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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: ARMIN DIRK VAN DAMME, Debtor.	BAP No. NV-25-1039-NBC Bk. No. 25-10329-gs
ARMIN DIRK VAN DAMME, Appellant, v. U.S. BANK NATIONAL ASSOCIATION, as Trustee, successor by merger to Lasalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2004-11; WELLS FARGO BANK, N.A., Appellees.	**MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the District of Nevada
Gary A. Spraker, Bankruptcy Judge, Presiding

Before: NIEMANN, BRAND, and CORBIT, 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.

INTRODUCTION

Debtor Armin Dirk Van Damme ("Debtor") filed his latest bankruptcy petition within one year of the dismissal of his prior bankruptcy case. In such circumstances, Bankruptcy Code § 362(c)(3)(A) provides that the automatic stay expires "on the 30th day after the filing of the later case."[1] The stay may only be extended by order of the bankruptcy court, under § 362(c)(3)(B), if four requirements are met: (1) a motion is filed; (2) there is notice and a hearing; (3) the hearing is completed before the expiration of the 30-day period; and (4) the debtor demonstrates that the filing of the new case "is in good faith as to the creditors to be stayed." In this appeal, Debtor challenges the bankruptcy court's order—entered on the 30th day after the filing of the current bankruptcy case—denying the extension of the automatic stay beyond this 30-day period (the "Order Denying Extension of Stay").

Debtor also raises two additional challenges related to the Order Denying Extension of Stay. First, Debtor alleges the bankruptcy court erred in proceeding on the merits of the motion rather than treating the initial

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure. All "Dkt." references are to the docket entries in the underlying bankruptcy case, Case No. 25-10329-gs, also referenced as "ECF No." in the orders issued by the bankruptcy court and quoted below.

hearing as a scheduling conference. Second, Debtor alleges the court erred in denying motions to reconsider or set aside the order.

The evidence does not support Debtor's arguments. No error or abuse of discretion by the bankruptcy court has been shown. Instead, the record demonstrates that the bankruptcy court went above and beyond to allow Debtor to timely make the required showing. Despite multiple accommodations by the bankruptcy court, Debtor failed to provide any evidence to support a good faith finding and did not attend the scheduled hearing. Accordingly, we AFFIRM.

FACTS[2]

Debtor's current bankruptcy case, his fourth, was filed on January 21, 2025 (the "Petition Date") in the bankruptcy court for the District of Nevada (the "Fourth Bankruptcy"). Roughly four months earlier, Debtor filed a chapter 13 bankruptcy case in the bankruptcy court for the Northern District of California (the "Third Bankruptcy").[3] The Third Bankruptcy was

[2] We exercise our discretion, when appropriate, to take judicial notice of documents electronically filed in the underlying bankruptcy case and related proceedings. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (Courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") (citation omitted).

[3] Only the Third Bankruptcy and the Fourth Bankruptcy are directly relevant to the issue presented in this appeal. The parties note Debtor's other bankruptcy cases to show the extensive years of litigation between them.

dismissed on November 8, 2024, at the request of Debtor after a motion to dismiss was filed by the chapter 13 trustee.

Because the Third Bankruptcy was dismissed within one year from the Petition Date, the duration of the automatic stay under § 362(a) was limited in the Fourth Bankruptcy. In accordance with § 362(c)(3)(A) and (B), the automatic stay would terminate on February 20, 2025, the 30th day after the Petition Date, absent a further order of the bankruptcy court upon a motion to extend the stay by a party in interest.

Several motions were filed within a week of the Petition Date. Debtor filed three motions:

1. Urgent Motion to Halt the Foreclosure Action and Trustee Sale, filed on January 22, 2025 (Dkt. 7);

2. Urgent Motion for Violation of the Automatic Stay and 2009 Discharge Injunction, filed on January 23, 2025 (Dkt. 14); and

3. Ex Parte Motion for Order Requiring Documentation Pursuant to NRS 107.080 and to Enforce Automatic Stay and Discharge Injunction, filed on January 27, 2025 (the "Motion to Extend") (Dkt. 20).

On January 22, 2025, appellees U.S. Bank N.A. and Wells Fargo Bank, N.A. (collectively, "U.S. Bank"), filed a Motion to (1) Dismiss Chapter 11 Case with Prejudice or, in the alterative, (2) for Immediate Relief from the Automatic Stay (the "Motion to Dismiss"). Each of these motions primarily focused on a pending foreclosure sale by U.S. Bank, scheduled for February 24, 2025, of real property currently scheduled as Debtor's

residence (the "Property"). As reflected in the motions, the parties have litigated U.S. Bank's enforcement of its security interest in the Property, in multiple cases, since roughly 2009.

A. The Scheduling Order for Motion to Extend

On January 30, 2025, the bankruptcy court entered two scheduling orders regarding the motions filed by Debtor and U.S. Bank. First, the court granted a request by U.S. Bank to shorten time for the hearing on the Motion to Dismiss and scheduled it to be heard on February 12, 2025. Second, the court entered an Order on Ex Parte Motion to Impose Stay under § 362(c)(3) ("the Scheduling Order") setting the Motion to Extend for hearing concurrently with the Motion to Dismiss on February 12, 2025.[4]

The Scheduling Order references each of the above-noted motions and then states, "The debtor is proceeding without counsel and the court construes his filings liberally." Scheduling Order at 3, citing *Kashani v. Fulton (In re Kashani),* 190 B.R. 875, 883 (9th Cir. BAP 1995). The Scheduling Order then construes the Motion to Extend "as a motion under § 362(c)(3)(B)" to extend the automatic stay. *Id*. After quoting the applicable language of § 362(c)(3)(A), (B) and (C), the Scheduling Order provides:

> Mr. Van Damme's most recent prior case was filed on September 12, 2024, and dismissed on November 8, 2024.

[4] Of the motions brought by Debtor, only the second one, Dkt. 14, was noticed for hearing by Debtor with that hearing being noticed for February 26, 2025. On January 31, 2025, the bankruptcy court entered an order vacating the February 26 hearing with the hearing to "be rescheduled after discussion with the parties at the February 12, 2025 hearing scheduled in the above-caption case."

> Accordingly, § 362(c)(3) is applicable to the current bankruptcy case. If the stay is not continued as to the parties to be stayed within 30 days of the petition date in the second bankruptcy case filed within a year of the dismissal of the first bankruptcy case, the automatic stay shall expire. 11 U.S.C. § 362(c)(3)(A). Accordingly, the matter must be heard and completed within 30 days of the petition date. 11 U.S.C. § 362(c)(3)(B). And, a motion to continue the automatic stay may only be granted after notice and a hearing. *Id.* For these reasons, the court construes the debtor's reference to ex parte relief in ECF No. 20 to be a request that the matter be heard on shortened time. The court finds good cause exists to consider the extension of the automatic stay prior to the expiration of the 30-day period.

Scheduling Order at 4. A briefing schedule was set with any response to the Motion to Extend due by February 6 and any reply by Debtor due by February 11, 2025.

B. Debtor's Requests for Continuance and the Continuance Order

On February 3, 2025, Debtor filed a document entitled Debtor, Armin Dirk Van Damme's Emergency Motion for Stay or Continuance of Proceedings Pending Resolution of Medical Emergency (the "First Request for Continuance"). In that filing, Debtor indicates he had a medical episode on January 31, 2025. Debtor attaches a note from the treating physician that recommends Debtor "avoid stressful activities for the next two weeks." In light of this medical episode, Debtor requested that all pending filing deadlines and hearings be continued "[u]ntil such time when the Debtor receives medical clearance to attend court hearing or proceedings and filing of documents which is reasonably calculated by the debtor not to

exceed **120 days**." First Request for Continuance at 5 (emphasis in original).[5]

On February 5, 2025, the bankruptcy court entered an order in response to the First Request for Continuance (the "Continuance Order"). The Continuance Order extended the deadline for Debtor to file his missing case commencement documents, including his bankruptcy Schedules and Statement of Financial Affairs, to February 11, 2025. The hearing on the Motion to Dismiss was rescheduled to March 4, 2025, and the corresponding deadline for Debtor's response extended to February 21, 2025. The Continuance Order noted the continuance of the Motion to Extend was "a bit more complicated." Specifically, the Continuance Order stated:

> The court explained in its [Scheduling Order] that the debtor's motion to continue the automatic stay can only be granted "after notice and a hearing completed before the expiration of the" 30th day after the filing of his case. The 30th day after the filing of the above-captioned case is February 20, 2025. Because the statute provides that the hearing must be completed prior to the 30th day after the filing, this deadline may not be extended. Absent any continuation of the stay, the automatic stay will be automatically terminated by the mandatory operation of § 362(c)(3) on February 21, 2025. *See In re Flynn*, 582 B.R. 25, 31 (B.A.P. 1st Cir. 2018); *see also In re Moreno*, 2007 WL 4166296, at *1 (Bankr. E.D. Cal. Nov. 20, 2007) (stating that even

[5] Debtor filed a second request for a continuance on February 4, 2025 asking for the entry of an order "[s]taying these bankruptcy proceedings pending the outcome of the related District Court case (Case No. 2:24-cv-02376-RFB-ELY) and due to Debtor's medical condition."

> extending the time for a hearing will not postpone termination of the automatic stay because termination is "mandatory" if the hearing is not held within the 30-day period). The fact that the debtor is operating without an attorney does not exclude him from the mandatory nature of the statute. *Flynn*, 582 B.R. at 31. The court is willing to continue the hearing currently scheduled for February 12, 2025, until the next week but it has limited availability. Accordingly, the court shall continue the hearing on the debtor's motion to continue the automatic stay until **February 18, 2025, at 3:00 p.m.** by remote appearance via Zoom video conference.

Continuance Order at 2-3 (emphasis in original). As further directed by the Continuance Order, U.S. Bank filed its opposition to the Motion to Extend on February 12, 2025.

C. Debtor Fails to Comply with Continuance Order

Debtor made no effort to comply with the updated deadlines allowed by the Continuance Order. Debtor did not file his missing case commencement documents by the February 11, 2025 extended deadline. Instead, in the week after the entry of the Continuance Order, Debtor filed four additional motions—all with the word "Emergency" in their title—without noticing any of the motions for hearing. The bankruptcy court entered two orders denying expedited consideration of the motions and providing that "[g]oing forward it remains [Debtor's] responsibility to schedule the remaining motion for hearing and give proper notice of such hearing(s)."

D. February 14 Scheduling Order

Within hours of the entry of those orders, Debtor filed another motion entitled Emergency Motion for Expedited Ruling on Motion to Extend Automatic Stay to Prevent Trustee Sale Pending March 14, 2025, Hearing (the "February 14 Motion"). In response to the February 14 Motion, the bankruptcy court issued another order, later that same day (the "February 14 Scheduling Order").

The February 14 Scheduling Order is one of the three orders attached to Debtor's Notice of Appeal in this case. However, it does not relate to the Motion to Extend. Instead, as the February 14 Scheduling Order notes:

> Although the title of the [February 14 Motion] indicates Mr. Van Damme is seeking expedited consideration of his motion to extend the automatic stay (ECF No. 20), the body of the Motion reveals that Mr. Van Damme is requesting an expedited hearing on the Emergency Ex Parte Motion to Vacate Orders, Halt Trustee Sale, and Declare Foreclosure Void Pursuant to NRCP 60(b)(2), (3), (4), Rule 12(b)(1), (6), NRCP 201, and NRS 107.080 & NRS 107.028 – Request for Immediate Ruling Without Hearing (ECF No. 66). Although the Motion once again fails to fully comply with Nevada Local Bankruptcy Rule 9006, in light of Mr. Van Damme's pro se status, the court will consider the Motion notwithstanding its procedural defects.

February 14 Scheduling Order at 1. The order then set the February 14 Motion for hearing on February 18, "***for the limited purpose of addressing whether expedited consideration of [the motion filed as Dkt. 66] should be granted and, if so, when that motion should be heard.***" February 14

Scheduling Order at 2 (emphasis in original). Finally, as relevant to this current appeal, the February 14 Order provided: "**The court will not hear argument on the merits of the motion filed at ECF No. 66 at the February 18, 2025 hearing.**" *Id*. (emphasis in original).

E. February 18 Hearing

Two items were on the bankruptcy court's calendar, specially set for Debtor's case, for the afternoon of February 18: (1) the Motion to Extend; and (2) the February 14 Motion. On the morning on February 18, 2025, Debtor filed a document entitled Emergency Notice of Medical Incapacity & Request to Cancel February 18, 2025 Hearing (the "February 18 Motion"). In response, and as noted in the transcript from the hearing, the court promptly advised Debtor that the hearing would go forward. However, Debtor did not attend the February 18 hearing.

At the February 18 hearing, the court first addressed the Motion to Extend. The court noted that § 362(c)(3)(B) places the burden on Debtor, as the moving party, to demonstrate the Fourth Bankruptcy was filed in good faith and that an extension may only be granted upon such a showing. The court found that, pursuant to § 362(c)(3)(C), a presumption against good faith applied and Debtor failed to provide any evidence to overcome the presumption. The court then found Debtor could not satisfy the required showing of good faith, even without the negative presumption. The court addressed on the record each of the four factors considered as to good faith under *Leavitt v. Soto* (*In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999). The

court found it "clear and convincing that there is no basis to believe that this case was filed in good faith" and declined to extend the stay under § 362(c)(3)(B).

The court then turned to the February 14 Motion. The court denied expedited consideration of the matters raised in the motion filed as Dkt. 66, in light of Debtor's failure to appear.

The court issued its own orders as to both motions a few days later.

F. Order Denying Extension of Stay and Subsequent Challenging Motions

The Order Denying Extension of Stay was issued on February 20, 2025. This detailed, 5-page order denied both the February 18 Motion and the Motion to Extend. It is the second order attached to Debtor's Notice of Appeal in this case.

Within hours of the entry of the Order Denying Extension of Stay, Debtor recorded a lis pendens with the Clark County Recorder ("Lis Pendens").[6] Debtor then followed with three additional motions filed with the bankruptcy court:

[6] The Lis Pendens references Nevada District Court Case No. 2:24-cv-02376-RFB-EJY (the "Third District Court Case"). The Third District Court case was initially filed by Debtor in Nevada state court on December 16, 2024, against the foreclosing trustee appointed by U.S. Bank. That action was removed by the named defendant to federal district court on December 19, 2024. The next day, U.S. Bank moved the intervene and that motion was granted. *See Van Damme v. Nat'l Default Serv. Co.*, No. 2:24-cv-02376-RFB-EJY, 2025 WL 2530648 (D. Nev. Sept. 2, 2025) (granting motion to dismiss and addressing Debtor's lack of interest in the Property and claim preclusion).

1. Emergency Motion to Notify the Court of Fraud Upon the Court, Take Judicial Notice of the Lis Pendens Attached in Opposition to Lift Automatic Stay, filed on February 20, 2025;

2. Emergency Motion to Immediately Vacate February 20, 2025 Order Denying Automatic Stay Extension Based on Lack of Subject Matter Jurisdiction, Fraud Upon the Court, and Request for Clarification on Trustee Sale Based on Joint Tenancy, filed on February 21, 2025; and

3. Supplemental Emergency Motion to Immediately Vacate February 20, 2025 Order Denying Automatic Stay Extension Based on Lack of Subject Matter Jurisdiction, Fraud Upon the Court, and Request for Clarification on Trustee Sale Based on Joint Tenancy, filed on February 24, 2025.

(collectively, the "Challenging Motions"). Again, none of the Challenging Motions were noticed for hearing.

The bankruptcy court issued an order on February 24, 2025 (the "February 24 Order") denying the Challenging Motions and finding as follows:

> First, the matters raised by Mr. Van Damme in the Motions have been addressed and rejected in multiple decisions by multiple courts. *See* ECF No. 31 at 1-2. Additionally, the debtor has repeatedly raised these issues in previously filed motions which are set for omnibus hearing on April 1, 2025. Finally, as referenced above, the court is aware of the pending foreclosure of Mr. Van Damme's property scheduled for February 24, 2025. Taking these circumstances into consideration, the court construes the Motions as a request for an injunction to stay the foreclosure, where the court has previously held the automatic stay has terminated under § 362(c)(3)(A). Mr. Van Damme has failed to establish either

> grounds for reconsideration of the Order (or to set the order aside) under either Fed. R. Bankr. P. 9023, incorporating Fed. R. Civ. P. 59, or Fed. R. Bankr. P. 9024, incorporating Fed. R. Civ. P. 60.
>
> Moreover, given the repeated rejection of the arguments he continues to raise, he has failed to establish any likelihood of prevailing on the merits to either reverse the court's decision as to the termination of the automatic stay under § 362(c)(3)(A) or his underlying challenges to the creditor's claims. *See Nken v. Holder*, 556 U.S. 418 (2009). Even if the court were to ignore the procedural problems raised by Mr. Van Damme seeking injunctive relief in a contested matter rather than an adversary proceeding, Mr. Van Damme has not presented adequate grounds for granting that relief.

February 24 Order at 2. The February 24 Order is the third and final order attached to Debtor's Notice of Appeal in this case.

After the entry of the court's February 24 Order, the foreclosure sale of the Property was completed by U.S. Bank on February 24, 2025.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(G). We have jurisdiction under 28 U.S.C. § 158.[7]

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[7] In a related appeal, BAP No. NV-25-1052-NBC, Debtor challenges a subsequent order by the bankruptcy court dismissing the Fourth Bankruptcy with prejudice and imposing a two-year bar to refiling (the "Dismissal Order"). If Debtor had not appealed the Dismissal Order, this appeal of the Order Denying Extension of Stay would be moot by operation of § 362(c)(2)(B), because the stay terminates at the time the case is dismissed. In that instance, the Panel would have no power to reinstate the stay even if we reversed as to the Order Denying Extension of Stay. *See Mangaoang v. Newport Beach Holdings, LLC (In re Mangaoang)*, BAP No. NC-18-1309-BSTa, 2019 WL 3801497, at *2 (9th Cir. BAP Aug. 13, 2019). Although we are separately affirming the Dismissal Order in the related appeal, this does not moot this appeal, as Debtor has the right to further

ISSUES

1. Did the bankruptcy court violate Debtor's due process rights by considering the merits of the Motion to Extend at the February 18, 2025 hearing?

2. Did the bankruptcy court abuse its discretion in denying an extension of the automatic stay under § 362(c)(3)(B)?

3. Did the bankruptcy court abuse its discretion in denying requests to reconsider or set aside the Order Denying Extension of Stay?[8]

STANDARDS OF REVIEW

Allegations of a due process violation present a mixed question of law and fact, which we review de novo. *Hasso v. Mozsgai (In re La Sierra Fin. Serv., Inc.)*, 290 B.R. 718, 726 (9th Cir. BAP 2002); *see also Wilborn v. Gallagher (In re Wilborn)*, 205 B.R. 202, 206 (9th Cir. BAP 1996). "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).

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appeal the Dismissal Order. *Dunn v. Rund (In re Dunn)*, BAP Nos. CC-09-1176-MkMoPa & CC-09-1249-MkMoPa, 2010 WL 6451888, at *9 n.14 (9th Cir. BAP Jan. 22, 2010). Therefore, we address the merits of Debtor's challenge to the Order Denying Extension of Stay.

[8] Our review of the February 24 Order is limited to these issues. Any potential challenge on the basis of the order's denial of an injunction to stay the foreclosure sale was rendered moot by the subsequent foreclosure sale of the Property.

Completion of the foreclosure sale does not, however, render the Order Denying Extension of Stay moot. There is no indication on the record that Debtor has been evicted from the Property.

The extension of the automatic stay under § 362(c)(3)(B) is at the discretion of the bankruptcy court. *See* § 362(c)(3)(B) (providing that "the court *may* extend the stay . . . only if the party in interest [movant] demonstrates that the filing of the later case is in good faith . . . ." (emphasis added)); *see also In re Montoya*, 342 B.R. 312 (Bankr. S.D. Cal. 2006). We review orders granting or denying an extension of the automatic stay under § 365(c)(3)(B) for an abuse of discretion. *Sill v. Glaze* (*In re Sill)*, BAP Nos. CC-17-1300-SKuL and CC-17-1312-SKuL, 2018 WL 2728836, at *2 (9th Cir. BAP June 6, 2018) (citing *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346, 351 (9th Cir. 1996)).

We also review for abuse of discretion bankruptcy court orders denying motions for reconsideration under Civil Rule 59 and to set aside under Civil Rule 60. *Lee v. Roessler-Lobert* (*In re Roessler-Lovert)*, 567 B.R. 560, 567 (9th Cir. BAP 2017) (motion for reconsideration); *Tennant v. Rojas (In re Tennant),* 318 B.R. 860, 866 (9th Cir. BAP 2004) (motion to set aside).

A bankruptcy court abuses its discretion if it applies the wrong law or its factual findings are illogical, implausible, or without support in the record. *Schlegel v. Billingslea (In re Schlegel)*, 526 B.R. 333, 338 (9th Cir. BAP 2015) (citing *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011)).

DISCUSSION

Debtor raises three challenges related to the Order Denying Extension of Stay. First, Debtor argues his due process rights were violated

when the bankruptcy court considered the merits of the Motion to Extend at the February 18 hearing. Next, Debtor argues the Order Denying Extension of Stay is "void ab initio" because it was issued (1) while the automatic stay was still in effect, and (2) before the bankruptcy considered his many objections to the pending foreclosure sale. Finally, Debtor argues the court erred in denying of reconsideration of that order (1) in light of the new evidence of a Lis Pendens filed by Debtor on February 20, 2025, and (2) because the court did not hold a hearing to consider oral argument prior to issuance of the February 24 Order. We will consider each of these challenges separately.

A. The bankruptcy court did not err in considering the merits of the Motion to Extend at the February 18 hearing.

Debtor, representing himself in both the Fourth Bankruptcy and this appeal, argues he was impermissibly denied the opportunity to argue the merits for extending the automatic stay. Debtor's position is that the bankruptcy court ruled on the merits of the Motion to Extend "without notice or hearing, contradicting ECF No. 71's assurance of a merits hearing on April 1, 2025." Debtor's argument rests on his assertion that the February 14 Scheduling Order, Dkt. 71—which set the February 14 Motion for hearing on February 18 "for the limited purpose of addressing whether expedited consideration of [the motion filed as Dkt. 66] should be granted and, if so, when that motion should be heard"—also applies to the Motion

to Extend. The explicit language of the February 14 Scheduling Order indicates it does not apply to the Motion to Extend:

> Although the title of the [February 14 Motion] indicates Mr. Van Damme is seeking expedited consideration of his [Motion to Extend] (ECF No. 20), the body of the Motion reveals that Mr. Van Damme is requesting an expedited hearing on the Emergency Ex Parte Motion to Vacate Orders, Halt Trustee Sale, and Declare Foreclosure Void Pursuant to NRCP 60(b)(2), (3), (4), Rule 12(b)(1), (6), NRCP 201, and NRS 107.080 & NRS 107.028 – Request for Immediate Ruling Without Hearing (ECF No. 66).

February 14 Scheduling Order at 1. There were two independent items on the bankruptcy court's February 18 specially set calendar—the Motion to Extend and the February 14 Motion. The Continuance Order set the Motion to Extend on that calendar. The February 14 Scheduling Order set the February 14 Motion on that calendar. The express language of the February 14 Scheduling Order eliminates any possible contrary interpretation.

Further, the merits of the Motion to Extend had to be considered before the 30-day period expired. *See In re Flynn*, 582 B.R. 25, 31 (1st Cir. BAP 2018) ("Unfortunately for the Debtor, the bottom line is that under § 362(c)(3)(B), she had only 30 days from the petition date to file a motion to continue the automatic stay and for the motion to be heard."); *In re Moreno*, No. 07-13478-B-13, 2007 WL 4166296, at *1 (Bankr. E.D. Cal. Nov. 20, 2007) (stating that extending the time for a hearing will not postpone termination of the automatic stay because termination is "mandatory" if

the hearing is not held within the 30-day period). Debtor's pro se status does not alter this hard deadline. *See Roberts v. Assoc. of Apt. Owners of Liona Kona (In re Roberts)*, Civil No. 14-00548 SOM/RLP, 2015 WL 7257918, at *5 (D. Haw. Nov. 16, 2015); *Genaro v. Wells Fargo Bank, N.A. (In re Genaro)*, BAP Nos. AK-06-1358-ZRB, AK-06-00198-ZRB, 2007 WL 7535064, at *3 (9th Cir. BAP May 14, 2007). Both the Scheduling Order and the Continuance Order noted that § 362(c)(3)(B) requires the hearing on the motion to extend the automatic stay be "completed before the expiration of the 30-day period." Despite these express warnings, Debtor ignored the hard deadline while also failing to provide any substantive evidence in support of an extension of the stay. Debtor did not attend the hearing on the Motion to Extend. Instead, Debtor filed a request to continue the hearing indefinitely.

For each of these reasons, the bankruptcy court did not err in denying the request to cancel the hearing or in considering the merits of the Motion to Extend at the February 18 hearing.

B. The bankruptcy court did not abuse its discretion in denying the extension of the automatic stay under § 362(c)(3)(B).

Debtor's challenges to the Order Denying Extension of Stay do not address the requirements of § 362(c)(3) or the bankruptcy court's findings thereunder. Instead, Debtor argues the Order Denying Extension of Stay is "void ab initio" because it was issued (1) while the automatic stay was still in effect, and (2) before the bankruptcy considered his many objections to the pending foreclosure sale including standing and subject matter

jurisdiction. Debtor seeks "reversal" on the basis that the order "enabled a fraudulent February 24, 2025, trustee sale." Debtor's alleged defenses to the then pending foreclosure sale, even if proven, would not establish that the Fourth Bankruptcy was filed in good faith, which is required to allow an extension of the automatic stay under § 362(c)(3)(B). Debtor has failed to cite any abuse of discretion by the bankruptcy court in its application of § 362(c)(3).

The bankruptcy court correctly and methodically applied the requirements of § 362(c)(3). By operation of § 362(a), the filing of a bankruptcy petition "operates as a stay, applicable to all entities," of most actions against a debtor, the debtor's property, and property of the bankruptcy estate. However, for debtors who have had another case pending within the preceding year that was dismissed, § 362(c)(3)(A) limits the duration of the stay. It is not disputed that Debtor filed the Fourth Bankruptcy within one year of the dismissal of the Third Bankruptcy. In light thereof, the automatic stay terminated "on the 30th day after the filing of the later case" under § 362(c)(3)(A).

If the 30-day deadline of § 362(c)(3)(A) applies, the deadline may only be extended if the four requirements of § 362(c)(3)(B) are met: (1) a motion is filed; (2) there is notice and a hearing; (3) the hearing is completed before the expiration of the 30-day period; and (4) the debtor demonstrates that

the filing of the new case is in good faith.[9] The bankruptcy court's Scheduling Order satisfied the first two requirements. It construed the motion filed by Debtor on January 27, 2025, Dkt. 20, as a motion under § 362(c)(3)(B). It also set the matter for an expedited hearing, with a briefing schedule noticed to the parties in interest. As to the third element, the bankruptcy court ensured that the motion was heard on its merits prior to the February 20 deadline even when the original hearing date was continued at Debtor's request.

The bankruptcy court's determination, and thus our review on appeal, focused on the final required element of § 362(c)(3)(B)—whether Debtor established good faith in filing the Fourth Bankruptcy. The bankruptcy court found Debtor did not satisfy that required showing, with that finding set forth in detail in both the transcript from the February 18 hearing and the body of the Order Denying Extension of Stay.

In determining whether the case has been filed in good faith, the court must first consider whether the presumption, set out in § 362(c)(3)(C), that the case was not filed in good faith is applicable. 3 Collier on Bankruptcy ¶ 362.06[3][b] (Alan N. Resnik & Henry J. Sommer, eds., 16th

[9] Section 362(c)(3)(B) provides: "[O]n the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]"

ed. 2025). If the presumption applies, § 362(c)(3)(C) requires clear and convincing evidence to the contrary to rebut the presumption. If the presumption does not arise, the debtor need only show that the current case was filed in good faith under the less demanding preponderance of the evidence standard. *In re Sill*, 2018 WL 2728836, at *3; *In re Elliott–Cook*, 357 B.R. 811, 814–15 (Bankr. N.D. Cal. 2006); *In re Montoya*, 342 B.R. at 316.

The bankruptcy court found that the bad faith presumption did apply to the Fourth Bankruptcy. Specifically, the court found, based on the recent dismissal of the Third Bankruptcy, Debtor "falls squarely within the purview of § 362(c)(3)(C)[i](III)[,]" which applies the presumption if, as applicable here:

> there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded . . . with a confirmed plan that will be fully performed[.]

Order Denying Extension of Stay at 2 (citation modified). The Order Denying Extension of Stay then notes Debtor failed to provide any evidence showing a change in circumstances. In support of the presumption, the court made the following factual findings:

- This is Debtor's fourth bankruptcy since 2009.
- Debtor filed the last three bankruptcy cases, including the current bankruptcy, facing imminent foreclosure.
- In his prior bankruptcy cases, Debtor has unsuccessfully challenged U.S. Bank's debt and deed of trust.

- Debtor has also filed three state court cases, subsequently removed to the United States District Court for the District of Nevada, to challenge the underlying debt and deed of trust.
- Two of those cases also resulted in adverse rulings against Debtor holding that his claims were time barred and precluded by issue or claim preclusion.
- Adverse judgments were entered on each and every cause of action brought by Debtor.
- Several appeals remain pending.
- In the Fourth Bankruptcy, Debtor filed (by the date of the Order Denying Extension of Stay) ten motions related to the foreclosure.
- Five of those motions were filed after Debtor states he suffered a medical condition.
- At the same time, Debtor failed to file any initial case documents such as schedules and statements despite obtaining an extension of time.
- Debtor's Schedules I and J filed in the Third Bankruptcy reflect that, as of late 2024, Debtor had monthly income net of deductions totaling $2,855, and monthly expenses of $847 (and no secured debt on real estate of any kind), for net monthly income of $2,008.
- U.S. Bank states that the amount owed on its secured claim is currently $1,831,711.24.
- The limited information Debtor provided from the Third Bankruptcy suggests that Debtor lacked the ability to propose, confirm and perform a plan to address his debts, including that owed to U.S. Bank. Rather, Debtor unsuccessfully sought to litigate U.S. Bank's claims on issues that have previously been rejected by the bankruptcy court and the district court.

- The evidence in the record demonstrates that nothing in Debtor's financial condition has changed since the dismissal of the Third Bankruptcy.

Each of these findings is supported by information readily available from various court dockets, which the Order Denying Extension of Stay meticulously cites. The Panel agrees that this record supports the bankruptcy court's finding that the presumption of bad faith, under § 362(c)(3)(C)(i)(III), applied to the Fourth Bankruptcy. As such, the bankruptcy court did not abuse its discretion in making the bad faith finding. The Panel also holds the bankruptcy court did not abuse its discretion in finding Debtor did not provide clear and convincing evidence rebutting this presumption.

The record reflects that Debtor provided no evidence on the issue of good faith. Therefore, Debtor failed to carry his burden of proof—either with or without the presumption of bad faith. Without the presumption, good faith is determined under the totality of the circumstances. *In re Sill*, 2018 WL 2728836, *3. For the purposes of § 362(c)(3)(B), courts have borrowed from the pre-existing factors considered to determine the debtor's good faith in proposing a chapter 13 plan. *In re Elliott-Cook*, 357 B.R. at 814. As set forth in *In re Leavitt,* 171 F.3d 1219, 1224 (9th Cir. 1999), those factors include: (1) whether the debtor misrepresented facts in the petition, unfairly manipulated the Bankruptcy Code, or otherwise filed the current petition in an inequitable manner; (2) the debtor's history of filings

and dismissals; (3) whether the debtor only intended to defeat state court litigation; and (4) whether egregious behavior is present.

Applying the same detailed findings noted above to these factors, the bankruptcy court found all of the factors weighed against a finding of good faith. The Order Denying Extension of Stay also incorporated by reference the court's analysis under *Leavitt* on the record at the February 18 hearing. The bankruptcy court correctly applied the *Leavitt* factors and its finding of lack of good faith under § 362(c)(3)(B) is supported by the record and not otherwise illogical or implausible. Accordingly, the bankruptcy court did not abuse its discretion in also finding a lack of good faith, without the application of the § 362(c)(3)(C) presumption.

For each of these reasons, Debtor's challenges to the Order Denying Extension of Stay itself are without merit.

C. The bankruptcy court did not abuse its discretion in denying reconsideration.

Debtor's final challenge relates to the February 24 Order. Debtor argues the court's denial of reconsideration of the order was in error (1) in light of the new evidence of the Lis Pendens filed by Debtor on February 20, 2025, and (2) because the court did not hold a hearing to consider oral argument prior to issuance of the February 24 Order. Neither allegation supports a finding of abuse of discretion by the bankruptcy court as to the issuance of the February 24 Order.

The existence of the Lis Pendens, even if ultimately upheld as valid, would not impact the good faith showing required of Debtor under § 362(c)(3)(B) for the same reasons discussed above as to Debtor's alleged defenses to the pending foreclosure.

As to Debtor's second argument, a hearing is not required for either a motion to reconsider or to set aside an order. Civil Rule 59; Civil Rule 60. Instead, it is within the court's discretion as to whether a hearing is necessary. Here, the bankruptcy court found it was not.

Again, the bankruptcy court's findings are supported by the record and not otherwise illogical or implausible. Therefore, the court did not abuse its discretion in declining, via the February 24 Order, to reconsider or set aside the Order Denying Extension of Stay.[10]

CONCLUSION

For the reasons set forth above, we AFFIRM.

[10] After oral argument on this appeal, Debtor filed a motion asking the Panel to vacate the February 24 Order (the "October 31 Motion"). The October 31 Motion restates Debtor's prior arguments. For the same reasons set forth in this memorandum decision, the October 31 Motion is DENIED.