

FEB 01 2018

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-16-1414-FLKu
)
 TIA DANIELLE SMITH,) Bk. No. 2:16-bk-17692-NB
)
 Debtor.)
)
 _____)
 TIA DANIELLE SMITH,)
)
 Appellant,)
)
 v.) **MEMORANDUM***
)
 IH4 PROPERTY WEST LP; KATHY)
)
 A. DOCKERY, Chapter 13)
)
 Trustee,)
)
 Appellees.)
)
 _____)

Submitted Without Argument on January 25, 2018

Filed - February 1, 2018

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

Honorable Neil W. Bason, Bankruptcy Judge, Presiding

Appearances: Appellant Tia Danielle Smith, pro se, on brief.

Before: FARIS, LAFFERTY, and KURTZ, 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 campaign to block the foreclosure of a deed of trust on her
2 property. The procedural history is complex, mostly because
3 Ms. Smith is a prolific and determined litigant despite repeated
4 and comprehensive losses, but also because her adversary, IH4,
5 was less diligent than she.

6 In December 2006, Ms. Smith borrowed \$556,000 secured by a
7 deed of trust on her residence in Los Angeles. Ms. Smith
8 defaulted in making payments under the loan a year later. After
9 several workout and loan modification attempts failed, the
10 trustee under the deed of trust recorded a notice of sale in May
11 2011. Smith v. Am. Mortg. Network, Case No. B252585, 2015 WL
12 2438819 (Cal. App. 2d Dist. May 21, 2015) ("Smith I").

13 In July 2011, Ms. Smith commenced Smith I in California
14 superior court. Her basic argument was that the foreclosing
15 lender failed to prove that it owned the loan and deed of trust.
16 The superior court dismissed the action, and Ms. Smith appealed.

17 Ms. Smith unsuccessfully sought an injunction against the
18 trustee's sale. In November 2011, the then-servicer of the loan
19 bought the property in a nonjudicial foreclosure sale and
20 recorded a trustee's deed upon sale. The servicer transferred
21 the property to IH4 in April 2014 by quitclaim deed.

22 Despite her defeat in Smith I, Ms. Smith then filed another
23 suit challenging the foreclosure in the superior court of
24 California against IH4 and others ("Smith II"). Her position in
25 Smith II was the same as the one the court rejected in Smith I:
26 the foreclosing lender had not proven its ownership of the loan
27 and deed of trust.

28 Shortly thereafter, IH4 filed an unlawful detainer action in

1 superior court against Ms. Smith and her tenants ("Unlawful
2 Detainer Action"). A jury found in favor of IH4, and the
3 superior court entered judgment ("Unlawful Detainer Judgment").
4 On March 4, 2015, the superior court issued a writ of possession
5 in favor of IH4.

6 IH4's victory was short-lived. Ms. Smith asked the superior
7 court in Smith II for a temporary restraining order ("TRO")
8 staying enforcement of the Unlawful Detainer Judgment.
9 Inexplicably, IH4 did not oppose this request, and the superior
10 court granted it on March 17. The superior court in the Unlawful
11 Detainer Action granted Ms. Smith's ex parte request to recall
12 and quash the March 4 writ of possession until the court in
13 Smith II lifted the TRO.

14 But then Ms. Smith suffered a series of setbacks. In May
15 2015, the California Court of Appeals affirmed the dismissal of
16 Smith I.³ In May 2016, the appellate division of the superior
17 court affirmed the Unlawful Detainer Judgment.⁴ During the same
18 month, the superior court dismissed Smith II, based on the
19 preclusive effect of the Smith I judgment, and vacated the TRO.
20 IH4 submitted another application for a writ of possession in the
21 Unlawful Detainer Action.

22 Undaunted, Ms. Smith fought back. On May 24, she filed in
23 Smith II a motion to set aside the order vacating the TRO

24
25 ³ The United States Supreme Court later denied Ms. Smith's
petition for a writ of certiorari. 136 S. Ct. 810 (2016).

26 ⁴ The California appellate court denied Ms. Smith's appeal
27 of the Unlawful Detainer Judgment on June 20, 2016. In August
28 2016, the Supreme Court of California denied Ms. Smith's petition
for writ of mandate.

1 ("Motion to Reinstate TRO"), claiming that IH4 had failed
2 properly to serve her with its motion to vacate the TRO.

3 On June 9, 2016, before the superior court acted on IH4's
4 application for a writ of possession in the Unlawful Detainer
5 Action or on Ms. Smith's Motion to Reinstate TRO in Smith II,
6 Ms. Smith filed a chapter 13 petition.

7 On June 23, Ms. Smith filed an emergency motion in the
8 bankruptcy court to enforce the automatic stay against IH4 and
9 the superior court. The bankruptcy court denied that motion
10 without prejudice. In denying Ms. Smith's request to shorten
11 time to hear the motion, the bankruptcy court stated in part:

12 (1) There is no showing of any imminent or ongoing
13 violation of the automatic stay, either by the Los
14 Angeles Superior Court (the "Superior Court") or by IH4
15 Property West LP. To the contrary, it seems from the
16 last exhibit to the debtor's motion (dkt. 8, the
17 "Motion") that the Superior Court has expressly
18 recognized that the automatic stay appears to apply,
19 presumably based on the same interpretation of
20 In re Perl, 811 F.3d 1120 (9th Cir. 2016), as the
21 debtor. (The debtor herself might want the Superior
22 Court to proceed, because it seems that the debtor is
23 the one who wants relief from orders of the Superior
24 Court that were issued before this bankruptcy case was
25 filed; but if that is so then **the debtor herself would
26 need to request relief from the automatic stay for that
27 purpose.**)

28 (Emphasis added.) (As we shall see, the bankruptcy court later
corrected its last comment.)

On June 27, the superior court issued a writ of possession
in the Unlawful Detainer Action. At this point, no party had
obtained relief from the automatic stay. As a result (and as IH4
conceded), the writ was void.

On the same day, Ms. Smith filed an emergency motion for
limited relief from the automatic stay. She requested that the

1 bankruptcy court lift the automatic stay to allow her to pursue
2 various state court actions, including Smith II, but maintain the
3 stay against IH4 and other creditors.

4 On June 28, the bankruptcy court granted temporary stay
5 relief and set the matter for hearing on July 5 ("Order Granting
6 Debtor's Motion for Stay Relief"). The court ordered, in
7 relevant part:

8 b. In Los Angeles Superior Court case no. BC553608
9 (the "Smith II Action"), the Superior Court is not
10 stayed from issuing its decision with respect to the
11 debtor's ex parte application for an order to vacate
12 the May 17, 2016 order dissolving the March 17, 2015
13 order re: preliminary injunction; and **all parties in
14 interest may file any responsive papers**

15 (Emphasis added.)

16 On June 30, Ms. Smith requested that the Smith II court
17 issue its decision on her Motion to Reinstate TRO. Surprisingly,
18 IH4 did not appear at the hearing on the Motion to Reinstate TRO.
19 The superior court found that IH4 had failed to serve proper
20 notice on Ms. Smith of the hearing on IH4's motion to vacate the
21 TRO and issued an order reinstating the TRO ("Order Reinstating
22 TRO").

23 With the TRO reestablished in Smith II, Ms. Smith filed in
24 the bankruptcy court a second motion for relief from the
25 automatic stay. She sought permission to attack the writ of
26 possession in the Unlawful Detainer Action. In response, IH4
27 conceded that the writ of possession was void because the
28 superior court issued it postpetition. The bankruptcy court
denied the motion as to IH4 as moot, stating: "IH4 has conceded
. . . that '[t]he writ of execution to which Debtor refers is of
no legal effect, and IH4 acknowledges that fact[.]'"

1 On August 22, 2016, IH4 filed its own motion for relief from
2 the automatic stay. IH4 argued (among other things) that the
3 automatic stay did not apply to the property, because Ms. Smith
4 had no interest in the property on the petition date. IH4
5 further acknowledged that the June 27 writ of possession issued
6 postpetition was void. It represented that, once stay relief was
7 granted, it would seek to set aside the TRO and seek a new writ
8 of possession.

9 While IH4's motion for relief from the automatic stay was
10 pending in the bankruptcy court, IH4 (represented by different
11 counsel) filed in Smith II a motion to set aside the TRO ("Motion
12 to Set Aside TRO"). IH4's bankruptcy counsel subsequently
13 persuaded IH4's state court counsel to take the hearing off
14 calendar "simply as a courtesy and to eliminate the appearance
15 that IH4 was doing what [counsel] had said it would not do until
16 after relief from stay was granted."

17 When responding to IH4's motion for relief from the
18 automatic stay, Ms. Smith argued that IH4 had violated the
19 automatic stay by filing the Motion to Set Aside TRO in Smith II.

20 The bankruptcy court granted IH4's motion for stay relief on
21 September 15, 2016. It rejected Ms. Smith's contention that IH4
22 violated the automatic stay when it filed its Motion to Set Aide
23 TRO. It stated that it had assumed "that the automatic stay
24 applies in the various nonbankruptcy actions. But in fact it
25 might not apply for various reasons. For example, actions
26 **against** the debtor generally are stayed but actions **by** the debtor
27 (including all counterclaims within that action) generally are
28 not."

1 Shortly thereafter, Ms. Smith filed a motion for damages
2 arising from violation of the automatic stay ("Motion for
3 Damages"), which is the subject of this appeal. She argued that
4 IH4 violated the automatic stay when it filed the Motion to Set
5 Aside TRO in Smith II while IH4's motion for relief from the
6 automatic stay was pending in the bankruptcy court.⁵ She sought
7 damages for emotional distress, a finding of contempt against
8 IH4, and imposition of punitive damages.

9 The bankruptcy court denied the Motion for Damages ("Damages
10 Order"). The bankruptcy court ruled that (1) Ms. Smith did not
11 establish that IH4 had violated the automatic stay because the
12 alleged violation occurred in an action commenced by the debtor;
13 (2) IH4's Motion to Set Aside TRO was within the scope of the
14 stay relief that the bankruptcy court had previously granted; and
15 (3) even if IH4 violated the automatic stay, Ms. Smith did not
16 suffer any compensable injury, because the only violation was the
17 setting of a hearing that IH4 subsequently took off calendar.

18 Ms. Smith filed a motion for reconsideration of the court's
19 Damages Order. The bankruptcy court denied the motion for
20 reconsideration ("Reconsideration Order"), stating:

21 The automatic stay in the debtor's bankruptcy case
22 might not have applied at all (as discussed on the
23 record and addressed in the filed papers), but to the
24 extent it did apply it was lifted for IH4 to pursue
25 all of its State Court remedies, including, but not
26 limited to, either issuance of a new writ of
possession (if required) or enforcement of its
existing writ of possession, if the State Court chose
to permit IH4 to proceed under that writ (which it

27 ⁵ Ms. Smith also argued that the superior court in Smith II
28 violated the automatic stay when it denied her motion for a new
trial. She has abandoned this argument on appeal.

1 might well have done, because the debtor has appeared
2 and the State Court has held hearings, so presumably
3 she cannot deny any longer that she has had notice of
4 IH4's request for a writ of possession and an
5 opportunity to be heard). If there is any wrongdoing
6 on the part of IH4 with regard to that writ of
7 possession, it is a matter for the State Court to
8 address, not this Bankruptcy Court.

9 Ms. Smith timely filed a notice of appeal from the Damages
10 Order and Reconsideration Order.

11 **JURISDICTION**

12 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
13 §§ 1334 and 157(b) (1). We have jurisdiction under 28 U.S.C.
14 § 158.

15 **ISSUE**

16 Whether the bankruptcy court erred in determining that IH4
17 did not violate the automatic stay by filing the Motion to Set
18 Aside TRO.

19 **STANDARDS OF REVIEW**

20 We review de novo questions of law, including the bankruptcy
21 court's determination as to whether a creditor has violated the
22 automatic stay. Palm v. Klapperman (In re Cady), 266 B.R. 172,
23 178 (9th Cir. BAP 2001), aff'd, 315 F.3d 1121 (9th Cir. 2003);
24 Advanced Ribbons & Office Prods., Inc. v. U.S. Interstate
25 Distrib., Inc. (In re Advanced Ribbons & Office Prods., Inc.),
26 125 B.R. 259, 262 (9th Cir. BAP 1991) (the scope of the automatic
27 stay under § 362(a) (6) is "a legal issue which we review de
28 novo"). "De novo review requires that we consider a matter anew,
as if no decision had been made previously." Francis v. Wallace
(In re Francis), 505 B.R. 914, 917 (9th Cir. BAP 2014).

"A bankruptcy court's decision to deny a motion for

1 additional findings, reconsideration or an amended order or
2 judgment is reviewed for abuse of discretion.” Marciano v. Fahs
3 (In re Marciano), 459 B.R. 27, 35 (9th Cir. BAP 2011), aff’d,
4 708 F.3d 1123 (9th Cir. 2013). To determine whether the
5 bankruptcy court has abused its discretion, we conduct a two-step
6 inquiry: (1) we review de novo whether the bankruptcy court
7 “identified the correct legal rule to apply to the relief
8 requested” and (2) if it did, whether the bankruptcy court’s
9 application of the legal standard was illogical, implausible, or
10 without support in inferences that may be drawn from the facts in
11 the record. United States v. Hinkson, 585 F.3d 1247, 1262-63 &
12 n.21 (9th Cir. 2009) (en banc).

13 DISCUSSION

14 **A. The bankruptcy court did not err in denying the Motion for** 15 **Damages.**

16 Ms. Smith argues that IH4 violated the automatic stay when
17 it filed the Motion to Set Aside TRO. We disagree.

18 Once a debtor files for bankruptcy protection, § 362(a) acts
19 to stay certain actions against the debtor and the bankruptcy
20 estate. The stay is broad but not unlimited. Among other
21 things, the automatic stay bars “the commencement or continuation
22 . . . of a judicial . . . action or proceeding **against the debtor**
23 that was or could have been commenced before the commencement of
24 the [bankruptcy] case” § 362(a)(1) (emphasis added).

25 The narrow question in this appeal is whether the automatic
26 stay applied to Smith II such that IH4’s postpetition motion
27 violated the stay. We agree with the bankruptcy court that the
28 stay was inapplicable.

1 **1. The automatic stay was not applicable to Smith II,**
2 **which was an action initiated by a debtor.**

3 By its terms, § 362(a)(1) applies to an action **against** a
4 debtor. The stay does not apply to actions commenced **by** the
5 debtor against a third party. See Lehman Commercial Paper, Inc.
6 v. Palmdale Hills Prop., LLC (In re Palmdale Hills Prop., LLC),
7 423 B.R. 655, 663 (9th Cir. BAP 2009), aff'd, 654 F.3d 868 (9th
8 Cir. 2011) ("the automatic stay has been found inapplicable to
9 lawsuits initiated by the debtor"); Eisinger v. Way (In re Way),
10 229 B.R. 11, 13 (9th Cir. BAP 1998) ("The primary purposes of
11 § 362 do not apply, however, to offensive actions by a debtor or
12 bankruptcy trustee, as the same policy considerations do not
13 exist where the debtor has initiated a prepetition lawsuit
14 against a creditor.").

15 In Gordon v. Whitmore (In re Merrick), 175 B.R. 333 (9th
16 Cir. BAP 1994), we considered whether defendants violated the
17 automatic stay by continuing to defend themselves in the state
18 court against the debtors' prepetition fraud action, including
19 obtaining summary judgment postpetition. We examined the
20 language of § 362(a) and concluded that the automatic stay
21 applied only to actions that are initiated "against" a debtor:

22 It is most unlikely that a contention by a defendant
23 that the trustee's claim is unfounded can be equated
24 with exercising dominion or control over property of
25 the estate. . . . Thus, **the operative subsections in**
the case at hand, (a) (1) and (a) (3), contemplate
actions "against" the debtor and not "concerning" the
debtor, which is much broader.

26 The automatic stay gives the debtor a breathing
27 spell from his creditors and allows the trustee to
28 marshall assets of the estate for the benefit of
creditors. While restraint of a defendant in a suit
subject to prosecution by the estate arguably could

1 contribute to an orderly processing of estate assets,
2 **we could find no case that supports the proposition**
3 **that the automatic stay prevents a defendant from**
4 **continuing to defend against a pre-bankruptcy lawsuit.**
5 To the contrary, there is substantial authority that
6 **the stay is inapplicable to postpetition defensive**
7 **action in a prepetition suit brought by the debtor.**

8 175 B.R. at 336 (emphases added) (internal citations omitted).

9 We cited the Seventh Circuit's unequivocal language permitting a
10 defendant to defend himself against a prepetition lawsuit:

11 The fundamental purpose of bankruptcy, from the
12 creditors' standpoint, is to prevent creditors from
13 trying to steal a march on each other, In re Holtkamp,
14 669 F.2d 505, 508 (7th Cir. 1982), and the automatic
15 stay is essential to accomplishing this purpose. **There**
16 **is, in contrast, no policy of preventing persons whom**
17 **the bankrupt has sued from protecting their legal**
18 **rights.**

19 Id. at 337 (emphasis added) (quoting Martin-Trigona v. Champion
20 Fed. Sav. & Loan Ass'n, 892 F.2d 575, 577 (7th Cir. 1989)). We
21 concluded that "[t]he automatic stay should not tie the hands of
22 a defendant while the plaintiff debtor is given free rein to
23 litigate." Id. at 338.

24 In the present case, the issue is whether IH4's Motion to
25 Set Aside TRO filed postpetition in Smith II violated the
26 automatic stay. As the bankruptcy court correctly stated,
27 Smith II is a quiet title action that Ms. Smith instituted
28 against IH4. It is not an action "against" Ms. Smith or the
estate's property, so IH4's efforts to defeat Ms. Smith in that
action did not violate the automatic stay.⁶ See Parker v. Bain,

26 ⁶ One might argue that IH4's goal was to evict Ms. Smith
27 from the property, and that any step it took toward that
28 objective (such as its Motion to Set Aside TRO) was an "act to
obtain possession of property of the estate" under § 362(a)(3).

(continued...)

1 68 F.3d 1131, 1135-36 (9th Cir. 1995) (the automatic stay applies
2 only to actions "originally brought" against the debtor);
3 In re Merrick, 175 B.R. at 336.

4 Ms. Smith argues that the bankruptcy court, the superior
5 court, and IH4 acknowledged that the automatic stay applied in
6 Smith II and that she relied on those representations. It is
7 true that IH4 initially conceded - incorrectly - that the stay
8 applied to Smith II, and that the bankruptcy court suggested the
9 same. Similarly, the superior court suspended the hearing on
10 Ms. Smith's May 2016 Motion to Reinstate TRO in Smith II when
11 Ms. Smith filed her chapter 13 petition, implying that the
12 automatic stay applied. But the automatic stay is a creature of
13 statute. A party's incorrect statements, a state court's
14 decisions,⁷ or a bankruptcy court's tentative views⁸ cannot
15 expand its scope.

16
17 _____
18 ⁶(...continued)

19 But because the foreclosure had been completed prepetition, the
20 estate had no ownership interest in the Property.

21 ⁷ A state court's erroneous interpretation of the automatic
22 stay is void. "Any state court modification of the automatic
23 stay would constitute an unauthorized infringement upon the
24 bankruptcy court's jurisdiction to enforce the stay." Gruntz v.
25 Cty. of L.A. (In re Gruntz), 202 F.3d 1074, 1082 (9th Cir. 2000).
26 Thus, the superior court's belief as to whether the automatic
27 stay prevented it from ruling on matters in Smith II is not
28 dispositive.

29 ⁸ The bankruptcy court clarified (in its order granting
30 IH4's motion for stay relief and the Damages Order) that the
31 automatic stay may not have applied at all and that it was only
32 assuming - without deciding - that the automatic stay applied to
33 Smith II. The bankruptcy court never unequivocally ruled that
34 the automatic stay applied to Smith II, and the court was free to
35 clarify any ambiguity in its comments in subsequent rulings.

1 **2. Alternatively, the Motion to Set Aside TRO fell within**
2 **the court's grant of limited stay relief.**

3 The bankruptcy court ruled that, even if the automatic stay
4 applied to Smith II, IH4's Motion to Set Aside TRO was within the
5 scope of the stay relief that the bankruptcy court had granted in
6 the Order Granting Debtor's Motion for Stay Relief. We find no
7 abuse of discretion.

8 In its Order Granting Debtor's Motion for Stay Relief, the
9 bankruptcy court ruled that the superior court could decide
10 Ms. Smith's Motion to Reinstate TRO and explicitly stated that
11 "all parties in interest may file any responsive papers"
12 The bankruptcy court ruled that the Motion to Set Aside TRO was a
13 "responsive paper." It stated that the motion "directly responds
14 to the debtor's ex parte application and is certainly a
15 'responsive pleading' [sic] addressed by this court's order
16 granting relief from stay"

17 On appeal, Ms. Smith argues that the Motion to Set Aside TRO
18 was not "responsive" within the meaning of the bankruptcy court's
19 order. But the bankruptcy court had the power to interpret and
20 clarify its own orders. See Wilshire Courtyard v. Cal. Franchise
21 Tax Bd. (In re Wilshire Courtyard), 729 F.3d 1279, 1289 (9th Cir.
22 2013) (noting that "it is well recognized that a bankruptcy court
23 has the power to interpret and enforce its own orders"); Rosales
24 v. Wallace (In re Wallace), 490 B.R. 898, 906 (9th Cir. BAP 2013)
25 ("We accord substantial deference to the bankruptcy court's
26 interpretation of its own orders and will not overturn that
27 interpretation unless we are convinced it amounts to an abuse of
28 discretion." (citing In re Marciano, 459 B.R. at 35)). The

1 bankruptcy court accurately observed that IH4's motion contested
2 the substance of Ms. Smith's attempt to reinstate the TRO. We
3 hold that the bankruptcy court did not abuse its discretion in
4 clarifying that stay relief applied to the Motion to Set Aside
5 TRO.

6 **3. We need not reach the issue of Ms. Smith's damages.**

7 Ms. Smith requested that the bankruptcy court sanction IH4
8 and award her damages for the physical and emotional distress
9 that she suffered. As we explain above, IH4 did not violate the
10 automatic stay, so we need not consider whether the bankruptcy
11 court erred in denying Ms. Smith's request for damages.

12 **B. The bankruptcy court did not abuse its discretion in denying**
13 **the motion for reconsideration.**

14 Ms. Smith also appeals from the Reconsideration Order. The
15 bankruptcy court held that Ms. Smith did not offer any newly
16 discovered evidence and that the issues presented were matters
17 better determined by the state court. We agree.

18 We examine Ms. Smith's arguments under Civil Rule 59, made
19 applicable in bankruptcy through Rule 9023. See Am. Ironworks &
20 Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892, 898-99 (9th
21 Cir. 2001) ("A 'motion for reconsideration' is treated as a
22 motion to alter or amend judgment under Federal Rule of Civil
23 Procedure 59(e) if it is filed within [fourteen] days of entry of
24 judgment. Otherwise, it is treated as a [Civil] Rule 60(b)
25 motion for relief from a judgment or order." (citation
26
27
28

1 omitted)).⁹ “[A] motion for reconsideration should not be
2 granted, absent highly unusual circumstances, unless the district
3 court is presented with newly discovered evidence, committed
4 clear error, or if there is an intervening change in the
5 controlling law.” Kona Enters., Inc. v. Estate of Bishop,
6 229 F.3d 877, 890 (9th Cir. 2000) (quoting 389 Orange St.
7 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999)).

8 The motion for reconsideration largely focused on IH4’s
9 alleged bad faith (as argued in a motion to dismiss that is not
10 the subject of this appeal), and not on the alleged automatic
11 stay violations. The only argument even tangentially related to
12 the automatic stay is Ms. Smith’s contention that the Los Angeles
13 Sheriff’s Department served her with a notice to vacate the
14 Property based on the writ of possession that the superior court
15 issued postpetition in violation of the automatic stay. But
16 Ms. Smith fails to address the bankruptcy court’s reasoning in
17 the Damages Order. Moreover, as the bankruptcy court held in its
18 Reconsideration Order, her contention that the writ of possession
19 was invalid is an issue for the superior court, not the
20 bankruptcy court.¹⁰ Accordingly, the bankruptcy court did not
21

22 ⁹ The bankruptcy court issued the Damages Order on
23 October 17, 2016, and Ms. Smith filed the motion for
24 reconsideration on October 28 and her supplemental brief on
November 7.

25 ¹⁰ Ms. Smith implies that the Sheriff’s Department violated
26 the automatic stay. She is wrong. First, the automatic stay was
27 not in effect when the Sheriff’s Department served Ms. Smith with
28 the notice to vacate on November 1, 2016. Second, the service of
the notice to vacate on November 1 cannot retroactively turn the
August 30 Motion to Set Aside TRO into a stay violation.

1 abuse its discretion in denying the motion for reconsideration.

2 **CONCLUSION**

3 The bankruptcy court did not err. We AFFIRM both the
4 Damages Order and the Reconsideration Order.

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