



1 Before: DUNN, KIRSCHER and BRANDT,<sup>3</sup> Bankruptcy Judges.  
2

3 The debtor, Melissa Rodriguez Lira ("Debtor"), appeals the  
4 bankruptcy court's order granting relief from stay, including an  
5 "in rem" provision under § 362(d)(4).<sup>4</sup> We AFFIRM.

6 I. FACTUAL BACKGROUND

7 This appeal is all about the on-going efforts of the Debtor  
8 and her family to retain their residence property ("Property") in  
9 Rancho Cucamonga, California. On or about October 12, 2006,  
10 Debtor's husband Frankie R. Lira ("Frankie")<sup>5</sup> and her father-in-  
11 law Frank Lira, Jr. ("Frank, Jr.") purchased the Property. The  
12 purchase was funded by a loan ("Loan") from Soma Financial  
13 ("Lender") in the original principal amount of \$960,000, with  
14 Frank, Jr. providing the \$240,000 downpayment plus approximately  
15 \$30,000 to cover closing costs.

16 Apparently, because of Frank, Jr.'s low credit score, the  
17 Loan was made to Frankie only in order to qualify for a 1% ARM  
18 loan. Repayment of the Loan was secured by a trust deed ("Trust  
19 Deed") on the Property. Section 18 of the Trust Deed provided  
20 that if the Borrower (Frankie) transferred any interest in the  
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22 <sup>3</sup> Hon. Philip H. Brandt, United States Bankruptcy Judge for  
23 the Western District of Washington, sitting by designation.

24 <sup>4</sup> Unless specified otherwise, all chapter, section and rule  
25 references are to the federal Bankruptcy Code, 11 U.S.C.  
26 §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure,  
Rules 1001-9037.

27 <sup>5</sup> We refer to members of the Lira family other than the  
28 Debtor by their first names for ease of reference. No disrespect  
is intended.

1 Property without the Lender's consent, the Lender, at its option,  
2 could accelerate the Loan. However, in an Addendum to Closing  
3 Instructions ("Addendum") for the Soma Financial/Frankie Loan  
4 transaction, Frankie as Borrower was "approved and authorized to  
5 transfer a beneficial interest to immediate family member(s) as  
6 governed by Section 18" of the Trust Deed. Accordingly, while  
7 Frankie apparently took title to the Property initially in his  
8 name only, he transferred title to the Property to himself and  
9 Frank, Jr. as Joint Tenants by grant deed recorded on October 27,  
10 2006. At the same time, the Debtor and her mother-in-law Cynthia  
11 Lira ("Cynthia") transferred any interests that they might have  
12 in the Property to their respective husbands as "sole and  
13 separate property" by Interspousal Transfer Grant Deeds recorded  
14 on October 27, 2006.

15 As a result of economic hardships in light of the 2008  
16 recession, Frankie filed a chapter 7 bankruptcy case on July 30,  
17 2009, and received his discharge on January 12, 2010. Frank, Jr.  
18 followed his son into bankruptcy on November 9, 2009, and  
19 received his chapter 7 discharge on March 17, 2010.<sup>6</sup>

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21 <sup>6</sup> Cynthia filed two chapter 7 bankruptcy cases as well (Case  
22 Nos. 6:11-bk-34330-SC and 6:11-bk-41440-MH). We exercise our  
23 discretion to take judicial notice of the electronic dockets in  
24 Cynthia's two bankruptcy cases. See O'Rourke v. Seaboard Sur.  
25 Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir.  
26 1989); Atwood v. Chase Manhattan Mortg. Co. (In re Atwood),  
27 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003). Case No. 6:11-bk-  
28 34330-SC, filed on July 28, 2011, was dismissed on August 17,  
2011, for failure to file required documents. However, Cynthia  
received a discharge in Case No. 6:11-bk-41440-MH on June 13,  
2012. Cynthia did not list the Property as an asset on her filed  
(continued...)

1 In Frank, Jr.'s case, an order granting relief from stay to  
2 "Wells Fargo Bank, National Association as Trustee for the  
3 certificateholders of Structured Asset Mortgage Investments II  
4 Inc., Bear Stearns Mortgage Funding Trust 2006-AR5, Mortgage  
5 Pass-Through Certificates Series 2006-AR5" was entered on May 25,  
6 2010. Since by that time, Frank, Jr. had received his discharge,  
7 the automatic stay already had terminated as to Frank, Jr. by  
8 operation of law (see § 362(c)(2)(C)), and the order was  
9 effective immediately on its entry. However, in order to allow  
10 Frank, Jr. time to complete a "workout plan," the order  
11 specifically provided that no foreclosure sale of the property  
12 could be conducted before July 23, 2010.

13 On March 29, 2012, the Trust Deed was assigned to the  
14 appellee Wells Fargo Bank, N.A. ("Wells Fargo"), by a corporate  
15 assignment ("Assignment") recorded on April 11, 2012.

16 On October 10, 2012, Frankie and Frank, Jr. transferred  
17 title to the Property by grant deed, recorded the same date, to  
18 "Frankie R. Lira and Melissa Lira, Married, as Joint Tenants and  
19 Frank Lira, Jr. and Cynthia L. Lira, Married, as Joint Tenants."

20 Four days later, the Debtor filed a chapter 13 bankruptcy  
21 petition. Her chapter 13 case ("Chapter 13 Case") was dismissed  
22 on November 6, 2012, for failure to file required documents.

23 Approximately two weeks later, the Debtor filed her  
24 chapter 7 petition, identifying the Property as her address,  
25 initiating a chapter 7 case ("Chapter 7 Case"). In her

26 \_\_\_\_\_  
27 <sup>6</sup>(...continued)  
28 Schedule A or as her residence on either of the petitions, but  
she did list the Property address as her mailing address.

1 Schedules A and D, Debtor listed the Property as having a value  
2 of \$600,000, subject to a Trust Deed debt of \$1,150,000, leaving  
3 a deficit of \$550,000 unsecured. Since the Chapter 13 Case had  
4 been filed and dismissed within one year preceding her chapter 7  
5 filing, the Chapter 7 Case was presumptively not filed in good  
6 faith, and if the Debtor did not obtain an extension of the  
7 automatic stay, the stay would terminate on the thirtieth day  
8 after her filing. See § 362(c)(3). The Debtor did not seek or  
9 obtain an extension of the stay.

10 The chapter 7 trustee filed a "no asset" report on  
11 January 2, 2013. However, our review of the docket in the  
12 Chapter 7 Case indicates that a discharge has not yet been  
13 entered.

14 On January 9, 2013, Bayview Loan Servicing, LLC ("Bayview")  
15 filed a motion for relief from stay in the Chapter 7 Case with  
16 respect to unscheduled property. Bayview alleged that it was  
17 entitled to stay relief "for cause" under § 362(d)(1) in that the  
18 Chapter 7 Case was filed in bad faith to delay, hinder or defraud  
19 Bayview and requested in rem relief under § 362(d)(4) because the  
20 filing of the Chapter 7 Case was "part of a scheme to delay,  
21 hinder, or defraud creditors that involved the transfer of all or  
22 part ownership of [property] without the consent of Bayview or  
23 court approval."<sup>7</sup> The Debtor filed a late response to the  
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26 <sup>7</sup> We refer to factual information from the Panel's prior  
27 unpublished disposition in BAP No. CC-13-1086-DPaKi, filed  
28 April 23, 2014, with respect to the Debtor's prior appeal of the  
bankruptcy court's order granting stay relief and in rem relief  
to Bayview.

1 motion.

2       The bankruptcy court granted Bayview's motion in all  
3 respects without a hearing, as under the local rules of the  
4 bankruptcy court for the Central District of California,  
5 LBR 9013-1(h), the failure to file a timely response to a motion  
6 is deemed consent to the relief requested in the motion, and  
7 Bayview had set forth a prima facie case in support of its  
8 motion. The Debtor appealed, and our prior Panel affirmed the  
9 bankruptcy court's relief from stay order in favor of Bayview by  
10 memorandum disposition filed on April 23, 2014.

11       On May 14, 2014, Wells Fargo filed a motion for relief from  
12 stay ("RFS Motion") in the Chapter 7 Case with respect to the  
13 Property. In the RFS Motion, Wells Fargo requested relief from  
14 stay for cause under § 362(d)(1), alleging that its interest in  
15 the Property was not adequately protected and that the Chapter 7  
16 Case was filed in bad faith to hinder, delay and defraud Wells  
17 Fargo. Wells Fargo also requested relief from stay under  
18 § 362(d)(2), alleging that the Debtor had no equity in the  
19 Property, and in this Chapter 7 Case, the Property was not  
20 necessary to an effective reorganization. Wells Fargo further  
21 requested relief in terms of an "in rem" order under § 362(d)(4),  
22 alleging that the Debtor was engaged in a scheme to delay, hinder  
23 and defraud Wells Fargo through transfer of an interest in the  
24 Property without Wells Fargo's consent or court approval and  
25 through multiple bankruptcy filings affecting the Property. In  
26 the RFS Motion, Wells Fargo alleged that 65 payments on the Loan  
27 obligation had been missed, and the total amount of arrears was  
28 \$293,601.86. The copy of the Loan promissory note included among

1 the exhibits to the RFS Motion included an endorsement without  
2 recourse from the Lender to Wells Fargo. Wells Fargo also  
3 attached a copy of the recorded Assignment as Exhibit 3 to the  
4 RFS Motion. Copies of both the Loan promissory note and the  
5 Assignment were authenticated by the declaration of Wells Fargo's  
6 Document Control Officer, Dianne French.

7 On June 6, 2014, the Debtor filed a response ("Response") in  
8 opposition to the RFS Motion. While the Response is wide-  
9 ranging, and the Debtor chides Wells Fargo for waiting so long  
10 after the Chapter 7 Case was filed to file the RFS Motion, the  
11 Debtor raised four arguments in opposition to the RFS Motion:

12 1) Wells Fargo had not established its standing to prosecute  
13 the RFS Motion.

14 2) Wells Fargo had not made an adequate showing to establish  
15 that the Debtor had filed the Chapter 7 Case in bad faith.  
16 Accordingly, "in rem" relief under § 362(d)(4) was not  
17 appropriate. Specifically in support of her argument  
18 (unfortunately, and perhaps critically, inartfully phrased) that  
19 the Liras did have consent to transfer interests in the Property  
20 among family members, the Debtor submitted the declaration of  
21 Frankie asserting that the Lender was aware of the projected  
22 transfer of an interest in the Property by Frankie to himself and  
23 Frank, Jr. as joint tenants. Frankie's declaration also  
24 authenticated an "Escrow Amendment" authorizing vesting of title  
25 to the Property in Frankie and Frank, Jr., in spite of the Loan  
26 being made to Frankie only, as Exhibit A, and the Addendum, as  
27 Exhibit B, to the Response.

28 3) In light of the termination of the automatic stay as to

1 the Debtor early in the Chapter 7 Case under § 362(c)(3), Wells  
2 Fargo's RFS Motion was moot. Considering that Frankie's and  
3 Frank, Jr.'s bankruptcies were filed and discharged years earlier  
4 and Debtor's explanation of her abortive chapter 13 filing, where  
5 was the "scheme" to delay or hinder? Since relief from stay had  
6 been granted in Frank, Jr.'s bankruptcy case in May 2010, no  
7 effort to foreclose on the Property had been initiated.

8 4) With property values having increased rapidly since the  
9 Chapter 7 Case was filed, the Property was necessary to an  
10 effective reorganization that could be effected through "some  
11 kind of a workout plan" that could be proposed "like in a  
12 chapter 20."

13 The Response was supported by the declarations of the  
14 Debtor, Frankie and Frank, Jr.

15 The bankruptcy court heard argument on the RFS Motion on  
16 June 17, 2014 ("Hearing"). After discounting the Debtor's  
17 argument as to absence of consent to transfers among Lira family  
18 members, counsel for Wells Fargo focused on the Liras' multiple  
19 bankruptcy filings. He noted that an in rem order already had  
20 been entered in the Chapter 7 Case against the Debtor with  
21 respect to a different property and a different creditor. In  
22 addition, he pointed out the evidence in the record as to Wells  
23 Fargo's standing and questioned the Debtor's standing to oppose  
24 the RFS Motion because there was no stay in place as to her.  
25 Wells Fargo was asking for relief from stay as to the estate and  
26 in rem relief as to the Property.

27 Frank, Jr. accompanied the Debtor at the Hearing, but the  
28 bankruptcy court refused to hear him as he was not an attorney.

1 The Debtor then argued that the bankruptcy filings of her husband  
2 and father-in-law were not relevant "since the bankruptcies were  
3 four years ago." She also argued that after she filed the  
4 Chapter 13 Case, she realized that she could not afford it and  
5 let it get dismissed. However, she had a legitimate reason to  
6 file the Chapter 7 Case to avoid garnishment by a judgment  
7 creditor. In addition, she contested Wells Fargo's allegation  
8 that the Loan was \$293,000 in arrears. By her calculations, the  
9 arrears were "only \$115,000." She concluded by asserting that  
10 once she obtained her discharge in the Chapter 7 Case, her intent  
11 was to get a modification of the Loan approved.

12 At the conclusion of the Hearing, the bankruptcy court  
13 announced its decision orally. It granted relief from stay "for  
14 the reasons set forth in the motion." It also granted relief  
15 under § 362(d)(4) "based on the unauthorized transfers of  
16 property and the filing of multiple bankruptcy cases . . . ."

17 On July 9, 2014, the bankruptcy court entered the order  
18 granting the RFS Motion, as submitted by counsel for Wells Fargo  
19 ("RFS Order").<sup>8</sup> The Debtor filed a premature Notice of Appeal on  
20 June 30, 2014 that became timely once the RFS Order was entered.  
21 See Rule 8002(a)(2).

## 22 II. JURISDICTION

23 The bankruptcy court had jurisdiction under 28 U.S.C.  
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26 <sup>8</sup> The RFS Order generally is consistent with the bankruptcy  
27 court's oral ruling, but it is incorrect in one respect in that  
28 the form order box for relief under § 362(d)(3) is checked.  
Relief from the stay under § 363(d)(3) was neither requested in  
the RFS Motion nor granted in the bankruptcy court's oral ruling.

1 §§ 1334 and 157(b) (2) (G). We have jurisdiction under 28 U.S.C.  
2 § 158.

3 III. ISSUES

4 1) Did the bankruptcy court err in failing to hold a  
5 separate evidentiary hearing to consider the Debtor's argument  
6 that Wells Fargo had no standing to prosecute the RFS Motion?

7 2) Did the bankruptcy court err in effectively overruling  
8 the Debtor's standing objection?

9 3) Did the bankruptcy court abuse its discretion in granting  
10 the RFS Motion and granting in rem relief to Wells Fargo under  
11 § 362(d) (4)?

12 4) Did the bankruptcy court err in refusing to hear argument  
13 from Frank, Jr., thereby unfairly prejudicing the Debtor?

14 IV. STANDARDS OF REVIEW

15 We review issues as to a party's standing de novo. Loyd v.  
16 Paine Webber, Inc., 208 F.3d 755, 758 (9th Cir. 2000); Kronemyer  
17 v. Am. Contractors Indem. Co. (In re Kronemyer), 405 B.R. 915,  
18 919 (9th Cir. BAP 2009). Whether a particular procedure comports  
19 with basic requirements of due process is a question of law which  
20 we review de novo. Alonso v. Summerville (In re Summerville),  
21 361 B.R. 133, 139 (9th Cir. BAP 2007). De novo review requires  
22 that we consider a matter anew, as if no decision had been made  
23 previously. United States v. Silverman, 861 F.2d 571, 576 (9th  
24 Cir. 1988); B-Real, LLC v. Chaussee (In re Chaussee), 399 B.R.  
25 225, 229 (9th Cir. BAP 2008).

26 We review an order granting relief from stay and/or in rem  
27 relief under § 362(d) (4) for an abuse of discretion.  
28 In re Kronemyer, 405 B.R. at 918.

1 A bankruptcy court abuses its discretion if it applies an  
2 incorrect legal standard or misapplies the correct legal  
3 standard, or if its factual findings are illogical, implausible  
4 or unsupported by evidence in the record. Trafficschool.com,  
5 Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011). Only if  
6 the bankruptcy court did not apply the correct legal standard or  
7 improperly applied it, or if its fact findings were illogical,  
8 implausible, or without support in inferences that can be drawn  
9 from facts in the record, is it proper to conclude that the  
10 bankruptcy court abused its discretion. United States v.  
11 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

12 We may affirm the bankruptcy court's orders on any basis  
13 supported by the record. See ASARCO, LLC v. Union Pac. R. Co.,  
14 765 F.3d 999, 1004 (9th Cir. 2014); Shanks v. Dressel, 540 F.3d  
15 1082, 1086 (9th Cir. 2008).

## 16 V. DISCUSSION

### 17 A. Standing

18 Standing is "a jurisdictional requirement which remains open  
19 to review at all stages of the litigation." Nat'l Org. for  
20 Women, Inc. v. Scheidler, 510 U.S. 249, 255 (1994). In addition  
21 to arguing that Wells Fargo lacked standing to bring the RFS  
22 Motion, the Debtor argues, for the first time in this appeal,  
23 that the bankruptcy court was required to hold a separate  
24 evidentiary hearing on the standing issue.

#### 25 1. The Debtor's argument regarding a hearing on standing

26 Although the Debtor objected to Wells Fargo's standing  
27 before the bankruptcy court, she never requested a separate  
28 hearing on the standing issue or argued that such a hearing was

1 necessary. Thus, we do not consider this issue, as it was not  
2 raised in the bankruptcy court. U.S. v. Real Prop. Located at  
3 17 Coon Creek Rd., Hawkins Bar Cal., Trinity Cty., 787 F.3d 968,  
4 979 (9th Cir. 2015) (“general practice” is not to consider  
5 arguments raised for the first time on appeal). Furthermore,  
6 both Wells Fargo and the Debtor filed declarations together with  
7 the RFS Motion and Response, respectively, and the bankruptcy  
8 court considered those declarations.

9 2. Wells Fargo’s standing to bring the RFS Motion

10 Standing before a federal court is a matter of both  
11 “constitutional limitations on federal court jurisdiction and  
12 prudential limitations on its exercise.” Warth v. Seldin,  
13 422 U.S. 490, 498 (1975); Veal v. Am. Home Mortg. Servicing, Inc.  
14 (In re Veal), 450 B.R. 897, 906 (9th Cir. BAP 2011). We  
15 understand the Debtor to be challenging Wells Fargo’s prudential  
16 standing to bring the RFS Motion.<sup>9</sup>

17 To satisfy the prudential standing requirement, a party must  
18 assert its own legal rights. Dunmore v. United States, 358 F.3d  
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21 <sup>9</sup> The Debtor’s Opening Brief on Appeal does not clearly  
22 articulate any particular argument challenging Wells Fargo’s  
23 standing, as distinct from the argument regarding the purported  
24 need for a separate hearing on standing. Ordinarily we do not  
25 consider any issue not clearly addressed in the appellant’s  
26 opening brief. Law Offices of Neil Vincent Wake v. Sedona Inst.  
27 (In re Sedona Inst.), 220 B.R. 74, 76 (9th Cir. BAP 1998). In  
28 the spirit of construing a pro se appellant’s arguments  
liberally, we address the underlying standing issue. See  
Shahrestani v. Alazzeh (In re Alazzeh), 509 B.R. 689, 694, n.5  
(9th Cir. BAP 2014) (BAP interprets pro se pleadings liberally);  
Ozenne v. Bendon (In re Ozenne), 337 B.R. 214, 218 (9th Cir. BAP  
2006) (same).

1 1107, 1112 (9th Cir. 2004). Section 362(d) permits a "party in  
2 interest" to request relief from the automatic stay. The Code  
3 does not define the term "party in interest." Instead, the  
4 bankruptcy court must determine on a case-by-case basis whether a  
5 movant is a party in interest, but the term can include any party  
6 that is impacted by the automatic stay. Brown v. Sobczak  
7 (In re Sobczak), 369 B.R. 512, 517-18 (9th Cir. BAP 2007).

8 Relief from stay proceedings do not "involve an adjudication  
9 on the merits . . . but simply determine whether the creditor has  
10 a colorable claim to the property of the estate." Biggs v.  
11 Stovin (In re Lux Int'l, Ltd.), 219 B.R. 837, 842 (9th Cir. BAP  
12 1998). When a party moves for relief from stay to foreclose on  
13 real property, the determination whether the movant has a  
14 colorable claim, hence whether it is a party in interest, depends  
15 on "the minimum requirements for the initiation of foreclosures  
16 under applicable nonbankruptcy law[.]" In re Veal, 450 B.R. at  
17 917 n.34.

18 CAL. CIV. CODE § 2924(a)(1) permits a "trustee, mortgagee, or  
19 beneficiary, or any of their authorized agents" to commence the  
20 nonjudicial foreclosure process. The record reflects that Wells  
21 Fargo was the assignee beneficiary under the Trust Deed, and the  
22 declaration of Dianne French authenticated the promissory note  
23 and the Assignment. Thus, it follows that Wells Fargo had a  
24 "colorable claim" to foreclose on the Property, which made it a  
25 party in interest under § 362(d). The bankruptcy court did not  
26 err in effectively overruling the Debtor's standing objection.

27 B. The RFS Order

28 In the RFS Order, the bankruptcy court granted relief to

1 Wells Fargo under subsections (d) (1), (d) (2), (d) (3) and (d) (4)  
2 of § 362;<sup>10</sup> however, the Debtor takes issue only with the  
3 bankruptcy court's § 362(d) (4) ruling, in particular the granting  
4 of in rem relief.

5 Section 362(d) (4) permits the bankruptcy court to grant in  
6 rem relief from the automatic stay under certain circumstances.  
7 An order granting such relief, if recorded in compliance with  
8 applicable state law, is binding for a period of two years in any  
9 bankruptcy case filed by any person. See § 362(b) (20); see  
10 also First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC  
11 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (9th  
12 Cir. BAP 2012). A creditor seeking relief under § 362(d) (4) must  
13 establish three elements. "First, debtor's bankruptcy filing  
14 must have been part of a scheme. Second, the object of the  
15 scheme must be to delay, hinder, or defraud creditors.<sup>11</sup> Third,  
16 the scheme must involve either (a) the transfer of some interest  
17 in the real property without the secured creditor's consent or

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19  
20 <sup>10</sup> As noted above, the mention of § 362(d) (3) in the  
21 RFS Order was an error, as relief under that section was neither  
22 requested in the RFS Motion nor granted at the Hearing. Since  
the Debtor makes no argument with respect to that aspect of the  
RFS Order, we do not discuss it further.

23 <sup>11</sup> Prior to December 22, 2010, the relevant language in  
24 § 362(d) (4) read "hinder, delay **and** defraud creditors" (emphasis  
25 added). The Bankruptcy Technical Corrections Act of 2010,  
26 Pub. L. No. 111-327, 124 Stat. 3557 (2010) (effective December 22,  
2010) replaced this language with "hinder, delay **or** defraud"  
27 (emphasis added). The mandatory form used for the RFS Order  
28 contained the outdated "and" language. However, we find that the  
bankruptcy court's decision was not an abuse of discretion under  
the currently applicable, less demanding standard.

1 court approval, or (b) multiple bankruptcy filings affecting the  
2 property." Id.

3 The bankruptcy court correctly identified these elements in  
4 its RFS Order, and found that each was satisfied. We now  
5 consider whether the bankruptcy court's factual determinations  
6 were adequately supported by inferences that could be drawn from  
7 facts in the record.

8 1. Part of a scheme

9 Section 362(d)(4) does not define the term "scheme," but it  
10 has been held in this context to refer to "an artful plot or  
11 plan." In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr.  
12 C.D. Cal. 2006), quoting Black's Law Dictionary 1372 (8th ed.  
13 2004). Generally, a bankruptcy court must rely on circumstantial  
14 evidence to infer the existence of a scheme, as direct evidence  
15 usually is not available. In re Duncan & Forbes Dev., Inc.,  
16 368 B.R. at 32. In paragraph 9 of the RFS Order, the bankruptcy  
17 court determined that the filing of the Chapter 7 Case was part  
18 of such a scheme.

19 The evidence before the bankruptcy court showed that a total  
20 of four members of the Lira family had at various times held a  
21 title interest in the Property. Each of those family members had  
22 filed at least one bankruptcy petition, and three of them  
23 (Frankie, Frank, Jr. and the Debtor) had included the Property in  
24 their bankruptcy schedules. Finally, the Debtor filed her first  
25 bankruptcy case (the Chapter 13 Case) a matter of days after she  
26 obtained a title interest in the Property, and her second (the  
27 Chapter 7 Case) just two weeks after the Chapter 13 Case was  
28 dismissed.

1 On the other hand, the Debtor submitted declarations from  
2 Frankie and Frank, Jr., in which they denied that their  
3 bankruptcy filings were part of a scheme to delay, hinder or  
4 defraud any creditor. The Debtor's declaration contains the same  
5 statement with regard to her own bankruptcy filings. The Debtor  
6 also argues that the length of time that passed between Frankie  
7 and Frank, Jr.'s filings and her own Chapter 13 Case pointed to  
8 the absence of a scheme.

9 Although the evidence was far from unequivocal in  
10 establishing the existence of an "artful plot," we cannot  
11 conclude that the bankruptcy court's determination was illogical,  
12 implausible or unsupported by inferences that can be drawn from  
13 the record.

14 2. Delay, hinder or defraud

15 It does not appear that the bankruptcy court based its  
16 decision on a finding that the Debtor intended to defraud  
17 creditors, and we do not understand Wells Fargo to argue that any  
18 fraud took place. However, the applicable statutory language is  
19 in the disjunctive and requires only that one of three elements  
20 (delay, hinder or defraud) be established before in rem relief  
21 can be granted.

22 To "delay" is to "postpon[e] or slow[]." In re Dorsey,  
23 476 B.R. 261, 268 (C.D. Cal. 2012), quoting Black's Law  
24 Dictionary (9th ed. 2009). Similarly, to "hinder" is "to slow or  
25 make difficult;" "to hold back;" or "to impede, delay, or  
26 prevent." Black's Law Dictionary (10th ed. 2014). Thus, the two  
27 terms are essentially synonymous. See also In re Duncan & Forbes  
28 Dev., Inc., 368 B.R. at 34 (noting that these terms "have the

1 same meaning" as used in § 362(d)).<sup>12</sup>

2 The record before the bankruptcy court supported its  
3 conclusion that the Chapter 7 Case was part of a scheme to delay  
4 or hinder Wells Fargo. Wells Fargo's efforts to foreclose on the  
5 Property have been postponed, delayed and impeded by each of the  
6 bankruptcy cases. Although the Debtor offers alternative  
7 explanations for her bankruptcy filings, the bankruptcy court was  
8 not required to accept those explanations as determinative in the  
9 matter before it.

10 3. Transfer of property without creditor consent

11 There appears to be no dispute that an interest in the  
12 property was transferred to the Debtor, and the Debtor does not  
13 suggest that the transfer was made with court approval. The  
14 Debtor does, however, dispute the bankruptcy court's  
15 determination that this transfer was without the consent of the  
16 creditor. In support of this contention, the Debtor points to  
17 the Addendum permitting Frankie to transfer title in the property  
18 to "immediate family member(s)."

19 The language of the Addendum shows that the Lender gave its  
20 consent to **some** transfer of interest in the property,  
21 specifically to the transfer between Frankie and Frank, Jr. at  
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24 <sup>12</sup> The bankruptcy court in Duncan & Forbes went on to  
25 conclude that, for purposes of § 362(d), the delay or hindrance  
26 must be shown to be unlawful. 368 B.R. at 34. We agree with the  
27 bankruptcy court in Dorsey and conclude that no such showing is  
28 required by the statutory language. 476 B.R. at 268 n.3. We  
also note that Duncan & Forbes construed the pre-2010 version of  
the statute, which required a showing of intent to "delay, hinder  
and defraud."

1 the time of closing.<sup>13</sup> However, the Debtor submitted no evidence  
2 that either the Lender or Wells Fargo approved any subsequent  
3 transfers of interest in the property, including the transfer to  
4 the Debtor made before the filing of the Chapter 13 Case.  
5 Although the Debtor argued before the bankruptcy court, and  
6 continues to argue on appeal, that her beneficial interest in the  
7 Property had existed since 2006, her own exhibits submitted with  
8 the Response to the RFS Motion show otherwise. The Interspousal  
9 Transfer Grant Deed executed in 2006 purported to transfer the  
10 Property **from** the Debtor **to** Frankie, as his sole and separate  
11 property. The Debtor did not obtain an interest in the Property  
12 until October 10, 2012.

13 This record provided support for the bankruptcy court's  
14 determination that the Property had been transferred without  
15 Wells Fargo's consent. That determination was not clearly  
16 erroneous.

17 4. Multiple bankruptcy filings affecting the property

18 As noted above, three members of the Lira family have filed  
19 a total of four bankruptcy cases affecting the property. The  
20 Debtor filed two bankruptcy cases within a period of less than  
21 two months. The bankruptcy court did not abuse its discretion  
22 when it determined that the Chapter 7 Case was one of "multiple  
23 bankruptcy filings" affecting the Property.

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26 <sup>13</sup> The relevant language from the Addendum is as follows:  
27 **"AT THE CLOSE AND OUTSIDE OF THE ABOVE REFERENCED ESCROW BARROWER**  
28 **[sic] IS APPROVED AND AUTHORIZED TO TRANSFER A BENEFICIAL**  
**INTEREST TO IMMEDIATE FAMILY MEMBER(S) AS GOVERNED BY SECTION 18.**  
**AT PAGE 10 OF DEED OF TRUST"** (emphasis added).

1 C. The bankruptcy court's refusal to hear from Frank, Jr.

2 The Debtor argues that the bankruptcy court's refusal to  
3 hear from Frank, Jr. at the Hearing was prejudicial and  
4 unconstitutional. To the extent the Debtor argues that she had a  
5 constitutional right to have Frank, Jr. speak on her behalf, we  
6 reject the argument.<sup>14</sup>

7 Rule 9010(a) governs representation and appearances in  
8 bankruptcy courts by debtors. A debtor may "appear in a case  
9 . . . and act either in the [debtor]'s own behalf or by an  
10 attorney authorized to practice in the court[.]" Rule 9011-2(b)  
11 of the Local Bankruptcy Rules for the Central District of  
12 California provides that an individual appearing pro se "must  
13 appear personally for such purpose." The bankruptcy court's  
14 decision to preclude Frank, Jr. from speaking on the Debtor's  
15 behalf comported with these rules. The Debtor has cited no  
16 authority for the proposition that she had a constitutional right  
17 to be represented before the bankruptcy court by a layperson, and  
18 we perceive no basis for recognizing such a right. The  
19 bankruptcy court did not abuse its discretion in refusing to  
20 allow Frank, Jr. to speak on the Debtor's behalf.

21 VI. CONCLUSION

22 Based on the foregoing, we conclude that the bankruptcy  
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24 <sup>14</sup> At the Hearing, the bankruptcy court understood Frank,  
25 Jr. to be appearing on behalf of the Debtor. In her brief, the  
26 Debtor argues that Frank, Jr. and Frankie should have been  
27 permitted to speak because they were parties in interest. To the  
28 extent the Debtor argues that Frank, Jr. and Frankie themselves  
were prejudiced, we do not consider the argument. Frank, Jr. and  
Frankie are not parties to this appeal.

1 court did not err in effectively overruling the Debtor's standing  
2 objection. We further conclude that the bankruptcy court did not  
3 abuse its discretion in granting the RFS Motion, including its  
4 granting of in rem relief to Wells Fargo. Finally, we conclude  
5 that the bankruptcy court did not err in refusing to hear  
6 argument from Frank, Jr. at the Hearing. We AFFIRM.

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