

FEB 03 2017

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

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	SC-16-1227-JuFY
)		
RW MERIDIAN LLC,)	Bk. No.	16-00629-MM7
)		
Debtor.)		
_____)		
COUNTY OF IMPERIAL TREASURER-)		
TAX COLLECTOR,)		
)		
Appellant,)		
v.)	O P I N I O N	
)		
RONALD E. STADTMUELLER,)		
Trustee; RW MERIDIAN LLC,)		
)		
Appellees.)		
_____)		

Argued and Submitted on January 19, 2017
at San Diego, California

Filed - February 3, 2017

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

Honorable Margaret M. Mann, Bankruptcy Judge, Presiding

Appearances: Laurel Lee Hyde, Schwartz Hyde & Sullivan, LLP,
argued for appellant County of Imperial
Treasurer-Tax Collector; Richard Girgado, Office
of the County Counsel, County of Los Angeles,
argued for Amici The California State Association
of Counties and The California Association of
County Treasurers and Tax Collectors; Brian A.
Kretsch argued for appellee Ronald E.
Stadtmueller, chapter 7 trustee.

Before: JURY, FARIS, and YUN,* Bankruptcy Judges.

* Hon. Scott H. Yun, United States Bankruptcy Judge for the
Central District of California, sitting by designation.

1 JURY, Bankruptcy Judge:

2
3 Appellant, County of Imperial Treasurer-Tax Collector
4 (County), scheduled a tax sale of real property owned by RW
5 Meridian, LLC (Debtor) by an internet auction on February 6,
6 2016, due to the non-payment of taxes. Under Cal. Rev. & Tax
7 Code (Tax Code) § 3707(a)(1), Debtor's right to redeem the tax
8 defaulted property expired at 5:00 p.m. on Friday, February 5,
9 2016. Debtor's right to redeem lapsed and the sale by auction
10 began as scheduled.

11 On February 8, 2016, Debtor filed a chapter 7¹ petition.
12 Aware of Debtor's filing, the County completed the auction on
13 February 9, 2016, by selling the property to the highest bidder
14 for \$343,000. The County then filed a motion for a comfort
15 order,² asserting that the automatic stay was not applicable to
16 its postpetition acts under Tracht Gut, LLC v. County of Los
17 Angeles (In re Tracht Gut, LLC), 503 B.R. 804 (9th Cir. BAP
18 2014), aff'd, 836 F.3d 1146 (9th Cir. 2016), since Debtor's
19 right to redeem the property lapsed prepetition.

20 The bankruptcy court disagreed that Tracht Gut was binding
21 precedent under these circumstances. The court found that
22

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

27 ² "A 'comfort order' is a bankruptcy term of art for an
28 order confirming an undisputed legal result, and often is entered
to confirm that the automatic stay has terminated." In re Hill,
364 B.R. 826, 829 n.3 (Bankr. M.D. Fla. 2007).

1 although Debtor's right to redeem the property had expired
2 prepetition, Debtor still held valuable rights in the property
3 at the time of its bankruptcy filing, including title,
4 possession, and contingent redemption rights. Accordingly, the
5 bankruptcy court found that the property was property of
6 Debtor's estate under § 541. As a result, the court concluded
7 that the County's postpetition completion of the tax sale
8 violated § 362(a)(3), (4), and (6) and thus was void. The court
9 entered an order denying the County's motion for a comfort
10 order. This appeal followed.

11 For the reasons set forth below, we agree with the
12 bankruptcy court's conclusion that Tracht Gut did not address a
13 circumstance where the redemption rights had lapsed but the sale
14 had not been completed prior to the bankruptcy filing.
15 Therefore, its holding is not binding under the facts of this
16 case. We hold that the County's postpetition completion of the
17 sale violated the automatic stay under § 362(a)(3), (4), and
18 (6). Accordingly, we AFFIRM.

19 I. FACTS

20 A. Prepetition Events

21 The underlying facts are undisputed. As of February 6,
22 2016, Debtor was the owner of 58.53 acres of unimproved land
23 located in Imperial County, California. Debtor had not paid the
24 property taxes for more than five years and was delinquent in
25 the approximate amount of \$167,000. As a result, the tax
26 collector scheduled the property for sale by auction commencing
27 on Saturday, February 6, 2016. By statute, Debtor's right to
28 redeem the property expired at 5:00 p.m. on Friday, February 5,

1 2016. Debtor's right to redeem lapsed and the auction began on
2 February 6, 2016, as scheduled.

3 **B. Postpetition Events**

4 On February 8, 2016, Debtor filed a chapter 7 petition.
5 Appellee, Ronald E. Stadtmueller, was appointed the chapter 7
6 trustee (Trustee). Aware of the bankruptcy filing, the County,
7 relying on the Panel's decision in Tracht Gut, completed the
8 auction postpetition by selling the property to the highest
9 bidder for \$343,000.

10 On February 11, 2016, the County filed a motion for a
11 comfort order requesting confirmation that the completion of the
12 auction had not violated the automatic stay and that the further
13 act of recording the tax deed would not be a stay violation as
14 it was a "ministerial act." Trustee opposed, contending that
15 the property was property of the estate which he could
16 administer for the benefit of the creditors and estate. After a
17 hearing and further briefing, the bankruptcy court took the
18 matter under submission.

19 On July 5, 2016, the bankruptcy court issued its decision
20 in In re RW Meridian LLC, 553 B.R. 807 (Bankr. S.D. Cal. 2016).
21 The court concluded that it was not bound by the holding in
22 Tracht Gut because in that case both the debtor's right to
23 redeem expired and the sale occurred prepetition and all that
24 was left in the sale process was the recording of the tax deed.
25 The bankruptcy court reasoned that until the sale, Debtor
26 retained rights in the property because equitable and legal
27 title had not transferred. The bankruptcy court also found that
28 Debtor had a contingent right of redemption under California

1 law, which became property of the estate. Finally, the
2 bankruptcy court held that the County's discretion regarding the
3 conduct of the sale eliminated the ministerial act exception to
4 the automatic stay.

5 Relying on the broad reach of the automatic stay espoused
6 in 40235 Washington Street Corp. v. W.C. Lusardi (In re
7 Lusardi), 329 F.3d 1076 (9th Cir. 2003), and other case law, the
8 bankruptcy court found the sale violated § 362(a)(3), (4), and
9 (6) and thus was void. The court denied the County's motion for
10 a comfort order and entered an order consistent with its
11 decision. The County filed a timely notice of appeal from that
12 order.

13 **C. Post-appeal Events**

14 The County then filed an emergency motion for a stay
15 pending appeal. Trustee opposed, contending that he had
16 received an offer from third parties to purchase the property
17 for \$500,000, an amount which would satisfy all claims in the
18 bankruptcy case, including the County's tax lien. According to
19 Trustee, this was the third offer he had received and any
20 further delay would impede the sale of the property. A motions
21 panel denied the stay motion.

22 On October 14, 2016, the California State Association of
23 Counties and the California Association of County Treasurer and
24 Tax Collectors filed a motion for leave to file an Amicus Brief.
25 The parties contended that the issue involved in this appeal was
26 "vital to the administration of property tax collection" and
27 that the decision, "if sustained," would "seriously impair the
28 ability of counties and their tax collectors to ensure the

1 collection of real property taxes [and] subject the counties to
2 a finding by the courts that they violated the automatic stay.”

3 Around the same time, Trustee filed an objection to Melissa
4 Johnson’s declaration, which was included in the County’s
5 appendix and not part of the record on appeal. The County
6 submitted Ms. Johnson’s declaration to “remove any uncertainty
7 as to the relevant dates of the events” in Lusardi, since the
8 bankruptcy court found that the facts in this case were “nearly
9 identical” to those in Lusardi.³ Although Lusardi involved a
10 postpetition tax sale, the County submitted Ms. Johnson’s
11 declaration to show that the debtor had filed a chapter 11
12 petition prior to the expiration of its redemption right. Ms.
13 Johnson, the Chief Deputy Treasurer-Tax Collector for Riverside
14 County, authenticated the tax records associated with the real
15 property in the Lusardi case showing the sequence of events. In
16 its opening brief, the County asked the Panel to take judicial
17 notice of those tax records.

18 A motions panel granted the motion for leave to file the
19 Amicus Brief and accepted it for filing, sustained Trustee’s
20
21
22

23
24 ³ We do not read the bankruptcy court’s decision as finding
25 Lusardi “almost identical” to the facts here. Rather, the court
26 cited Lusardi to demonstrate the breadth of the automatic stay
27 under § 362(a)(4) as applied to a postpetition tax sale. In any
28 event, as in Tracht Gut, Lusardi does not discuss a debtor’s
property interests after the expiration of its right to redeem
but before a sale. Therefore, the case does not control the
outcome here.

1 objection to Ms. Johnson's declaration, and denied the County's
2 request for judicial notice.⁴

3 **II. JURISDICTION**

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

7 **III. ISSUES**

8 A. Whether the bankruptcy court erred in finding that
9 Debtor had various interests in the property on the petition
10 date despite the expiration of its right to redeem;

11 B. Whether the bankruptcy court erred in finding that the
12 County's postpetition sale of the property violated § 362(a)(3)
13 and (4); and

14 C. Whether the bankruptcy court erred in finding that the
15 County's action violated § 362(a)(6) as an act to collect a
16 claim against Debtor.

17 **IV. STANDARD OF REVIEW**

18 The standard of review for the issues raised in this appeal
19 is de novo. Whether an asset is estate property and whether the
20 automatic stay is applicable to a particular situation are
21 conclusions of law reviewed de novo. Groshong v. Sapp (In re
22

23 ⁴ Generally, a merits panel is not bound by the decisions
24 of a motions panel. Stagecoach Utilities, Inc. v. Cty. of Lyon
25 (In re Stagecoach Utilities, Inc.), 86 B.R. 229, 230 (9th Cir.
26 BAP 1988). We see no reason to deviate from the decision made by
27 the motions panel denying the County's request for judicial
28 notice and sustaining the objection to Ms. Johnson's declaration.
The declaration was not in the record relied upon by the
bankruptcy court and therefore requesting judicial notice of the
declaration is an improper augmentation of the trial record.

1 Mila, Inc.), 423 B.R. 537, 542 (9th Cir. BAP 2010). We also
2 review the bankruptcy court's interpretation of state law de
3 novo. Mele v. Mele (In re Mele), 501 B.R. 357, 362 (9th Cir.
4 BAP 2013). "De novo review requires that we consider a matter
5 anew, as if no decision had been rendered previously." Id.

6 V. DISCUSSION

7 A. The Automatic Stay: § 362(a)(3) and (4)

8 The scope of the automatic stay is quite broad. Hillis
9 Motors, Inc. v. Haw. Auto. Dealers' Ass'n, 997 F.2d 581, 585
10 (9th Cir. 1993). It stays "any act to obtain possession of
11 property of the estate or of property from the estate or to
12 exercise control over property of the estate" and also "any act
13 to . . . enforce any lien against property of the estate."
14 § 362(a)(3), (4).

15 When Debtor filed its bankruptcy petition, the automatic
16 stay took effect. § 362(a). It is undisputed that the County
17 continued the auction and sold Debtor's property postpetition to
18 the highest bidder. A postpetition sale of property generally
19 falls within the scope of § 362(a)(3) and (4). Actions taken in
20 violation of the automatic stay are void. In re Lusardi, 329
21 F.3d at 1084; Schwartz v. United States (In re Schwartz), 954
22 F.2d 569, 575 (9th Cir. 1992).

23 However, when a debtor is completely divested of all legal
24 and equitable rights in property prior to the filing of its
25 petition, the automatic stay is inapplicable and there is no
26 need for a creditor to seek relief from the automatic stay. See
27 Eden Place, LLC v. Perl (In re Perl), 811 F.3d 1120, 1127-28
28 (9th Cir. 2016). In Perl, prior to the debtor's bankruptcy

1 filing, a nonjudicial foreclosure sale had occurred, the
2 trustee's deed was timely recorded, and the purchaser at the
3 sale had obtained an unlawful detainer judgment and writ of
4 possession. These events collectively terminated the debtor's
5 legal title and right of possession in the property prepetition
6 under California law. As a result, the Ninth Circuit held that
7 the purchaser of the property did not violate the automatic stay
8 by evicting the debtor after he filed for bankruptcy.

9 From this holding, it follows that a debtor's right to the
10 protection of the automatic stay is dependent upon § 541(a)(1),
11 which provides that a bankruptcy estate succeeds only to "legal
12 or equitable interests of the debtor . . . as of the
13 commencement of the case." The nature and extent of the
14 debtor's interests in property must be determined by
15 nonbankruptcy law. Butner v. United States, 440 U.S. 48, 54-55
16 (1979). Here, California law applies. Since the sale of tax-
17 defaulted property in California is governed by statute, we
18 examine the statutory scheme to determine when Debtor's
19 equitable and legal interests in the underlying property
20 terminate during the tax sale process.

21 **1. California's statutory scheme for tax sales**

22 Taxes on real property are secured by and serve as a lien
23 on the real property for which they are assessed. Secured
24 property taxes that remain unpaid at the close of the fiscal
25 year (June 30) are deemed to be in default. Tax Code § 3436.
26 Properties which have been tax defaulted for a minimum of five
27
28

1 years⁵ are subject to the county tax collector's power to sell
2 them to satisfy the outstanding defaulted taxes. Tax Code
3 § 3691. Sale is to the highest bidder at a public auction.
4 Public auction includes the internet. Tax Code § 3693. Various
5 notices and publication are required prior to the tax sale. Tax
6 Code §§ 3351, 3361, 3371, 3701, 3704.7.

7 For tax sales, the "'Date of the sale' means the date upon
8 which a public auction begins." Tax Code § 3692.1(b). This
9 definition has relevance to the expiration of a debtor's right
10 to redeem. Tax Code § 4101 states: "Tax defaulted property may
11 be redeemed until the right of redemption is terminated." To
12 redeem the property the total amount of all prior year defaulted
13 taxes must be paid, together with the penalties, costs, and
14 fees. Tax Code § 4102.

15 The termination of the redemption period, the circumstances
16 under which the right to redeem revives, and when the sale is
17 complete are governed by Tax Code § 3707 which provides in
18 relevant part:

19 (a) (1) The right of redemption terminates at the close
20 of business on the last business day prior to the **date**
of the sale. (Emphasis added)

21 (2) If the tax collector approves a sale as a credit
22 transaction and does not receive full payment on or
23 before the date upon which the tax collector requires
pursuant to Section 3693.1, the right of redemption is
revived on the next business day following that date.

24 . . .

25 (c) The sale shall be deemed complete when full
26 payment has been received by the tax collector.

27
28 ⁵ For nonresidential commercial property, the period is
three years. Tax Code § 3691.

1 (d) The right of redemption revives if the property is
2 not sold.

3 When the sale is "deemed" complete (i.e., the full purchase
4 price has been paid) a debtor's right to redeem the tax-
5 defaulted property will not revive under Tax Code § 3707(a)(2)
6 and (d). When the sale is complete, the tax collector executes
7 a deed to the purchaser. Tax Code § 3708. The tax deed
8 "conveys title to the purchaser free of all encumbrances of any
9 kind existing before the sale" with certain exceptions set forth
10 in the statute. Tax Code § 3712.

11 **2. Under California law, Debtor's equitable and legal**
12 **interests in the underlying property were not divested**
13 **upon the expiration of Debtor's right to redeem.**

14 Although Debtor's right to redeem the property lapsed
15 prepetition, Debtor's right to redeem the property is a distinct
16 property right from its legal and equitable interests in the
17 property. See Harsh Inv. Corp. v. Bialac (In re Bialac), 712
18 F.2d 426, 431 (9th Cir. 1983) ("[P]re-foreclosure right to
19 redeem is a property right under [§] 541. . . ."). As
20 previously noted, while § 541 is very broad, the existence and
21 scope of a debtor's interest in a given asset is determined by
22 state law. As discussed below, under California law, the lapse
23 of Debtor's redemption right did not terminate its legal and
24 equitable title to the property which remained with Debtor on
25 the petition date.

26 Although the Tax Code provides that legal title to the tax-
27 defaulted property transfers after a sale with the recording of
28 the tax deed, the statutory scheme does not specify at what
point in the process equitable title to the real property

1 transfers to the purchaser during the sale process. To answer
2 this question, we look to California law.

3 In ordinary sales of real property to third parties,
4 California law states that prior to the transfer of legal title,
5 the purchaser of real property under a purchase and sale
6 agreement is said to have "equitable title" and a "beneficial
7 interest" in the property. RC Royal Dev. & Realty Corp. v.
8 Standard Pac. Corp., 177 Cal. App. 4th 1410, 1419 (Cal. Ct. App.
9 2009) (citing Osborn v. Osborn, 42 Cal. 2d 358, 363 (1954) ("At
10 the time of the execution of the contract of sale, the grantee
11 acquires an equitable title to the estate being sold; the
12 grantor retains the legal title as security for the purchase
13 price. The legal title passes to the grantee at the time of his
14 completion of the conditions precedent")). "[E]quitable
15 title is a 'beneficial interest,' as it is one stick in the
16 bundle of full legal rights to real property." RC Royal Dev.,
17 177 Cal. App. 4th at 1419.

18 In an involuntary sale such as foreclosure, equitable title
19 is transferred to the purchaser at the foreclosure auction with
20 acceptance of the highest bid and it is at that time a trustee's
21 sale is "complete." See In re Richter, 525 B.R. 735, 745
22 (Bankr. C.D. Cal. 2015) (citing Nguyen v. Calhoun, 105 Cal. App.
23 4th 428, 441 (Cal. Ct. App. 2003) ("[a]s a general rule, a
24 trustee's sale is complete upon acceptance of the highest
25 bid")); see also In re Engles, 193 B.R. 23, 26 (Bankr. S.D. Cal.
26 1996) ("When a purchaser receives equitable title at a
27 [foreclosure] sale, but legal title remains in a debtor, and the
28 debtor thereafter files for bankruptcy, cause exists to lift the

1 stay to allow the equitable owner to gain legal title.”).

2 Applying these principles to the facts of this case, we
3 conclude that Debtor was not divested of its legal or equitable
4 interests in the underlying property by operation of law upon
5 the expiration of its right to redeem. Rather, before Debtor’s
6 equitable interests in the property could transfer, the tax sale
7 process required the County to hold an auction and, at the very
8 least, accept the highest bid, or at most, also receive the
9 purchase price before the sale could be considered “complete.”
10 See Tax Code § 3707(c) (stating that a tax sale is not complete
11 until the purchase price has been paid in full which is a later
12 point in time than in a foreclosure sale when it is the
13 acceptance of the highest bid which passes equitable title).
14 Here, neither the auction nor acceptance of the highest bid was
15 accomplished prepetition. Therefore, under California law, no
16 transfer of Debtor’s legal and equitable interests in the
17 property had occurred by the petition date.⁶ Furthermore,
18 Debtor remained in rightful possession of the property at all
19 times.

20 Both parties relied heavily on United States v. Whiting
21 Pools, Inc., 462 U.S. 198, 204 n.8 (1983), for their respective
22 positions. There, the Supreme Court explained:

23 Section 541(a)(1) speaks in terms of the debtor’s
24 ‘interests . . . in property,’ rather than property in

25 ⁶ To the extent the County argues that Debtors’s equitable
26 interests expired upon termination of its redemption rights, this
27 argument leaves a void. Until a buyer was identified in a
28 completed sale, there is no party other than Debtor which would
hold that equitable interest. The County as a secured creditor
certainly could not claim the interest. Therefore, it must
remain with Debtor.

1 which the debtor has an interest, but this choice of
2 language was not meant to limit the expansive scope of
3 the section. The legislative history indicates that
4 Congress intended to exclude from the estate property
5 of others in which the debtor had some minor interest
6 such as a lien or bare legal title. See 124 Cong.
7 Rec. 32399, 32417 (1978) (remarks of Rep. Edwards);
8 id., at 33999, 34016-34017 (remarks of Sen.
9 DeConcini); cf. § 541(d) (property in which debtor
10 holds legal but not equitable title, such as a
11 mortgage in which debtor retained legal title to
12 service or to supervise servicing of mortgage, becomes
13 part of estate only to extent of legal title); 124
14 Cong.Rec. 33999 (1978) (remarks of Sen. DeConcini)
15 (§ 541(d) 'reiterates the general principle that where
16 the debtor holds bare legal title without any
17 equitable interest, . . . the estate acquires bare
18 legal title without any equitable interest in the
19 property'). Similar statements to the effect that
20 § 541(a)(1) does not expand the rights of the debtor
21 in the hands of the estate were made in the context of
22 describing the principle that the estate succeeds to
23 no more or greater causes of action against third
24 parties than those held by the debtor. See H.R.Rep.
25 No. 95-595, pp. 367-368 (1977). These statements do
26 not limit the ability of a trustee to regain
27 possession of property in which the debtor had
28 equitable as well as legal title.

16 This discussion, contained in a footnote, does not help the
17 County. As discussed, under California law, Debtor had an
18 equitable interest in the property as well as legal title on the
19 petition date. None of the provisions of the Tax Code governing
20 tax sales indicate that the expiration of the right to redeem
21 divested Debtor of those interests. Further, if Debtor had no
22 equitable interest, under § 541(d) the estate would acquire bare
23 legal title even without any equitable interest in the property.
24 In sum, on the petition date, Debtor's legal and equitable
25 interests in the property were property of its estate.

26 **3. The sale occurred postpetition.**

27 The County also argues that the bankruptcy court erred in
28 concluding that the tax sale occurred postpetition. According

1 to the County, Tax Code § 3692.1 defines the "Date of the sale"
2 as the date the auction is commenced. Therefore, although the
3 sale was completed postpetition within the meaning of Tax Code
4 § 3707(c) (i.e., the purchase price was paid in full), the
5 County maintains that the date of the sale was February 6, 2016,
6 two days before the petition was filed. Under this reasoning,
7 the automatic stay is inapplicable because all the events that
8 occurred after the petition date relate back to the commencement
9 of the auction which occurred prepetition. We are not
10 persuaded.

11 "Statutory definitions control the meaning of statutory
12 words . . . in the usual case." Lawson v. Suwanee Fruit &
13 Steamship Co., 336 U.S. 198, 201 (1949). And yet statutory
14 definitions must not be read "in a mechanical fashion" that
15 would "create obvious incongruities in the language, and . . .
16 destroy one of the major purposes" of the legislation. Id.
17 Sometimes the "meaning—or ambiguity—of certain words or phrases
18 may only become evident when placed in context." Food & Drug
19 Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132.
20 (2000). The "overall statutory scheme" must be taken into
21 consideration. Id. at 133; (quoting Davis v. Mich. Dep't of
22 Treasury, 489 U.S. 803, 809 (1989)).

23 Given these directives, we examine the overall statutory
24 scheme and the context in which the term "date of the sale" is
25 used. Tax Code § 3706 states that "[i]f the property is not
26 redeemed before the close of business on the last business day
27 prior to the **date of the sale** of the property, the tax collector
28 shall sell the property at public auction to the highest

1 bidder." (Emphasis added). Tax Code § 3707(a)(1) shows that
2 the "date of the sale" definition is again relevant in
3 connection with the expiration of a debtor's right to redeem "on
4 the last business day prior to the **date of the sale.**" (Emphasis
5 added). In contrast, Tax Code § 3710 requires that a tax deed
6 contain the "date the property was sold." Read together, these
7 statutes plainly show that the "date of the sale" is not the
8 same as the "date the property was sold."

9 In short, the statutory definition of "date of the sale"
10 used in context plainly and unambiguously relates to the
11 expiration of a debtor's right to redeem. Accordingly, the
12 "date of the sale" definition provides no basis to make the tax
13 sale valid by providing that the void act relates back to a time
14 before it occurred. See Ma v. Ashcroft, 361 F.3d 553, 558 (9th
15 Cir. 2004) (well-accepted rules of statutory construction
16 require that it avoid "statutory interpretations which would
17 produce absurd results. . .").

18 **4. The County violated § 362(a)(3) and (4).**

19 In conclusion, Debtor's equitable and legal interests in
20 the property remained intact on the petition date. Those
21 interests, including legal title and possession, were consistent
22 with ownership of the property since the County had not accepted
23 the highest bid nor completed the sale prepetition. Upon the
24 filing of Debtor's petition, those interests became property of
25 the estate subject to the automatic stay. Because the County
26 completed the tax sale postpetition which divested Debtor of
27 those interests, § 362(a)(3) and (4) were violated. The sale
28 was thus void. In re Lusardi, 329 F.3d at 1084; In re Schwartz,

1 954 F.2d at 575.

2 Finally, we cannot conclude the County's postpetition sale
3 fell within the narrow ministerial exception to the automatic
4 stay without stretching the exception beyond its limits. The
5 ministerial acts exception provides that the automatic stay does
6 not prohibit "[m]inisterial acts or automatic occurrences that
7 entail no deliberation, discretion, or judicial involvement" on
8 the part of an actor. McCarthy, Johnson & Miller v. N. Bay
9 Plumbing, Inc. (In re Pettit), 217 F.3d 1072, 1080 (9th Cir.
10 2000). While the ministerial acts exception to the automatic
11 stay may apply to the recording of a tax deed after a sale was
12 completed prepetition as held in Tracht Gut, completing the sale
13 process by accepting the highest bid is not ministerial.

14 **B. Tracht Gut is not controlling authority on the issues**
15 **before us.**

16 The County's central argument on appeal is that under the
17 holding in Tracht Gut, all of Debtor's interests in the property
18 lapsed due to the expiration of its right to redeem the property
19 prepetition. We disagree that Tracht Gut is binding precedent
20 under these circumstances.

21 In Tracht Gut, the county conducted the tax sales of the
22 debtor's properties at public auction prior to the debtor's
23 chapter 11 filing. The properties were sold, and although not
24 specifically recited in the facts of the case, presumably this
25 meant that the purchase price had been paid. More than a month
26 later, the debtor filed its chapter 11 petition. The tax deeds
27 transferring title to the properties to the purchasers were both
28 recorded by the county after the bankruptcy filing.

1 The debtor then filed an adversary proceeding asking the
2 bankruptcy court to grant relief on five separate claims
3 pertaining to the sale of the properties, including that the
4 recording of the tax deeds violated the automatic stay. "Debtor
5 claimed that its legal title in the Properties was not
6 extinguished until the tax deeds were recorded. Because this
7 occurred postpetition, Debtor argued that the recordings of the
8 deeds violated the automatic stay under § 362(a)." 503 B.R. at
9 811.

10 The county moved to dismiss the complaint under Civil Rule
11 12(b)(6). With respect to the stay violation, the county argued
12 that since the tax sales occurred prepetition, the properties
13 were not property of the estate under § 541 and thus were not
14 protected by the automatic stay when the debtor's bankruptcy
15 petition was filed. The bankruptcy court agreed that the
16 properties were not property of the estate for purposes of § 541
17 and also concluded that the post-petition recording of the deeds
18 did not violate the automatic stay as it was solely a
19 ministerial act. The bankruptcy court dismissed the complaint
20 with prejudice.

21 On appeal, in affirming the dismissal of the debtor's claim
22 for violation of the automatic stay,⁷ the Panel noted that
23 (1) the debtor's right of redemption as to the properties lapsed
24 the day before the tax sales occurred under Tax Code § 3707 and
25 (2) "[a] tax deed subsequently provided to a purchaser 'conveys
26

27 ⁷ Although the debtor did not argue that the bankruptcy
28 court had erred in dismissing the claim for violation of the
automatic stay, the Panel considered the arguments of the county
on the issue raised in its brief. Id. at 811.

1 title to the purchaser free of all encumbrances of any kind’”
2 under Tax Code § 3712.6. Id. at 811. The panel then stated:
3 “Under these facts, since Debtor’s interest in the Properties
4 lapsed before it filed for bankruptcy, the Properties never
5 became property of the estate under § 541, and any action by the
6 County concerning those properties would not run afoul of the
7 automatic stay under § 362(a).” Id. at 811-12. Next,
8 consistent with the bankruptcy court’s ruling, the Panel found
9 that the recording of the tax deeds postpetition was a
10 ministerial act and, as such, would not violate the automatic
11 stay when, under California law, “the tax collector had no
12 discretion in recording the deed; he instead is commanded to
13 record it.” Id. at 812.

14 The Tracht Gut case is easily distinguished from the
15 circumstances here. There, the redemption period expired and
16 the sale was completed prepetition. The last step in the sale
17 process, the recording of the tax deeds conveying the property,
18 was considered a ministerial act. Therefore, it was the
19 expiration of the right to redeem coupled with the completion of
20 the sale (payment in full of the purchase price) which
21 terminated the debtor’s interests in the properties such that
22 the properties did not come into the estate. Under the plain
23 language of Tax Code § 3707, the revival of the debtor’s right
24 to redeem under subsections (a) (2) and (d) became moot due to
25 the completion of the sales prepetition.

26 Moreover, because the tax sale process was virtually
27 completed prepetition and the stay argument was presented in the
28 context of a motion to dismiss under Civil Rule 12(b) (6), Tracht

1 Gut does not contain any discussion about the scope of the
2 debtor's property interests after the expiration of the right to
3 redeem. Therefore, it is far from certain that the panel
4 intended the result the County urges. See Brecht v. Abrahamson,
5 507 U.S. 619, 631 (1993) (where issue was "never squarely
6 addressed," prior rulings do not serve as binding precedent);
7 Webster v. Fall, 266 U.S. 507, 511 (1925) ("[q]uestions which
8 merely lurk in the record . . . are not considered as having
9 been so decided as to constitute precedents"). Accordingly, we
10 do not read Tracht Gut as standing for a "bright line" rule that
11 once redemption rights have expired prepetition, the County is
12 free to take further actions to complete a sale after a
13 bankruptcy petition has been filed without regard to the
14 automatic stay.

15 **C. Other caselaw cited by the County is neither binding**
16 **nor persuasive.**

17 None of the other cases cited by the County in its opening
18 brief are binding or persuasive on the issue before us. The
19 case of In re Fahmi Hammad, No. 2:10-bk-54706-RN (Bankr. C.D.
20 Cal. 2010), contains no discussion regarding the debtor's
21 interests in the property after the right to redeem expires.
22 Rather, the court found that pursuant to § 108, it lacked
23 jurisdiction to set aside a tax sale which had occurred
24 postpetition because the debtor's right to redeem had terminated
25 prepetition. The only issue submitted to the court was the
26 § 108 issue.

27 We also disagree that the Second Circuit's decision in
28 Rodgers v. County of Monroe (In re Sandralee Rodgers), 333 F.3d

1 64 (2d Cir. 2003), is relevant to the issue before us. There, a
2 tax foreclosure sale took place prepetition, but the deed had
3 not been transferred. The debtor filed for bankruptcy hoping
4 that the automatic stay would block the transfer of the deed and
5 resurrect her ability to redeem the property which had been lost
6 under state law due to the foreclosure. In determining whether
7 the debtor had any equitable or legal rights in the underlying
8 property, the Second Circuit examined New York law. Under New
9 York Real Property Tax Law § 1131, expiration of the redemption
10 period "forever . . . bar[s] and foreclose[s] [] all right,
11 title, and interest and equity of redemption and to the parcel
12 in which the person has an interest. . . ." We found no
13 corresponding statute under California's tax sale scheme.

14 Further, similar to Tracht Gut, all the actions necessary
15 to transfer the property under New York law were completed
16 prepetition - a judgment of foreclosure had been entered and a
17 foreclosure sale conducted. Those events terminated the
18 debtor's right to redeem the property and other interests in the
19 property under New York law.

20 In In re Theoclis, 213 B.R. 880 (Bankr. D. Mass. 1997), the
21 issues raised were in the context of a motion for stay pending
22 appeal. The bankruptcy court had previously granted a motion
23 for relief from stay filed by the successful bidders at a
24 foreclosure sale who asserted they were the "owners" of the
25 property. In evaluating whether the debtor was entitled to a
26 stay, the court found it unlikely that he would be successful on
27 the merits because under Massachusetts law, where a foreclosure
28 sale is properly conducted, the redemption rights of a mortgagor

1 terminate as early as the execution of the memorandum of sale.
2 Therefore, after foreclosure of the debtor's equity of
3 redemption, neither the debtor nor the bankruptcy estate had any
4 interest in the underlying property and the automatic stay was
5 inapplicable to a transfer of title. This case is
6 distinguishable in that it also dealt with the peculiarities of
7 Massachusetts foreclosure law.

8 **D. The Automatic Stay: § 362(a)(6)**

9 The bankruptcy court also found that the County's
10 postpetition tax sale violated § 362(a)(6), which stays "any act
11 to collect, assess, or recover a claim against the debtor that
12 arose before the commencement of [the debtor's bankruptcy
13 case]." The statute plainly stays acts to recover a "claim
14 against the debtor." Under § 102(2), "'claim against the
15 debtor' includes claim against property of the debtor," thus
16 bringing the County's tax sale of Debtor's property within the
17 prohibition of § 362(a)(6).

18 **VI. CONCLUSION**

19 For the reasons stated, we AFFIRM.
20
21
22
23
24
25
26
27
28