 233 Cal. Rptr. 923 (1987).

26           Mr. Baghdasarian's first bankruptcy filing before the Trustee's  
Deed was delivered and recorded and the bankruptcy court's order on  
the Motion preserved Mr. Baghdasarian's right to assert his claims  
that the foreclosure sale of his residence was wrongful and  
fraudulent in the Eviction Action. However, Mr. Baghdasarian did  
not prevail on those claims.

1 reorganization." SRT bore the burden of proof to establish that Mr.  
2 Baghdasarian had no equity in the Residence, but Mr. Baghdasarian  
3 bore the burden of proof to establish that it was necessary for an  
4 effective reorganization of his affairs. § 362(g).

5 With title to the Residence in SRT, no equity for  
6 Mr. Baghdasarian was a given unless and until a court in appropriate  
7 proceedings restored title to Mr. Baghdasarian. Without an  
8 ownership interest in the Residence, also given was the Residence  
9 could not be necessary to a reorganization of Mr. Baghdasarian's  
10 affairs.

11 What is as important as what the bankruptcy court did in its  
12 order on the Motion is what it did not do: It did not grant SRT's  
13 Motion in the alternative to annul the stay retroactively to  
14 validate the Judgment. The order accordingly required SRT to go  
15 back to Superior Court and litigate with Mr. Baghdasarian whether it  
16 was appropriate to evict him from the Residence in light of  
17 Mr. Baghdasarian's claims that the foreclosure sale underlying SRT's  
18 claim to title was wrongful and fraudulent. Accordingly, the  
19 bankruptcy court's order on the Motion is entirely consistent with  
20 the limited procedure and purposes prescribed for motions for relief  
21 from stay under the Bankruptcy Code, and we conclude that the  
22 bankruptcy court did not abuse its discretion in granting the Motion  
23 as it did, based on our review of the record.

24 With respect to Mr. Baghdasarian's Motion to Reconsider, as  
25 noted by SRT in its opposition, the motion was based on  
26 Mr. Baghdasarian's argument that the foreclosure sale was wrongful

1 because it was conducted while loan modification negotiations were  
2 in process. A bankruptcy court has broad discretion in deciding  
3 whether to reconsider its own orders, and a motion for  
4 reconsideration should not be granted in the absence of highly  
5 unusual circumstances. Orange St. Partners v. Arnold, 179 F.3d 656,  
6 665 (9th Cir. 1999). Generally, granting a motion for  
7 reconsideration is only proper if the bankruptcy court 1) is  
8 presented with newly discovered evidence that was not available at  
9 the time of the original hearing or 2) committed clear error or made  
10 a decision that was manifestly unjust, or 3) there is an intervening  
11 change in controlling law. Zimmerman v. City of Oakland, 255 F.3d  
12 at 740.

13 While we do not know what Mr. Baghdasarian argued at the  
14 Hearing, there is no new evidence in the Motion to Reconsider and  
15 the supporting exhibits that was not available to Mr. Baghdasarian  
16 at the time of the Hearing, and the bankruptcy court's decision on  
17 the Motion, as noted above, was consistent with applicable law and  
18 the facts before it, as we can perceive them from the record. We do  
19 not see any abuse of discretion in the bankruptcy court's decision  
20 to deny the Motion to Reconsider.

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#### VI. CONCLUSION

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For the reasons set forth above, we DISMISS this appeal as  
MOOT, but if the appeal were not moot, we would AFFIRM the  
bankruptcy court's decisions to grant the Motion and to deny the  
Motion to Reconsider.