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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NOT FOR PUBLICATION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:
DUPLEX AT SLEEPY HOLLOW, LLC,
Debtor.

BAP No. CC-25-1256-NMG

Bk. No. 8:25-bk-12892-SC

S.E. AMSTER,
Appellant,

v.

777 AT LAGUNA, LLC; CLIFF DRIVE
PROPERTIES DE, LLC; LAGUNA
FESTIVAL CENTER, LLC; 694 NCH
APARTMENTS, LLC; RETREAT AT
LAGUNA VILLAS, LLC; 891 LAGUNA
CANYON ROAD, LLC; HEISLER
LAGUNA, LLC; SUNSET COVE
VILLAS, LLC; LAGUNA ART DISTRICT
COMPLEX, LLC; DUPLEX AT SLEEPY
HOLLOW, LLC; COASTLINE SANTA
MONICA INVESTMENTS, LLC;
VIEREGRUPPE MANAGEMENT, INC.;
SPECIALTY DIP, LLC; JENNIFER
LOVELACE; ENTERPRISE BANK AND
TRUST,

Appellees.

MEMORANDUM*

* 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.

Appeal from the United States Bankruptcy Court
for the Central District of California
Scott C. Clarkson, Bankruptcy Judge, Presiding

Before: NIEMANN, MARUM,¹ and GAN, Bankruptcy Judges.

INTRODUCTION

Appellant S.E. Amster was a potential bidder at foreclosure sales of ten related properties. Minutes before the scheduled sales, involuntary chapter 11² bankruptcy petitions were filed against the entities holding the properties.³ Neither the foreclosing secured creditor nor the trustee conducting the sales was advised of the bankruptcy filings, and the public auctions went forward. Although many third-party bidders were present, none bid on nine of the ten properties, and the properties reverted to the secured creditor. The bankruptcy court subsequently entered an order retroactively annulling the automatic stay, which validated the nine foreclosure sales. Mr. Amster, who has no connection with the bankruptcy

¹ Hon. J. Barrett Marum, United States Bankruptcy Judge for the Southern District of California, sitting by designation.

² Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

³ The above captioned bankruptcy case name and number is the lead case for the following additional jointly administered bankruptcy cases: 777 at Laguna, LLC (Case No. 8:25-bk-12893-SC); Cliff Drive Properties DE, LLC (Case No. 8:25-bk-12894-SC); Laguna Festival Center, LLC (Case No. 8:25-bk-12895-SC); 694 NCH Apartments, LLC (Case No. 8:25-bk-12896-SC); Retreat at Laguna Villas, LLC (Case No. 8:25-bk-12898-SC); 891 Laguna Canyon Road, LLC (Case No. 8:25-bk-12899-SC); Heisler Laguna, LLC (Case No. 8:25-bk-12900-SC); Sunset Cove Villas, LLC (Case No. 8:25-bk-12601-SC); and Laguna Arts District Complex, LLC (Case No. 8:25-bk-12902-SC).

cases except as a potential prepetition bidder, contests that retroactive annulment and insists the sales must be re-noticed.

Finding no abuse of discretion by the bankruptcy court in granting the retroactive annulment, we AFFIRM.

FACTS

The involuntary bankruptcy cases at issue in this appeal were preceded by a protracted business dispute between two real property investors—Mohammad Honarker and Mahender Makhijani. As the competing investors vied for control, a sequence of bankruptcy filings in two jurisdictions unfolded. Neither the investors nor their related entities are active parties to this appeal,⁴ but it was against this backdrop that the bankruptcy court considered the retroactive annulment of the automatic stay.

A. Enterprise’s Secured Loans

Prior to the foreclosures sales, Enterprise Bank and Trust (“Enterprise”) held seven promissory notes secured by ten parcels of real property located in Laguna Beach, California (each a “Property” and, collectively, the “Properties”). Each Property was owned by a separate single asset real estate entity (each “Debtor” and, collectively, “Debtors”). Debtors’ collective book value for the Properties was, as of 2025,

⁴ The Notice of Appeal listed each of the ten debtors, the petitioning creditors, and secured creditor Enterprise Bank and Trust as other parties to this appeal. The only appellee to actively respond is Enterprise Bank and Trust.

approximately \$95 million. Each Property had at least three deeds of trust pledged against it with secured debts totaling far more than the collective book value. Enterprise, which was owed roughly \$80 million, held the first deed of trust on each Property.

Debtors defaulted on the loans from Enterprise by, among other things, failing to pay real property tax bills and regular principal and interest payments due under the loans. In November 2024, Enterprise notified Debtors of the default and demanded prompt cure. When Debtors failed to cure the defaults, Enterprise recorded a Notice of Default and Election to Sell Under Deed of Trust against each Property in February 2025 (the “NOD”).

B. Prior Voluntary Bankruptcy Cases in Delaware

Within three weeks of the NOD, Debtors and twelve other related entities filed voluntary chapter 11 bankruptcy petitions in the bankruptcy court for the District of Delaware. The Delaware bankruptcy court ordered the 22 cases to be jointly administered under the lead case of MOM CA Investco LLC, Case No. 25-10321.

In June 2025, Enterprise filed motions for relief from stay in each of the ten voluntary bankruptcy cases filed by Debtors. No opposition was filed to the motions, and on July 15, 2025, the Delaware bankruptcy court granted relief from stay as to each Debtor. Shortly thereafter, in August 2025, the Delaware bankruptcy court dismissed the 22 jointly administered bankruptcy cases.

C. Appointment of Receiver and Notice of Sale

Enterprise returned to California to continue to collect the debt owed by Debtors. In August 2025, Enterprise filed a complaint against Debtors in state court for breach of the promissory notes and appointment of a receiver. The state court entered an order granting a preliminary injunction and appointing a receiver over the Properties on October 7, 2025.

Notwithstanding the appointment of the receiver, Mr. Makhijani and his related entities continued to actively interfere with the management of the Properties.

Also in August 2025, Enterprise recorded a Notice of Sale against each Property with the nonjudicial foreclosure sales scheduled for 3:00 p.m. on October 15, 2025 (the “Foreclosure Sales”).

D. Events on the Day of the Scheduled Foreclosure Sales

Between 2:28 p.m. and 3:02 p.m. on October 15, 2025, involuntary bankruptcy petitions were filed against Debtors in the bankruptcy court for the Central District of California. The petitioning creditors included an entity associated with Mr. Makhijani. Neither the foreclosure trustee nor Enterprise were notified of the bankruptcy filings until some time later.

Unaware of the involuntary petitions, the foreclosure trustee called the Foreclosure Sales as noticed and conducted the Foreclosure Sales between 3:13 p.m. and 3:52 p.m. Roughly twenty nonrelated parties were present at the Foreclosure Sales. However, only one nonrelated party placed a bid, with that bid being the highest bid for the Property owned by

Debtor 694 NCH Apartments, LLC (the “694 NCH Property”). The only bids for the remaining nine properties were the credit bids submitted by Enterprise, which was declared the successful bidder.

Mr. Amster was interested in one Property in particular—683 Sleepy Hollow Lane, which was owned by Debtor Sunset Cove Villas, LLC.

Mr. Amster declared he was also interested in other unspecified Properties, but not the 694 NCH Property. The auctioneer cried the Foreclosure Sale for 683 Sleepy Hollow Lane at 3:24 p.m. Mr. Amster did not appear at the courthouse steps where the Foreclosure Sales occurred until approximately 3:30 p.m., after the sale of 683 Sleepy Hollow Lane was complete. When Mr. Amster stated that he was interested in bidding on 683 Sleepy Hollow Lane, he was advised that sale was complete and the Property had reverted to Enterprise.

Mr. Amster declared that, before the sales were cried, he contacted his title agent to confirm the status of title to 683 Sleepy Hollow Lane. The title agent advised Mr. Amster that a new bankruptcy case had just been filed for Sunset Cove Villas, LLC. Mr. Amster brought cashier’s checks with him to the Foreclosure Sales but says he was “not willing to spend up to \$12,550,000 [the total of the cashier’s checks he had on hand] on the properties only to have [his] money tied up once the bankruptcies were allowed to play out if [he] was the successful bidder.” Mr. Amster did not, however, mention the bankruptcy filings to the foreclosure trustee.

Around 4:10 p.m., the foreclosure trustee received an email from an attorney representing the petitioning creditors attaching file-stamped copies of the involuntary bankruptcy petitions filed against Debtors. When the winning bidder for the 694 NCH Property was advised of the bankruptcy filings, the bidder demanded the foreclosure trustee either issue the trustee's deed upon sale or return the funds. The foreclosure trustee then canceled the sale as to the 694 NCH Property and returned the funds to the winning bidder.

E. Motion for Relief from Stay

Roughly one month after the Foreclosure Sales, Enterprise brought a motion for relief from stay before the bankruptcy court (the "Motion"), alleging insiders had filed the involuntary bankruptcy cases in bad faith. The Motion sought prospective relief from stay under § 362(d)(1), in rem relief under § 362(d)(4), and retroactive annulment of the automatic stay to validate the Foreclosure Sales.

Mr. Amster filed a limited opposition to the Motion, contesting only the retroactive annulment portion of the requested relief. Mr. Amster argued all ten sales should be re-noticed to allow the competitive bidding that he contended the involuntary petitions chilled.

Debtors also opposed the Motion, asserting that the Properties were necessary for an effective reorganization. Debtors' opposition attached a proposed purchase and sale agreement whereby an entity identified as Special Assets Laguna, LLC had agreed to purchase the Properties for

\$102 million (the “PSA”). The PSA was signed on behalf of both the alleged selling and purchasing entities by James E. Miller. Mr. Miller purported to be the acting manager of Debtors. Mr. Miller is also the Chief Executive Officer, Chief Financial Officer, and Secretary of Vierergruppe Management, the petitioning creditor connected to Mr. Makhijani.⁵ Debtors’ opposition to the Motion stated the proposed purchaser would deposit \$1 million into escrow upon the bankruptcy court’s approval of the PSA.

Finally, Mr. Honarker, the other investor in Debtors, and his related entity, 4G Wireless, opposed the Motion. Mr. Honarker’s opposition noted that an arbitration award had been entered against Mr. Makhijani and his related entities, which found they had fraudulently induced the Honarker parties and converted assets. Mr. Honarker argued validation of the Foreclosure Sales would destroy his rescission rights pending final adjudication of his litigation against the Makhijani parties.

The bankruptcy court granted the Motion and, as relevant here, entered a memorandum opinion and order retroactively annulling the automatic stay as to the nine properties for which Enterprise was the sole bidder (the “Order”). The bankruptcy court found that retroactive

⁵ Vierergruppe Management was misspelled in the notice of appeal as “Vieregruppe.”

annulment was inappropriate as to the 694 NCH Property because that sale had been rescinded before the Motion was heard.⁶

Mr. Amster timely appealed the Order and argues retroactive annulment was (i) a misapplication of the balancing of equities required by *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12 (9th Cir. BAP 2003), and (ii) contrary to the competitive bidding requirements of California nonjudicial foreclosures. Debtors also appealed the Order but then filed a motion to voluntarily dismiss those appeals.⁷ On June 9, 2026, the Panel entered an order granting Debtors' motions to voluntarily dismiss those appeals. This appeal is the only remaining appeal as to the Order.

F. Dismissal of the Involuntary Cases

The Motion was heard by the bankruptcy court on December 12, 2025, concurrently with (i) a status conference for the jointly administered cases, (ii) a continued hearing regarding whether the petitioning creditors

⁶ The successful bidder as to the 694 NCH Property would later bring a separate motion seeking retroactive annulment of the stay, which was denied by the bankruptcy court.

⁷ Debtors' appeals were BAP Nos. CC-25-1260, CC-25-1261, CC-25-1262, CC-25-1263, CC-25-1264, CC-25-1265, CC-25-1266, CC-25-1267, CC-25-1268, and CC-25-1269 (the "Debtors' Appeals"). Debtors also filed the same motion to dismiss in this appeal, but the relief sought is not applicable to this appeal because Debtors are not the appellants. *See* BAP Doc. No. 15. Enterprise separately filed a motion to dismiss Debtors' Appeals. That motion was also docketed in this appeal. *See* BAP Doc No. 10. However, this appeal is not referenced in the case numbers listed in the caption of Enterprise's motion. Nor does the body of Enterprise's motion mention appellant Mr. Amster. Therefore, both motions to dismiss appear to have been docketed in this appeal in error.

should be required to post a bond, and (iii) a continued hearing on whether the bankruptcy court should transfer the involuntary cases to the Delaware bankruptcy court. At the hearing, Enterprise noted that Debtors never responded to the involuntary petitions and the petitioning creditors did not take Debtors' defaults. Enterprise argued this was indicative that the involuntary petitions were simply filed to "buy more time."

At the December 12 hearing, the bankruptcy court granted the Motion and required the petitioning creditors to post a \$1 million bond (the "Bond Order"). The Bond Order provided that if the \$1 million bond was not posted within fourteen days of the entry of the Bond Order, the involuntary bankruptcy cases would be dismissed. The bankruptcy court's docket indicates both the Order and the Bond Order were entered on December 15, 2025. The petitioning creditors did not post the bond. On March 18, 2026, the bankruptcy court entered orders dismissing the ten involuntary bankruptcy cases.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(G). Two issues are raised by the parties that potentially impact our jurisdiction on appeal. We address these jurisdictional matters before considering the merits.

A. Mootness

The first jurisdictional issue is whether this appeal has been rendered constitutionally moot by the intervening dismissal of the underlying

involuntary bankruptcy cases.⁸ This challenge was not directly raised in Enterprise's responsive brief. However, it might be inferred from the Notice of Recent Development filed by Enterprise advising the Panel of the bankruptcy court's dismissal of all ten involuntary bankruptcy cases which concludes "[t]his dismissal may have an impact on the ongoing pendency of this Appeal."⁹ Appellant Mr. Amster construed the notice, and the reference thereto in Enterprise's responsive brief, as such a challenge and addressed the issue in his reply.

We lack jurisdiction over a moot appeal, and if an appeal becomes moot while it is pending before us, we must dismiss it. *I.R.S. v. Pattullo (In re Pattullo)*, 271 F.3d 898, 900-01 (9th Cir. 2001). We have an independent obligation to consider mootness sua sponte. *Pilate v. Burrell (In re Burrell)*, 415 F.3d 994, 997 (9th Cir. 2005). An appeal is constitutionally moot if it is impossible for us to give the appellant effective relief in the event we decide the appeal in his favor. See *Chafin v. Chafin*, 568 U.S. 165, 172 (2013); *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 880 (9th Cir. 2012).

⁸ Mr. Amster's opening brief notes Enterprise asserted in its statement of issues on appeal that this appeal should be deemed moot due to the issuance of trustee's deeds upon foreclosure to Enterprise. This argument was not pursued by Enterprise in its responsive brief.

⁹ The motion to dismiss filed by Debtors in this appeal directly asserts the appeals are "constitutionally moot" in light of the subsequent dismissals.

We agree with Mr. Amster that constitutional mootness does not apply here. The sole substantive issue on appeal is the retroactive annulment of the automatic stay. That annulment had the effect of validating the nine Foreclosure Sales as to which Enterprise was the successful bidder. The subsequent dismissal of the involuntary bankruptcy cases does not impact the retroactive annulment. *See Wytch v. Pacific Reconveyance (In re Wytch)*, 223 B.R. 190 (9th Cir. BAP 1998), *rev'd on other grounds*, 213 F.3d 645 (9th Cir. 2000).

B. Standing

The second jurisdictional issue is whether Mr. Amster has standing to bring this appeal. Enterprise contested Mr. Amster's standing to oppose the Motion both before the bankruptcy court and on appeal. While the Order did not directly address Mr. Amster's standing, it did find "no third-party bidder participated" and "[n]o evidence of prejudice to bona fide purchasers exists."

"Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation." *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255 (1994). Only persons who are directly and adversely affected pecuniarily by an order have standing to appeal the order. *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983). A person is "directly and adversely affected pecuniarily" if the order would "diminish the [party's] property, increase his burdens, or detrimentally affect his rights." *Id.* at 442. "While standing to appeal is

generally a legal issue reviewed de novo, whether an appellant is a ‘person aggrieved’ by the order appealed is a question of fact we review in the first instance.” *Landres v. Cambridge Land Co. II, LLC (In re Cambridge Land Co. II, LLC)*, 626 B.R. 319, 323 (9th Cir. BAP 2021).

On appeal, Mr. Amster asserts that, as a party prepared to bid at the auction, he has standing as a party in interest under § 1109(b). Enterprise first argues § 1109 is inapplicable because the involuntary cases were filed as, and remained, chapter 7 cases. This, however, is wrong—the involuntary petitions were all filed as chapter 11 cases. Enterprise also argues Mr. Amster is “nothing more than a failed bidder” who is limited to challenging the sale process itself. This argument also is not well taken.

Mr. Amster *is* challenging the sale process, maybe just not the way Enterprise would like to restrict his arguments. Mr. Amster’s declaration also reflects that he altered his behavior based on his knowledge that a bankruptcy petition had been filed as to the owner of 683 Sleepy Hollow Lane just prior to the auction being called. Mr. Amster produced evidence he had funds on hand at the time of the Foreclosure Sales. Although Mr. Amster did not approach the auctioneer until after the sale of 683 Sleepy Hollow Lane (the Property of most interest to Mr. Amster) was complete, Mr. Amster did so mere minutes later and was, therefore, clearly in the vicinity. Taken together, this is sufficient to establish Mr. Amster detrimentally relied upon the automatic stay being in place prior to the Foreclosure Sales. Mr. Amster was, therefore, directly and adversely

affected pecuniarily by the Order retroactively annulling the stay and has standing to bring this appeal.

We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Did the bankruptcy court abuse its discretion in retroactively annulling the automatic stay?

STANDARD OF REVIEW

A bankruptcy court's decision to annul the automatic stay retroactively is reviewed for an abuse of discretion. *Gasprom, Inc. v. Fateh (In re Gasprom, Inc.)*, 500 B.R. 598, 604 (9th Cir. BAP 2013) (citing *Nat'l Env't. Waste Corp. v. City of Riverside (In re Nat'l Env't. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997); *Williams v. Levi (In re Williams)*, 323 B.R. 691, 696 (9th Cir. BAP 2005)). To determine whether the bankruptcy court has abused its discretion, we conduct a two-step inquiry: (1) we review de novo whether the bankruptcy court "identified the correct legal rule to apply to the relief requested" and (2) if it did, we consider whether the bankruptcy court's application of the legal standard was illogical, implausible, or without support in inferences that may be drawn from the facts in the record. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

DISCUSSION

The filing of a bankruptcy petition, be it voluntary or involuntary, automatically creates an estate that contains all legal and equitable interests of the debtor in property as of the commencement of the case. See §§ 541(a)

and 303. The filing of a petition also gives rise to the automatic stay that “effect[s] an immediate freeze of the *status quo* by precluding and nullifying post-petition actions, judicial or nonjudicial, in nonbankruptcy fora against the debtor or affecting the property of the estate.” *Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi)*, 764 F.3d 1168, 1173 (9th Cir. 2014) (citation omitted); *see also* § 362(a). Here, the Foreclosure Sales, conducted after the filing of the involuntary petitions, constituted actions to obtain possession of and to enforce a lien against property of the estate in violation of § 362. Actions taken in violation of the stay are void. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 572 (9th Cir. 1992).

However, the Bankruptcy Code also acknowledges there may be circumstances in which relief from the automatic stay is warranted. Section 362(d)¹⁰ “gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay.” *Schwartz*, 954 F.2d at 572.¹¹ Retroactive annulment of the automatic stay validates any actions taken in violation of the stay, which

¹⁰ Section 362(d) provides, in pertinent part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay[.]

¹¹ Although the U.S. Supreme Court has limited *nunc pro tunc* orders in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 589 U.S. 57 (2020) (*per curiam*), we have previously held that decision does not deprive the bankruptcy court of jurisdiction to grant retroactive relief from the automatic stay under § 362(d). *Merriman v. Fattorini (In re Merriman)*, 616 B.R. 381, 392-94 (9th Cir. BAP 2020).

would otherwise be void. *Id.* at 573 (“If a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay[.]”); *see also Lone Star Sec. & Video, Inc. v. Gurrola (In re Gurrola)*, 328 B.R. 158, 172 (9th Cir. BAP 2005) (“annulling the stay . . . has the effect of retroactively validating acts that otherwise violated the stay.”). Retroactive annulment was among the relief sought by the Motion and is the only aspect of the Order at issue in this appeal.

A. The bankruptcy court identified the correct legal standard for retroactive annulment of the automatic stay.

The Ninth Circuit has noted two factors considered by many courts in determining whether retroactive annulment of the stay is appropriate: “(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.” *Nat’l Env’t. Waste Corp.*, 129 F.3d at 1055. The Ninth Circuit then clarified that “we have never held these two factors to be dispositive; instead, we have engaged in a case by case analysis. Thus, this court, similar to others, balances the equities in order to determine whether retroactive annulment is justified.” *Id.* (citations omitted).

To assist in this balancing of the equities test, this Panel subsequently suggested a handful of additional factors to consider when deciding whether to retroactively annul the stay:

1. Number of [bankruptcy] filings;

2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the *status quo ante*;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor; and
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (9th Cir. BAP 2003). The bankruptcy court was "not required to analyze each and every factor articulated in *Fjeldsted*, but it was required to balance the equities by

considering whether the [creditor was] aware of the bankruptcy petition and whether prejudice would result to [the creditor] by not granting retroactive relief.” *Merriman v. Fattorini (In re Merriman)*, 616 B.R. 381, 391 (9th Cir. BAP 2020) (citing *Nat’l Env’t. Waste Corp.*, 129 F.3d at 1055).

The bankruptcy court cited both *Nat’l Env’t. Waste Corp.* and *Fjeldsted* in the Order and addressed several of the *Fjeldsted* factors in detail. On appeal, however, Mr. Amster appears to argue alternative legal standards should apply. First, he argues retroactive annulment is a misapplication of the balancing of equities under *Fjeldsted*. Second, Mr. Amster asserts the result of the retroactive annulment is contrary to the competitive bidding requirements of California nonjudicial foreclosures. While the impact of the retroactive annulment on the competitive bidding process—and, thereby, the bankruptcy estate—may be a factor to be considered when balancing the equities, as required under *Nat’l Env’t. Waste Corp.*, it is not a separately recognized legal standard for deciding whether to retroactively annul the automatic stay. Mr. Amster appears to concede this point in this reply brief, which includes a section entitled “*In re Fjeldsted* Controls.” The bankruptcy court, therefore, identified and applied the correct legal standard as to retroactive annulment.

B. The bankruptcy court did not abuse its discretion in its application of the legal standard for retroactive annulment.

The parties agree that, under *Nat’l Env’t. Waste Corp.*, the bankruptcy court’s decision to annul the automatic stay retroactively is reviewed on

appeal for an abuse of discretion. The point of departure between the parties is whether the bankruptcy court erred in “balancing the equities” in this particular case.

Mr. Amster’s argument hinges upon his belief that “[t]he balancing here disfavored [retroactive] annulment just as the Bankruptcy Court found relative to [the 694 NCH Property].” Mr. Amster argues “[t]here can be no justification for granting [retroactive] annulment for nine properties and denying [retroactive] annulment for the tenth on the very same order.” Mr. Amster asserts the bankruptcy court reached its erroneous result by improperly framing the *Fjeldsted* factors as applying between Debtors and Enterprise, rather than as between Mr. Amster (and like-minded potential bidders) and Debtors. Mr. Amster asserts, for instance, the “good faith basis or the knowledge of Enterprise [as the foreclosing party] should play no role in the analysis.” Mr. Amster says he promptly “made [his] position known” to the bankruptcy court, like Enterprise, via his opposition to the Motion. As to the prejudicial results from retroactive annulment, Mr. Amster asserts “[p]rejudice falls squarely on the side of [Mr.] Amster and not Enterprise.”

Enterprise’s response boils down to its belief that Mr. Amster has the scope of the *Fjeldsted* factors all wrong. Enterprise notes that “*Fjeldsted* and all reported cases following it in this Circuit” balance the equities between the debtor and the moving creditor. “Under no circumstances, nor under any reported cases cited by [Mr. Amster], has an analysis been conducted

by a court in which the balance of equities analyzed involved a debtor and a third party bidding at a foreclosure sale.”

The language of the *Fjeldsted* factors shows the appropriate scope of the balancing of interests is somewhere in between these two extremes. The factors speak repeatedly of the “debtor” and “creditor(s).” However, *Fjeldsted* also includes a consideration of prejudice to “third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser.” Mr. Amster’s position is something significantly less than a bona fide purchaser, and this factor does not appear to otherwise help him. Further, Mr. Amster’s suggestion that the bankruptcy court was required to weigh the retroactive annulment solely from his perspective ignores that (i) the relief sought by the Motion was against Debtors’ property and bankruptcy estates, and (ii) Mr. Amster was not the only party opposing the Motion. Many of the factors that contributed to the bankruptcy court’s finding of bad faith in the filing of the involuntary cases, establishing “cause” for relief from stay under §362(d)(1), are also *Fjeldsted* factors that weigh in favor of retroactive annulment. Mr. Amster’s position would have us ignore these factors and judge the prejudice to Enterprise solely from the date of the Foreclosure Sales forward.

The bankruptcy court made several findings in weighing the *Fjeldsted* factors. First, as to *Fjeldsted* factor no. 5, Enterprise presented unrefuted evidence establishing neither Enterprise nor the foreclosure trustee had notice of the involuntary bankruptcy filings until after the Foreclosure

Sales were concluded. Second, as to *Fjeldsted* factor no. 4, the bankruptcy court separately found in the Order that the cases were filed in bad faith under *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). Third, as to *Fjeldsted* factors no. 9 and 10, Enterprise acted promptly after learning of the bankruptcy filings to bring the Motion. Finally, as to *Fjeldsted* factors 3 and 11, the bankruptcy court weighed the respective prejudice to Enterprise and other parties. The bankruptcy court noted as follows as to the prejudice to Enterprise:

The prejudice to Enterprise is compounded by the procedural posture of these cases. Enterprise had already obtained stay-relief orders in the Delaware proceedings and proceeded in California in reliance on those orders and the absence of any known bankruptcy filings. Requiring Enterprise to restart nine foreclosure sales would not only impose additional delay and expense while interest continues to accrue but would also extend the period during which the Properties remain exposed to the operational disputes and alleged post-appointment misconduct described in the Receiver's declaration. Under these circumstances, denying [retroactive] annulment would effectively penalize Enterprise for acting in accordance with prior court authority and without notice of any intervening stay.

As to the potential prejudice to other parties if retroactive annulment was granted as to the Properties other than the 694 NCH Property, the bankruptcy court noted that “no third-party bidder participated” and “[n]o evidence of prejudice to bona fide purchasers exists.” The Order then acknowledged the inherent prejudice to Debtors in losing the Properties

but found that, standing alone, the prejudice was “insufficient to outweigh Enterprises’ equities.” The bankruptcy court concluded that “the equities overwhelmingly favor [retroactive] annulment as to the nine Properties that reverted to Enterprise and lacked third-party bidding.”

These findings are not illogical, implausible, or without support in inferences that may be drawn from the facts in the record. Nor does Mr. Amster’s counterargument that the involuntary bankruptcy petitions chilled bidding on the Properties leave us with a definite and firm conviction that the bankruptcy court committed a clear error of judgment in its conclusion that retroactive annulment was warranted.¹² The history of this appeal did not begin on October 15, 2025, and it was an appropriate use of the bankruptcy court’s discretion to consider preceding events in balancing the equities.

Finally, Mr. Amster’s reliance on the bankruptcy court’s later denial of retroactive annulment as to the 694 NCH Property is misplaced. The Order here makes clear that the reason the 694 NCH Property was treated differently than the other Properties was that the trustee’s sale of the 694

¹² In considering the equities, the knowledge and actions (or lack thereof) of Mr. Amster are also relevant. Had the foreclosure trustee been advised of the bankruptcy filings, the Foreclosure Sales would not have gone forward and Mr. Amster would have the relief he now seeks on appeal. While Mr. Amster had no duty to alert the foreclosure trustee or submit a bid, his failure to do either weighs substantially against any prejudice he may have suffered from the retroactive annulment of the automatic stay, an outcome a sophisticated foreclosure investor like Mr. Amster would know was a possibility.

NCH Property to a third-party bidder had been rescinded before the Motion was heard. There may be some dispute as to whether that rescission was appropriate, but that issue is left to the separate appeal brought by the third-party bidder. Further, unlike Enterprise, the third-party bidder on the 694 NCH Property did not seek relief until several months after the Foreclosure Sales. There is no inconsistent treatment by the bankruptcy court's orders if the circumstances are factually distinguishable, as they are here.

CONCLUSION

For the reasons set forth above, we AFFIRM.