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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: BEULAH MARGARET BANKS, Debtor.	BAP No. CC-25-1009-NSG Bk. No. 2:24-bk-16960-NB
BEULAH MARGARET BANKS, Appellant, v. NEIGHBOR TO NEIGHBOR HOMES, LLC, Appellee.	MEMORANDUM*

Appeal from the United States Bankruptcy Court
for the Central District of California
Neil W. Bason, Bankruptcy Judge, Presiding

Before: NIEMANN, SPRAKER, and GAN, Bankruptcy Judges.

INTRODUCTION

Less than an hour before debtor Beulah Margaret Banks filed her chapter 7¹ bankruptcy petition, her residence was sold at a foreclosure sale. Neighbor to Neighbor Homes, LLC (“Neighbor”) was the high bidder at

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

the foreclosure sale. When Neighbor subsequently brought an unlawful detainer action (the “UD Action”), Ms. Banks notified Neighbor of her bankruptcy filing and demanded dismissal of the UD Action. Neighbor instead brought a motion for relief from stay, seeking to annul the stay to retroactively permit the transfer of the foreclosed property as well as the commencement of the UD Action and prospectively to allow the UD Action to proceed. Ms. Banks appeals the order entered by the bankruptcy court granting such relief.

No stay was requested pending the outcome of this appeal, and it appears the UD Action went forward. At oral argument, Ms. Bank advised the Panel that she was removed from possession of the property by law enforcement officers shortly after relief from stay was granted. Neighbor also advised the property has since been sold to a third party. In light of these developments, and as posited as a possibility during oral argument, we DISMISS this appeal as moot.

FACTS

The property at issue in this appeal is a single-family residence located in Inglewood, California (the “Property”). The facts underlying the appealed order relating to the Property span several years and multiple bankruptcy cases. However, in light of events that have transpired since this appeal was taken, only a handful of undisputed facts remain relevant.

The Property was owned by Ms. Banks and her son, Michael Crutchfield, as joint tenants. Ms. Banks and Mr. Crutchfield executed a

deed of trust against the Property to secure a loan. The loan went into default and, on January 11, 2024, the lender recorded a Notice of Default and Election to Sell Under Deed of Trust (the “NOD”).

The noticed foreclosure sale of the Property went forward a on August 29, 2024 (the “Foreclosure Sale”), and Neighbor was the high bidder. Neighbor was not the foreclosing beneficiary of the deed of trust, but instead appears to be an independent third party. Ms. Banks filed her bankruptcy petition on the same day as the Foreclosure Sale, shortly after the auction was completed. She failed to provide notice to either the foreclosing creditor or the purchaser of the property at the time she filed her bankruptcy.

A Trustee’s Deed Upon Sale (the “TDUS”) was executed on October 15, 2024 and recorded by Neighbor on October 17, 2024.

On October 31, 2024, Neighbor served a 3-day notice to quit (“3-Day Notice”) on Ms. Banks, Mr. Crutchfield, and all occupants of the Property. After the expiration of the 3-day period, the UD Action was filed against Ms. Banks and Mr. Crutchfield on November 6, 2024. After they were served with the summons and complaint in the UD Action, Ms. Banks and Mr. Crutchfield sent letters to Neighbor’s attorney of record in the UD Action advising him of, among other things, Ms. Banks’s bankruptcy case and demanding dismissal of the UD Action.

On December 10, 2024, Neighbor filed a motion for relief from the automatic stay under both § 362(d)(1) and (2) (the “Motion”).² The Motion sought the annulment of the stay to validate the following post-petition actions: (1) issuance of the TDUS; (2) recordation of the TDUS; (3) service of the 3-Day Notice; and (4) the filing and service of the UD Action. The Motion also sought prospective relief to proceed with the UD Action and eviction. Ms. Banks opposed the Motion. After a hearing, the bankruptcy court granted the Motion and entered an order both terminating and retroactively annulling the automatic stay in Ms. Banks’s case (the “Order”). Ms. Banks timely appealed the Order.

No stay was requested pending the outcome of this appeal. The UD Action proceeded and judgment was entered in Neighbor’s favor on January 27, 2025. Shortly thereafter, the parties negotiated a stipulation whereby Ms. Banks would voluntarily vacate the Property, Neighbor would allow her some additional time and money to do so, and this appeal would be dismissed. Although that stipulation was signed, Ms. Banks then withdrew her agreement. Ms. Banks was subsequently evicted from the Property by law enforcement officials. Sometime thereafter but prior to oral argument in this appeal, Neighbor sold the Property to a third party.

² The Motion also requested in rem relief under § 362(d)(4). However, such relief was not granted in the appealed order and appears to have been withdrawn by Neighbor.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(G). 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).

ISSUE

Is this appeal moot in light of events occurring after the appeal was taken?

STANDARD OF REVIEW

The question of our own appellate jurisdiction is an issue of law we may raise sua sponte and that we address de novo. *See Belli v. Temkin (In re Belli)*, 268 B.R. 851, 853 (9th Cir. BAP 2001); *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 903 (9th Cir. BAP 1999).

DISCUSSION

The doctrine of constitutional mootness arises from Article III of the Constitution, which limits the jurisdiction of all federal courts to live cases and controversies. U.S. Const. art. III, § 2, cl. 1; *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 880 (9th Cir. 2012). When it is impossible for us to grant effective relief, no live case or controversy exists. *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 33 (9th Cir. BAP 2008) (citing *Church of Scientology of Cal. v.*

United States, 506 U.S. 9, 12 (1992)). Thus, an appeal is constitutionally moot if it is impossible for us to give the appellant effective relief in the event we were to decide the appeal in her favor. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013); *Thorpe Insulation Co.*, 677 F.3d at 880. “It is not enough that a dispute was very much alive when suit was filed; the parties must continue to have a personal stake in the ultimate disposition of the lawsuit.” *Chafin*, 568 U.S. at 172 (citation modified).

This appeal hinges upon Ms. Banks’s rights in the Property. State law establishes the property rights of the parties and determines when those rights are obtained or eliminated. *Butner v. United States*, 440 U.S. 48, 54-55 (1979); *Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1127 (9th Cir. 2016). In this case, the Foreclosure Sale occurred prior to the filing of Ms. Banks’s bankruptcy case. In light thereof, by the time of her bankruptcy case, Ms. Banks no longer had a legal interest in the Property.³ The only remaining interest Ms. Banks had in the Property was her continued possession of the Property. Then, during the time this appeal was pending, Neighbor obtained a judgment in the UD Action and lawfully evicted

³ See *Perl*, 811 F.3d at 1128 (holding a prepetition foreclosure sale, followed by the timely recording of a TDUS, “extinguished” any legal interest by the debtor/mortgagor in the foreclosed property) (citing *Wells Fargo Bank v. Neilsen*, 178 Cal. App. 4th 602, 613-14 (2009), as modified and Cal. Civ. Code § 2924h(c)); see also *Smith v. Allen*, 68 Cal. 2d 93, 96 (1968) (holding a properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender); *Moeller v. Lien*, 25 Cal. App. 4th 822, 831-32 (1994) (holding a foreclosure sale is presumptively valid upon the delivery of a TDUS, with that presumption conclusive as to a bona fide purchaser).

Ms. Banks from the Property pursuant to a writ of possession. The entry of judgment in the UD Action eliminated Ms. Banks's possessory interest in the Property, even before she was physically removed by the law enforcement officials.⁴ Consequently, pursuant to California law, Ms. Banks no longer has any legal or equitable possessory interest in the Property. Ms. Banks's position vis-à-vis the Property was further prejudiced by the subsequent sale of the Property to another third party.⁵

Because Ms. Banks no longer has any legal or equitable possessory interest in the Property, it is impossible for the Panel to provide her any effective relief even if we decided the matter on the merits in her favor. Any reversal of the bankruptcy court's Order would not undo the state court actions and rulings taken in reliance on the Order. Nor would it restore Ms. Banks's possession of the Property. Therefore, the reversal "would not in any meaningful way change . . . [Ms. Banks's] status, position or rights vis-a-vis the Property or the eviction proceedings." *McKinney v. Kondaur Cap. Corp. (In re McKinney)*, BAP No. AZ-10-1393-MkMaD, 2011 WL 4503131, at *3 (9th Cir. BAP July 7, 2011), *aff'd*, 531 F.

⁴ See *Perl*, 811 F.3d at 1130 (holding a post-foreclosure judgment in an unlawful detainer action under Cal. Civ. Code § 1161a is a "final and binding adjudication of legal title and rights of immediate possession").

⁵ See *PW, LLC*, 391 B.R. at 33-34 (discussing cases addressing equitable mootness); *Trone v. Roberts Farms, Inc. (In re Roberts Farms, Inc.)*, 652 F.2d 793, 798 (9th Cir. 1981) (finding that a failure to seek a stay of objectionable orders together with a substantial change of circumstances through the sale of the property to a third party supported dismissal for equitable mootness); *Casady v. Bucher (In re Royal Properties, Inc.)*, 621 F.2d 984, 986 (9th Cir. 1980) (same).

App'x 816 (9th Cir. 2013); *see also* *Baghdasarian v. SRT Partners, LLC (In re Baghdasarian)*, BAP No. CC-10-1277-DMkKi, 2011 WL 4485244, at *4 (9th Cir. BAP July 8, 2011) (holding the appeal of a similar order allowing relief from stay to proceed with a UD Action under California law was moot because the debtor was dispossessed after the appeal was taken).

Because the appeal is moot, we have no jurisdiction to determine whether the bankruptcy court abused its discretion in granting Neighbor relief from the automatic stay.

CONCLUSION

For the reasons set forth above, the appeal is hereby DISMISSED as moot.