

FEB 26 2015

NOT FOR PUBLICATION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

In re:)	BAP No. NC-14-1070-JuTaPa
)	
ANITA G. CHESLEY,)	Bk. No. 13-46238
)	
Debtor.)	
<hr/>		
ANITA G. CHESLEY,)	
)	
Appellant,)	
v.)	M E M O R A N D U M *
)	
RWW PROPERTIES, LLC,)	
)	
Appellee.)	
<hr/>		

Argued and Submitted on February 19, 2015
at San Francisco, California

Filed - February 26, 2015

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

Honorable Roger L. Efremsky, Chief Bankruptcy Judge, Presiding

Appearances: Julie Bettencourt Cliff of Yesk Law argued for
appellant Anita G. Chesley; Michael St. James of
St. James Law, P.C. argued for appellee RWW
Properties, LLC.

Before: JURY, TAYLOR, and PAPPAS, Bankruptcy Judges.

* 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 8024-1.

1 Chapter 13¹ debtor Anita G. Chesley (debtor) appeals from
2 the bankruptcy court's order denying her motion for
3 reconsideration of an order annulling the automatic stay in
4 favor of RWW Properties, LLC (RWW). We AFFIRM.

5 **I. FACTS**

6 Debtor, who is 95, owned property located at 412-418 48th
7 Street in Oakland, California. Debtor resided in 412 and relied
8 upon rental income from the other units for support. Her
9 daughter, Catalina Chesley, assists her with her business
10 affairs.

11 Wells Fargo Bank, N.A. (Wells Fargo) held a first and
12 second deed of trust against debtor's property. Regional
13 Trustee Services Corporation (RTSC) was the trustee under the
14 deeds of trust. Debtor was in arrears on the obligations
15 secured by first and second deed of trusts in the amounts of
16 \$182,166 and \$5,331, respectively.

17 **A. Debtor's Prior Chapter 13 Petitions Are Dismissed**

18 On November 23, 2011, debtor filed pro se a skeletal
19 chapter 13 petition (Bankr. Case No. 11-72386), which was later
20 dismissed based on her failure to file documents. On April 4,
21 2013, debtor filed pro se a second skeletal chapter 13 petition
22 (Bankr. Case No. 13-42087), which was also dismissed based on
23 her failure to file documents. We have taken judicial notice of
24 debtor's prior cases filed with the bankruptcy court through its

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

1 electronic docketing system. See O'Rourke v. Seaboard Sur. Co.
2 (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989).

3 **B. The Instant Case - Debtor's Third Bankruptcy Case**

4 Subsequently, Maria Boruta, a licensed real estate sales
5 agent, attempted to renegotiate the loan with Wells Fargo on
6 debtor's behalf. On November 12, 2013, Wells Fargo notified
7 Ms. Boruta that it had scheduled a foreclosure sale for
8 November 18, 2013, at 1:00 p.m. Although Ms. Boruta was working
9 to postpone the sale due to a pending short sale, she was
10 advised on the morning of November 18th that the foreclosure
11 sale would not be postponed. At 9:17 a.m. on November 18th,
12 Ms. Boruta filed debtor's skeletal chapter 13 petition with the
13 bankruptcy court.

14 The petition listed debtor's street address as 412 48th
15 Street, Oakland, CA, and listed debtor's mailing address as
16 6 Perth Place, Berkeley, CA. No Creditors Matrix was filed with
17 the petition. Debtor included a "List of 20 Largest Creditors"
18 which contained as its sole entry "Wells Frago [sic] 877-859-
19 1860" and which was signed by debtor on April 9, 2013.²

20 Later that same day, at approximately 12:00 p.m., debtor's
21 property was sold at the foreclosure sale to RWW for \$860,050.
22 RWW is in the business of purchasing properties for investment
23 purposes.

24 On November 25, 2013, RWW filed a motion to retroactively
25 annul the automatic stay in order to obtain clear title to the
26

27
28 ² This date would imply the debtor signed this document in
conjunction with her second prior case.

1 property. RWW asserted that it was not aware of a bankruptcy
2 case involving the property at the time of the foreclosure sale.
3 Citing the twelve non-exclusive factors for evaluating the
4 equities associated with a request to annul the stay under
5 Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24 (BAP 9th
6 Cir. 2003), RWW argued that eight of the twelve factors
7 militated in favor of granting the relief. In support of the
8 motion, RWW submitted the declaration of Wayne Lippman, one of
9 RWW's managing members, who declared that neither he nor RWW had
10 any notice of debtor's bankruptcy at the time of the foreclosure
11 sale.

12 On December 10, 2013, debtor's petition was amended after
13 she hired Matthew M. Spielberg as her attorney. In Schedule D,
14 debtor valued the property at \$550,000 and showed Wells Fargo
15 was owed \$997,350 under the first deed of trust and \$72,000
16 under the second deed of trust.

17 On December 11, 2013, the day of the scheduled hearing for
18 RWW's motion to annul the stay, a document was filed on debtor's
19 behalf which sought a fourteen-day extension for filing
20 opposition to RWW's motion. This pleading referred to debtor as
21 "he" and alleged that debtor discovered that "he" was probably
22 victimized by foreclosure fraud, with the collusion of RWW. The
23 document was signed by debtor and dated the same day the
24 document was filed. This document, referred to as Exhibit 13 in
25 debtor's motion for reconsideration described below, would come
26 under the bankruptcy court's scrutiny because it was unclear who
27 had filed the document.

28 At the hearing on RWW's motion, the bankruptcy court

1 considered the Fjeldsted factors. The court noted that this was
2 debtor's third bankruptcy filing and there was no credit
3 counseling certificate filed postpetition or a declaration
4 regarding exigent circumstances. The court also observed that
5 the automatic stay was going to expire on December 18, 2013, and
6 that there was no request to extend the stay beyond that date.
7 According to the court, these facts weighed in favor of
8 annulling the stay.

9 The bankruptcy court also questioned debtor's overall good
10 faith when her prior two bankruptcies were dismissed for failure
11 to file documents. The bankruptcy court had issued an order
12 requiring debtor to comply with the filing requirements in the
13 present case by December 3, 2013, which she did not do.
14 Accordingly, the court noted that debtor had not complied with
15 the Bankruptcy Code or Rules in any of her cases.

16 The bankruptcy court further observed that the declaration
17 of Mr. Lippman showed that RWW had no knowledge of debtor's
18 bankruptcy and automatic stay. The court noted that RWW moved
19 for annulment of the stay within days of the foreclosure sale
20 and took no other action in violation of the stay. The court
21 further found RWW was a bona fide purchaser and that without
22 retroactive annulment RWW would be harmed.

23 In considering the cost of annulment, the bankruptcy court
24 found it would not cost debtor or creditors anything since RWW
25 had already paid the money for the property. The bankruptcy
26 court also found no irreparable harm to debtor when her case was
27 going to be dismissed. Finally, the court considered whether
28 the annulment would promote judicial economy when this was

1 debtor's third bankruptcy. In the end, the court concluded that
2 the Fjeldsted factors weighed in favor of annulling the stay.

3 On the same day, the bankruptcy court dismissed debtor's
4 bankruptcy case.

5 The bankruptcy court entered the order granting RWW's
6 motion on December 13, 2013. The order provided that the
7 bankruptcy court retained jurisdiction to resolve disputes
8 respecting the effect of the order.

9 On December 27, 2013, debtor filed a motion for
10 reconsideration pursuant to Civil Rule 60(b)(1), (2), (3), (4),
11 and (6).³ Debtor's primary challenge was to RWW's status as a
12 bona fide purchaser. Debtor argued that RWW had notice through
13 its agents that a bankruptcy petition was being filed on
14 debtor's behalf. Incorporated into the motion was the joint
15 declaration of Catalina Chesley and Xavier Webb Zapata, debtor's
16 son-in-law.⁴ Catalina and Xavier declared that agents of RWW
17 came by debtor's residence at 10:00 a.m. on November 18, 2013,
18 and were told that the bankruptcy was being filed. According to
19 debtor, this information constituted "newly discovered evidence"
20 warranting relief from the order.

21 In opposition, RWW argued that the declaration of Catalina
22 and Xavier was not "newly discovered" as the evidence was always

24 ³ Civil Rule 60 is made applicable to bankruptcy proceedings
25 under Rule 9024.

26 ⁴ Catalina and Xavier filed a chapter 13 bankruptcy petition
27 on October 21, 2013 (Bankr. Case No. 13-45281). Their omissions
28 and misrepresentations in their schedules would later come under
scrutiny at the evidentiary hearing on debtor's motion for
reconsideration.

1 known and could have been presented in response to the motion to
2 annul. RWW further questioned the credibility of Catalina who
3 testified in her deposition that she went to RWW's website and
4 that "refreshed her recollection" about RWW's agents, Philip
5 Fair and Donna Madden, who had conversations with her about
6 debtor's bankruptcy filing on the morning of November 18th, and
7 that Mr. Fair had given her a business card with RWW's logo on
8 it. RWW asserted that if the court found RWW was not a bona
9 fide purchaser, the Fjeldsted factors still supported annulling
10 the stay in its favor.

11 In support of the opposition, RWW submitted the
12 declarations of Mr. Fair, Sam Katzen, Lloyd Meltzer, and
13 Ms. Madden. Mr. Fair declared that he visited the property on
14 the morning of November 18th, but that he went alone and was
15 certain that neither Catalina nor Xavier had told him that the
16 property or the homeowner was in bankruptcy. He also declared
17 that he was not employed by RWW and did not have a RWW business
18 card.

19 Mr. Katzen declared that he was employed by RWW and went to
20 debtor's property alone on the morning of November 18th to
21 evaluate it for RWW. Mr. Katzen did not recall speaking with
22 anyone from inside the property and was given no information
23 about the rescheduling of the foreclosure sale or any bankruptcy
24 filing.

25 Mr. Meltzer, also employed by RWW, declared that he went to
26 the property on November 18th and asked a "man and a woman" if
27 he could look inside. Mr. Meltzer declared that the "man and
28 woman" (presumably Catalina and Xavier) were "hostile" and "did

1 not mention anything about bankruptcy." According to
2 Mr. Meltzer, the man and woman asked for his business card, but
3 he did not have one.

4 Ms. Madden declared that she was a licensed realtor,
5 associated with the Danville/Blackhawk office of Alain Pinel
6 Realtors. Ms. Madden stated that although she provides
7 assistance to RWW from time to time, it has never been with
8 respect to properties located in Oakland. Ms. Madden declared
9 that on the morning of November 18th she was at her home in
10 Diablo, California, and never went to debtor's property.

11 In reply, debtor's new attorney J. Harmond Hughey,⁵ argued
12 that Catalina's declaration directly contradicted RWW's position
13 that it was unaware of debtor's bankruptcy filing. Hughey
14 asserted that the information in the declaration was "newly
15 discovered" due to the fact that debtor's prior attorney dealt
16 strictly with debtor and her real estate agent, Ms. Boruta, and
17 had no reasonable idea that debtor's daughter might hold
18 evidence essential to opposing the motion to annul. Catalina
19 submitted another declaration which questioned the credibility
20 of Mr. Fair and the others.

21 On January 22, 2014, the bankruptcy court held an initial
22 hearing on debtor's motion. During the course of the hearing,
23 the bankruptcy court stated that it had serious concerns as to
24 whether debtor had signed the petition that supposedly put the
25 stay into effect. When debtor took the stand and was placed
26

27
28 ⁵ At the same time, attorney Hughey also represented
Catalina and Xavier in their bankruptcy case.

1 under oath, she confirmed that it was her signature on the
2 petition. However, the bankruptcy court was not convinced that
3 it was debtor's signature and thought it was her daughter's.
4 When the court questioned debtor about the mailing address in
5 Berkeley which was on her petition, debtor could not remember
6 whose address it was. Debtor also did not know whose phone
7 number was reflected on the petition and thought maybe that it
8 was her daughter's. After hearing debtor's testimony, the
9 bankruptcy court decided that debtor's motion for
10 reconsideration would come down to a credibility issue and
11 therefore an evidentiary hearing would be appropriate. The
12 bankruptcy court also stated: "I think there's some really
13 serious issues that are going on here that I want to get to the
14 bottom of and create a record."

15 At the January 24, 2014 evidentiary hearing, witnesses for
16 debtor – debtor, Ms. Boruta, Catalina and Xavier – were cross
17 examined by counsel and at times, by the bankruptcy court.
18 Witnesses for RWW – Mr. Fair, Mr. Lippman, Mr. Katzen,
19 Ms. Madden (via telephone) and Mr. Meltzer (via telephone) –
20 were also cross examined.

21 After hearing closing arguments, the bankruptcy court
22 placed its findings of fact and conclusions of law on the
23 record. In the end, the bankruptcy court concluded that the
24 Fjeldsted factors favored RWW and denied debtor's motion for
25 reconsideration. The court entered the order denying the motion
26 on January 27, 2014. Debtor filed a timely notice of appeal
27 (NOA).

28 Although debtor's NOA only referenced the order denying the

1 reconsideration motion, we will treat her appeal as also
2 requesting review of the underlying order annulling the
3 automatic stay. During the motion for reconsideration, the
4 bankruptcy court confirmed its earlier ruling, finding that the
5 Fjeldsted factors still weighed in favor of RWW. Further, the
6 parties have fully briefed the issues arising from the
7 underlying annulment order. See Lolli v. Cnty. of Orange,
8 351 F.3d 410, 414-15 (9th Cir. 2003); Wash. State Health
9 Facilities Ass'n v. Wash. Dep't of Soc. & Health Servs.,
10 879 F.2d 677, 681 (9th Cir. 1989).

11 **II. JURISDICTION**

12 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
13 §§ 1334 and 157(b)(2)(G). We have jurisdiction under 28 U.S.C.
14 § 158.

15 **III. ISSUES**

16 A. Did the bankruptcy court abuse its discretion by
17 granting RWW's motion to annul the automatic stay?

18 B. Did the bankruptcy court abuse its discretion by
19 denying debtor's motion for reconsideration?

20 **IV. STANDARDS OF REVIEW**

21 A bankruptcy court's decision to grant retroactive relief
22 from the automatic stay is reviewed for an abuse of discretion.
23 Nat'l Env'tl. Waste Corp. v. City of Riverside (In re Nat'l
24 Env'tl. Waste Corp.), 129 F.3d 1052, 1054 (9th Cir. 1997);
25 Williams v. Levi (In re Williams), 323 B.R. 691, 696 (9th Cir.
26 BAP 2005).

27 We also review the bankruptcy court's denial of a motion
28 for reconsideration for an abuse of discretion. Tracht Gut, LLC

1 v. Cnty. of L.A. Treasurer & Tax Collector (In re Tracht Gut,
2 LLC), 503 B.R. 804, 810 (9th Cir. BAP 2014).

3 In applying an abuse of discretion test, we first
4 “determine de novo whether the [bankruptcy] court identified the
5 correct legal rule to apply to the relief requested.” United
6 States v. Hinkson, 585 F.3d, 1247, 1262 (9th Cir. 2009)
7 (en banc). If the bankruptcy court identified the correct legal
8 rule, we then determine whether its “application of the correct
9 legal standard [to the facts] was (1) ‘illogical,’
10 (2) ‘implausible,’ or (3) without ‘support in inferences that
11 may be drawn from the facts in the record.’” Id. (quoting
12 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 577
13 (1985)). If the bankruptcy court did not identify the correct
14 legal rule, or its application of the correct legal standard to
15 the facts was illogical, implausible, or without support in
16 inferences that may be drawn from the facts in the record, then
17 the bankruptcy court has abused its discretion. Id.

18 Under the abuse of discretion standard, we cannot reverse
19 unless we have a definite and firm conviction that the
20 bankruptcy court committed a clear error of judgment in the
21 conclusion it reached upon a weighing of the relevant factors
22 for annulment of the automatic stay. See Smith v. Jackson,
23 84 F.3d 1213, 1221 (9th Cir. 1996).

24 V. DISCUSSION

25 A. The bankruptcy court did not err in annulling the stay.

26 Actions taken in violation of the automatic stay are void.
27 However, an action taken in violation of the automatic stay that
28 would otherwise be void may be declared valid if cause exists

1 for retroactive annulment of the stay. Schwartz v. United
2 States (In re Schwartz), 954 F.2d 569, 573 (9th Cir. 1992).

3 Section 362(d) expressly authorizes a bankruptcy court to
4 terminate, annul, modify, or condition the automatic stay in a
5 bankruptcy case for "cause." In deciding whether "cause" exists
6 to annul the stay, a bankruptcy court should examine the
7 circumstances of the specific case and balance the equities of
8 the parties' respective positions. Gasprom, Inc. v. Fateh
9 (In re Gasprom, Inc.), 500 B.R. 598, 607 (9th Cir. BAP 2013)
10 (citing In re Nat'l Env'tl. Waste Corp., 129 F.3d at 1055);
11 In re Fjeldsted, 293 B.R. at 24. Under this approach, the
12 bankruptcy court considers (1) whether the creditor was aware of
13 the bankruptcy petition and automatic stay and (2) whether the
14 debtor engaged in unreasonable or inequitable conduct.
15 In re Nat'l Env'tl. Waste Corp., 129 F.3d at 1055.

16 In Fjeldsted, we approved additional factors for
17 consideration in assessing the equities. The twelve non-
18 exclusive factors are: (1) number of filings; (2) whether, in a
19 repeat filing case, the circumstances indicate an intention to
20 delay and hinder creditors; (3) a weighing of the extent of
21 prejudice to creditors or third parties if the stay relief is
22 not made retroactive, including whether harm exists to a bona
23 fide purchaser; (4) the debtor's overall good faith (totality of
24 circumstances test); (5) whether creditors knew of stay but
25 nonetheless took action, thus compounding the problem;
26 (6) whether the debtor has complied, and is otherwise complying,
27 with the Bankruptcy Code and Rules; (7) the relative ease of
28 restoring parties to the status quo ante; (8) the costs of

1 annulment to debtors and creditors; (9) how quickly creditors
2 moved for annulment, or how quickly debtor moved to set aside
3 the sale or violative conduct; (10) whether, after learning of
4 the bankruptcy, creditors proceeded to take steps in continued
5 violation of the stay, or whether they moved expeditiously to
6 gain relief; (11) whether annulment of the stay will cause
7 irreparable injury to the debtor; and (12) whether stay relief
8 will promote judicial economy or other efficiencies. 293 B.R.
9 at 24. The Panel noted that these factors merely present a
10 framework for analysis and “[i]n any given case, one factor may
11 so outweigh the others as to be dispositive.” Id. at 25.

12 In a separate discussion, the Panel held that bona fide
13 purchaser status, standing alone, cannot constitute “cause” for
14 stay relief under § 362(d)(1). Id.

15 On appeal, debtor argues that a fair balance of the
16 equities would necessitate a finding that the automatic stay in
17 this case should not have been annulled. Debtor complains that
18 the bankruptcy court did not balance the equities, but focused
19 exclusively on whether RWW was a bona fide purchaser. Debtor
20 also contends that Ms. Boruta’s declaration shows that she faxed
21 the bankruptcy documents to several different departments at
22 Wells Fargo and confirmed that each department had received the
23 documentation. Relying on Ms. Boruta’s declaration, debtor
24 concludes that Wells Fargo knew of the bankruptcy filing, but
25 proceeded with the foreclosure sale anyway through its agent
26 RTSC, and thus the foreclosure sale was void. Finally, debtor
27 maintains that annulment of the stay will cause, and has caused,
28 debtor irreparable injury because she is 95 years old, in frail

1 health and having to vacate her home has been very stressful for
2 her physically and emotionally.

3 Debtor's arguments mischaracterize the bankruptcy court's
4 analysis under Fjeldsted. When reviewing for abuse of
5 discretion, as here, we will reverse only if we hold a "definite
6 and firm conviction that the court below committed a clear error
7 of judgment in the conclusion it reached upon a weighing of the
8 relevant factors." Smith v. Jackson, 84 F.3d at 1221. We have
9 no such conviction here.

10 The record shows that the bankruptcy court considered all
11 the Fjeldsted factors and did not rely on RWW's bona fide
12 purchaser status alone for its decision. The bankruptcy court
13 considered that debtor filed three skeletal bankruptcy cases,
14 all of which were dismissed based on her failure to file
15 documents and which were filed to prevent a foreclosure sale of
16 the property. These facts implicate Fjeldsted factors one, two,
17 and six. The bankruptcy court questioned debtor's overall good
18 faith when the property was purchased for \$360,000 over what
19 debtor estimated the value of the property to be and noted that
20 she had not complied with the Bankruptcy Code or Rules in any of
21 her cases. These findings implicate factor four.

22 In addition, the record supports the bankruptcy court's
23 finding that RWW was unaware of the stay at the time of the
24 sale, which satisfies factor five. While debtor disputes this
25 finding on appeal, the bankruptcy court did not find debtor's
26 witnesses credible. Moreover, although debtor complains that
27 Wells Fargo knew about the bankruptcy filing, there is nothing
28 in the record that supports this contention other than

1 Ms. Buruta's declaration which the bankruptcy court did not find
2 credible. Credibility determinations "demand[] even greater
3 deference to the trial court's findings; for only the trial
4 judge can be aware of the variations in demeanor and tone of
5 voice that bear so heavily on the listener's understanding of
6 and belief in what is said." Anderson, 470 U.S. at 575; see
7 also Civil Rule 52(a) (made applicable to bankruptcy proceedings
8 by Rule 7052 and requiring the reviewing court to give due
9 regard "to the trial court's opportunity to judge the witnesses'
10 credibility."); Rule 8013 (same).

11 The court also noted that once RWW learned of the
12 bankruptcy it promptly moved to annul the stay and did not take
13 any further steps in violation of the stay, which satisfies
14 Fjeldsted's factors nine and ten. Although the bankruptcy court
15 was sympathetic to debtor's age and the impact of losing her
16 home, the bankruptcy court found no irreparable injury to debtor
17 in light of the fact that she acknowledged in her schedules
18 there was no equity in the property.

19 In connection with debtor's motion for reconsideration, the
20 bankruptcy court found RWW was a bona fide purchaser of the
21 subject property because it had no knowledge of the bankruptcy
22 filing. In applying factor three, the bankruptcy court weighed
23 the extent of prejudice to RWW if the stay relief was not made
24 retroactive. The bankruptcy court noted that RWW had to incur
25 significant attorney's fees in obtaining annulment of the stay
26 and then to combat the motion for reconsideration.

27 Finally, the court considered whether stay relief would
28 promote judicial economy or other efficiencies under factor

1 twelve. The court found that in light of the fact that this was
2 debtor's third bankruptcy filing, "stay relief will promote
3 judicial economy and other efficiencies." For all these
4 reasons, the bankruptcy court concluded that the Fjeldsted
5 factors fell in favor of RWW.

6 In sum, the record shows that the bankruptcy court
7 correctly applied the balancing of equities test under
8 In re Fjeldsted, without affording undue weight, let alone
9 exclusive weight to any one factor. Therefore, we conclude the
10 bankruptcy court did not abuse its discretion in finding that
11 cause existed for retroactive annulment of the stay to validate
12 the foreclosure sale.

13 **B. The bankruptcy court did not abuse its discretion in**
14 **denying debtor's motion for reconsideration.**

15 On appeal, debtor argues that the bankruptcy court did not
16 consider the evidence presented in support of her motion for
17 reconsideration under Civil Rule 60(b). According to debtor,
18 there were newly discovered evidence, fraud or misconduct and
19 other factors that "weighed" in favor of granting the motion.

20 The record does not support these contentions. The sole
21 issue raised in debtor's motion for reconsideration was a
22 question of fact concerning RWW's knowledge of debtor's
23 bankruptcy filing prior to the foreclosure sale. According to
24 debtor's daughter, Catalina, she told agents of RWW who visited
25 the property on the morning of the foreclosure about the
26 bankruptcy filing. RWW's witnesses Mr. Fair, Mr. Katzen,
27 Mr. Meltzer, Ms. Madden, and Mr. Lippman all refuted such
28 knowledge.

1 The bankruptcy court held a six-hour evidentiary hearing on
2 January 24, 2014, at which witnesses for debtor and RWW were
3 cross examined. After hearing testimony, the bankruptcy court
4 found debtor to be forthright and honest, but noted that given
5 her age she was dependent upon her daughter, Catalina. The
6 court found the testimony of Mr. Fair, Mr. Katzen, Ms. Madden,
7 Mr. Meltzer and Mr. Lippman credible and believed that none of
8 them was ever told by anybody that a bankruptcy case had been
9 filed on November 18th on behalf of debtor. The court did not
10 find Ms. Boruta's testimony credible. She initially testified
11 that she had written her office address on debtor's bankruptcy
12 petition and when pressed by the court admitted that she may
13 have made numerous changes and actually filled in most of the
14 document. Moreover, she actually filed the document with the
15 bankruptcy court. The bankruptcy court believed that Ms. Boruta
16 actually did prepare the petition and that under the law she
17 would be deemed a petition preparer and did not disclose that
18 fact.

19 The bankruptcy court was also concerned with Exhibit 13
20 which was the motion for an extension of time to file opposition
21 to RWW's motion to annul the stay. There was no conclusive
22 evidence as to who prepared the document. However, the
23 bankruptcy court noted that clearly debtor did not prepare the
24 document and that it seriously doubted that Catalina or Xavier
25 prepared it since it referred to debtor as being a male and it
26 appeared that the person who wrote it did not speak English as
27 her first language.

28 In sum, the court believed the testimony of the RWW

1 witnesses and did not put weight on the testimony of the
2 witnesses in support of reconsideration. Based upon these
3 credibility determinations, the bankruptcy court found that RWW
4 was a bona fide purchaser of the property at the foreclosure
5 sale that occurred on November 18, 2013, because it did not know
6 about debtor's bankruptcy. Even if we assume that the joint
7 declaration of Catalina and Xavier constituted newly discovered
8 evidence under Civil Rule 60(b)(2), which we do not, the
9 bankruptcy court's findings based on the credibility of
10 witnesses "demand[] even greater deference to the trial court's
11 findings[.]" Anderson, 470 U.S. at 575. Therefore, we cannot
12 say the trial court's interpretation of the facts is implausible
13 on its face. Accordingly, the bankruptcy court did not abuse
14 its discretion in denying debtor's motion for reconsideration.

15 **VI. CONCLUSION**

16 For the reasons stated, we AFFIRM.

17
18
19
20
21
22
23
24
25
26
27
28