

JUL 12 2011

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

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-10-1362-MkPaD
)
 LUPI PAULO EDWARDS,) Bk. No. LA-10-42638-PC
)
 Debtor.)
 _____)
)
 LUPI PAULO EDWARDS,)
)
 Appellant,)
)
 v.) **OPINION**
)
 WELLS FARGO BANK, N.A., Trustee,)
)
 Appellee.)
 _____)

Submitted Without Oral Argument
on March 17, 2011*

Filed - July 12, 2011

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

Honorable Peter H. Carroll, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Lupi Paulo Edwards, pro se, on brief;
 Donna L. LaPorte, Esq, Wright, Finlay & Zak, LLP
 on brief for Appellee Wells Fargo Bank, N.A.,
 Trustee

Before: MARKELL, PAPPAS, and DUNN, Bankruptcy Judges.

MARKELL, Bankruptcy Judge:

*This matter originally was calendared for oral argument on
 March 17, 2011. This panel subsequently granted the appellant's
 motion to submit on the briefs, by order entered on March 3,
 2011.

1 **INTRODUCTION**

2 Debtor Lupi Edwards ("Edwards") appeals the bankruptcy
3 court's order granting relief from the automatic stay to appellee
4 Wells Fargo Bank, as trustee for certain mortgage-backed
5 securities ("Wells Fargo"). We AFFIRM.

6 **FACTS**

7 On August 5, 2010, Edwards filed a voluntary chapter 7¹
8 bankruptcy petition. Within days, Wells Fargo filed a motion for
9 relief from the automatic stay with respect to Edwards'
10 residence, located in Long Beach, California (the "Property").

11 In support of its motion, Wells Fargo attached a copy of a
12 post-foreclosure Trustee's Deed Upon Sale dated May 17, 2010
13 ("Trustee's Deed"). The Trustee's Deed conveys title to the
14 Property to Wells Fargo based on the completion of a non-judicial
15 foreclosure sale at which Wells Fargo was the successful bidder
16 ("Foreclosure Sale"). The Trustee's Deed identifies Power
17 Default Services, Inc. as trustee and grantor, and Wells Fargo as
18 grantee. Wells Fargo recorded the Trustee's Deed in Los Angeles
19 County on May 20, 2010, almost three months before Edwards filed
20 her bankruptcy case.

21 Wells Fargo also attached copies of the following documents
22 to its motion for relief from stay: (1) a Notice to Vacate
23 Property, addressed to Edwards' and dated May 28, 2010; (2) a
24 complaint for unlawful detainer filed in the Los Angeles County

25 _____
26 ¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 Superior Court ("State Court"), dated June 3, 2010 ("Unlawful
2 Detainer Action"); (3) an order of the State Court in the
3 Unlawful Detainer Action, dated July 14, 2010, granting summary
4 judgment in Wells Fargo's favor in the Unlawful Detainer Action
5 ("Unlawful Detainer Judgment"); and (4) a Writ of Possession in
6 favor of Wells Fargo, issued on July 26, 2010.

7 On August 26, 2010, Edwards filed her response to Wells
8 Fargo's motion for relief from stay. In her response, Edwards
9 asserted that the Property was still hers, was unencumbered and
10 was worth \$180,000. Moreover, Edwards asserted that the Property
11 was necessary for her reorganization.²

12 In support of her response, Edwards argued:

13 Movant [Wells Fargo] unlawfully foreclosed this
14 property, & executed an UNLAWFUL EVICTION against the
15 debtor. [¶] Movant has NO STANDING to bring this
16 motion, [¶] An ADVERSARY PROCEEDING is pending in this
17 case against [Wells Fargo] to recover property and
18 money, and the motion should be DENIED so that the
19 debtor's rights are not prejudiced by defendant's
20 wrongful actions against the debtor and the bankruptcy
21 estate.

22 (Emphasis added.)

23 Other than a proof of insurance form, the only document that
24 Edwards attached in support of her response was a copy of her
25 notice of appeal of the Unlawful Detainer Judgment.³

26 Despite Edwards' reference to a pending adversary
27 proceeding, there was none, at least when she filed her response.

28 ²This allegation was odd. Edwards filed her case under
chapter 7, which contemplates liquidation rather than
reorganization.

³While the record does not reveal the status of Edwards'
appeal in the Unlawful Detainer Action, we presume it remains
pending.

1 Edwards did not file her adversary proceeding until September 9,
2 2010 - the same day as the hearing on the motion for relief from
3 stay.⁴

4 On September 9, 2010, the bankruptcy court heard Wells
5 Fargo's motion for relief from stay. Wells Fargo appeared
6 through counsel, and Edwards appeared pro se. Edwards briefly
7 argued that the foreclosure sale was invalid, arguing primarily
8 that Gold Country Escrow was the original trustee on her deed of
9 trust, and that she had never received notice of a change. She
10 contended that this lack of notice rendered any change of trustee
11 improper. In her view, only Gold Country Escrow had the capacity
12 to foreclose and pass title under the deed of trust to Wells
13 Fargo.

14 After confirming the facts of the Unlawful Detainer Judgment
15 and the Writ of Possession with both Wells Fargo and Edwards, the
16 bankruptcy court determined that cause existed to grant relief
17 from stay pursuant to § 362(d)(1) and granted Wells Fargo its
18 requested relief. The court also stated that its tentative
19 ruling, issued the day before the hearing, would become the
20 court's final order.

21 On September 13, 2010, Wells Fargo submitted an Order
22 Granting Motion for Relief From Stay, which the court entered
23 incorporating its rulings from the hearing and from the tentative
24

25 ⁴The allegations in Edwards' complaint appear to simply re-
26 hash Edwards' assertions made in her response to Wells Fargo's
27 motion for relief from stay. The bankruptcy court's disposition
28 of Edwards' adversary proceeding is the subject of a separate
appeal before this panel (CC-11-1010-PaMkA1). The resolution of
that appeal does not affect the appeal before us.

1 ruling (the "Relief from Stay Order").

2 Edwards timely filed her appeal.⁵

3 **JURISDICTION**

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

7 **ISSUE**

8 Did the bankruptcy court abuse its discretion in granting
9 Wells Fargo's motion for relief from the automatic stay?

10 **STANDARDS OF REVIEW**

11 We review an order granting relief from stay for abuse of
12 discretion. Veal v. Am. Home Mortg. Servicing, Inc. (In re
13 Veal), ___ B.R. ___, 2011 WL 2304200, at *12 (9th Cir. BAP
14 June 10, 2011); Kronemyer v. Am. Contractors Indem. Co. (In re
15 Kronemyer), 405 B.R. 915, 919 (9th Cir. BAP 2009). As noted in
16 Veal, this standard has two parts:

17 The abuse of discretion test involves two distinct
18 determinations: first, whether the court applied the
19 correct legal standard; and second, whether the factual
20 findings supporting the legal analysis were clearly
erroneous. United States v. Hinkson, 585 F.3d 1247,
1261-63 (9th Cir. 2009) (en banc).

21 ⁵After filing her notice of appeal, Edwards filed a motion
22 for rehearing under Rule 9023. Pursuant to Rule 8002(b),
23 Edwards' appeal of the Relief from Stay Order became effective
24 when the bankruptcy court entered its order denying Edwards'
25 motion for rehearing, on October 22, 2010. We will not review as
26 part of this appeal the order denying the motion for rehearing
27 because Edwards did not, as required by Rule 8002(b), amend her
28 notice of appeal to include this order. We also will not review
the order denying rehearing because Edwards' brief on appeal did
not raise any issues specifically relating to the motion for
rehearing, and thus she has waived them. See Golden v. Chicago
Title Ins. Co. (In re Choo), 273 B.R. 608, 613 (9th Cir. BAP
2002).

1 If the court failed to apply the correct legal
2 standard, then it has "necessarily abuse[d] its
3 discretion." Cooter & Gell v. Hartmarx Corp., 496 U.S.
4 384, 405, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990). This
5 prong of the determination is considered de novo.
6 Hinkson, 585 F.3d at 1261-62.

7 In re Veal, 2011 WL 2304200, at *12.

8 DISCUSSION

9 **A. Preliminary Issue: The Record on Appeal**

10 The panel notes that both parties referenced or included
11 numerous documents in their briefs and excerpts of record that
12 were not presented to the bankruptcy court. Evidence, or
13 purported evidence, that was not properly before the bankruptcy
14 court is not part of the record on appeal. See Kirshner v.
15 Uniden Corp. of Am., 842 F.2d 1074, 1077 (9th Cir. 1988); see
16 also Fed. R. App. P. 10. As such, we can only consider those
17 documents that were before the bankruptcy court when it granted
18 Wells Fargo's motion for relief from stay, along with those
19 documents delineated in Rule 8006.

20 **B. Wells Fargo's Standing**

21 We first address Edwards' argument that Wells Fargo lacked
22 standing. Standing is a "threshold question in every federal
23 case, determining the power of the court to entertain the suit."
24 Warth v. Seldin, 422 U.S. 490, 498 (1975); see also Thomas v.
25 Mundell, 572 F.3d 756, 760 (9th Cir. 2009); In re Veal, 2011 WL
26 2304200, at *4. Although standing has both constitutional and
27 prudential dimensions, Edwards challenges only the prudential

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1 standing of Wells Fargo.⁶

2 Prudential standing imposes limitations on the exercise of
3 federal jurisdiction. Elk Grove Unified School Dist. v. Newdow,
4 542 U.S. 1, 11 (2004). One aspect of prudential standing is that
5 a movant must assert its own legal rights, and may not assert the
6 legal rights of others. See id. at 12; see also Chapman v. Pier
7 1 Imports (U.S.) Inc., 631 F.3d 939, 960 (9th Cir. 2011); In re
8 Veal, 2011 WL 2304200, at *5. In this context, prudential
9 standing essentially melds with the concept of "real party in
10 interest" under Civil Rule 17.⁷ In re Veal, 2011 WL 2304200, at
11 *6. Among other policy considerations, the real party in
12 interest requirement "ensures that the party bringing the action
13 owns or has rights that can be vindicated by proving the elements
14 of the claim for relief asserted." Id.

15 Section 362(d) allows a party to bring a motion for relief
16 from stay if it establishes that it is a "party in interest."
17 While the Code does not define the term "party in interest," this
18 status is "determined on a case-by-case basis, with reference to
19 the interest asserted and how [that] interest is affected by the
20 automatic stay." In re Kronemyer, 405 B.R. at 919 (quoting In re

22 ⁶"Constitutional standing requires an injury in fact, which
23 is caused by or fairly traceable to some conduct or some
24 statutory prohibition, and which the requested relief will likely
25 redress." In re Veal, 2011 WL 2304200, at *4. Constitutional
26 standing is rarely lacking when a creditor seeks relief from the
automatic stay, as the stay directly affects a creditor's ability
to exercise or vindicate its nonbankruptcy rights.

27 ⁷Rule 7017 makes Civil Rule 17 applicable to adversary
28 proceedings, and Rule 9014(c) makes Rule 7017 applicable to
contested matters such as motions under § 362.

1 Woodberry, 383 B.R. 373, 378 (Bankr. D.S.C. 2008)).

2 This panel has previously held that "a party seeking stay
3 relief need only establish that it has a colorable claim to
4 enforce a right against property of the estate." In re Veal,
5 2011 WL 2304200, at *11; Biggs v. Stovin (In re Luz Int'l, Ltd.),
6 219 B.R. 837, 842 (9th Cir. BAP 1998); see also First Fed. Bank
7 of Cal. v. Robbins (In re Robbins), 310 B.R. 626, 631 (9th Cir.
8 BAP 2004).

9 Veal essentially recognizes that a movant has a colorable
10 claim sufficient to bestow upon it standing to prosecute a motion
11 under § 362 if it either: (a) owns or has another form of
12 property interest in a note secured by the debtor's (or the
13 estate's) property; or (b) is a "person entitled to enforce"
14 ("PETE") such a note under applicable state law. Id. at *10.
15 When standing is challenged, applicable nonbankruptcy law
16 provides the tests to establish a property interest or PETE
17 status. As Veal indicates, property interests are typically
18 established by showing compliance with local law, usually the
19 relevant provisions of Article 9 of the Uniform Commercial Code
20 ("UCC"), while PETE status is shown by reference to the
21 applicable provisions of UCC Article 3. Id. at **6-10.

22 The issue here is not, as it was in Veal, whether Wells
23 Fargo has an ownership or other property interest in the debtor's
24 secured note. Indeed, due to the foreclosure, the debtor's note
25 has been satisfied by Wells Fargo's credit bid. Rather the issue
26 here is the simpler one of whether, when taken together, Wells
27 Fargo's recorded Trustee's Deed and the Unlawful Detainer
28 Judgment demonstrate that Wells Fargo has some property interest

1 in the Property. As shown below, this combination establishes,
2 under applicable California law, that Wells Fargo is the
3 presumptive current title owner. As a result, there can be no
4 doubt that Wells Fargo has a sufficient "colorable" claim
5 required for standing.⁸

6 Edwards, however, argues that Wells Fargo is not the proper
7 party to move for relief from stay because the trustee on her
8 Deed of Trust was Gold Country Escrow; therefore, the parties
9 conducting the foreclosure, T.D. Services or Power Default
10 Services, as the case may be, lacked the authority to sell the
11 Property at the Foreclosure Sale on May 17, 2010. That
12 contention is baseless on this record and under applicable
13 California law.

14 The duly-recorded Trustee's Deed provides that Wells Fargo
15 is the presumptive current record owner with respect to the
16 Property. See, e.g., In re Salazar, 448 B.R. 814, 819 (Bankr.
17 S.D. Cal. 2011) (bank moving for relief from stay established a
18 prima facie case of standing as it was the title holder on the
19 subject property under a recorded Trustee's Deed Upon Sale).
20 Pursuant to its title to the Property, Wells Fargo acquired
21 additional rights and remedies when it subsequently obtained the
22 Unlawful Detainer Judgment and Writ of Possession to the
23 Property. Wells Fargo possessed these interests and rights

25 ⁸Although Wells Fargo has a sufficient colorable claim to
26 give it standing under Veal, that standing only allows it to
27 proceed with its request for stay relief. If allowed under
28 applicable nonbankruptcy law, the debtor may still challenge the
foreclosure in state court, or if there is jurisdiction, by
initiating an adversary proceeding in bankruptcy court.

1 before Edwards filed her bankruptcy petition, and at the time it
2 moved for relief from stay.

3 Moreover, under California law, Wells Fargo took title free
4 and clear to the Property upon completion of the Foreclosure
5 Sale. See 4 Harry D. Miller and Marvin B. Starr, CAL. REAL ESTATE
6 § 10:208 (3d ed. 2009) (under California law, “[t]he purchaser at
7 the foreclosure sale receives title free and clear of any right,
8 title, or interest of the trustor or any grantee or successor of
9 the trustor.”).

10 Under these facts, we find that Wells Fargo satisfied the
11 threshold showing of a colorable claim to an ownership interest
12 in the Property, as well as enforceable rights to the Property
13 thereunder. In turn, this establishes Wells Fargo’s status as a
14 real party in interest, as it is clear that Wells Fargo is
15 asserting its own legal rights. Therefore, Wells Fargo had
16 standing to seek relief from the automatic stay.

17 **C. Cause for Relief From Stay**

18 We now turn to the merits. Section 362(d)(1) provides that,
19 “[o]n request of a party in interest and after notice and a
20 hearing, the court shall grant relief from the stay . . . (1) for
21 cause, including the lack of adequate protection of an interest
22 in property of such party in interest.” Although the Bankruptcy
23 Code does not expressly define this term, “cause” for relief from
24 stay under § 362(d)(1) is determined on a case-by-case basis. In
25 re Kronemyer, 405 B.R. at 921.

26 As briefly mentioned above, in California, once a
27 foreclosure sale concludes and the purchaser records the deed in
28 accordance with applicable law, the original trustor or borrower

1 no longer has an interest or right in the subject real property.
2 See *Bebensee-Wong v. Fed. Nat'l Mortg. Ass'n (In re*
3 *Bebensee-Wong*), 248 B.R. 820 (9th Cir. BAP 2000) (construing Cal.
4 Civ. Code § 2924h(c)); see also Kathleen P. March and Hon. Alan
5 M. Ahart, CALIFORNIA PRACTICE GUIDE: BANKRUPTCY, ¶ 8:1196 (2010),
6 available at Westlaw CABANKR ("Where a real property nonjudicial
7 foreclosure was completed and the deed recorded prepetition, the
8 debtor has neither equitable nor legal title to the property at
9 the time the bankruptcy petition is filed.") (emphasis in
10 original). Accordingly, upon the original trustor's subsequent
11 bankruptcy filing, "there is no reason not to allow the creditor
12 to repossess because filing a bankruptcy petition after loss of
13 ownership cannot reinstate the debtor's title." Id. at ¶ 8:1195
14 (citing § 541(a)). Instead, the debtor is essentially a
15 "squatter," and thus cause for relief from stay is established.
16 Id. at ¶ 8:1196.

17 In this matter, the bankruptcy court found that cause
18 existed based on the pre-petition Foreclosure Sale, and the
19 subsequent Unlawful Detainer Judgment and Writ of Possession. In
20 ruling from the bench at the relief from stay hearing, the court
21 stated:

22 Wells Fargo initiated the unlawful detainer action as
23 the owner of the property. Evidently, [Edwards] did
24 not respond to that unlawful detainer action. A
25 judgment was entered by a State Court, which determined
26 the right of possession to that property based upon
27 evidence that was presented to that State Court judge.

28 I am not about to question that judgment. A writ of
possession was issued pursuant to that judgment. The
only issue before this Court is whether or not there is
some cause to lift the protection of the Bankruptcy
Court to allow that State Court judgment to be
enforced. And the Court believes that Wells Fargo has

1 established that cause.

2 Hrg. Trans. (Sep. 9, 2010) at 3:1-12.

3 In its Relief from Stay Order, the court determined that
4 under California law, Edwards' had no right of redemption once
5 the pre-petition Foreclosure Sale was completed. The court also
6 found that Edwards was served with a required three-day notice to
7 quit or pay rent on May 28, 2010, and that Wells Fargo obtained
8 the Unlawful Detainer Judgment on July 14, 2010. On this basis,
9 the court determined that Edwards "ha[d] no right to ignore the
10 foreclosure and attempt to reorganize the debt." The court
11 further determined that Edwards "filed the bankruptcy petition on
12 August 5, 2010 in an apparent effort to stay enforcement of the
13 unlawful detainer judgement." As such, the court properly found
14 that Edwards no longer had an interest in the Property, and Wells
15 Fargo established cause to obtain relief from stay.⁹

16 Based on the foregoing, and upon our review of Wells Fargo's
17 rights as a purchaser at a foreclosure sale, we find that the
18 court's factual findings were not clearly erroneous. Therefore,
19 the court did not abuse its discretion in granting Wells Fargo
20 relief from the automatic stay.

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24 ⁹This case is distinguishable from cases such as In re
25 Salazar. In Salazar, the bank moving for relief from stay had
26 obtained title to the subject property prior to the debtor's
27 bankruptcy filing through a non-judicial foreclosure sale. 448
28 B.R. at 818. The relief sought, however, was to continue the
unlawful detainer action it commenced in state court prior to
debtor's bankruptcy. Id. There thus was no final state court
judgment adjudicating the parties' rights.

1 **D. The Adversary Proceeding**

2 Edwards further claims that the bankruptcy court erred in
3 granting relief from stay because she had commenced an adversary
4 proceeding against Wells Fargo challenging its title. The crux
5 of Edwards' complaint was that the Foreclosure Sale, Unlawful
6 Detainer Action, subsequent Unlawful Detainer Judgment and Writ
7 of Possession were improper, fraudulent, illegal and invalid.

8 As a preliminary matter, it is not clear that the adversary
9 proceeding complaint was before the court at the September 9
10 hearing. Although Edwards referenced an adversary proceeding in
11 her response to Wells Fargo's motion for relief from stay, the
12 bankruptcy docket reflects that the adversary proceeding was not
13 filed until September 9, 2010, the same day as the relief from
14 stay hearing. There is no indication that Edwards actually
15 presented a copy of her complaint, or even mentioned it, to the
16 court at or before the September 9 hearing.

17 Even if the court could have assumed that Edwards had filed
18 an adversary complaint, it would not change our analysis. The
19 bankruptcy court generally has broad discretion in granting
20 relief from stay for cause under § 362(d). Groshong v. Sapp (In
21 re Mila, Inc.), 423 B.R. 537, 542 (9th Cir. BAP 2010). This
22 includes granting relief from stay to enforce a prepetition state
23 court judgment, in spite of whether the debtor has initiated a
24 related adversary proceeding. See generally In re Robbins, 310
25 B.R. at 630 (granting or denying relief from stay while adversary
26 proceeding is pending is within the sound discretion of the
27 bankruptcy court); In re Kronemyer, 405 B.R. at 921-22 (court did
28 not abuse discretion in granting creditor relief from stay to

1 continue state court litigation despite a pending adversary
2 proceeding).

3 Moreover, once a California state court grants an unlawful
4 detainer judgement in favor of a foreclosure sale purchaser, the
5 original trustor or borrower is foreclosed under the doctrine of
6 claim preclusion from arguing that the foreclosure sale itself
7 was improper.¹⁰ See Freeze v. Salot, 122 Cal. App. 2d 561, 565-
8 66, 266 P.2d 140, 142-43 (1954)(after defendant obtained a
9 judgment against plaintiff in an unlawful detainer action, res
10 judicata precluded plaintiff's re-litigation of wrongful
11 foreclosure claims in subsequent lawsuit). 28 U.S.C. § 1738
12 requires that federal courts give state court judgments the same
13 effect as the judgment would be given under the applicable state
14 law.

15 Edwards' complaint, much like her argument before this
16 panel, seemingly advances the same state law claims, rights and
17 defenses that she asserted (or should have asserted) before the
18 State Court. As previously discussed, the State Court rendered
19 judgment in favor of Wells Fargo in the Unlawful Detainer Action.
20 Edwards was therefore precluded from continuing to assert that
21 the Foreclosure Sale was improper, fraudulent, illegal and
22 invalid in her bankruptcy case. It could not have been an abuse
23 of discretion in these circumstances to grant relief from stay.

24 In sum, we find that based on the record in this case, the
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26 ¹⁰However, an unlawful detainer judgment does not
27 necessarily bar subsequent litigation as to title of the realty.
28 See Vella v. Hudgins, 20 Cal. 3d 251, 257, 572 P.2d 28, 31
(1977).

1 bankruptcy court did not abuse its discretion in granting Wells
2 Fargo relief from the automatic stay under § 362(d)(1).¹¹

3 **CONCLUSION**

4 For all of the reasons set forth above, the bankruptcy
5 court's order granting relief from stay is AFFIRMED.

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28 ¹¹We decline to reach the issue of whether stay relief might
also have been appropriate under § 362(d)(2).