

JUL 23 2014

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:) BAP Nos. CC-13-1303-DKiTa
) CC-13-1426-DKiTa
IDA MANASARYAN,)
)
Debtor.) Bk. No. 12-17095-MT
)

SERGEY KORCHINSKY,)
)
Appellant,)
)
v.)
)
SKYLINE VISTA EQUITIES, LLC;)
BANK OF AMERICA, N.A.; IDA)
MANASARYAN; CORI B. JONES,)
)
Appellees.)
_____)

In re:) BAP No. CC-13-1411-DKiTa
)
SERGEY KORCHINSKY,) Bk. No. 12-17169-AA
)
Debtor.)
)

SERGEY KORCHINSKY,)
)
Appellant,)
)
v.)
)
SKYLINE VISTA EQUITIES, LLC;)
BANK OF AMERICA, N.A.;)
CORI B. JONES,)
)
Appellees.)
_____)

In re:) BAP No. CC-13-1427-DKiTa
)
RUZANNA MANASARYAN,) Bk. No. 12-13444-MT
)
Debtor.)
_____)

1 SERGEY KORCHINSKY,)
2 Appellant,)
3 v.)
4 SKYLINE VISTA EQUITIES, LLC;)
5 BANK OF AMERICA, N.A.;)
6 CORI B. JONES,)
7 Appellees.)

M E M O R A N D U M¹

8 Argued and Submitted on June 26, 2014
9 at Pasadena, California

10 Filed - July 23, 2014

11 Appeals from the United States Bankruptcy Court
12 for the Central District of California

13 Honorable Maureen A. Tighe and Honorable Alan M. Ahart,
14 Bankruptcy Judges, Presiding

15 Appearances: Mohammad Azhar Asadi, of Law Offices of M. Azhar
16 Asadi & Associates APC, argued for Appellant
17 Sergey Korchinsky; Leslie M. Werlin argued for
18 Appellees Bank of America, N.A. and ReconTrust
19 Company, N.A.; William Fitch argued for Appellee
20 Skyline Vista Equities, LLC.

21 Before: DUNN, KIRSCHER, and TAYLOR, Bankruptcy Judges.

22 Facing a foreclosure sale of real property he owned,
23 Appellant filed a bankruptcy case in the name of an alias;
24 failed to inform the secured creditor of his pending bankruptcy
25 case; and transferred, postpetition, fractional interests in the
26 real property to two other individuals with pending bankruptcy
27 cases. After the foreclosure sale took place, the secured
28 creditor was notified of the bankruptcy of one of the transferees

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 of an interest in the real property. The purchaser at the
2 foreclosure sale sought and obtained in that bankruptcy case an
3 in rem order granting relief from the automatic stay as to any
4 and all bankruptcy cases pending that involved the real property.

5 Appellant thereafter asserted in state court proceedings
6 that the foreclosure sale was void, having been conducted in
7 violation of the automatic stay in his bankruptcy case. The
8 Appellant filed a motion to reopen the bankruptcy case in which
9 the in rem order had been entered in order to seek relief from
10 the order. When the bankruptcy court denied the motion to
11 reopen, Appellant filed the first appeal.

12 The secured creditor then filed a motion for relief from the
13 automatic stay in the bankruptcy case of the Appellant and each
14 individual allegedly holding an interest in the real property
15 based upon Appellant's postpetition transfers. The bankruptcy
16 court granted in rem relief in all cases, and annulled the
17 automatic stay in each case. Appellant appealed all three of
18 those orders.

19 For the reasons stated in this Memorandum, we AFFIRM in all
20 four appeals.

21 I. FACTUAL BACKGROUND

22 On October 24, 2005, Sergey Korchinsky ("Sergey") obtained a
23 loan in the amount of \$920,000, evidenced by a promissory note
24 ("Note") secured by a deed of trust ("Trust Deed") on real
25 property ("Property") in Granada Hills, California. Countrywide
26 Home Loans, Inc. ("Countrywide") was the lender. On
27 September 16, 2011, Countrywide assigned the Trust Deed to The
28 Bank of New York Mellon fka The Bank of New York, as Trustee for

1 the Certificateholders of CWALT, Inc., Alternative Loan Trust
2 2005-71, Mortgage Pass-Through Certificates, Series 2005-71. The
3 assignment was recorded on October 13, 2011. ReconTrust
4 Company, N.A. ("ReconTrust"), was the trustee under the Trust
5 Deed, and Bank of America, N.A. ("BofA") (hereinafter, ReconTrust
6 and BofA are collectively referred to as the "Bank") is the
7 servicer on the Note.

8 Beginning in August 2008, Sergey defaulted on the Note. On
9 February 17, 2012, the Bank served a notice of default, recorded
10 on February 22, 2012, advising that Sergey was \$262,346.06 in
11 default and that the Bank had elected to sell the Property if the
12 default was not cured. On July 23, 2012, the Bank served a
13 notice of sale, recorded on July 25, 2012, stating that the Bank
14 intended to conduct an auction ("Trustee's Sale") of the Property
15 on August 17, 2012.

16 The Trustee's Sale was held as scheduled on August 17, 2012,
17 at which time the Property was sold to Skyline Vista Equities,
18 LLC ("Skyline"). The Trustee's Deed Upon Sale was recorded on
19 September 4, 2012.

20 The Tale of Three Bankruptcy Cases: A Pattern is
21 Established²

22 The notice of the Trustee's Sale set off a series of events
23

24 ² We exercised our discretion to review the bankruptcy
25 court's electronic docket and pleadings on record therein for the
26 three bankruptcy cases included in the factual discussion below.
27 See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.),
28 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v. Chase Manhattan
Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP
2003).

1 which culminated in the orders currently on appeal.

2 Sergey filed a chapter 13³ bankruptcy petition ("Sergey
3 Bankruptcy Case") on August 9, 2012. Notably, the petition was
4 in the name of Sergey Sahakyan. Only the petition was filed.
5 The mailing matrix included two creditors: BAC Home Loans
6 Servicing, LP with a post office box address, and "DWP," also
7 with a post office box address. Neither address included an
8 individual officer or agent. Sergey used an address other than
9 the Property address as his mailing address for purposes of the
10 Sergey Bankruptcy Case.

11 On August 9, 2012, the Bankruptcy Clerk entered an order
12 directing Sergey to file, inter alia, his bankruptcy schedules,
13 Statement of Financial Affairs, and Chapter 13 Plan
14 (collectively, "Bankruptcy Documents") not later than August 23,
15 2012. Sergey filed his Bankruptcy Documents on August 22, 2012,
16 but they were completely devoid of any information. All
17 provisions either were marked "N/A" or left blank entirely.

18 On August 16, 2012, postpetition, a grant deed ("Grant
19 Deed") was executed⁴ with respect to the Property which purported
20 to transfer a fractional interest in the Property from Sergey to
21 _____

22 ³ Unless otherwise indicated, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
24 all "Rule" references are to the Federal Rules of Bankruptcy
25 Procedure, Rules 1001-9037. The local rules of the Bankruptcy
26 Court for the Central District of California are referred to as
"LBRs." The Federal Rules of Civil Procedure are referred to as
"Civil Rules."

27 ⁴ The use of the passive voice to describe this act is
28 intentional in light of Sergey's later assertions that the Grant
Deed is a forgery.

1 Sergey, Ida Manasaryan ("Ida"), and Ruzanna Manasaryan
2 ("Ruzanna"). The Grant Deed was recorded on August 17, 2012, the
3 date set for the Trustee's Sale.

4 At the time the Grant Deed was executed and recorded,
5 Ruzanna was a debtor in a pending chapter 7 case ("Ruzanna
6 Bankruptcy Case"). The Ruzanna Bankruptcy Case had been filed as
7 a chapter 13 case on April 12, 2012, but was converted to
8 chapter 7 on May 2, 2012, on Ruzanna's motion. In her Bankruptcy
9 Documents filed on May 12, 2012, Ruzanna listed only real
10 property located on Cumpston Street in Los Angeles ("Ruzanna
11 Residence").⁵

12 The Ruzanna Bankruptcy Case ultimately was dismissed on
13 November 26, 2012, after Ruzanna repeatedly failed to appear at
14 her § 341(a) Meeting of Creditors. Although Ruzanna amended her
15 Bankruptcy Documents on August 10, 2012, she never added the
16 Property as an asset in which she claimed an interest.

17 At the time the Grant Deed was executed and recorded, Ida
18 also was a debtor in a pending chapter 7 case ("Ida Bankruptcy
19

20 ⁵ On June 27, 2012, Ruzanna filed a motion to vacate an
21 order granting relief from the automatic stay as to the Ruzanna
22 Residence that had been entered in the alleged unrelated
23 chapter 13 case of Federico J. Tribel. In her motion to vacate,
24 Ruzanna stated that unknown to her, and by use of her forged
25 signature, a portion of the Ruzanna Residence had been deeded to
26 Mr. Tribel. The lender ("Ruzanna Lender") on the Ruzanna
27 Residence had obtained an in rem order ("Ruzanna In Rem Order")
28 granting relief from the automatic stay as to the Ruzanna
Residence. The Ruzanna Lender thereafter noticed a new
foreclosure sale for April 12, 2012. Ruzanna purportedly learned
of the Ruzanna In Rem Order after the purchaser at the public
auction of the Ruzanna Residence initiated an unlawful detainer
action against Ruzanna in state court.

1 Case"). The Ida Bankruptcy Case had been filed as a chapter 13
2 case on August 7, 2012. Similar to Mr. Korchinsky, Ida filed
3 only the petition on that date. Her mailing matrix included the
4 identical creditors as did Mr. Korchinsky's: BAC Home Loans
5 Servicing, LP with a post office box address, and "DWP," also
6 with a post office box address. Neither address included an
7 individual officer or agent. Ida ultimately filed her Bankruptcy
8 Documents on August 22, 2012, but they also were completely
9 devoid of any information. All provisions either were marked
10 "N/A" or left blank entirely. Ida listed no interest in real
11 property in her schedules.⁶

12 On September 10, 2012, the United States Trustee ("UST")
13 filed a motion to dismiss the Ida Bankruptcy Case for abuse. The
14 UST Motion asserted that the Ida Bankruptcy Case had not been
15 filed for any legitimate purpose. The UST cited to the grant
16 deed transferring the Granada Hills Property to Ida for the
17 apparent purpose of stopping foreclosure proceedings. The UST
18 cited to yet another grant deed transferring real property from
19

20
21 ⁶ A relief from stay motion ("Wilshire Motion") was brought
22 by Wilshire Finance Partners, Inc. ("Wilshire") alleging that on
23 August 3, 2012, shortly before Wilshire's August 9, 2012
24 scheduled foreclosure sale on real property in Granada Hills,
25 California ("Granada Hills Property"), and four days before the
26 Ida Bankruptcy Case was filed, a grant deed was recorded
27 transferring the Granada Hills Property from Wilshire's borrower,
28 Geghetsik Nersisyan, to Ida. Ida responded to the Wilshire
Motion, asserting that she had more than 35% equity in the
Granada Hills Property. To her response she attached "Sale
Escrow Instructions" dated August 2, 2012, reflecting a proposed
sale from Geghetsik Nersisyan to a third party buyer, Hovhannes
Yesayan.

1 Maria Trinidad Figueroa to Ms. Figueroa and Ida as joint tenants,
2 also in an apparent effort to stop a pending foreclosure sale of
3 Ms. Figueroa's property. Following a hearing on the UST's
4 motion, on October 18, 2012, the bankruptcy court entered an
5 order dismissing the Ida Bankruptcy Case with a one year bar to
6 refiling.

7 The Property, Foreclosure Proceedings, and Annulment of the
8 Automatic Stay

9 Although Sergey filed the Sergey Bankruptcy Case on
10 August 9, 2012, he did not notify the Bank of the pending case.⁷
11 The Trustee's Sale of the Property was held as scheduled on
12 August 17, 2012, and the Property was sold to Skyline.⁸ A
13 Trustee's Deed Upon Sale was recorded in due course on
14 September 4, 2012.

15 On September 26, 2012, Skyline filed a motion for relief
16 from stay ("Skyline Motion") in the Ida Bankruptcy Case, alleging
17 it was entitled to relief pursuant to § 362(d)(1) based on Ida's
18 bad faith and pursuant to § 362(d)(4) on the basis that the
19 filing was part of a scheme to hinder, delay or defraud
20 creditors.

21 Sergey was served with the Skyline Motion at the Property
22 address and via telephonic notice.⁹ Ida appeared and opposed the
23

24 ⁷ The Bank contends it first received notice of the Sergey
25 Bankruptcy Case on September 7, 2012.

26 ⁸ It appears that the Bank received notice of the Ida
27 Bankruptcy Case thereafter on or about August 27, 2012.

28 ⁹ Two days after the Skyline Motion was filed, Sergey
continue...

1 Skyline Motion, asserting that the Bank was aware of the active
2 Ida Bankruptcy Case at the time of the Trustee's Sale such that
3 it should be rescinded.

4 On October 18, 2012, the bankruptcy court entered an order
5 ("Skyline Order") granting the Skyline Motion, annulling the
6 automatic stay retroactively to the date the Ida Bankruptcy Case
7 was filed, and extending the annulment of the stay to be binding
8 and effective as against any other "currently pending bankruptcy
9 cases" based on the bankruptcy court's finding that the filing of
10 the Ida Bankruptcy Case was "part of a scheme to delay, hinder,
11 or defraud creditors that involved . . . transfer of all or part
12 ownership of, or other interest in, the Property without the
13 consent of the secured creditor or court approval." The Skyline
14 Order was served on Sergey at the Property address. Neither Ida
15 nor Sergey appealed the Skyline Order.

16 Sergey On the Offensive

17 In January 2013, Sergey filed a state court complaint
18 against the Bank alleging that the Trustee's Sale should be
19 deemed void, because it was conducted in violation of the
20
21

22 _____
23 ⁹...continue
24 amended the petition in his bankruptcy case to add Sergey
25 Korchinsky as an "aka" for the debtor Sergey Sahakyan (Sergey
26 Bankruptcy Case docket no. 17); he also filed an amended
27 statement of his social security number (Sergey Bankruptcy Case
28 docket no. 16). These amendments made it clear that until
September 28, 2012, there was nothing in the Sergey Bankruptcy
Case that would have put either the Bank or Skyline on notice
that Sergey had a pending bankruptcy case.

1 automatic stay in the Sergey Bankruptcy Case.¹⁰ Sergey asserted
2 that the Grant Deed by which an interest in the Property was
3 transferred to Ida was a forgery, with the consequence that the
4 Skyline Order could not apply to provide annulment of the
5 automatic stay in the Sergey Bankruptcy Case.

6 Sergey thereafter filed a motion ("Sergey Motion") in the
7 bankruptcy court on March 29, 2013, to reopen the Ida Bankruptcy
8 Case for the purpose of vacating the Skyline Order based on the
9 same assertions. The Bank and Skyline both opposed the Sergey
10 Motion. On June 19, 2013, the bankruptcy court entered its order
11 ("Sergey Order") denying all relief requested in the Sergey
12 Motion, based on the available avenue for relief in the pending
13 state court litigation. In ruling on the Sergey Motion, but not
14 dispositive to its ruling, the bankruptcy court expressly
15 rejected Sergey's contentions that he had not been served either
16

17
18 ¹⁰ The Bank alleges that this was Sergey's second attempt
19 to get relief in the state court. On October 29, 2012, Sergey
20 filed a state court complaint (Case No. PC053965), seeking, inter
21 alia, a determination that the Trustee's Sale was void because it
22 was conducted in violation of the automatic stay in the Sergey
23 Bankruptcy Case. Case No. PC053965 apparently was dismissed
24 after Sergey failed to pay the filing fee.

25 In a Supplemental Declaration filed July 23, 2013, in
26 response to the Bank RFS Motion, Sergey contends that although he
27 is the named plaintiff in Case No. PC053965, he did not file that
28 case. He asserts that he did not know about the existence of
Skyline on the date it was filed, October 29, 2012, nor did he
know of any transfer of the Property. He contends he learned of
the Trustee's Sale on or about December 5, 2012, when one of his
tenants informed him of an approaching lockout.

Sergey further asserts that when he received the file in
Skyline's pending unlawful detainer action on January 22, 2013,
he learned that someone had filed an answer in his name.

1 with the Skyline Motion or the Skyline Order.¹¹ Sergey timely
2 appealed the Sergey Order on June 28, 2013, and it is pending
3 before the Panel as BAP No. CC-13-1303.

4 Thereafter, on July 12, 2013, the Bank filed two motions
5 each in the Sergey Bankruptcy Case, the Ida Bankruptcy Case, and
6 the Ruzanna Bankruptcy Case. The first motion sought to reopen
7 the cases; these motions were granted on July 22, 2013. The
8 second motion ("Bank RFS Motions") sought annulment of the
9 automatic stay based on bad faith, annulment of automatic stay
10 pursuant to § 362(d)(4), and a "comfort order" to the effect that
11 the Trustee's Sale was not void as a result of the annulment of
12 the automatic stay. The Bank asserted that the relief was
13 necessary because Sergey continued to assert in state court
14 proceedings that the Trustee's Sale was void. Sergey opposed the
15 Bank RFS Motions.

16 The bankruptcy court entered an order ("Bank RFS Order") in
17 each of the three cases granting the Bank RFS Motions.¹² At the

18
19 ¹¹ "[Sergey] argues that he had no knowledge of the
20 [Skyline Motion or the Skyline Order] until January 22, 2013,
21 when [Sergey] received the Unlawful Detainer Complaint. . . .
22 The Court finds this argument to be unpersuasive. On September
23 26, 2012, [Sergey] was served with the [Skyline Motion], wherein
24 Skyline made clear it was requesting both a finding under
25 § 362(d)(4) and extraordinary relief. The [Skyline] Order was
26 entered on November 21, 2012. [Sergey] was again served with the
[Skyline Order], which clearly showed what relief the Court had
granted to Skyline. Again, there was no objection to the form of
order by [Sergey] under [LBR] 9021-1(3)(B)." See Sergey Order at
2:23-28.

27 ¹² The Bank RFS Order in the Sergey Bankruptcy Case was
28 entered on August 16, 2013, by Judge Alan M. Ahart, the case
continue...

1 August 7, 2013 hearing on the Bank RFS Motions in the Ida
2 Bankruptcy Case and the Ruzanna Bankruptcy Case, the bankruptcy
3 court stated its intent to docket its Tentative Ruling as its
4 findings of fact and conclusions of law in connection with its
5 decision to grant the Bank RFS Motions. The Tentative Ruling was
6 docketed October 15, 2013.

7 In the Tentative Ruling, the bankruptcy court affirmatively
8 found that the elements required to grant relief under
9 § 362(d)(4) were present, i.e., that the bankruptcy cases of
10 Sergey, Ida, and Ruzanna were part of a scheme to hinder, delay
11 or defraud creditors that included transfers of the Property and
12 multiple bankruptcy filings. The bankruptcy court also
13 considered issues relating to good faith and prejudice to the
14 parties and ruled that annulment of the stay was warranted.

15 Sergey timely appealed each of the Bank RFS Orders.¹³
16

17 ¹²...continue
18 judge for the Sergey Bankruptcy Case. The Bank RFS Orders in the
19 Ida Bankruptcy Case and the Ruzanna Bankruptcy Case were entered
20 on August 23, 2013, by Judge Maureen Tighe, the case judge for
the Ida Bankruptcy Case and the Ruzanna Bankruptcy Case.

21 ¹³ Each Bank RFS Order contained the following "additional"
relief beyond relief pursuant to § 362(d)(4) and annulment:

22 Separate and independent from the relief provided
23 above, the Court hereby confirms that (i) pursuant to
24 11 U.S.C. §§ 105(a) and 362(j), the [Skyline Order]
25 annulled the stay in this debtor's bankruptcy case
26 retroactive to the date of the bankruptcy petition and
27 (ii) that pursuant to the [Skyline Order], the stay in
28 this debtor's bankruptcy case does not affect
postpetition acts by the Movants with respect to the
Property, except to the extent that an appellate court
continue...

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.
3 §§ 1334 and 157(b) (2) (G). We have jurisdiction under 28 U.S.C.
4 § 158.

5 **III. ISSUES**

6 Whether the bankruptcy court abused its discretion when it
7 refused to reopen the Ida Bankruptcy Case on the Sergey Motion.

8 Whether the bankruptcy court abused its discretion when it
9 exercised jurisdiction over the Bank RFS Motions while the appeal
10 of the Sergey Order was pending.

11 Whether the bankruptcy court erred in determining that the
12 Bank had standing to prosecute the Bank RFS Motions eighteen
13 months after the Trustee Sale had been conducted and the
14 Trustee's Deed had been recorded to vest title in Skyline.

15 Whether the bankruptcy court erred when it found that the
16 Property was transferred to Ida and Ruzanna with intent to
17 hinder, delay or defraud a creditor.

18 Whether the bankruptcy court abused its discretion when it
19 annulled the automatic stay as to the Property in the Bank RFS
20 Orders.

21 **IV. STANDARDS OF REVIEW**

22 We review a bankruptcy court's denial of a motion to reopen
23 a bankruptcy case for abuse of discretion. See Weiner v. Perry,
24 Settles & Lawson, Inc. (In re Weiner), 161 F.3d 1216, 1217 (9th

25
26 ¹³...continue
27 orders otherwise. The relief provided in paragraphs 3,
28 4, 9, 10a and 10b herein is separate and independent
from the relief provided in the [Skyline Order].

1 Cir. 1998); Lopez v. Specialty Rests., Inc. (In re Lopez),
2 283 B.R. 22, 26 (9th Cir. BAP 2002).

3 We review the bankruptcy court's application of procedural
4 rules and whether a particular procedure comports with due
5 process de novo. All Points Cap. Corp. v. Meyer (In re Meyer),
6 373 B.R. 84, 87 (9th Cir. BAP 2007); Beneficial Cal. Inc. v.
7 Villar (In re Villar), 317 B.R. 88, 92 (9th Cir. BAP 2004); see
8 also Berry v. U.S. Trustee (In re Sustaita), 438 B.R. 198, 207
9 (9th Cir. BAP 2010) (whether adequate due process notice was
10 given in any particular instance is a mixed question of law and
11 fact reviewed de novo) (citing Demos v. Brown (In re Graves),
12 279 B.R. 266, 270 (9th Cir. BAP 2002)).

13 The rule that a notice of appeal will divest a court of
14 jurisdiction "is not absolute." Neary v. Padilla
15 (In re Padilla), 222 F.3d 1184, 1190 (9th Cir. 2000). We review
16 de novo whether the bankruptcy court had jurisdiction over an
17 issue following the filing of a notice of appeal. See Rains v.
18 Flinn (In re Rains), 428 F.3d 893 (9th Cir. 2005).

19 "Standing is a legal issue that we review de novo."
20 Kronemyer v. Am. Contractors Indemn. Co. (In re Kronemyer),
21 405 B.R. 915, 919 (9th Cir. BAP 2009).

22 The decision of a bankruptcy court to grant relief from the
23 automatic stay under § 362(d) is reviewed for abuse of
24 discretion. Kronemyer, 405 B.R. at 919. This includes a
25 decision to grant in rem relief (First Yorkshire Holdings, Inc.
26 v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.),
27 470 B.R. 864, 870-71 (9th Cir. BAP 2012)), and a decision to
28 annul the automatic stay (Gasprom, Inc. v. Fateh (In re Gasprom,

1 Inc.), 500 B.R. 598, 607-08 (9th Cir. BAP 2013)).

2 We review the bankruptcy court's findings of fact for clear
3 error. In re Brooks-Hamilton, 400 B.R. 238, 245 (9th Cir. BAP
4 2009). Clear error exists when, on the entire evidence, the
5 reviewing court is left with the definite and firm conviction
6 that a mistake was made. Oney v. Weinberg (In re Weinberg),
7 410 B.R. 19, 28 (9th Cir. 2009); Hoopai v. Countrywide Home
8 Loans, Inc. (In re Hoopai), 369 B.R. 506, 509 (9th Cir. BAP
9 2007).

10 De novo review requires that we consider a matter anew, as
11 if no decision had been made previously. United States v.
12 Silverman, 861 F.2d 571, 576 (9th Cir.1988); B-Real, LLC v.
13 Chaussee (In re Chaussee), 399 B.R. 225, 229 (9th Cir. BAP 2008).

14 A bankruptcy court abuses its discretion if it applies an
15 incorrect legal standard or misapplies the correct legal
16 standard, or its factual findings are illogical, implausible or
17 without support from evidence in the record. TrafficSchool.com
18 v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

19 We may affirm the decision of the bankruptcy court on any
20 basis supported by the record. Shanks v. Dressel, 540 F.3d 1082,
21 1086 (9th Cir. 2008).

22 V. DISCUSSION

23 A. BAP No. 13-1303

24 In his Opening Brief on Appeal, Sergey asserts that the
25 bankruptcy court's fundamental error that led to each of the four
26 appeals currently before the Panel was the failure to find that
27 the Grant Deed had been forged.

28 However, in entering the Sergey Order, which is the subject

1 of BAP No. 13-1303, the bankruptcy court explicitly made no
2 findings with respect to the validity of the Grant Deed.
3 “[W]hether [Sergey] is successful in prosecuting his Complaint to
4 Void the Trustee Sale of the . . . Property is outside the scope
5 of the [Skyline Order].” Because the validity of the Grant Deed
6 could be litigated in the state court proceedings, the bankruptcy
7 court determined that reopening the Ida case to vacate the
8 Skyline Order was not necessary.¹⁴

9 Sergey’s Opening Brief further asserts that the bankruptcy
10 court incorrectly found that Sergey had been served with the
11 Skyline Motion and the Skyline Order. Implicit in the bankruptcy
12 court’s findings is a determination that the notice provided to
13 Sergey satisfied due process requirements. We agree. The record
14 on appeal reflects that Sergey was served with the Skyline Motion

15
16 ¹⁴ Generally, “the reopening of a closed bankruptcy case is
17 a ministerial act that functions primarily to enable the file to
18 be managed by the clerk as an active matter and that, by itself,
19 lacks independent legal significance and determines nothing with
20 respect to the merits of the case.” Menk v. Lapaglia
21 (In re Menk), 241 B.R. 896, 913 (9th Cir. BAP 1999) (citations
22 omitted). A motion to reopen implicates a narrow range of
23 administrative issues, such as, for example, whether further
24 estate administration is necessary, whether a trustee should be
25 appointed, and whether another filing fee is required. Id. at
26 916-17. This Panel has previously ruled that it is not
27 appropriate in proceedings on a motion to reopen to make
28 substantive determinations on claims for relief. Id.

24 In this appeal, however, Sergey does not assert that the
25 bankruptcy court erred in denying his motion to reopen on the
26 ground that extraneous issues intruded in the court's decision to
27 deny the motion. We therefore deem this issue to have been
28 waived by Sergey. See, e.g., Arpin v. Santa Clara Valley Transp.
Agency, 261 F.3d 912, 919 (9th Cir. 2001) (generally, issues not
“specifically and distinctly argued” in a party's opening brief
are deemed waived).

1 and the Skyline Order in the Ida Bankruptcy Case at the Property
2 address. Even assuming that the short notice period between the
3 service and the October 3, 2012 hearing might raise due process
4 issues, Sergey took no prompt action to address allegedly
5 improper notice once he had been served with the Skyline Order.
6 The Sergey Motion was not filed until March 2013, well after the
7 appeals period had run in the case, and only after Sergey had
8 been served with an unlawful detainer action in state court. In
9 addition, Sergey complains that Skyline filed no motion in his
10 bankruptcy case. However, Sergey filed the Sergey Bankruptcy
11 Case in a name unknown to the Bank and with an incorrect social
12 security number. Skyline had no way of knowing about the Sergey
13 Bankruptcy Case. The matrix information in the Sergey
14 Bankruptcy Case did not afford the Bank an opportunity to discern
15 the filing and its potential application to its creditor
16 interests. This record suggests Sergey went to great lengths to
17 keep the Bank from learning of the Sergey Bankruptcy Case. Had
18 Sergey been forthcoming about his own bankruptcy case
19 information, he likely would have received better, or at least
20 additional or different, notice. Under the circumstances, we
21 cannot say that the bankruptcy court erred when it determined
22 that service on Sergey at the Property address did not deprive
23 Sergey of his due process rights in connection with the Skyline
24 Motion and Order.

25 On this record, the Sergey Motion appears to have been
26 nothing more than an attempt to attack the Skyline Order
27 collaterally. Thus, we are satisfied that the bankruptcy court
28 did not abuse its discretion when it denied Sergey's motion to

1 reopen the Ida Bankruptcy Case. Having denied Sergey's motion to
2 reopen, the bankruptcy court did not need to reach Sergey's
3 motion to vacate the Skyline Order.

4 B. BAP Nos. 13-1411, 13-1426 and 13-1427.

5 1. The Pendency of BAP No. 13-1303 Did Not Divest the
6 Bankruptcy Court of Jurisdiction Over the Bank RFS Motions.

7 Sergey asserts on appeal that the pendency of the appeal of
8 the Sergey Order, BAP No. 13-1303, divested the bankruptcy court
9 of jurisdiction over "related matters."

10 However, a valid notice of appeal does not completely divest
11 the trial court of jurisdiction in the underlying case; the trial
12 court retains jurisdiction over any part of the case not affected
13 by the notice of appeal. "When a proper notice of appeal has
14 been timely filed, the general rule is that jurisdiction over any
15 matters involved in the appeal is immediately transferred . . .
16 [to the appellate court]." See Matter of Thorp, 655 F.2d 997,
17 998 (9th Cir. 1991). See also Petrol Stops NW v. Cont'l Oil Co.,
18 647 F.2d 1005, 1010 (9th Cir. 1991) (generally, the filing of a
19 notice of appeal divests a trial court of jurisdiction only over
20 matters involved in the appeal). Orders from contested matters
21 that adjudicate discrete disputes do not divest the bankruptcy
22 court of jurisdiction generally.

23 Sergey argues that because the issues on appeal in BAP
24 No. 13-1303 are exactly the same issues underlying the Bank
25 RFS Motions, i.e., whether the bankruptcy court should have
26 granted in rem relief from the automatic stay as to the Property,
27 the bankruptcy court erred when it exercised jurisdiction over
28 the Bank RFS Motions and entered the Bank RFS Orders in the three

1 bankruptcy cases.

2 Sergey is mistaken. The primary issue on appeal in BAP
3 No. 13-1303 is whether the Ida Bankruptcy Case should have been
4 reopened for the purpose of vacating the Skyline Order. Although
5 the Sergey Order includes a provision denying Sergey's requested
6 relief from the Skyline Order as it applied to him, the
7 bankruptcy court did not reach the underlying issue, ruling
8 instead that the issue of the validity of the Grant Deed could be
9 raised in state court proceedings. Further, even if Sergey could
10 possibly be successful through BAP No. 13-1303 in obtaining
11 relief from the Skyline Order, the Bank, as a separate holder of
12 a secured interest in the Property at the time each of the
13 bankruptcy cases was filed, had its own right to seek relief from
14 the automatic stay, including retroactive relief and relief in
15 rem. Stated differently, the Bank RFS Motions addressed the
16 Bank's rights vis-à-vis the Property. The Sergey Order on appeal
17 at most touched upon Skyline's rights vis-à-vis the Property from
18 the date it was entered.

19 2. The Bank Had Standing to Prosecute the RFS Motions.

20 Sergey next asserts that the Bank had no standing to
21 prosecute the Bank RFS Motions, filed in July 2013, where the
22 Bank's Trustee Sale on August 17, 2012, and the recording of the
23 Trustee's Deed in favor of Skyline divested the Bank of any
24 interest in the Property. This argument is specious on its face.
25 The purpose of the Bank RFS Motions was specifically to address
26 the issue of whether the Bank could have conducted the Trustee
27 Sale in August 2012 in the first instance. Resolution of this
28 issue necessarily involved adjudication of the Bank's rights with

1 respect to its secured interest in the Property and the impact of
2 a bankruptcy filing(s) on the exercise of the Bank's rights.
3 Further, the Bank RFS Motions were filed in response to Sergey's
4 assertions in the state court proceedings that the Trustee Sale
5 violated the automatic stay in the Sergey Bankruptcy Case.

6 In the case of a party seeking relief from the automatic
7 stay to foreclose an interest in real property, we have held that
8 a moving party must establish it had some interest in the
9 underlying note, either as a holder or as a person entitled to
10 enforce the note. See Veal v. Am. Home Mortg. Serv., Inc.
11 (In re Veal), 450 B.R. 897, 910-13 (9th Cir. BAP 2011). While
12 the Bank ostensibly no longer held any interest in the Property
13 when it filed the Bank RFS Motions in light of the Trustee's Deed
14 recorded in favor of Skyline, two other factors are significant
15 in this analysis. First, the Bank was seeking such relief
16 specifically in response to Sergey's assertion in the state court
17 that the Bank had no right to conduct the Trustee Sale in the
18 absence of relief from the automatic stay in the Sergey
19 Bankruptcy Case. The logical extension of Sergey's argument is
20 that the Bank must still be the holder of the Note or the person
21 entitled to enforce the Note. Second, the Bank was seeking an
22 order with respect to the automatic stay that would establish its
23 rights prior to the Trustee's Sale, a time at which it clearly
24 had standing.

25 Relying on Kronemyer v. Am. Contractors Indem. Co.
26 (In re Kronemyer), 405 B.R. 915, 919 (9th Cir. BAP 2009), and
27 First Fed. Bank v. Robbins (In re Robbins), 310 B.R. 626, 631
28 (9th Cir. BAP 2004), the bankruptcy court ruled that the Bank was

1 a "party in interest" with a colorable claim sufficient to confer
2 standing. We agree.

3 3. The Bankruptcy Court's Finding That the Property Was
4 Transferred With Intent to Hinder, Delay or Defraud a
Creditor Was Not Clearly Erroneous.

5 Section 362(d)(4) authorized the bankruptcy court to grant
6 in rem relief as to the Property, provided that appropriate
7 findings were made. Section 362(d)(4) provides:

8 On request of a party in interest and after notice and
9 a hearing, the court shall grant relief from the stay
10 provided under subsection (a) of this section, such as
by terminating, annulling, modifying, or conditioning
such stay -

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

14 (A) transfer of all or part ownership of, or other
15 interest in, such real property without the consent of
the secured creditor or court approval; or
16 (B) multiple bankruptcy filings affecting such real
property.

17 In In re First Yorkshire Holdings, Inc., 470 B.R. 864, 870
18 (9th Cir. BAP 2012), this Panel articulated the elements a
19 bankruptcy court must find present in order to grant in rem
20 relief as to property: a debtor's bankruptcy filing must have
21 been part of a scheme; the purpose of the scheme must have been
22 to delay, hinder, or defraud creditors; and the scheme must have
23 involved either (a) the transfer of some interest in the real
24 property without the secured creditor's consent or court
25 approval, or (b) multiple bankruptcy filings. The bankruptcy
26 court affirmatively found each element present in this case.

27 We observe again that in his Opening Brief on Appeal, Sergey
28 asserts that the bankruptcy court's fundamental error that led to

1 each of the four appeals currently before the Panel was the
2 failure to find that the Grant Deed had been forged. Sergey
3 asserts that because the Grant Deed was fraudulent as to him, in
4 rem relief was not available under the express terms of the
5 statute. He contends that any transfer of an interest in the
6 Property was void, such that the bankruptcy court's
7 § 362(d) (4) (A) finding was clearly erroneous. Further, because
8 the Grant Deed was ineffective to transfer an interest in the
9 Property to Ida and Ruzanna, the Property only was affected by
10 the filing of the Sergey Bankruptcy Case.

11 The bankruptcy court considered and rejected Sergey's
12 evidence that the Grant Deed was forged and that Sergey had no
13 knowledge of its execution or recording. We must accept the
14 bankruptcy court's findings of fact unless we have a definite and
15 firm conviction that a mistake has been committed. Oney v.
16 Weinberg (In re Weinberg), 410 B.R. at 28; Hoopai v. Countrywide
17 Home Loans, Inc. (In re Hoopai), 369 B.R. at 509. We have no
18 such conviction with respect to these appeals. The record on
19 appeal adequately supports the bankruptcy court's findings. In
20 particular, the pattern of the Sergey, Ida, and Ruzanna
21 bankruptcy filings, Sergey's filing of the Sergey Bankruptcy Case
22 in a manner patently designed to preclude the Bank from learning
23 of the filing in order to protect its rights, Ida's opposition to
24 the Skyline Motion suggesting she claimed an interest in the
25 Property, and the Amended Involuntary Petition filed in the
26 Bankruptcy Court for the District of Nevada which establishes
27 that creditors of Sergey believed he also used the names of Ida
28 and Ruzanna, all support the bankruptcy court's findings that

1 Sergey engaged in a course of conduct designed solely to protect
2 the Property from foreclosure.

3 Because the record supports the bankruptcy court's findings
4 that the elements of § 362(d)(4) were established, the bankruptcy
5 court did not abuse its discretion when it granted the Bank in
6 rem relief in the Sergey, Ida, and Ruzanna bankruptcy cases.

7 4. The Bankruptcy Court Did Not Abuse Its Discretion When
8 It Granted Retroactive Relief to the Bank.

9 Section 362(d) expressly authorizes a bankruptcy court to
10 terminate, annul, modify, or condition the automatic stay in a
11 bankruptcy case. Here, the bankruptcy court annulled the stay.

12 The use of the word "annulling" means that such relief
13 from the stay may operate retroactively. This would
14 validate actions taken by a party at a time when the
15 party was unaware of the stay.

16 3 COLLIER ON BANKRUPTCY ¶ 362.07[1] (Alan N. Resnick and Henry J.
17 Sommer eds., 16th ed. 2013).

18 In Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (9th
19 Cir BAP 2003), this Panel identified factors that a bankruptcy
20 court should consider when deciding whether to annul the
21 automatic stay:

22 (1) number of filings; (2) whether, in a repeat filing
23 case, the circumstances indicate an intention to delay
24 and hinder creditors; (3) a weighing of the extent of
25 prejudice to creditors or third parties if the stay
26 relief is not made retroactive, including whether harm
27 exists to a bona fide purchaser; (4) the debtor's
28 overall good faith (totality of the circumstances);
(5) whether the creditor knew of the stay but
nonetheless took action, thus compounding the problem;
(6) whether the debtor has complied and is otherwise
complying with the Bankruptcy Code and rules; (7) the
relative ease of restoring the parties to the status
quo ante; (8) the costs of annulment to the debtor and
to the creditor; (9) how quickly the creditor moved for
annulment, or how quickly the debtor moved to set aside

1 the sale or violative conduct; (10) whether, after
2 learning of the bankruptcy, the creditor proceeded to
3 take steps in continued violation of the stay, or
4 whether the creditor moved expeditiously to gain
5 relief; (11) whether annulment of the stay will cause
6 irreparable injury to the debtor; and (12) whether stay
7 relief will promote judicial economy or other
8 efficiencies.

9 The bankruptcy court determined, based upon the indicia of a
10 scheme to hinder, delay or defraud present in each bankruptcy
11 case, that annulment of the stay was appropriate. The bankruptcy
12 court further found that neither Sergey, Ida nor Ruzanna "made
13 anything more than a sham attempt to actually pursue
14 reorganization and discharge in good faith." In deciding the
15 issue, the bankruptcy court noted the prejudice that otherwise
16 would result to the Bank and Skyline, particularly where Sergey
17 was actively seeking relief in the state court proceedings to set
18 aside the Trustee's Sale as void.

19 In light of the bankruptcy court's findings, supported by
20 evidence, that Sergey engaged in a scheme to delay, hinder or
21 defraud the Bank, and that the Bank and Skyline were being
22 prejudiced by Sergey's actions going forward, we find no abuse of
23 discretion in the bankruptcy court's annulment of the automatic
24 stay as to the Property as a means of correcting, or more
25 accurately, validating, the legal record regarding the transfer
26 of ownership of the Property to Skyline as a consequence of the
27 Trustee's Sale.

28 **VI. CONCLUSION**

BAP No. 13-1303. The bankruptcy court did not abuse its
discretion when it declined to reopen the Ida Bankruptcy Case.

BAP Nos. 13-1411, 13-1426, 13-1427. The filing of BAP No.

1 13-1303 did not divest the bankruptcy court of jurisdiction to
2 consider the Bank RFS Motions. The Bank did not lose standing to
3 prosecute the Bank RFS Motions post-foreclosure where Sergey
4 asserted that the foreclosure itself was void. On the record
5 before it, the bankruptcy court did not abuse its discretion when
6 it granted the Bank RFS Motions, including when it annulled the
7 automatic stay as to the Property and when it granted in rem
8 relief.

9 We affirm the orders of the bankruptcy court in each of the
10 pending appeals.

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