

MAR 12 2018

SUSAN M. SPRAUL, CLERK
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NOT FOR PUBLICATION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.	NC-17-1062-STaB
)		
JAMES JIN QING LI,)	Bk. No.	3:12-bk-33630
)		
Debtor.)		
_____)		
JAMES JIN QING LI,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
MIKE ROSEN,)		
)		
Appellee.)		
_____)		

Argued and Submitted on January 25, 2018
at San Francisco, California

Filed - March 12, 2018

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

Honorable Hannah L. Blumenstiel, Bankruptcy Judge, Presiding

Appearances: Bradley Kass of Kass & Kass Law Offices argued for
appellant; Lawrence D. Miller argued for appellee.

Before: SPRAKER, TAYLOR and BRAND, 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 **INTRODUCTION**

2 In terms of standard of proof and procedure, there are
3 significant differences between relief from stay and lien
4 avoidance proceedings. This case highlights those differences.
5 The debtor, James Jin Qing Li, argues that the bankruptcy court
6 erroneously terminated the automatic stay to permit execution on
7 an invalid judgment lien. However, motions for relief from the
8 automatic stay are summary proceedings and may be granted upon
9 demonstration of a colorable claim. Challenges to the validity
10 of a creditor's lien, in contrast, ordinarily require the
11 commencement and prosecution of an adversary proceeding under
12 Rule 7001(2).¹

13 The bankruptcy court found that the moving creditor's claim
14 was colorable. It did not attempt to decide whether the
15 creditor's lien was valid. Rather, the court specifically left
16 that question for another day. In the context of relief from
17 stay jurisprudence, this was wholly appropriate. Accordingly, we
18 AFFIRM.

19 **FACTS**

20 Creditor Mike Rosen filed his relief from stay motion in
21 October 2016. The motion was one salvo in a long history of
22 litigation between the parties. Rosen sought relief from stay so
23 that he could enforce a judgment lien against debtor James Jin
24 Qing Li's leasehold interest in a restaurant space located in a
25

26 ¹ Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 shopping center in Daly City, California.

2 Rosen also sought to lift the automatic stay to file a
3 fraudulent transfer action against Li's former spouse Xiao Yan
4 Chen. Rosen claimed that, days before commencing his 2012
5 chapter 7 bankruptcy case, Li fraudulently transferred to Chen
6 two parcels of real property; one located in Milbrae, California,
7 and the other located in Daly City, California. Notwithstanding
8 the transfers, Rosen believed that Li, and presumably his
9 bankruptcy estate, continued to have an interest in the
10 transferred property that necessitated relief from the stay
11 before he could pursue a claim to recover this property in a
12 nonbankruptcy forum.

13 In his papers filed in support of his relief from stay
14 motion, Rosen explained the source of his lienholder's interest:
15 a judgment dated July 31, 2012, in favor of Spondulix Company,
16 Inc. and against Li and other defendants in the amount of
17 \$872,304.95. Spondulix assigned this judgment to Rosen on March
18 8, 2013 (the "Spondulix Judgment").² Prior to the assignment,
19 Spondulix recorded in the official records of Alameda County an
20 abstract of judgment to perfect a judgment lien against the
21 judgment debtors' real property. Of particular note, the form
22 abstract of judgment has a space for the judgment creditor to
23 enter the last four digits of the judgment debtor's Social
24 Security number, but Spondulix checked the box indicating that
25 Li's Social Security number was unknown. Rosen contends that a

27
28 ² The relationship between Rosen and Spondulix, if any, is
undisclosed.

1 judgment lien arose upon the recording of the abstract and
2 attached to the two parcels Li later transferred to Chen, as well
3 as his remaining leasehold interest.

4 Li opposed the relief from stay motion by filing a
5 "preliminary" memorandum of points and authorities. Li asserted
6 that the relief from stay motion was duplicative of a prior
7 motion filed by Rosen and his spouse and granted in 2013
8 (Bk. Dkt., Doc. No. 57). Li further maintained that any
9 fraudulent transfer claims belonged to his bankruptcy estate and
10 thus Rosen lacked standing to pursue those claims (and also to
11 seek relief from stay to pursue those claims). As for the
12 leasehold interest in the restaurant space, Li argued that his
13 interest had no value, so stay relief should be denied.

14 Li also asserted that Rosen was barred from pursuing the
15 fraudulent transfer claims, and from enforcing the Spondulix
16 Judgment, in light of a settlement agreement between Rosen and
17 Li. Li's chapter 7 trustee was not a party to the settlement
18 agreement. Still, on July 12, 2016, the bankruptcy court had
19 approved the settlement agreement. Pursuant to the settlement
20 agreement, the parties released and resolved all pending claims
21 and actions they held against each other with certain specific
22 exceptions. Significantly, the enumerated exceptions included:
23 (1) Rosen's rights as an assignee of judgment creditor Spondulix;
24 and (2) Rosen's rights, if any, in Li's leasehold interest in the
25 restaurant space.³

26
27 ³ The bankruptcy court subsequently vacated its July 12,
28 2016 settlement approval order to the extent it could have

(continued...)

1 At the relief from stay hearing, Li raised a new argument.
2 He contended that Spondulix's abstract of judgment was invalid
3 and unenforceable because it did not include Li's Social Security
4 number. Therefore, Li reasoned, there was no basis for relief
5 from the stay. Rosen acknowledged at the hearing that California
6 law required the creditor to include the debtor's Social Security
7 number if known, and that Spondulix indisputably knew Li's Social
8 Security number because it was included in Spondulix's complaint.
9 However, Rosen argued that Li lacked standing to assert the
10 invalidity of the abstract of judgment.

11 The bankruptcy court was not persuaded by any of Li's
12 arguments. In particular, it was not swayed by the argument that
13 the allegation of a fatal defect in the abstract of judgment was
14 something it should determine as part of the relief from stay
15 motion. Rather, the bankruptcy court noted that either Li, or
16 his former spouse, could raise (and litigate) the validity of his
17 judgment lien as part of whatever state court proceedings
18 followed the granting of relief from stay. The bankruptcy court
19 entered its order granting relief from stay on December 14, 2016.

20 Li timely filed a motion under Civil Rules 59 and 60 seeking

21 _____
22 ³(...continued)
23 affected Rosen's rights as Spondulix's assignee. See Order
24 Granting Motion to Set Aside Order Dismissing Adversary Complaint
25 (Sept. 1, 2016) at p. 2. By effectively modifying its settlement
26 approval order in this manner, the court sought to limit the
27 scope and effect of its order to mirror the scope of the parties'
28 settlement and releases set forth in their settlement agreement.
That settlement only concerned and resolved Rosen's direct claims
against Li and others and their related counterclaims and cross-
claims. As set forth above, the settlement agreement
specifically excluded the rights Rosen derived from the Spondulix
Judgment.

1 reconsideration of the relief from stay order. In the
2 reconsideration motion, Li further developed his argument that
3 the failure to include his Social Security number in the abstract
4 of judgment rendered Spondulix's judgment lien unenforceable
5 under state law. However, the bankruptcy court concluded that
6 the alleged invalidity of the abstract of judgment was
7 insufficient to justify vacating the relief from stay order. The
8 bankruptcy court pointed out that the defect in the abstract of
9 judgment was not newly discovered evidence and that Li obviously
10 knew or should have known of the defect in the abstract of
11 judgment at the time Rosen filed his relief from stay motion.
12 The bankruptcy court also opined that its refusal to determine
13 the validity of the abstract of judgment was not clear error and
14 did not result in a manifest injustice. The bankruptcy court,
15 once again, noted that it was inappropriate to resolve the lien
16 validity issue as part of the relief from stay motion and that
17 this issue could be raised and resolved in state court.

18 The bankruptcy court denied the reconsideration motion on
19 February 3, 2017. Li timely filed his notice of appeal from both
20 the relief from stay order and the order denying reconsideration.

21 **JURISDICTION**

22 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
23 §§ 1334 and 157(b)(2)(G). Subject to the mootness discussion set
24 forth below, we have jurisdiction under 28 U.S.C. § 158.

25 **ISSUES**

- 26 1. Is this appeal moot?
- 27 2. Did the bankruptcy court abuse its discretion when it
28 granted Rosen's relief from stay motion?

1 3. Did the bankruptcy court abuse its discretion when it denied
2 Li's reconsideration motion?

3 **STANDARD OF REVIEW**

4 We review mootness issues de novo. McCormack v. Herzog,
5 788 F.3d 1017, 1024 (9th Cir. 2015); Suter v. Goedert, 504 F.3d
6 982, 985 (9th Cir. 2007).

7 We review the bankruptcy court's order on a motion for
8 relief from stay for an abuse of discretion. Benedor Corp. v.
9 Conejo Enters., Inc. (In re Conejo Enters., Inc.), 96 F.3d 346,
10 351 (9th Cir. 1996). We also review the denial of Li's
11 reconsideration motion under Civil Rules 59 and 60 for an abuse
12 of discretion. Ybarra v. McDaniel, 656 F.3d 984, 998 (9th Cir.
13 2011); Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1258
14 (9th Cir. 2010).

15 A bankruptcy court abuses its discretion if it applies an
16 incorrect legal standard or if its factual findings are
17 illogical, implausible or not supported by the record. Glick v.
18 Edwards, 803 F.3d 505, 508 (9th Cir. 2015) (citing United States
19 v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc)).

20 **DISCUSSION**

21 **A. Mootness Issue.**

22 Under Article III of the Constitution, federal courts only
23 can hear and decide actual cases and controversies. Motor
24 Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe
25 Insulation Co.), 677 F.3d 869, 880 (9th Cir. 2012). A case is
26 constitutionally moot if we determine that there is no effective
27 relief we could provide to the appellant even if he or she were
28 to prevail on the merits. Id.; Giesbrecht v. Fitzgerald (In re

1 Giesbrecht), 429 B.R. 682, 689 (9th Cir. BAP 2010). Parties
2 advocating that an appeal is moot bear a heavy burden: they must
3 demonstrate that it is impossible to grant meaningful relief.
4 Suter v. Goedert, 504 F.3d 982, 986 (9th Cir. 2007).

5 A discharge order has been entered in favor of Li. At first
6 glance this appeal appears moot because even if we were to
7 conclude that the bankruptcy court incorrectly granted Rosen's
8 relief from stay motion, reversal of that order would not
9 reinstate the automatic stay - at least the aspects of the
10 automatic stay directly protecting Li and his property. Those
11 aspects of the stay fully and finally terminated upon entry of
12 Li's discharge. See § 362(c)(2)(C). But, one aspect of the
13 automatic stay survives discharge. The stay of acts against
14 estate property continues unless and until "such property is no
15 longer property of the estate." § 362(c)(1); see also Good v.
16 Daff (In re Swintek), 543 B.R. 303, 308 (9th Cir. BAP 2015).

17 Estate property ceases to be estate property if it is sold,
18 abandoned or returned to the debtor as exempt. 3-362 Collier on
19 Bankruptcy ¶ 362.06[1] (16th ed. 2017). Here, the trustee has
20 not abandoned or sold the estate's interest in the leasehold.⁴
21 Whatever the estate's interests in the fraudulent conveyance
22 claims asserted by Rosen, it is clear that the estate has
23 retained its interests in those claims. In fact, the bankruptcy
24 court entered an order reserving the estate's interest in the

25
26 ⁴ In chapter 7 cases, property of the estate is technically
27 abandoned when a scheduled asset passes through bankruptcy
28 without being administered by the chapter 7 trustee upon the
closing of the case. See § 554(c). However, this case remains
open.

1 subject property. Consequently, the estate retains its interests
2 in the leasehold interest as well as the fraudulent transfer
3 claims. Thus, if the relief from stay order were reversed on
4 appeal, at least one aspect of the automatic stay would be
5 reinstated with respect to the subject property.⁵ Accordingly,
6 this appeal is not moot. Reversal of the order on appeal might
7 result in some meaningful relief in Li's favor.

8 **B. Order Granting Relief From Stay.**

9 Section 362(d) governs relief from the automatic stay.
10 While most creditors seeking to pursue litigation in a
11 nonbankruptcy forum tend to rely on § 362(d)(1), Rosen sought
12 relief to pursue the fraudulent conveyance claims, as well as
13 foreclosure against the leasehold interest, under § 362(d)(2).⁶
14 Section 362(d)(2) directs the bankruptcy court to grant the
15 creditor relief from the automatic stay to pursue acts against
16 estate property or property of the debtor when the debtor has no

17
18 ⁵ The parties acknowledged at oral argument that the trustee
19 has subsequently retained Rosen's counsel to join the fraudulent
20 transfer action on behalf of the estate as well. Nonetheless,
21 Rosen also continues to pursue his fraudulent transfer claims
22 based upon the relief from stay granted by the bankruptcy court.
23 Accordingly, the relief from stay is not moot as to Rosen's
24 ability to maintain the action in his own name.

25 ⁶ Section 362(d)(2) authorizes bankruptcy courts to
26 terminate, annul, modify, or otherwise condition such application
27 of the automatic stay with respect to a stay of an act against
28 property if:

- 25 (A) the debtor does not have an equity in such property; and
- 26 (B) such property is not necessary to an effective
- 27 reorganization; . . .

28 11 U.S.C.A. § 362 (West).

1 equity in the subject property and the property is not necessary
2 for an effective reorganization. See Johnson v. Righetti (In re
3 Johnson), 756 F.2d 738, 740 (9th Cir. 1985).

4 Debtors ordinarily litigate equity and the relationship of
5 the asset to reorganization when challenging a relief from stay
6 motion under § 362(d)(2). See In re Johnson, 756 F.2d at 740.
7 However, Li does not argue that these assets were necessary for
8 reorganization, presumably because he commenced a chapter 7 case
9 rather than a chapter 11 or 13 case. See In re Hyatt, 2011 WL
10 6140736, at *12 & n.40 (Mem. Dec.) (Bankr. D. Idaho Dec. 9, 2011)
11 (“In this chapter 7 case, there is no argument that the Property
12 is needed ‘for an effective reorganization’ as there is, per
13 force, no reorganization in a liquidation case.”). Nor does he
14 directly challenge Rosen’s calculation of equity. Instead, Li
15 challenges Rosen’s underlying interests in the leasehold interest
16 and the fraudulent transfer claims.

17 Motions for relief from stay are “summary proceedings”
18 suitable only to ascertain whether the application of the
19 automatic stay should be modified. Id. As such, bankruptcy
20 courts have the discretion to “consider” the defective nature of
21 the creditor’s interests within a motion for relief from stay.
22 Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 32-34 (1st Cir.
23 1994), cited with approval in Biggs v. Stovin (In re Luz Int’l,
24 Ltd.), 219 B.R. 837, 842 (9th Cir. BAP 1998). But, motions for
25 relief from stay may not be used to determine the scope and
26 enforceability of a creditor’s interest in property of the
27 estate; such issues typically require the commencement of an
28 adversary proceeding. See Rule 7001(2); GMAC Mortg. Corp. v.

1 Salisbury (In re Loloee), 241 B.R. 655, 660 (9th Cir. BAP 1999);
2 Expeditors Int'l of Wash., Inc. v. Citicorp N. Am., Inc. (In re
3 Colortran, Inc.), 218 B.R. 507, 510-11 (9th Cir. BAP 1997).

4 Relief from stay may be granted so long as the movant
5 establishes a "colorable claim" sufficient to establish his or
6 her entitlement to seek relief from the automatic stay. In re
7 Luz Int'l, Ltd., 219 B.R. at 842; see also Veal v. Am. Home
8 Mortg. Servicing, Inc. (In re Veal), 450 B.R. 897, 906 (9th Cir.
9 BAP 2011). A claim is colorable for relief from stay purposes
10 when there is a "reasonable likelihood" that the creditor has a
11 legitimate claim or lien against the debtor's property. Grella,
12 42 F.3d at 33. We similarly have defined the term "colorable
13 claim" in this context to mean "a plausible legal claim."

14 Baghdasarian v. SRT Partners, LLC (In re Baghdasarian), 2011 WL
15 4485244, at *6 (Mem. Dec.) (9th Cir. BAP July 8, 2011); Sardana
16 v. Bank of America (In re Sardana), 2011 WL 3299861, at *5 (Mem.
17 Dec.) (9th Cir. BAP June 7, 2011). A colorable claim "is one
18 'that is legitimate and that may reasonably be asserted, given
19 the facts presented and the current law (or a reasonable and
20 logical extension or modification of the current law).'" Budd v.
21 Fid. Asset Mgmt., LLC (In re Budd), 2011 WL 4485190 at *3 n.4
22 (Mem. Dec.) (9th Cir. BAP July 12, 2011) (quoting Black's Law
23 Dictionary (9th ed. 2009)).

24 Rosen holds a judgment lien against property of the estate
25 based upon the recorded abstract of judgment. He claims an
26 interest in property that has no equity and is not part of any
27 effort to reorganize. Unless the record unequivocally
28 demonstrates that Rosen was barred from obtaining the requested

1 relief, the bankruptcy court properly granted relief from stay
2 and properly left for another day and another proceeding the
3 issue of lien validity.

4 **1. The Settlement Agreement.**

5 Li claims that relief from stay was erroneously granted
6 because the parties' August 2015 settlement agreement precludes
7 Rosen from any further collection efforts. While the settlement
8 agreement does include a broad release of claims held by the
9 signatories, it specifically excluded Rosen's rights as
10 Spondulix's assignee. The settlement agreement also excluded
11 from the release the Rosens' judgment collection efforts directed
12 at Li's leasehold interest in the restaurant space. The
13 bankruptcy court's July 12, 2016 order approving the settlement
14 neither altered, nor expanded, the scope of the parties'
15 releases. Indeed, the court effectively clarified that it was
16 not its intent to alter the scope of the parties' releases in its
17 September 1, 2016 order granting Rosen's motion to set aside its
18 order dismissing adversary complaint. The settlement agreement
19 did not bar Rosen's relief from stay.

20 **2. The Alleged Deficiency in the Recorded Abstract of
21 Judgment.**

22 Li contends that Spondulix failed to comply with the
23 requirements necessary to perfect its judgment and, therefore,
24 there is no secured interest to support Rosen's relief from stay
25 motion.⁷ California law requires creditors to include the last

26 ⁷ If Rosen had asked for relief from stay under § 362(d)(1),
27 the validity of Rosen's Spondulix judgment lien would have been
28 largely irrelevant, at least for purposes of Rosen's request to
(continued...)

1 four digits of the debtor's Social Security number in the
2 abstract of judgment unless the creditor does not know the
3 debtor's Social Security number. Cal. Civ. Proc. Code ("CCP")
4 § 674(a)(6).⁸ In such a case, the creditor must check a box
5 stating that it is unaware of the debtor's Social Security
6 number.

7 Courts have strictly enforced this statutory obligation. In
8 Keele v. Reich, 169 Cal. App. 3d 1129, 1132 (1985), the
9 California Court of Appeals specifically rejected a creditor's
10 argument that he had substantially complied with the statutory
11 requirements though he failed to list the Social Security number
12 despite identifying such numbers in his complaint. Subsequently,

13 _____
14 ⁷(...continued)
15 pursue state law fraudulent transfer claims against Li's former
16 spouse. Secured creditor status generally is not a prerequisite
17 to obtaining relief under § 362(d)(1) to pursue state court
18 litigation. See, e.g., Benedor Corp. v. Conejo Enters., Inc.
(In re Conejo Enters., Inc.), 96 F.3d 346, 352-53 (9th Cir.
1996); Kronemyer v. Am. Contractors Indemn. Co. (In re
Kronemyer), 405 B.R. 915, 921 (9th Cir. BAP 2009).

19 ⁸ The statute provides:

20 (a) Except as otherwise provided in Section 4506 of the
21 Family Code, an abstract of a judgment or decree
22 requiring the payment of money shall be certified by
23 the clerk of the court where the judgment or decree was
24 entered and shall contain all of the following:

25 * * *

26 (6) The last four digits of the social
27 security number and driver's license number
28 of the judgment debtor if they are known to
the judgment creditor. If either or both of
those sets of numbers are not known to the
judgment creditor, that fact shall be
indicated on the abstract of judgment.

1 in Alcove Inv., Inc. v. Conceicao (In re Conceicao), 331 B.R.
2 885, 892-93 (9th Cir. BAP 2005), we upheld a bankruptcy court
3 decision invalidating a lien based upon an abstract of judgment
4 that failed to include the required Social Security number.
5 Based upon these decisions, Li argues that Rosen did not have a
6 valid judgment lien, and relief from stay was, therefore, error.

7 Rosen does not dispute the holding in Keele. Rather, he
8 relies upon an amendment to CCP § 674 adopted after, and in
9 response to, Keele.⁹ As amended, CCP § 674 now provides a
10 procedure for curing by amendment a defect in an abstract of
11 judgment resulting from the omission of the judgment debtor's
12 known Social Security number and driver's license number. The
13 statute as amended states in relevant part that:

14 A recorded Amendment to Abstract of Judgment
15 shall have priority as of the date of
16 recordation of the original abstract of
17 judgment, except as to any purchaser,
18 encumbrancer, or lessee who obtained their
19 interest after the recordation of the
20 original abstract of judgment but prior to
21 the recordation of the Amendment to Abstract
22 of Judgment without actual notice of the
23 original abstract of judgment. **The**
24 **purchaser, encumbrancer, or lessee without**
25 **actual notice may assert as a defense against**
26 **enforcement of the abstract of judgment the**

27 ⁹ The amendment was adopted in "apparent response to Keele
28 v. Reich." 8 Witkin, Cal. Proc. 5th - Enf. Of Judgm. § 70 (2008)
(describing and explaining some of the 1988 amendments made in
response to Keele); see also 1988 Cal. Legis. Serv. 1411 (West)
("The amendments to Section 674 of the Code of Civil Procedure
made by this act are intended to maintain the integrity of the
recordation system for interests in real property as discussed in
Keele v. Reich, (1985) 169 Cal.App.3d 1129, to preserve the
reasonable expectations of all parties asserting interests in
real property, and to provide a means for the amendment of
abstracts of judgment recorded after the effective date of
Chapter 203 of the Statutes of 1978.")

1 failure to comply with this section . . .
2 regarding the contents of the original
3 abstract of judgment notwithstanding the
subsequent recordation of an Amendment to
Abstract of Judgment.

4 CCP § 674(b) (emphasis added).

5 Rosen contends that, as part of this amendment, the
6 California legislature removed judgment debtors from the class of
7 those protected by the statutory requirements for abstracts of
8 judgment. Rosen argues that CCP § 674(b) now precludes judgment
9 debtors from invalidating abstracts of judgment for deficiencies
10 under CCP § 674(a) (6).

11 Keele was decided before the enactment of the current
12 version of CCP § 674(b) containing the apparent limitation on
13 challenges to the validity of judgment liens. The challenge in
14 Conceicao was actually brought by a bankruptcy debtor. But, as
15 Rosen points out, the bankruptcy court did not specifically
16 address whether the current version of CCP § 674(b) prohibits a
17 judgment debtor from attacking a judgment lien based on the
18 failure to include the judgment debtor's Social Security number
19 and driver's license number in the abstract of judgment.

20 Spondulix's abstract did not include the last four digits of
21 Li's Social Security number. Rosen further admitted during the
22 relief from stay hearing that this information was known and
23 readily available at the time Spondulix prepared and recorded the
24 abstract of judgment. Keele and Conceicao support Li's arguments
25 that the abstract of judgment upon which Rosen relies for his
26 judgment lien is unenforceable under California law. However,
27 the amendment to CCP § 674(b) upon which Rosen bases his lack of
28 standing argument was adopted after Keele. While Conceicao was

1 decided after the amendment, there is no discussion of the
2 debtor's standing under CCP § 674(b), as amended.¹⁰

3 Moreover, neither of the parties, nor this panel, have found
4 any case on point specifically determining whether judgment
5 debtors have standing to pursue actions to invalidate judgment
6 liens notwithstanding the language set forth in CCP § 674(b).
7 And the California Supreme Court, the ultimate arbiter of what
8 CCP § 674 means, has not published any decision covering this
9 issue. Judge Ahart writes in his treatise on enforcement of
10 judgments under California law that: "Regardless of whether an
11 amended abstract of judgment . . . is recorded, only a
12 'purchaser, encumbrancer or lessee' who obtained an interest in
13 the debtor's property without actual notice of the original
14 abstract may assert the defective abstract as a defense against
15 its enforcement." 6B-3 Alan M. Ahart, Cal. Prac. Guide: Enf. J.
16 & Debt at ¶ 6:187.4 (Rutter Grp. May 2017). The treatise further
17 concludes that, "[t]he judgment debtor is precluded from voiding
18 a defective abstract under CCP § 674(b)." Id. at ¶ 6:187.5.

19 The limited question on appeal is whether the bankruptcy
20 court abused its discretion in crediting Rosen with a
21 sufficiently colorable judgment lien to warrant relief from the
22 automatic stay. Rosen's admission that Li's Social Security

24 ¹⁰ Conceicao took place in the context of an adversary
25 proceeding specifically brought by the bankruptcy debtor to
26 challenge the validity of the subject judgment lien, as
27 contemplated in Rule 7001(2). In this sense, Conceicao supports
28 the bankruptcy court's decision, here, to defer the lien validity
issue to an **appropriate** proceeding - something other than the
summary proceeding invoked by the filing of Rosen's relief from
stay motion.

1 number was readily available and that the number was not included
2 in the abstract of judgment casts doubt upon the enforceability
3 of the Spondulix judgment lien. We recognize that Conceicao
4 upheld the invalidation of a judgment lien very similar to the
5 one Rosen asserts here. We also acknowledge that the policy
6 concerns underlying California's Social Security number
7 requirement, discussed in both Keele and Conceicao, support their
8 holdings. However, neither the cases, nor the policy concerns,
9 negate Rosen's argument as a matter of law that CCP § 674(b) does
10 not permit a judgment debtor to attack the validity of a judgment
11 lien based on the failure to include the judgment debtor's Social
12 Security number in the abstract of judgment. There being a
13 colorable argument for the enforceability of Rosen's judgment
14 lien, the bankruptcy court did not abuse its discretion by
15 terminating the automatic stay to permit enforcement of that
16 judgment lien.¹¹ Under Grella and In re Luz Int'l, Ltd., the
17 bankruptcy court correctly reserved Li's challenge to the
18 validity of Rosen's judgment lien for another day and another
19 forum.

20 **3. The Lack of Equity in the Leasehold Interest and Prior**
21 **Motion.**

22 Li offers two additional arguments for reversal of relief
23 from stay: (1) the leasehold is worthless; and (2) the matter was
24 decided by a prior motion. With respect to Li's argument that
25 his leasehold interest in the restaurant space is worthless, Li
26 has never explained why this alleged fact precluded relief from

27 ¹¹ We express no opinion on the merits other than to note
28 the plausibility of Rosen's argument.

1 stay. Contrary to Li's argument, an absence of equity in the
2 leasehold interest is a requirement for granting relief from stay
3 under § 362(d) (2).

4 As for the alleged duplicative nature of the relief from
5 stay motion, Rosen's October 2016 relief from stay motion was
6 brought solely to enforce his rights as the assignee of the
7 Spondulix judgment. The 2013 relief from stay litigation between
8 the Rosens and Li did not specifically reference Rosen's rights
9 as Spondulix's assignee.

10 **4. Fraudulent Transfer Claims.**

11 The only other arguments Li has made regarding Rosen's
12 relief from stay motion concern Rosen's asserted right to pursue
13 fraudulent transfer claims against Chen.

14 **a. The Timeliness of the Fraudulent Transfer Claims.**

15 Without citing any relevant authority, Li claimed that any
16 such claims should be considered time barred. We agree with the
17 bankruptcy court that, to the extent Li's former spouse has a
18 valid statute of limitations defense, she may raise such a
19 defense in any subsequent fraudulent transfer lawsuit. Her
20 potential affirmative defense does not preclude termination of
21 the automatic stay.

22 **b. Standing to Bring the Fraudulent Transfer Claim.**

23 Li additionally posited that only his chapter 7 trustee had
24 standing to bring a fraudulent transfer action against Chen. On
25 the one hand, "California Civil Code sections 3439.04, 3439.05
26 and 3439.07 permit creditors to file actions to avoid fraudulent
27 transfers made by the debtor after the creditor's claim arose."

28 JMS Labs Limited (U.S.A.), LLC v. Silver Eagle Labs, Inc. (In re

1 Lockwood), 414 B.R. 593, 602 (Bankr. N.D. Cal. 2008). On the
2 other hand, only a bankruptcy trustee or a debtor in possession
3 typically may assert fraudulent transfer claims once a bankruptcy
4 case is commenced, unless the bankruptcy court grants the
5 individual creditor permission to pursue the claims. Id.; see
6 also City Nat'l Bank v. Chabot (In re Chabot), 100 B.R. 18, 23
7 (Bankr. C.D. Cal. 1989), aff'd, 131 B.R. 720 (C.D. Cal. 1991),
8 aff'd, 992 F.2d 891 (9th Cir. 1993) (holding that individual
9 creditor may pursue a state law fraudulent transfer cause of
10 action after the bankruptcy trustee abandons that cause of
11 action).¹²

12 The bankruptcy court here exercised its discretion to permit
13 Rosen to pursue the fraudulent transfer claims. This permission
14 was specifically granted in both the bankruptcy court's 2013
15 relief from stay order as well as the bankruptcy court's 2016
16 relief from stay order. If successful, the fraudulent transfer
17 claims would void the challenged transfers and return transferred
18 property to the estate. Indeed, the bankruptcy court's relief
19 from stay orders acknowledged the estate's continuing interest in
20 the fraudulent transfer claims. Its orders specifically provided
21 for the preservation of the estate's interests by restricting
22 Rosen's enforcement, collection and recovery with respect to any
23

24
25 ¹² Other aspects of In re Chabot have been superseded by
26 statute or disapproved of by subsequent case law, but the portion
27 of In re Chabot addressing the respective authority of individual
28 creditors and the bankruptcy trustee to bring state law
fraudulent transfer actions is still good law. See Always There
Nursing Care, Inc. v. Frazer (In re Vandevort), 2009 WL 7809927,
at *6 & n.8 (Mem. Dec.) (9th Cir. BAP Sept. 8, 2009).

1 fraudulent transfer judgment obtained.¹³

2 Thus, the bankruptcy court's relief from stay orders
3 authorized Rosen to pursue the fraudulent transfer claims on his
4 own behalf as well as on behalf of the bankruptcy estate. The
5 bankruptcy court confirmed that this was its intent at the
6 hearing on the 2016 relief from stay motion. See Hr'g Tr.
7 (Dec. 1, 2016) at 4:10-22, 9:16-10:2. The bankruptcy court
8 indisputably had the discretion to grant this authority to Rosen.
9 See In re Lockwood, 414 B.R. at 602; see generally Liberty Mut.
10 Ins. Co. v. Official Creditors' Comm. (In re Spaulding
11 Composites, Inc.), 207 B.R. 899, 903 (9th Cir. BAP 1997) ("It is
12 well settled that in appropriate situations the bankruptcy court
13 may allow a party other than the trustee or debtor-in-possession
14 to pursue the estate's litigation.").

15 In sum, none of Li's arguments on appeal persuade us that
16 the bankruptcy court abused its discretion when it granted
17 Rosen's stay relief motion.

18 **C. Order Denying Reconsideration.**

19 Citing Civil Rule 60(b)(2) and (6), Li argues on appeal that
20 the bankruptcy court should have granted his motion for
21 reconsideration. Neither of these Civil Rule provisions
22 justified relief from the bankruptcy court's stay relief order.
23 Civil Rule 60(b)(2) provides for relief from a judgment based on

24
25 ¹³ The chapter 7 trustee did not file a response to Rosen's
26 October 2016 relief from stay motion. However, he did file a
27 conditional non-opposition to the Rosens' April 2013 relief from
28 stay motion. The trustee did not oppose the granting of the
April 2013 relief from stay motion so long as any assets
recovered by the Rosens in excess of their judgment liens were
turned over to the bankruptcy estate.

1 "newly discovered evidence that, with reasonable diligence, could
2 not have been discovered in time to move for a new trial under
3 Rule 59(b)." The bankruptcy court here correctly found that the
4 evidence Li was relying on in support of his reconsideration
5 motion - the content of the Spondulix abstract of judgment - was
6 not newly discovered; it was readily available to Li at the time
7 Rosen filed his relief from stay motion. Consequently, Civil
8 Rule 60(b)(2) did not justify relief from the bankruptcy court's
9 relief from stay order. See Coastal Transfer Co. v. Toyota Motor
10 Sales, U.S.A., 833 F.2d 208, 212 (9th Cir. 1987) (holding that,
11 because appellant possessed evidence at time of trial, it was not
12 "newly discovered evidence" for purposes of either Civil Rule
13 60(b)(2) or Civil Rule 59).

14 Similarly, Civil Rule 60(b)(6) only applies when
15 "extraordinary circumstances prevented a party from taking timely
16 action to prevent or correct an erroneous judgment." Zurich Am.
17 Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.),
18 503 F.3d 933, 939, 941 (9th Cir. 2007). Li has not identified
19 any such circumstances. Furthermore, even if Li had met the
20 foundational requirements for relief under Civil Rule 60(b)(2) or
21 (6), his reconsideration motion was based on the false premise
22 that stay relief was inappropriate in light of the judgment lien
23 validity issue. We already have explained, above, that the
24 bankruptcy court did not abuse its discretion when it granted
25 relief from stay, when it declined to determine the validity of
26 the judgment lien and when it told Li he was free to raise the
27 issue in state court. The same reasoning supports affirmance of
28 the bankruptcy court's order denying Li's reconsideration

1 motion.¹⁴

2 **CONCLUSION**

3 For the reasons set forth above, we AFFIRM the bankruptcy
4 court's order granting relief from the automatic stay and its
5 order denying Li's reconsideration motion.

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23 ¹⁴ Li also argued on appeal that the bankruptcy court's
24 equitable powers under § 105 supported reconsideration of the
25 relief from stay order. Whatever equitable powers bankruptcy
26 courts hold must be exercised within the confines of the
27 Bankruptcy Code. Law v. Siegel, 134 S.Ct. 1188, 1194-95 (2014).
28 As we already held, above, the bankruptcy court correctly applied
§ 362(d)(2) when it granted Rosen's relief from stay motion.
Nothing in Li's appeal papers explains how the bankruptcy court
could have exercised its equitable powers under § 105 to depart
from § 362(d)(2)'s criteria for obtaining stay relief.