No. _____

IN THE
Supreme Court of The United States

SHOLEM PERL,

Petitioner,

v.

EDEN PLACE, LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

GRANT T. STEIN
ANDREW J. TUCK
D. ANDREW HATCHETT
ALSTON & BIRD LLP
1201 W. PEACHTREE STREET
Atlanta, GA 30309
(404) 881-7000

LEIB M. LERNER
Counsel of Record
ALSTON & BIRD LLP
333 S. HOPE STREET
Los Angeles, CA 90071
(213) 576-1000
leib.lerner@alston.com

BRIAN D. BOONE
ALSTON & BIRD LLP
101 S. TRYON STREET
Charlotte, NC 28280
(704) 444-1000

Attorneys for Petitioner

QUESTION PRESENTED

Under 11 U.S.C. § 362, filing a bankruptcy petition triggers an "automatic stay" that prevents creditors from (among other things) seizing property from the debtor's bankruptcy estate. Courts enforce the automatic stay through orders that may include damages and other sanctions.

The Second, Third, Fifth, Seventh, Tenth, and Eleventh Circuits have held that if a bankruptcy court issues an order finding liability (for a violation of the automatic stay or otherwise) but deferring its ruling on damages for future consideration, that order is not final under 28 U.S.C. § 158 and thus is not immediately appealable. Breaking from its sister circuits, the Ninth Circuit held that an order finding liability but deferring on damages was final and immediately appealable under 28 U.S.C. § 158.

The question presented is:

If a bankruptcy court finds that a party violated the automatic stay but reserves the question of damages for future determination, is that order final under 28 U.S.C. § 158 and therefore immediately appealable?

LIST OF PARTIES AND RULE 29.6 STATEMENT

Petitioner Sholem Perl is the debtor in the bankruptcy case and appellee in the court of appeals.

Respondent Eden Place, LLC is appellant in the court of appeals.

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Petitioner Sholem Perl petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

INTRODUCTION

"It ain't over till it's over." *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1693 (2015).

A California bankruptcy court issued an order holding Respondent Eden Place, LLC in contempt for violating 11 U.S.C. § 362's automatic stay provision because Eden evicted Perl from his Los Angeles home while Perl's automatic bankruptcy stay was in effect. But the bankruptcy court deferred ruling on damages because the record was incomplete. App. 52a. Instead, the bankruptcy court continued the hearing for one month to address Perl's damages. *Id.* Before that hearing took place, Eden Place appealed.

In those circumstances, the Second, Third, Fifth, Seventh, Tenth, and Eleventh Circuits have all concluded—consistent with this Court's decision in *Liberty Mutual Insurance Co. v. Wetzel*, 424 U.S. 737 (1976)—that "a bankruptcy court's order is not final for purposes of appellate jurisdiction where the bankruptcy court finds liability . . . but defers assessment of damages." *In re Atlas*, 210 F.3d 1305, 1308 (11th Cir. 2000); *see also In re Fugazy Exp., Inc.*, 982 F.2d 769, 776 (2d Cir. 1992); *In re Brown*, 803 F.2d 120, 123 (3d Cir. 1986); *In re Morrell*, 880 F.2d 855, 856–57 (5th Cir. 1989); *In re U.S. Abatement Corp.*, 39 F.3d 563, 567 (5th Cir. 1994); *In re Behrens*, 900 F.2d 97, 100 (7th Cir. 1990); *In re Rollison*, 566 F. App'x 679, 680 (10th Cir. 2014).

Here, the Ninth Circuit, over a strong dissent, broke ranks with its sister circuits and accepted jurisdiction over Eden Place's appeal even though the bankruptcy court's order expressly left the question of damages for another day. In that way, the Ninth Circuit accepted jurisdiction "from a bankruptcy court order that cannot by any stretch be deemed final." App. 22a (Watford, J., dissenting). In ruling as it did, the Ninth Circuit made mincemeat of 28 U.S.C. § 158's plain text and ignored the uniform authority from its sister circuits applying *Wetzel* in the bankruptcy context.

Accepting jurisdiction over a non-final order may seem like a small thing, but as this Court has stressed many times, it isn't. "The considerations that determine finality are not abstractions but have reference to very real interests—not merely those of

the immediate parties, but, more particularly, those that pertain to the smooth functioning of our judicial system." *Budinich v. Beckton Dickson and Co.*, 486 U.S. 196, 201 (1988). The Ninth Circuit's decision to allow piecemeal appeals before a final damages award "undermines 'efficient judicial administration' and encroaches upon the prerogatives of [bankruptcy] judges, who play a 'special role' in managing ongoing litigation." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009).

This Court should grant the petition, resolve the split among the circuits, and vacate the Ninth Circuit's judgment.

OPINIONS BELOW

The Ninth Circuit's opinion (App. 1a–27a) is reported at 811 F.3d 1120. The Bankruptcy Appellate Panel's opinion (App. 28a–48a) is reported at 513 B.R. 566. The bankruptcy court's order granting relief from the automatic stay and deferring ruling on damages (App. 49a–53a) is unpublished.

JURISDICTION

The court of appeals' judgment was entered on January 8, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 158 of Title 28 of the United States Code provides in pertinent part:

> (a) The district courts of the United States shall have jurisdiction to hear appeals

> (1) From final judgments, orders, and decrees;
>
> . . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title.
>
> * * * * *
>
> (b) (1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) . . . .
>
> * * * * *
>
> (d) (1) The courts of appeals shall have jurisdiction from all final decisions, judgements, orders, and decrees entered under subsections (a) and (b) of this section.

STATEMENT

Before the Ninth Circuit's decision in this case, the courts of appeals were in agreement that a bankruptcy court's order finding liability but postponing a ruling on damages is not "final" within the meaning of 28 U.S.C. § 158(a). The Ninth Circuit forged a new path below that allows litigants to appeal automatic-stay violations before the bankruptcy court assesses sanctions.

1. Perl and a joint-tenant owned a single-family duplex in Los Angeles, California. After Perl defaulted on his mortgage, Bank of America instituted foreclosure proceedings and sold the duplex to Eden Place through a non-judicial foreclosure sale.

Eden Place promptly served Perl with a three-day notice to quit and, later, with two unlawful-detainer complaints, one for each side of the duplex. In response, Perl filed a complaint against Eden Place to set aside the trustee's sale; Eden Place filed a cross-complaint for damages, trespass, and interference with prospective economic advantage. The California state court entered judgment for Eden Place on the unlawful-detainer actions. Three days later, the state court entered a writ of possession in Eden Place's favor.

2. Sometime between June 14 and June 24, 2013, the Los Angeles County Sheriff posted a lockout notice on Perl's home. Still in possession of the property, Perl filed a chapter 13 bankruptcy petition. Perl's counsel informed Eden Place about the bankruptcy petition and that any eviction would violate 11 U.S.C. § 362's automatic stay. In response, Eden Place sought relief in the bankruptcy court from the automatic stay. It also argued, in the alternative, that the automatic stay did not apply because the duplex was not property of the estate.

Before the hearing on Eden Place's motion for relief from the stay, the Sheriff, at Eden Place's direction, proceeded with the lockout and evicted Perl before he could remove his personal belongings. Perl

immediately filed an emergency motion to enforce the automatic stay, arguing that the eviction interfered with a protectable equitable interest: possession of the premises.

The bankruptcy judge determined that Perl's "bare possessory interest, coupled with the possibility of some sort of relief [from the pending litigation]" gave "the bankruptcy estate a protected interest that is subject to the automatic stay." App. 6a. Accordingly, the bankruptcy court concluded that Eden Place "violated the automatic stay" by evicting Perl and that the eviction was "void." App. 52a. The bankruptcy court postponed its ruling on damages for one month to allow the parties an opportunity to present evidence of damages. *Id.* at 52a–53a; App. 6a.

Rather than wait for the scheduled damages hearing, Eden Place filed a notice of appeal to the Bankruptcy Appellate Panel of the Ninth Circuit (BAP). A few weeks later, while the BAP appeal was pending, the bankruptcy court dismissed Perl's chapter 13 case but retained jurisdiction to award damages arising from Eden Place's violation of the automatic stay.

3. The BAP did not address whether, absent a ruling on Perl's request for damages, the bankruptcy court's order was "final" under 28 U.S.C. § 158(a)(1). Instead, glossing over that jurisdictional question, the BAP simply observed (correctly) that the dismissal of Perl's underlying bankruptcy case did not moot the appeal because the bankruptcy court could still award

damages for Eden Place's automatic-stay violation. App. 38a n.5.[1]

The BAP then turned to the "sole issue" before it: whether "at the time Perl filed his bankruptcy petition, he had any remaining interest in the Residence protected by the automatic stay." App. 39a. Applying California law, the BAP held that, although Perl's ownership interest was terminated when Eden Place purchased the property at the trustee's foreclosure sale, Perl had a recognizable equitable interest in the property because he physically occupied it. Concluding that "changing the locks on the Residence, locking inside Perl's personal property, which was also property of the estate, was an act to exercise control over property of the estate in violation of [the automatic stay]," the BAP affirmed the bankruptcy court's decision. App. 48a–49a.

4. Eden Place appealed the BAP's decision to the Ninth Circuit. Over a dissent by Judge Watford, the panel majority held that the bankruptcy court's order finding a violation of the automatic stay but postponing its damages assessment was a "final order" under 28 U.S.C. § 158(a). App. 8a–13a. The

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[1] The BAP could have accepted the appeal as interlocutory under 28 U.S.C. § 158(a)(3) but gave no indication that it was accepting jurisdiction on that basis. Neither the bankruptcy court nor the BAP certified Eden Place's appeal as an interlocutory appeal under 28 U.S.C. § 158(d)(2)—which is required for any interlocutory appeal from a bankruptcy court, district court, or BAP order—so the only possible basis for the court of appeals' jurisdiction is from a "final judgment, order, [or] decree" under § 158(d)(1). *See also Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1695–96 (2015).

panel then reversed the bankruptcy court's contempt finding. App. 14a–21a.

a. Turning first to the jurisdictional issue, the panel majority held that the bankruptcy court's order finding that Eden Place violated the automatic stay "qualifies as a final decision under [the Ninth Circuit's] pragmatic approach to finality in the bankruptcy context" even though the bankruptcy court did not rule on Perl's request for sanctions. App. 12a–13a. The majority conceded that Ninth Circuit precedent "has not been entirely pellucid regarding the flexible concept of finality in the bankruptcy context" (App. 10a), but it nevertheless concluded that, "[a]s a practical matter," the bankruptcy court's resolution of the "discrete issue of whether there was a stay violation" "resolved the entire case." App. 12a.

Though it did not identify any decisions by name, the panel majority acknowledged the dissent's reliance on *Liberty Mutual Insurance Co. v. Wetzel*, 424 U.S. 737, 742 (1976)—which held that a district court's order finding liability but postponing a decision on damages is not "final" under 28 U.S.C. § 1291—and the numerous out-of-circuit decisions that have applied *Wetzel* in the bankruptcy context. The panel majority rejected *Wetzel* because it was "decided in the context of general litigation" and not bankruptcy, and it shrugged off the out-of-circuit decisions as non-binding. App. 13a.

b. Turning to the merits, the panel majority reversed the BAP's judgment finding that Eden Place violated the automatic stay by evicting Perl from his

home. The majority concluded that, as a matter of California law, the state court's unlawful detainer judgment and writ of possession entered in Eden Place's favor bestowed legal title and possessory rights on Eden Place that were superior to Perl's bare possessory interest. According to the majority, Perl had no legal or equitable interest in the property that became part of the bankruptcy estate. App. 20a–21a.

5. Judge Watford dissented. In his view, the court of appeals lacked jurisdiction because Eden Place took its appeal "from a bankruptcy court order that cannot by any stretch be deemed final, even under the more relaxed standard for finality that we apply in bankruptcy appeals." App. 22a.

In Judge Watford's view, the question for the court was "whether the bankruptcy court's order finally disposed of the discrete dispute over Eden Place's alleged violation of the automatic stay." App. 23a. Following *Wetzel*, Judge Watford concluded that "the bankruptcy court's order did not finally determine even 'the discrete issue of whether there was a stay violation,' because the order resolved only liability and nothing else." App. 24a (quoting panel majority opinion).

Judge Watford also explained that the panel majority's decision conflicted with decisions from other circuits that "have uniformly held that an order finding a stay violation but postponing assessment of damages . . . is not final." App. 25a (citing *In re Atlas*, 210 F.3d 1305, 1308 (11th Cir. 2000); *In re Fugazy Exp., Inc.*, 982 F.2d 769, 776 (2d Cir. 1992); *In re*

Brown, 803 F.2d 120, 123 (3d Cir. 1986); and *In re Morrell*, 880 F.2d 855, 856–57 (5th Cir. 1989)). Drawing on those authorities, Judge Watford said that it is "perfectly clear" an order "postponing a determination of damages . . . is not final" under 28 U.S.C. § 158. App. 26a.

Finally, Judge Watford rejected the panel majority's conclusion that Ninth Circuit precedent compelled its jurisdictional holding. In sum, Judge Watford concluded that the bankruptcy court's order addressing liability but deferring a determination on damages "was not final under *Wetzel*, [Ninth Circuit precedent], or the uniform holdings of [the Ninth Circuit's] sister circuits." App. 27a.

REASONS FOR GRANTING THE PETITION

Four decades ago, this Court held that an order finding liability but reserving on damages is not "final" under the rules governing appeals from federal district courts (28 U.S.C. §1291). *Liberty Mutual Insurance Co. v. Wetzel*, 424 U.S. 737, 742 (1976). In the forty years since, the courts of appeals have unanimously held that the same reasoning articulated in *Wetzel* applies to bankruptcy appeals under 28 U.S.C. § 158. Until the decision below, that is: A divided panel of the Ninth Circuit departed from those uniform decisions and held that *Wetzel* does not apply in bankruptcy appeals. App. 13a.

The Ninth Circuit's decision to chart its own path has significance beyond this case. Maintaining uniformity among the circuits about what constitutes a "final," immediately appealable order is critical "to

the smooth functioning of our judicial system." *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 201 (1988). If left to stand, the decision below will erode the "operational consistency and predictability in the overall application of [§ 158]." *Id.* at 202.

With the Ninth Circuit's decision on the books, an order finding a violation of the automatic stay but reserving judgment on damages—a common posture in bankruptcy cases—is not appealable in six circuits but now is in the Ninth Circuit. Allowing piecemeal litigation in the seven States that comprise the Ninth Circuit will harm debtors, creditors, and the bankruptcy system as a whole. The Court should grant certiorari to correct the Ninth Circuit's error.

I. THE DECISION BELOW CONFLICTS WITH HOLDINGS IN THE SECOND, THIRD, FIFTH, SEVENTH, TENTH, AND ELEVENTH CIRCUITS.

In ordinary civil litigation, a party can appeal only from a "final decision[]" of the district court. 28 U.S.C. § 1291. In the typical case, that "final" decision is reflected in a ruling where the "district court disassociates itself from a case." *Bullard*, 135 S. Ct. at 1691 (quoting *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995)).

Bankruptcy proceedings are a little different. Like ordinary civil litigation, bankruptcy appeals also require finality in the lower court. *See* 28 U.S.C. § 158(a)(1) (allowing appeals from "*final* judgments, orders, and decrees" (emphasis added)). But unlike ordinary civil litigation, a bankruptcy case typically

"involves 'an aggregation of individual controversies,' many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor." *Bullard*, 135 S. Ct. at 1692 (quoting 1 Collier on Bankruptcy ¶ 5.08[1][b], p. 5–42 (16th ed. 2014)). In recognition of those differences, "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they *finally dispose* of discrete disputes within the larger case." *Bullard*, 135 S. Ct. at 1692 (citation omitted) (emphasis added).

But the devil is in the details. In *Wetzel*, this Court held that, in ordinary civil litigation, an order finding liability but postponing a decision on damages is not "final" under 28 U.S.C. § 1291. 424 U.S. at 742. Consistent with *Wetzel*, the Second, Third, Fifth, Seventh, Tenth, and Eleventh Circuits have all concluded that "[t]he requirement of finality is no different when it is the bankruptcy court (rather than the district court) which has failed to assess damages." *In re U.S. Abatement Corp.*, 39 F.3d 563, 567 (5th Cir. 1994); *see also In re Morrell*, 880 F.2d 855, 856–57 (5th Cir. 1989) ("The rule for appeals from bankruptcy decisions determining liability but not damages under 28 U.S.C. § 158(d) must therefore be the same as the rule under § 1291."); *In re Fugazy Exp., Inc.*, 982 F.2d 769, 776 (2d Cir. 1992); *In re Brown*, 803 F.2d 120, 123 (3d Cir. 1986); *In re Behrens*, 900 F.2d 97, 100 (7th Cir. 1990); *In re Rollison*, 566 F. App'x 679, 680 (10th Cir. 2014); *In re Atlas*, 210 F.3d 1305, 1308 (11th Cir. 2000). Those courts have concluded that an order reserving on

damages does not "finally dispose of" a discrete issue within the larger bankruptcy case.

Instead of joining that chorus of circuit courts, the Ninth Circuit held that *Wetzel*—which was "decided in the context of general civil litigation"—does not apply "in the bankruptcy context, where '[t]he rules are different.'" App. 13a (quoting *Bullard*, 135 S. Ct. at 1692). Rejecting the numerous out-of-circuit cases applying *Wetzel* in the bankruptcy context and professing to take its cues from this Court's decision in *Bullard*, the panel majority chose instead to apply a "pragmatic approach to finality." App. 13a.

The resulting circuit split is evident. The Ninth Circuit's decision stands in conflict with at least six other circuits. With seven circuits having already answered the question, there is no reason for this Court to wait for the split to percolate any longer. It is time for the Court to weigh in.

II. THE NINTH CIRCUIT MISINTERPRETED 28 U.S.C. § 158.

In breaking from at least six other circuits, the Ninth Circuit did not merely pick one among many reasonable approaches. It misapplied 28 U.S.C. § 158, ignored *Wetzel*, and misinterpreted *Bullard*.

Like its civil counterpart, the statute governing bankruptcy appellate jurisdiction (28 U.S.C. § 158)—with some exceptions not applicable here—requires finality in the bankruptcy court before a party can appeal. *See* 28 U.S.C. § 1291 (requiring a "final decision[]" in civil cases); 28 U.S.C. § 158(a)(1)

(allowing intermediate bankruptcy appeals from "final judgments, orders, and decrees"); 28 U.S.C. § 158(d)(1) (creating jurisdiction for the appellate courts to hear bankruptcy appeals from "final decisions, judgements, orders, and decrees").

Bullard did not change anything on that score. On the contrary, the *Bullard* Court reaffirmed the longstanding rule that "orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes with the larger case." 135 S. Ct. at 1692. But the *Bullard* Court never suggested that an order reserving on damages is "final" for purposes of § 158(d)(1). On the contrary, the Court's reasoning in *Bullard*—which led the Court to conclude that a bankruptcy court's order denying confirmation of a debtor's reorganization plan is *not* final under § 158—leaves no doubt that an order deferring on damages is not "final" in the bankruptcy context, just as it is not final in the non-bankruptcy context.

The other circuits have stayed true to that teaching. They uniformly recognize that a "dispute is not completely resolved until the bankruptcy court determines the amount of damages to be awarded." *In re Fugazy Exp., Inc.*, 982 F.2d at 776. "[F]or a bankruptcy court order to be final within the meaning of § 158(d), the order need not resolve all of the issues raised by the bankruptcy; but it must completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief." *Id.*

Wetzel compels that conclusion—even as the Ninth Circuit ignored the decision. *Wetzel* teaches that an

order is "final" only if it resolves both liability and relief. 424 U.S. at 742. "Because the bankruptcy court's order determined liability but left the issue of damages unresolved, this case is governed by *Wetzel*." App. 24a (Watford, J., dissenting). "What we are left with, then, is an order finding a stay violation but postponing until later a ruling on damages under [11 U.S.C.] § 362(k). Because that order addressed liability but deferred a determination of damages, it was not final." App. 27a. There is no authority, in this Court or outside the Ninth Circuit, supporting the panel majority's contrary decision.

III. FINALITY ISSUES ARE AMONG THOSE MOST ATTENDED TO BY THIS COURT.

The jurisdictional issue raised in this petition is bigger than this case. The Ninth Circuit's novel interpretation of § 158's finality requirement doesn't just affect Perl; it threatens to interrupt the flow of proceedings in thousands of bankruptcies throughout the seven States in the Ninth Circuit. The appellate mischief that likely will ensue will harm not only creditors and debtors but also the bankruptcy system as a whole.

It shouldn't be so. Time and again, this Court has emphasized that finality considerations "are not abstractions but have reference to very real interests"—"those that pertain to the smooth functioning of our judicial system." *Budinich*, 486 U.S. at 201. "What is of importance" is the "preservation of operational consistency and predictability" of the statutes governing appellate jurisdiction. *Id.* If the

decision below stands, all aspirations for "operational consistency" will fall away. The end result? A system in which dissatisfied participants in bankruptcy cases in the Ninth Circuit can take intermediate and successive appeals that they could not pursue in any other circuit.

Indeed, we expect that the Ninth Circuit's decision will yield many more quick-trigger bankruptcy appeals than have been seen in any other context. Under the rule now ensconced in the circuit, creditors who violate the automatic stay can delay their penalty long into the future. This case proves the point. Eden Place appealed the bankruptcy court's liability finding just days before the hearing on damages (which never took place after the appeal was filed). Had the Ninth Circuit affirmed the bankruptcy court's and BAP's conclusion that Eden Place violated the stay, the matter would have returned to the bankruptcy court for a damages award, from which Eden Place could take yet another appeal. Days turn into months and months turn into years, all without a damages award against the offending party. Half-formed orders will bounce around the appellate courts while successive appeals run up and down the flagpole. Permitting that type of "piecemeal, prejudgment appeals . . . undermines 'efficient judicial administration' and encroaches upon the prerogatives of [bankruptcy] judges, who play a 'special role' in managing ongoing litigation." *Mohawk Indus., Inc., v. Carpenter*, 558 U.S. 100, 106 (2009) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981)).

This Court's decisions command "a healthy respect for the virtues of the final-judgment rule." *Mohawk Indus.*, 558 U.S. at 106. The decision below gives finality no respect at all. It should be undone.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

March 28, 2016

GRANT T. STEIN
ANDREW J. TUCK
D. ANDREW HATCHETT
ALSTON & BIRD LLP
1201 W. PEACHTREE ST.
Atlanta, GA 30309
(404) 881-7000

LEIB M. LERNER
ALSTON & BIRD LLP
333 S. HOPE STREET
Los Angeles, CA 90071
(213) 576-1000
leib.lerner@alston.com

BRIAN D. BOONE
ALSTON & BIRD LLP
101 S. TRYON STREET
Charlotte, NC 28280
(704) 444-1000

Appendix

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE SHOLEM PERL, *Debtor.*	No. 14-60039
EDEN PLACE, LLC, *Appellant,* v. SHOLEM PERL, *Appellee.*	BAP No. 13-1328 OPINION

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Kirscher, Taylor, and Dunn, Bankruptcy Judges,
Presiding

Argued and Submitted
August 31, 2015—Pasadena, California

Filed January 8, 2016

Before: Susan P. Graber, Jonnie B. Rawlinson,
And Paul J. Watford, Circuit Judges.

Opinion by Judge Rawlinson;
Dissent by Judge Watford

SUMMARY*

Bankruptcy

On appeal from the Bankruptcy Appellate Panel, the panel reversed the bankruptcy court's determination that Eden Place, LLC, violated the automatic stay by evicting a chapter 13 debtor from a residential property.

The panel held that it had jurisdiction over the appeal. Because the case did not involve a remand, the panel applied the two-part finality test articulated in *SS Farms, LLC v. Sharp (In re SK Foods, L.P.)*, 676 F.3d 798 (9th Cir. 2012). The panel concluded that the bankruptcy court's decision (1) resolved and seriously affected substantive rights and (2) finally determined the discrete issue to which it was addressed.

On the merits, the panel concluded that the debtor had no legal or equitable interest remaining in the property at the time of his eviction. An unlawful detainer judgment and writ of possession entered pursuant to California Code of Civil Procedure § 415.46 bestowed legal title and all rights of possession upon Eden Place. Accordingly, Eden Place did not violate the automatic stay provisions of 11 U.S.C. § 362(a).

*This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Dissenting, Judge Watford wrote that he would dismiss the appeal for lack of jurisdiction because the bankruptcy court's order, finding a stay violation but postponing until later a ruling on damages, could not be deemed final.

COUNSEL

Ronald N. Richards (argued), Law Offices of Ronald Richards & Associates, APC, Beverly Hills, California; Howard N. Madris, Law Office of Howard N. Madris, APC, Beverly Hills, California, for Appellant.

No appearance for Appellee.

OPINION

RAWLINSON, Circuit Judge:

Appellant Eden Place, LLC (Eden Place), appeals the decision of the Bankruptcy Appellate Panel (BAP) affirming the bankruptcy court's determination that Eden Place violated the automatic stay provisions of the Bankruptcy Code by evicting Debtor Sholem Perl (Perl) from a residential property. Because we conclude that Perl had no legal or equitable interest remaining in the property at the time of his eviction, we reverse the bankruptcy court's ruling that Eden Place violated the automatic stay.

BACKGROUND[2]

State Court Proceedings

Perl and a joint tenant owned a single-family duplex in Los Angeles, California. After refinancing, Perl defaulted on his mortgage payments, and Bank of America instituted foreclosure proceedings. The property was sold to Eden Place through a non-judicial foreclosure sale on March 20, 2013. Eden Place timely recorded the trustee's deed nine days later.

Despite the legal transfer of title, Perl refused to vacate the premises. Eden Place served Perl with a three-day notice to quit, and later served Perl with two unlawful detainer complaints, one for each side of the duplex. In response, Perl filed a complaint against Eden Place to set aside the trustee's sale (Complaint to Set Aside Sale), and Eden Place filed a cross-complaint for damages, trespass, and interference with prospective economic advantage (Cross-Complaint), and a motion to expunge Perl's *lis pendens*.

On June 11, 2013, the state court entered judgment in favor of Eden Place on the unlawful detainer actions, resulting in a judgment for possession and restitution. Three days later, the state court entered a Writ of Possession in favor of Eden Place. Sometime between June 14 and June 24, the

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[2]The background facts are taken from the BAP's opinion. *See Eden Place, LLC v. Perl (In re Perl)*, 513 B.R. 566, 568 (B.A.P. 9th Cir. 2014).

Los Angeles County Sheriff posted the lockout notice. On June 19, the state court heard Perl's motion to stay the unlawful detainer proceedings and set various conditions for a stay. Once Perl failed to meet the conditions, the unlawful detainer judgment for possession remained in effect, culminating in eviction by the Sheriff.

Bankruptcy Court Proceedings

Rather than complying with the state court requirements to stay the unlawful detainer proceedings, Perl filed a "skeletal" chapter 13 bankruptcy petition *pro se*. He failed to file any schedules, financial affairs statement, or proposed plan of reorganization. Although not listed as a creditor, Eden Place learned of the bankruptcy filing from Perl's counsel, who informed Eden Place that no exceptions to the automatic stay applied and that any eviction would violate the automatic stay.

Perl also filed a notice of removal in the three state court actions (Complaint to Set Aside Sale, Cross-Complaint, and Unlawful Detainer Actions). Because there was a previously scheduled state court hearing to expunge the *lis pendens* on the property, Eden Place sought to remand the three state court actions and also sought relief from the automatic stay (Stay Relief Motion). Eden Place argued, in the alternative, that the automatic stay did not apply because the property was not property of the estate. Specifically, Eden Place argued that, prior to the filing of the bankruptcy petition by Perl, Eden Place purchased

the property at a trustee's sale, recorded the trustee's deed, and obtained a judgment and writ of possession.

Before the bankruptcy court held a hearing on the Stay Relief Motion, the Sheriff proceeded with the lockout and evicted Perl. As a result, Perl was unable to remove some of his personal belongings. Perl then filed an emergency motion to enforce the automatic stay, arguing that the eviction interfered with protectable equitable interests based on his continued possessory interest in the premises.

Over Eden Place's objection, the bankruptcy judge determined that Perl's "bare possessory interest, coupled with the possibility of some sort of relief [from the pending litigation]" gave "the bankruptcy estate a protected interest that is subject to the automatic stay." Accordingly, the bankruptcy court determined that Eden Place had violated the automatic stay when it evicted Perl, and that the eviction was void. The bankruptcy court stayed its determination regarding contempt sanctions because Perl had not yet offered evidence of damages. Although Eden Place later filed a status report pursuant to the bankruptcy court's order, Perl never filed anything further in his bankruptcy case. Eventually, the bankruptcy case was dismissed for Perl's failure to appear at the creditor's meeting. Eden Place timely appealed the bankruptcy court's order to the BAP.

BAP Proceedings

The BAP determined that it had jurisdiction over the appeal because Eden Place remained subject to a

claim for damages based on the bankruptcy court's finding that Eden Place violated the automatic stay.

After examining its jurisdiction, the BAP turned to the "sole issue" before it: whether "at the time Perl filed his bankruptcy petition, he had any remaining interest in the Residence protected by the automatic stay." Applying California law, the BAP held that Perl's ownership interest was terminated prepetition when Eden Place purchased the property at the trustee's sale. Nevertheless, the BAP held that Perl had a recognizable equitable interest in the property by virtue of his physical occupancy, notwithstanding the illegality of his continued occupancy.

The BAP noted that "changing the locks on the Residence, locking inside Perl's personal property, which was also property of the estate, was an act to exercise control over property of the estate in violation of" the automatic stay. Thus, the BAP affirmed the bankruptcy court's ruling, and Eden Place filed a timely appeal to this court.

STANDARD OF REVIEW

"Whether the automatic stay provisions of 11 U.S.C. § 362(a) have been violated is a question of law reviewed de novo." *Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi)*, 764 F.3d 1168, 1173 (9th Cir. 2014) (citation omitted). "We review a bankruptcy court decision independently and without deference to the [BAP]'s decision. . . ." *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1109 (9th Cir. 2010) (citation omitted).

DISCUSSION

Jurisdiction - Finality

Before considering the merits of Eden Place's appeal, we first consider whether we have jurisdiction over the appeal. *See Sahagun v. Landmark Fence Co. (In re Landmark Fence Co.)*, 801 F.3d 1099, 1102 (9th Cir. 2015); *see also Stanley v. Crossland, Crossland, Chambers, MacArthur & Lastreto (In re Lakeshore Vill. Resort, Ltd.)*, 81 F.3d 103, 105 (9th Cir. 1996). The bankruptcy court determined as a matter of law that Eden Place violated the automatic stay when it evicted Perl, but deferred its ruling on the contempt sanctions. Subsequently, the bankruptcy case was dismissed because Perl failed to appear at the creditor's meeting. However, the bankruptcy court retained jurisdiction over "all issues arising under Bankruptcy Code" §§ 110 (penalties), 329 (attorney's fees), and 362 (automatic stay).

The BAP determined that it had jurisdiction because there was a final order from the bankruptcy court, and Eden Place remained subject to a claim for damages based on the bankruptcy court's determination that Eden Place violated the automatic stay. *See Eden Place, LLC v. Perl (In re Perl)*, 513 B.R. 566, 571 n.5 (B.A.P. 9th Cir. 2014). We agree.

We also have jurisdiction over appeals from final judgments and orders of the bankruptcy court. *See* 28 U.S.C. § 158(d). In determining what constitutes an appealable order in bankruptcy proceedings, we have adopted a "pragmatic approach." *Rosson v. Fitzgerald*

(In re Rosson), 545 F.3d 764, 769 (9th Cir. 2008) (citation omitted).

In *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1692 (2015), the Supreme Court reaffirmed the principle that, for jurisdictional purposes, "[t]he rules are different in bankruptcy. . . ." In an ordinary civil case, a party may appeal the district court's judgment only under 28 U.S.C. § 1291 and only if the decision "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373–74 (1981) (citation and internal quotation marks omitted). In bankruptcy cases, though, which typically are appealed (as this one is) under 28 U.S.C. § 158(d),[3] a pragmatic approach is warranted; the court uses a more flexible standard. Orders in bankruptcy cases may be appealed immediately "if they finally dispose of discrete disputes within the larger case. . . ." *Bullard*, 135 S. Ct. at 1692 (citation omitted).[4] The Court went on to hold that an order

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[3] An appellate court hearing an interlocutory appeal from a district court that is sitting in bankruptcy can apply 28 U.S.C. § 1292, *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992), but that exception does not apply here. This appeal comes from the BAP, not the district court.

[4] Before *Bullard*, we had made the same point.

> We have adopted a pragmatic approach to finality in bankruptcy because certain proceedings in a bankruptcy case are so distinctive and conclusive either to the rights of individual parties or the ultimate outcome of the case that final decisions as to them should be appealable as of right. Our approach emphasizes

declining to confirm a proposed repayment plan was not "final" because the debtor remained free to propose an alternative plan; the process of attempting to arrive at an approved plan that would allow the bankruptcy to move forward was fluid. *Id.* at 1690, 1693.

Our precedent has not been entirely pellucid regarding the flexible concept of finality in the bankruptcy context. In some instances, we have applied the following four-part test:

> (1) the need to avoid piecemeal litigation; (2) judicial efficiency; (3) the systemic interest in preserving the bankruptcy court's role as the finder of fact; and (4) whether delaying review would cause either party irreparable harm.

In re Landmark Fence, 801 F.3d at 1102 (citation and internal quotation marks omitted); *see also Meyer v. U.S. Trustee (In re Scholz)*, 699 F.3d 1167, 1170 (9th Cir. 2012).

In other instances, we look to whether the bankruptcy court's decision: "1) resolves and seriously affects substantive rights and 2) finally determines the discrete issue to which it is addressed." *SS Farms, LLC v. Sharp (In re SK Foods, L.P.)*, 676 F.3d 798, 802

> the need for immediate review, rather than whether the order is technically interlocutory.

Alexander v. Compton (In re Bonham), 229 F.3d 750, 761 (9th Cir. 2000) (citation, alteration, and internal quotation marks omitted).

(9th Cir. 2012) (citation omitted); *see also Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1043 (9th Cir. 1997).

A survey of our precedent reveals that the four-part finality test articulated in *In re Landmark Fence* is utilized almost exclusively when determining the finality of a case involving a remand to the bankruptcy court. *See In re Landmark Fence*, 801 F.3d at 1101–02; *see also In re Scholz*, 699 F.3d at 1170; *In re Lakeshore Vill.*, 81 F.3d at 104, 106; *Congrejo Invs., LLC v. Mann (In re Bender)*, 586 F.3d 1159, 1161, 1164 (9th Cir. 2009); *Saxman v. Educ. Credit Mgmt. Corp. (In re Saxman)*, 325 F.3d 1168, 1171 (9th Cir. 2003); *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1182, 1187 (9th Cir. 2003); *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 978, 980 (9th Cir. 2001); *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1038 (9th Cir. 2000); *Walthall v. United States*, 131 F.3d 1289, 1292–93 (9th Cir. 1997); *Bonner Mall P'ship v. U.S. Bancorp Mortg. Co. (In re Bonner Mall P'ship)*, 2 F.3d 899, 902, 904 (9th Cir. 1993).

On the other hand, when the decision of the bankruptcy court is affirmed or reversed, rather than remanded, we have applied the two-part finality test articulated in *In re SK Foods*, 676 F.3d at 802. *See In re Rosson*, 545 F.3d at 769; *see also In re Lewis*, 113 F.3d at 1043; *Dye v. Brown (In re AFI Holding, Inc.)*, 530 F.3d 832, 836 (9th Cir. 2008); *Schulman v. California (In re Lazar)*, 237 F.3d 967, 974, 985 (9th Cir. 2001); *Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.)*, 177 F.3d 774, 777, 780 (9th

Cir. 1999); *New Life Health Ctr. Co. v. I.R.S. (In re New Life Health Ctr. Co.)*, 102 F.3d 428, 429 (9th Cir. 1996) (per curiam); *United States v. Stone (In re Stone)*, 6 F.3d 581, 583 (9th Cir. 1993); *Elliott v. Four Seasons Props. (In re Frontier Props., Inc.)*, 979 F.2d 1358, 1361, 1364 (9th Cir. 1992); *Turgeon v. Victoria Station Inc. (In re Victoria Station Inc.)*, 840 F.2d 682, 683–84 (9th Cir. 1988); *United States v. Technical Knockout Graphics, Inc. (In re Technical Knockout Graphics, Inc.)*, 833 F.2d 797, 798, 801 (9th Cir. 1987); *Farber v. 405 N. Bedford Dr. Corp. (In re 405 N. Bedford Dr. Corp.)*, 778 F.2d 1374, 1376–77 (9th Cir. 1985).

Because this case did not involve a remand, application of the two-part finality test is appropriate. *See In re SK Foods*, 676 F.3d at 802. Notwithstanding the fact that no financial penalty or sanction has yet been assessed against Eden Place, the bankruptcy court's determination that Eden Place violated the automatic stay is a substantive ruling with real effects, including money damages that could be sought by Perl indefinitely. *See Price v. Rochford*, 947 F.2d 829, 831–32 (7th Cir. 1991) (holding that a cause of action for violation of the automatic stay survives the termination of the bankruptcy proceeding). The bankruptcy court's order determined the discrete issue of whether there was a stay violation, which was the only issue litigated in the bankruptcy proceedings and before the BAP. *See In re SK Foods*, 676 F.3d at 802 (discussing finality in the bankruptcy context). As a practical matter, resolution of this issue resolved the entire case and thereby qualifies as a final decision

under our pragmatic approach to finality in the bankruptcy context. *See id.*

We respectfully part company with our dissenting colleague's view of the finality of the bankruptcy court's order, largely because the cases relied on by the dissent were decided in the context of general civil litigation rather than in the bankruptcy context, where "[t]he rules are different . . ." *Bullard*, 135 S. Ct. at 1692. Neither are we persuaded by the out-of-circuit authority cited in the dissent. Rather, we look to our precedent specifically addressing finality in the bankruptcy context. That precedent persuades us that the ruling by the bankruptcy court that Eden Place violated the automatic stay resolved the only issue in the case, and seriously affected substantive rights related to damages. There is no question that the discrete issue addressed by the bankruptcy court—violation of the automatic stay—has been definitively and finally resolved. Resolution of that issue is as final as it will ever be in this case.

We also look to the clear language of the bankruptcy appeals statute, which as the Supreme Court noted, "authorizes appeals as of right not only from final judgments in cases but from final judgments, orders, and decrees in cases and proceedings." *Id.* (quoting 28 U.S.C. § 158(a)) (alteration and internal quotation marks omitted). After considering our applicable precedent and the clear language of the statute, we hold that the bankruptcy court's order that Eden Place violated the automatic stay was final and appealable. *See* 28 U.S.C. § 158(d).

Merits - Violation of Automatic Stay

Having resolved the issue of finality, we now turn to the merits of this case—whether Eden Place violated the automatic stay. We start from the premise that the filing of a bankruptcy petition creates the bankruptcy estate, which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). The bankruptcy filing acts as an automatic stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. . . ." 11 U.S.C. § 362(a)(3). The violation of the automatic stay inquiry determines whether the debtor, in isolation, has *any* protectable legal, equitable, or possessory interest. *See Ramirez v. Fuselier (In re Ramirez)*, 183 B.R. 583, 587 (B.A.P. 9th Cir. 1995); *see also* 11 U.S.C. § 362(a)(3). Thus, the question in this case is whether Perl had any remaining legal or equitable possessory interest in the property after Eden Place properly recorded the trustee's deed from the non-judicial foreclosure sale, and after the state court fully adjudicated in the unlawful detainer proceedings Perl's remaining possessory interest in the premises. *See id.*

We look to state law to determine property interests in bankruptcy proceedings. *See Butner v. United States*, 440 U.S. 48, 54–55 (1979). We conclude that under California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable

possessory interests in the real property at issue. *See Vella v. Hudgins*, 572 P.2d 28, 30 (Cal. 1977).

The BAP correctly determined that Perl had no remaining legal interest in the property because, when Eden Place purchased the property at the foreclosure sale and recorded its deed within fifteen days of the sale, any legal interest Perl retained in the property was extinguished. *See Wells Fargo Bank v. Neilsen*, 178 Cal. App. 4th 602, 613–14 (2009), *as modified*; *see also* Cal. Civ. Code. § 2924h(c). But, the BAP went further, reasoning that Perl's unlawful possession bestowed equitable possessory rights upon him, which he retained until the Sheriff actually dispossessed him of the property by executing the writ of possession. *See In re Perl*, 513 B.R. at 574–76. However, whether Perl had actual possession of the property when he filed for bankruptcy has no bearing on whether he had a cognizable possessory interest in the property. In resolving this issue, the unlawful detainer statutory provisions are the point of departure for our analysis.

California's unlawful detainer statutory scheme was designed to adjudicate the right to possession of realty between a landlord and tenant when the tenant is in violation of the lease. *See Knowles v. Robinson*, 387 P.2d 833, 836–37 (Cal. 1963). The unlawful detainer provisions authorize a summary proceeding that adjudicates the right to immediate possession of the property. *See Vella*, 572 P.2d at 30. For this reason, claims regarding title to the property are not generally litigated in an unlawful detainer proceeding. *See id.* One exception to the rule that title

is not generally determined in an unlawful detainer proceeding is found in California Code of Civil Procedure § 1161a, governing the right of possession by a party initiating an unlawful detainer proceeding after obtaining title at a nonjudicial foreclosure sale.[5]

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[5] California Code of Civil Procedure § 1161a provides in relevant part:

> (b) In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobilehome, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:
>
> (1) Where the property has been sold pursuant to a writ of execution against such person, or a person under whom such person claims, and the title under the sale has been duly perfected.
>
> (2) Where the property has been sold pursuant to a writ of sale, upon the foreclosure by proceedings taken as prescribed in this code of a mortgage, or under an express power of sale contained therein, executed by such person, or a person under whom such person claims, and the title under the foreclosure has been duly perfected.
>
> (3) Where the property has been sold in accordance with Section 2924 of the Civil Code, under a power of sale contained in a deed of trust executed by such person, or a person under whom such person claims, and the title under the sale has been duly perfected.
>
> (4) Where the property has been sold by such person, or a person under whom such person

See id. The exception allows for "a narrow and sharply focused examination of title." *Id.*; *see also Mortg. Guarantee Co. v. Smith*, 50 P.2d 835, 836 (Cal. Ct. App. 1935) (noting that in actions brought under § 1161a, title is determined "as a necessary element of the remedy of unlawful detainer").

In California, an unlawful detainer proceeding is *quasi in rem* and, accordingly, a judgment rendered in an unlawful detainer proceeding is "not binding upon the world, but conclusive only between the parties and their privies." *Park v. Powers*, 42 P.2d 75, 79 (Cal. 1935). Pursuant to Code of Civil Procedure § 415.46,[6]

> claims, and the title under the sale has been duly perfected.
>
> (5) Where the property has been sold in accordance with Section 18037.5 of the Health and Safety Code under the default provisions of a conditional sale contract or security agreement executed by such person, or a person under whom such person claims, and the title under the sale has been duly perfected.

[6] California Code of Civil Procedure § 415.46 provides in relevant part:

> (a) In addition to the service of a summons and complaint in an action for unlawful detainer upon a tenant and subtenant, if any, as prescribed by this article, a prejudgment claim of right to possession may also be served on any person who appears to be or who may claim to have occupied the premises at the time of the filing of the action. Service upon occupants shall be made pursuant to subdivision (c) by serving a copy of a prejudgment claim of right to possession, as specified in subdivision (f), attached to a copy of the summons

no occupant of the premises retains any possessory interest of any kind following service of the writ of possession. *See* Cal. Code Civ. Proc. § 715.020(d) (explaining that "if the summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46, no occupant of the premises, whether or not the occupant is named in the judgment for possession, may object to the enforcement of the judgment . . .")

We recognize that the BAP may have considered itself bound to follow its prior decision in *Williams v. Levi (In re Williams)*, 323 B.R. 691 (9th Cir. BAP 2005), and the cases upon which *In re Williams* relied. *See id.* at 699 (citing *Di Giorgio v. Lee (In re Di Giorgio)*, 200 B.R 664 (C.D. Cal. 1996), and *Westside Apartments, LLC v. Butler (In re Butler)*, 271 B.R. 867, 876–77 (Bankr. C.D. Cal. 2002)). However, we are not persuaded that those cases engaged in the proper analysis.

The earliest case espousing the reasoning adopted by the BAP is *In re DiGiorgio*. The DiGiorgios were the defendants in an unlawful detainer action. They subsequently entered into a Stipulation for Judgment, forfeiting the lease and providing for the issuance of a writ of possession. *See* 200 B.R. at 667. After the writ of possession was issued by the court, but before it was executed, the DiGiorgios filed a voluntary petition for bankruptcy. *See id.* Relying on California Code of Civil Procedure § 715.050, the Sheriff's Department

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and complaint at the same time service is made upon the tenant and subtenant, if any.

indicated its intent to enforce the writ of possession without seeking relief from the automatic stay.[7] In addition to ruling that § 715.050 was preempted by the Bankruptcy Code, the district court held that, although the DiGiorgios had no legal possessory interest in the tenancy at the time of the filing of the bankruptcy petition, they retained an equitable possessory interest by virtue of their continued physical presence. *See id.* at 670–71.

This holding was repeated in *In re Butler*, and adopted by the BAP in *In re Williams*, *see* 323 B.R. at 699. In *In re Butler*, the court relied upon California Civil Code § 1006. *See* 271 B.R. at 870–71. That statute provides:

> Title by Occupancy; extent
>
> Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; but the title conferred by occupancy is not a

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[7] California Code of Civil Procedure § 715.050 provides in relevant part:

> Except with respect to enforcement of a judgment for money, a writ of possession issued pursuant to a judgment for possession in an unlawful detainer action shall be enforced pursuant to this chapter without delay, notwithstanding receipt of notice of the filing by the defendant of a bankruptcy proceeding.

Because we resolve this case without relying upon the provisions of § 715.050, we express no view on whether the state statute is preempted by the Bankruptcy Code.

> sufficient interest in real property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.

The bankruptcy court concluded that, under California case law, "the mere possession of real estate is constantly treated as property, which may be purchased and sold, and for the recovery of which an *action may be maintained against one having no better title*." *In re Butler*, 271 B.R. at 871 (citations omitted) (emphasis added).

The flaw in the bankruptcy court's analysis is that the unlawful detainer proceedings under § 1161a are expressly designed to determine who has superior title to the property, including the right to immediate possession. *See Vella*, 572 P.2d at 30. As a result, the prevailing party in the unlawful detainer proceeding under § 1161a has "better title" than the evicted resident. *In re Butler*, 271 B.R. at 871. The conclusion that the occupying resident retains an equitable possessory interest is inconsistent with § 1161a, which contemplates a final and binding adjudication of legal title and rights of immediate possession. *See Mortg. Guarantee Co.*, 50 P.2d at 836; *see also Vella*, 572 P.2d at 30. We therefore conclude that because Perl had no remaining interest in the property, legal or equitable, when the bankruptcy petition was filed, the bankruptcy court erred in concluding that Eden Place violated the automatic stay by executing the writ of possession.

The unlawful detainer judgment and writ of possession entered pursuant to California Code Civil Procedure § 415.46 bestowed legal title and *all* rights of possession upon Eden Place. *See Vella*, 572 P.2d at 30. Thus, at the time of the filing of the bankruptcy petition, Perl had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay. *See id*. Consequently, the Sheriff's lockout did not violate the automatic stay because no legal or equitable interests in the property remained to become part of the bankruptcy estate. *See id.*; *see also* 11 U.S.C. § 541(a)(1) (describing the bankruptcy estate as consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case").

CONCLUSION

The bankruptcy court erred when it ruled that Eden Place violated the automatic stay provisions of the Bankruptcy Code. Perl had no legal or equitable interest remaining in the property after issuance of the unlawful detainer judgment and writ of possession in state court. We therefore reverse the bankruptcy court order. We need not and do not reach any other issues presented on appeal.

REVERSED.

WATFORD, Circuit Judge, dissenting:

I would dismiss this appeal for lack of jurisdiction. The appeal is taken from a bankruptcy court order that cannot by any stretch be deemed final, even under the more relaxed standard for finality that we apply in bankruptcy appeals. *See Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1692 (2015).

The bankruptcy court's June 28, 2013, order found that Eden Place had violated the automatic stay by evicting Perl and his wife from their home. The court postponed deciding whether damages or sanctions should be awarded as a remedy for that violation until a subsequent hearing scheduled for the following month. Rather than wait to see whether the bankruptcy court would actually award damages or sanctions, Eden Place immediately filed a notice of appeal. As it turned out, the bankruptcy court never held the subsequent hearing because Perl failed to appear at a scheduled creditors' meeting, and the bankruptcy court therefore dismissed his Chapter 13 case altogether.

The Bankruptcy Appellate Panel (BAP) correctly held that dismissal of Perl's underlying bankruptcy case did not render his request for damages or sanctions moot. *See Price v. Rochford*, 947 F.2d 829, 831–32 (7th Cir. 1991). But the BAP did not make clear why it thought jurisdiction existed to hear the appeal. The BAP might have assumed that it had jurisdiction under 28 U.S.C. § 158(a)(1), which grants district courts (and by extension the BAP) jurisdiction over appeals "from final judgments, orders, and

decrees." Or the BAP might have exercised jurisdiction under § 158(a)(3), which allows the BAP to hear appeals, "with leave of the court, from other interlocutory orders and decrees." Either way, we have jurisdiction to review the BAP's decision only if the underlying bankruptcy court order was in fact final. 28 U.S.C. § 158(d)(1). Since the BAP never addressed this issue, we have to do so in the first instance. *See In re Lievsay*, 118 F.3d 661, 662–63 (9th Cir. 1997) (per curiam).

Bankruptcy court orders are final and appealable "if they finally dispose of discrete disputes within the larger case." *Bullard*, 135 S. Ct. at 1692 (internal quotation marks omitted). So the question for us is whether the bankruptcy court's order finally disposed of the discrete dispute over Eden Place's alleged violation of the automatic stay. The answer to that question turns on which of two general rules applies. On the one hand, an order is not final if it determines liability but does not resolve the plaintiff's request for damages or other relief. *Liberty Mutual Insurance Co. v. Wetzel*, 424 U.S. 737, 744 (1976). On the other hand, an order resolving the merits of a dispute is final, even if it leaves a request for attorney's fees unresolved. *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 200–02 (1988).

The first rule applies here. This is not a case in which the bankruptcy court resolved the merits of the dispute and left unresolved only a request for attorney's fees. The bankruptcy court's order merely determined liability; it left entirely unresolved the relief to be awarded, which included a potential award

of compensatory and punitive damages as well as an award of attorney's fees. (Eden Place incorrectly asserts that Perl requested attorney's fees alone as relief; in fact, his motion requested all appropriate relief, including but not limited to attorney's fees.) Because the bankruptcy court's order determined liability but left the issue of damages unresolved, this case is governed by *Wetzel*. Under the finality rule established there, the bankruptcy court's order did not finally determine even "the discrete issue of whether there was a stay violation," Maj. op. at 12, because the order resolved only liability and nothing else.

Eden Place contends the bankruptcy court's order should be deemed final under *In re Dyer*, 322 F.3d 1178 (9th Cir. 2003). Our decision in that case construed 11 U.S.C. § 105(a), a catch-all provision granting bankruptcy courts the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *See* 322 F.3d at 1184 n.3. We held that an order finding a violation of the automatic stay but postponing assessment of appropriate sanctions under § 105(a) is final and therefore immediately appealable. *Id.* at 1185–87. That ruling is probably wrong; a well-developed body of law holds that "[a] determination that contempt has occurred is not final if the question of sanctions is postponed." 15B Charles A. Wright et al., *Federal Practice and Procedure* § 3917, at 377–78 (2d ed. 1992 & Supp. 2015) (collecting cases).

But we can put that matter to one side. The only portion of *Dyer* that has any bearing on this case is the court's observation, in dicta, that the finality analysis might be different if the court were confronted with an order finding a stay violation but postponing assessment of damages under 11 U.S.C. § 362(h) (now § 362(k)). 322 F.3d at 1186–87 n.10. Because § 362(k) authorizes an award of "damages," the finality of orders under that statute is controlled by *Wetzel*. We held that § 105(a), by contrast, is "a sanction authority only and, as such, controlled by the principles of *Budinich*." *Id.* at 1187 n.10. In support of that holding, we cited an Eleventh Circuit case, *In re Atlas*, 210 F.3d 1305, 1307–08 (11th Cir. 2000), for the proposition that the distinction between attorney's fees and damages is "crucial to [the] analysis" of whether an order finding a stay violation but not addressing remedies is final. *See In re Dyer*, 322 F.3d at 1187 n.10.

What we said in dicta in *Dyer* about the finality of orders under § 362(k) is entirely correct. Our sister circuits have uniformly held that an order finding a stay violation but postponing assessment of damages under § 362(k) is not final. *See In re Atlas*, 210 F.3d at 1307–08; *In re Fugazy Express, Inc.*, 982 F.2d 769, 774–76 (2d Cir. 1992); *Matter of Morrell*, 880 F.2d 855, 856–57 (5th Cir. 1989); *In re Brown*, 803 F.2d 120, 121–23 (3d Cir. 1986). Although there is some uncertainty as to whether an order finding a stay violation but leaving unresolved only the determination of *attorney's fees* is final, *see In re Porto*, 645 F.3d 1294, 1300–01 (11th Cir. 2011); *In re*

Johnson, 501 F.3d 1163, 1168–69 (10th Cir. 2007), it is perfectly clear that an order finding a violation of the automatic stay and postponing a determination of *damages* under § 362(k) is not final. Under that rule, which governs here, the bankruptcy court's order cannot be deemed final.

Whatever the merits of the rule established by *Dyer* for orders under § 105(a), it doesn't apply here. It's true that Perl cited § 105(a) in his moving papers when requesting sanctions for Eden Place's stay violation, but in fact no relief was available to him under that statutory provision. Individual debtors like Perl have a specific remedy available to them under § 362(k), so it would not be "necessary or appropriate" for the bankruptcy court to enforce the stay by imposing contempt sanctions under the catch-all authority granted by § 105(a). *See In re Snowden*, 769 F.3d 651, 661 (9th Cir. 2014) (citing *In re Roman*, 283 B.R. 1, 14–15 (9th Cir. BAP 2002)). The bankruptcy court recognized as much. At the hearing on Perl's motion, the court noted that it was considering the imposition of punitive damages, which are available under § 362(k) in some circumstances but not available under § 105(a) to remedy a past stay violation. *See In re Dyer*, 322 F.3d at 1192–93. And when the court later dismissed Perl's case, it retained jurisdiction over "all issues arising under Bankruptcy Code §[§] 110, 329 and 362." It did not retain jurisdiction to award any relief under § 105, presumably because it recognized that no such relief would be available.

What we are left with, then, is an order finding a stay violation but postponing until later a ruling on damages under § 362(k). Because that order addressed liability but deferred a determination of damages, it was not final under *Wetzel*, our dicta in *Dyer*, or the uniform holdings of our sister circuits. I would dismiss the appeal for lack of jurisdiction.

APPENDIX B

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re: SHOLEM PERL, *Debtor.*	BAP No. CC-13-1328-KiTaD Bk. No. 2:13-bk-26126-NB
EDEN PLACE, LLC *Appellant,* v. SHOLEM PERL, *Appellee.*	OPINION

Argued and Submitted on March 20, 2014,
At Pasadena, California

Filed – May 30, 2014
Ordered Published – June 5, 2014

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

Honorable Neil W. Bason, Bankruptcy Judge, Presiding

*This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Appearances: Ronald N. Richards, Esq. of the Law Offices of Ronald Richards & Associates, APC argued for appellant Eden Place, LLC; Appellee failed to file a brief and waived right to oral argument.

Before: KIRSCHER, TAYLOR and DUNN, Bankruptcy Judges.

KIRSCHER, Bankruptcy Judge:

Appellant Eden Place, LLC ("Eden Place") appeals an order from the bankruptcy court that determined, in part, that the postpetition lockout/eviction by the Los Angeles County Sheriff's Department ("Sheriff") of the debtor from his residence on June 27, 2013, made at the request of Eden Place violated the automatic stay. Based on the Panel's decision in Williams v. Levi (In re Williams), 323 B.R. 691, 699 (9th Cir. BAP 2005), aff'd, 204 F. App'x 582 (9th Cir. 2006),[1] we AFFIRM.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Prepetition events

Appellee-debtor Sholem Perl ("Perl") and a joint tenant (collectively, "Perls") owned a single-family

[1] We acknowledge Eden Place submitted a letter under Fed. R. App. P. 28(j). We discussed some of Eden Place's cited authorities, specifically In re Williams, with its counsel at the time of oral argument and were familiar with its other cited BAP authorities.

duplex in Los Angeles, California ("Residence"). In 2005, Perls refinanced their mortgages in connection with the Residence; in 2009, Perls fell behind in their mortgage payments.

After recording a notice of default and a notice of trustee's sale, Bank of America sold the Residence on March 20, 2013 to Eden Place. Eden Place timely recorded the trustee's deed on March 29, 2013.

Perls failed to vacate the Residence after being served with a 3-day notice to quit; Eden Place filed two identical complaints (one for each side of the duplex) for unlawful detainer on March 26, 2013 ("UD Actions").

On April 12, 2013, the Perls filed a complaint in state court against Eden Place (and others) to set aside the sale. Perls alleged claims for (1) wrongful foreclosure, (2) violation of the Homeowner Bill of Rights, (3) unfair business practices and (4) breach of contract ("Complaint to Set Aside Sale"). Eden Place filed a cross-complaint on May 7, 2013, for (1) holdover damages, (2) trespass and (3) interference with prospective economic advantage ("Cross-Complaint"), as well as a motion to expunge the lis pendens filed by the Perls.

On June 11, 2013, the state court entered an unlawful detainer judgment in favor of Eden Place (including a judgment for possession and restitution of $11,700) in the UD Actions ("UD Judgment"). The state court entered a Writ of Possession in favor of Eden Place on June 14, 2013. Sometime between June 14 and June 24, 2013, the Sheriff posted the lockout notice.

On June 19, 2013, the state court heard Perls' motion to stay the UD Judgment and set various requirements for a stay, which Perls failed to satisfy. Consequently, a second scheduled hearing for June 26 was taken off calendar; the state court did not stay the UD Judgment. Eden Place contends that when Perls failed to obtain a stay of the UD Judgment, the Sheriff was on "auto pilot" to complete the eviction.

B. Postpetition events

On June 20, 2013, Perl, acting pro se, filed a "skeletal" chapter 13[2] bankruptcy petition. Perl needed to file his schedules, statement of financial affairs, chapter 13 plan and other required documents by July 5, 2013. Although not listed as a creditor, Eden Place received notice of Perl's bankruptcy filing. On June 24, 2013, Perl's counsel faxed a letter to Eden Place's counsel and to the Sheriff's department informing them of the bankruptcy filing. In the letter, Perl's counsel asserted that no landlord-tenant relationship existed between Perl and Eden Place, so any exceptions to the automatic stay provided in § 362(b)(22) did not apply. He also asserted, citing to Westside Apartments, LLC v. Butler (In re Butler), 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002), that CAL. CODE CIV. P. § 715.050[3] operated in contravention to the Code and was therefore unconstitutional.

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[2] Unless specified otherwise, all chapter, code and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

[3] CAL. CODE CIV. P. § 715.050 provides, in relevant part:

> Except with respect to enforcement of a judgment for money, a writ of possession issued pursuant to a

On June 24, 2013, Perl filed a notice to remove the three state court actions — the Complaint to Set Aside Sale, the Cross-Complaint and the UD Actions ("Removed Actions"). Prior to Perl filing this notice of removal, the state court scheduled a hearing on June 25, 2013, to consider Eden Place's motion to expunge the lis pendens Perls had recorded against the Residence.

Later on June 24, 2013, Eden Place moved to remand the Removed Actions ("Motion for Remand") and filed its application for an order shortening time. The bankruptcy court scheduled the Motion for Remand for hearing on June 28, 2013. Also on June 24, Eden Place filed a motion in bankruptcy court for relief from stay ("Stay Relief Motion"), pursuant to the provisions of § 362(d)(1) and (2). Alternatively it asserted that the automatic stay did not apply. Eden Place asserted that it purchased the Residence at the March 20, 2013 prepetition foreclosure sale, that the trustee's deed had been properly recorded, that the UD Judgment had been obtained as well as a Writ of Possession and that the Residence was not property of Perl's bankruptcy estate. The bankruptcy court set a hearing on the Stay Relief Motion for July 9, 2013.

Notwithstanding the bankruptcy filing and Eden Place's pending Stay Relief Motion, the Sheriff proceeded with Perls' lockout on June 27, 2013, thereby evicting the Perls. Some of Perls' personal

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judgment for possession in an unlawful detainer action shall be enforced pursuant to this chapter without delay, notwithstanding receipt of notice of the filing by the defendant of a bankruptcy proceeding.

belongings remained inside the Residence at the time of the eviction.

Perl, with the assistance of counsel, filed his Amended Emergency Motion to Enforce the Automatic Stay, Set Aside the Eviction and for Order in Contempt ("Emergency Motion to Enforce Stay") and his application for order shortening time. Perl asserted that by continuing the eviction process against him and eventually evicting him, Eden Place had violated the automatic stay pursuant to § 362(a)(1)-(3). Specifically, Perl asserted that his possessory interest in the Residence constituted an equitable interest under § 541(a) protected by § 362(a)(3), citing In re Butler and Di Giorgio v. Lee (In re Di Giorgio), 200 B.R. 664, 670 (C.D. Cal. 1996), vacated on mootness grounds, 134 F.3d 971 (9th Cir. 1998). Perl also asserted that his pending litigation to set aside the sale and his dispute over the validity of the UD Judgment created a protected equitable interest in the Residence. Perl requested that his Emergency Motion to Enforce Stay be heard on June 28 along with Eden Place's Motion for Remand. A few hours later, Eden Place filed an objection to Perl's Emergency Motion to Enforce Stay, contending that it was moot and procedurally defective.

On June 27, 2013, the bankruptcy court entered its order setting the hearing on Perl's Emergency Motion to Enforce Stay and on Eden Place's Stay Relief Motion for June 28, 2013.

Just hours before the scheduled hearing, Eden Place filed another objection to Perl's Emergency Motion to Enforce Stay. Eden Place argued that, under California law, once the foreclosure occurred and Eden Place recorded its trustee's deed on March

29, 2013, Perl had no legal or equitable interest in the Residence protected by the automatic stay at the time of the eviction on June 27, 2013; he was merely a squatter or trespasser with no cognizable interest. Eden Place further argued that Perl's motion failed to recognize ample authority which supports the position that continued enforcement of a prepetition unlawful detainer judgment is not a violation of the automatic stay. Citing Lee v. Baca, 73 Cal. App. 4th 1116, 1117-18 (1999), a case involving a residential tenant and landlord, Eden Place argued that an unlawful detainer judgment extinguishes the residential tenant's interest in the property and that a postjudgment bankruptcy filing does not affect the landlord's right to regain possession of the property because it is not, at that point, property of the tenant-debtor's estate. Eden Place also cited Marquand v. Smith (In re Smith), 105 B.R. 50, 53-54 (Bankr. C.D. Cal. 1989), which held that a debtor-tenant has no legal or equitable interest in rented property once a judgment for possession has been entered in favor of the landlord. Based on these authorities, Eden Place argued that Perl lost whatever possessory interest he might have had in the Residence upon entry of the UD Judgment, so the Sheriff's execution of the Writ of Possession did not affect property of the estate. Eden Place also took the position that once the UD Judgment and Writ of Possession were issued, the Sheriff had no choice but to proceed with the eviction.

Eden Place acknowledged the holdings of In re Butler and In re Di Giorgio, but argued that both cases were inapplicable because they were "tenant" cases, not "squatter" cases. Eden Place further argued that these cases were weakened with the addition of § 362(b)(22) under the amendments of the Bankruptcy

Abuse Prevention and Consumer Protection Act of 2005, which clarifies that residential tenants, subject to certain limitations, are not protected by the automatic stay. Eden Place contended that no federal courts of appeals have ever ruled that a squatter who loses an unlawful detainer action still has a cognizable property interest that would warrant invoking the automatic stay. Alternatively, Eden Place argued that cause existed to annul the stay retroactively to June 20, 2013.

The hearing on the Emergency Motion to Enforce Stay, the Stay Relief Motion and the Motion for Remand proceeded on June 28, 2013. Counsel for both parties appeared. Before the parties presented oral argument, the bankruptcy court opined that the postpetition enforcement of the Writ of Possession on June 27 "seem[ed] to be something that would violate the automatic stay." Hr'g Tr. (June 28, 2013) 2:19-20. After hearing brief argument from counsel for Eden Place, the bankruptcy court made its initial findings with respect to whether Eden Place violated the automatic stay:

> THE COURT: Okay. Well, let's back up a moment here. As of the petition date, before the sheriff went in and evicted, there was a possessory interest, correct, or am I misunderstanding the facts?
>
> MR. RICHARDS: Well, there was a possessory interest of naked possession, yes.
>
> THE COURT: Okay.
>
> . . .

> MR. RICHARDS: So other than a naked possessory interest, that's all there was.
>
> THE COURT: I understand. I do not follow In re Smith.
>
> MR. RICHARDS: Okay.
>
> THE COURT: And in my view, the bare possessory interest, coupled with the possibility of some sort of relief, may be sufficient to give the bankruptcy estate a protected interest that is subject to the automatic stay.

Id. at 5:3-10, 15-23. The court also noted that despite Eden Place's argument respecting a residential tenant under § 362(b)(22), this was not a rental situation. Id. at 5:24-6:15. Counsel then noted that In re Butler was also a landlord-tenant case and not a case that dealt with squatters who lose their house to foreclosure. Id. at 7:6-9.

After hearing further argument from the parties, the bankruptcy court took a brief recess to review the cases cited by the parties. However, before the recess, the court opined:

> I will note that the automatic stay is a little broader than just a property interest.
>
> It's not just any act to obtain possession of the property of the estate or to exercise control over property of the estate, an enforcement against the debtor or against property of the estate of a judgment obtained before commencement of the case.

> Now, when we're talking about a cause of action or claims or defenses such as an assertion of a right to possession, even if that's after a writ of possession, there are still claims there.
>
> Any by – if – it may be that the automatic stay applies even to the more limited bundle of rights that still exists. It may not even be a bundle. It might just be the opportunity to seek some relief.

Id. at 34:17-35:7.

Upon further review of the cases cited by the parties, the bankruptcy court determined that the eviction was a violation of the automatic stay and was therefore void. The bankruptcy court granted Eden Place's Motion for Remand and Eden Place's Stay Relief Motion prospectively, modifying the automatic stay to permit Perl until July 12, 2013, to seek relief from the state court and denied Eden Place's request to annul the stay retroactively. The bankruptcy court entered an order after the hearing containing the following relevant part: "The eviction of the debtor by the Sheriff, at the request of the movant, after the bankruptcy petition was filed violated the automatic stay and is void[.]" June 28, 2013 Order ("Order").

The bankruptcy court declined to impose any contempt sanctions against Eden Place for the stay violation because Perl had not yet offered any evidence of damages due to the eviction. Sanctions would be decided at a later hearing, after the state court had an opportunity to rule on Perl's claims. The bankruptcy court directed the parties to file a status report informing it of the state court proceedings.

Eden Place filed a status report on July 15, 2013.[4] Despite extensions to file his schedules and other required documents, Perl never filed anything further in his bankruptcy case. The case was ultimately dismissed on August 8, 2013, for Perl's failure to appear at the scheduled § 341(a) meeting of creditors.

Eden Place timely appealed the Order.

II. 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.[5]

III. ISSUE

Did the bankruptcy court err when it determined that Eden Place violated the automatic stay with the postpetition eviction of Perl?

IV. STANDARD OF REVIEW

Whether the automatic stay provisions of § 362 have been violated is a question of law we review de novo. McCarthy, Johnson & Miller v. N. Bay Plumbing, Inc. (In re Pettit), 217 F.3d 1072, 1077 (9th

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[4] According to Eden Place, the Perls' lis pendens was expunged. The UD Actions were closed. Perl's counsel filed a state court appeal. Eden Place transferred the Residence to a new owner. Perl was allowed access to the Residence to remove some of his remaining personal belongings, but he also allegedly removed certain fixtures from the property, including two dishwashers, two cooktops and their hoods.

[5] On January 9, 2014, a motions panel determined that this appeal was not moot, despite the dismissal of Perl's bankruptcy case, because Eden Place could still be subject to a claim for damages at some point in the future based on the Order. We agree. Therefore, we have jurisdiction over this appeal.

Cir. 2000) (citing Cal. v. Taxel (In re Del Mission Ltd.), 98 F.3d 1147, 1150 (9th Cir. 1996)).

V. DISCUSSION

The sole issue in this appeal is whether, at the time Perl filed his bankruptcy petition, he had any remaining interest in the Residence protected by the automatic stay. Eden Place contends that he did not and that the bankruptcy court erred in determining that Perl's possessory interest was a sufficient estate interest to trigger the protections of the automatic stay under § 362(a).

A. The bankruptcy court did not err when it determined that Eden Place had violated the automatic stay.

"The automatic stay under § 362 is designed to give the bankruptcy court an opportunity to harmonize the interests of both debtor and creditors while preserving the debtor's assets for repayment and reorganization of his or her obligations." In re Pettit, 217 F.3d at 1077 (citation omitted). The stay is self-executing, effective upon the filing of the bankruptcy petition, and sweeps broadly. Id. It stays the "commencement or continuation . . . or other action or proceeding against the debtor that was or could have been commenced before the [filing of the bankruptcy]," as well as the enforcement of a prepetition judgment against the debtor or property of the estate. § 362(a)(1) & (2).

It also stays actions to "obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." § 362(a)(3). "Property of the estate" is also broadly defined to include all of the debtor's legal and equitable interests in property as of the

commencement of the case, wherever located and by whomever held. § 541(a). See also Ramirez v. Fuselier (In re Ramirez), 183 B.R. 583, 587 (9th Cir. BAP 1995) (automatic stay protects property of the estate in which the debtor has a legal, equitable or possessory interest) (citing Interstate Commerce Comm'n v. Holmes Transp., Inc., 931 F.2d 984, 987 (1st Cir. 1991)). Bankruptcy courts must look to state law to determine whether and to what extent the debtor has any legal or equitable interests in property as of the commencement of the case. Butner v. United States, 440 U.S. 48, 54-55 (1978).

Actions taken in violation of the automatic stay are void. Griffin v. Wardrobe (In re Wardrobe), 559 F.3d 932, 934 (9th Cir. 2009) (citing Gruntz v. Cnty. of Los Angeles (In re Gruntz), 202 F.3d 1074, 1082 (9th Cir. 2000) (en banc)).

In determining whether Eden Place violated the automatic stay by proceeding with the eviction of Perl, we must determine whether Perl had any remaining interest in the Residence on the date he filed bankruptcy. Because the Residence is located in California, California law controls this determination. Here, it is undisputed that Eden Place purchased the Residence and timely recorded its trustee's deed prepetition. Under CAL. CIV. CODE § 2924h(c), "the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days after the sale[.]" "The purchaser at a nonjudicial foreclosure sale receives title under a trustee's deed free and clear of any right, title or interest of the trustor. A properly conducted nonjudicial foreclosure

sale constitutes a final adjudication of the rights of the borrower and lender." Wells Fargo Bank v. Neilsen, 178 Cal. App. 4th 602, 614 (2009) (citations and quotation marks omitted). See also 4 Miller & Starr, Cal. Real Estate § 10:208 (3d ed. 2009) (Under California law, "[t]he purchaser at the foreclosure sale receives title free and clear of any right, title, or interest of the trustor or any grantee or successor of trustor."). Accordingly, title to the Residence passed to Eden Place free and clear of any right, title or interest of Perl's about three months before he filed his chapter 13 bankruptcy petition. Thus, Perl's ownership interest in the Residence was eliminated prepetition. Therefore, to find that Eden Place violated the automatic stay, we must determine whether Perl held some other sort of interest in the Residence recognized by California law at the time he filed bankruptcy.

Prepetition, Eden Place had successfully obtained the UD Judgment, and Perl's efforts to stay that judgment failed. A Writ of Possession in favor of Eden Place was also issued prepetition. It is undisputed that Perl was in possession of the Residence at all relevant times. We often cite the following passage from a well-known treatise in cases where the order on appeal concerns the bankruptcy court's decision to grant relief from stay so that the purchaser may proceed with its eviction action against the holdover debtor-borrower:

> Where a real property nonjudicial foreclosure was completed and the deed recorded prepetition, the debtor has neither legal nor equitable title to the property at the time the bankruptcy petition is filed. Although the debtor may still be in

> possession of the premises, his or her status is essentially that of a "squatter." The mortgagee (or purchaser at the foreclosure sale) is entitled to the property and thus relief from the stay should be granted.

Kathleen P. March and Alan M. Ahart, CALIFORNIA PRACTICE GUIDE: BANKRUPTCY ¶ 8:1196 (2009) (emphasis in original). See Wells Fargo Bank v. Edwards (In re Edwards), 454 B.R. 100, 106 (9th Cir. BAP 2011), as just one of many examples.

We have determined in cases with facts such as these that "cause" was established to grant relief from stay because the debtor, hence the estate, no longer had any interest in the real property at issue when he or she filed for bankruptcy. Id. at 107. See also Nyamekye v. Wells Fargo Bank (In re Nyamekye), 2011 WL 3300335, at *5-6 (9th Cir. BAP Feb. 15, 2011) (determining that because an unlawful detainer judgment and writ of possession had been obtained by the creditor prepetition, neither the holdover debtor-borrower nor her estate had any ownership interest or right in the property; therefore cause was shown to grant relief from stay).

A distinction exists between the analyses required for stay relief matters and violation of stay matters. In the former, the creditor is summarily attempting to establish a colorable claim in terms of an interest in a debtor's secured note or an interest in debtor's property. In considering the interest in debtor's property, an analysis is made as to the strength of debtor's interest vis-a-vis creditor's interest in the same property. Consequently, terms like "owner" and "squatter" appear. See In re Edwards, 454 B.R. at 105-06. In the latter, the debtor is attempting to establish

that the creditor is violating the automatic stay by taking some action against the debtor or against property of the estate. In this instance, the strength of one's interest is not determinative; but more importantly, if debtor or the estate has "any" interest the question becomes: is the creditor's action violative of the stay. Creditor's action may be violative even if a minimal interest, such as a squatter's or possessory interest, is held by the debtor or the estate. See In re Di Giorgio, 200 B.R. at 672-74.

In a case factually similar to Nyamekye concerning whether a party had violated the automatic stay, we held that a debtor-borrower had a possessory interest in the real property at issue by virtue of his or her physical occupancy. In re Williams, 323 B.R. at 699. In In re Williams we cited In re Butler, 271 B.R. at 876-77, with approval and for the proposition that under California law a debtor-tenant's mere physical possession of apartment premises after writ of possession had issued in favor of landlord in unlawful detainer action is an equitable interest in the property, protected by the automatic stay. In other words, we extended the holding of In re Butler to include a debtor-former homeowner as opposed to only a debtor-tenant under a residential lease. We also cited In re Di Giorgio, which similarly held that under California law mere possession of real property, even after a writ of possession has issued, creates a protected equitable interest subject to the automatic stay. 200 B.R. at 671-73. Granted, In re Di Giorgio, a case from 1996, involved a residential tenant as opposed to a former homeowner, and, as we discuss below, residential tenants are no longer given the protection of the automatic stay if certain limitations are satisfied. However, the holding in In re Di Giorgio

appears broad, and the district court did not limit its analysis as to what constitutes a "possessory interest" under California law strictly to residential tenants under a lease. "Under California law, mere possession of real property creates a protected interest." Id. at 671 (citing to CAL. CIV. CODE § 1006, which states: "Occupancy for any period confers a title sufficient against all except the state and those who have title . . . ."). "[T]he mere possession of real estate is constantly treated as property which may be purchased and sold, and for the recovery of which an action may be maintained against one having no better title." King v. Goetz, 70 Cal. 236, 240, 11 P. 656, 658 (1886). See 12 WITKIN ON REAL PROP., SUMMARY 10TH (2005) § 208 (possession gives possessor substantial right).

In In re Williams, the debtor had transferred record title to his condominium to his girlfriend prepetition, but was still occupying the condo when he filed bankruptcy and at the time the homeowners association foreclosed its lien on the property. Recognizing that the debtor had no recorded interest in the condo on the petition date, we determined that he nonetheless held a possessory interest in it that was property of the estate under § 541(a) and protected by the automatic stay. 323 B.R. at 699. We remanded that portion of the order to have the bankruptcy court determine whether any stay violation damages were appropriate. Id. at 702.

Eden Place had not cited to In re Williams in its brief and appeared to be unaware of it at the time of oral argument. Instead, Eden Place argues that the bankruptcy court erred by not following In re Smith and contends that we should adopt it, and further

contends that we should reject In re Butler. In In re Smith, the bankruptcy court held that where a residential landlord obtained an unlawful detainer judgment prepetition, the debtor-tenant has no legal or equitable interest in the property protected by the automatic stay. 105 B.R. at 54. The court further held that the debtor-tenant's physical possession of the property was not a property interest recognized by law. Id. Notably, it did not cite to any California authority for this proposition. The court went on to conclude that it was not necessary for the movant to obtain relief from stay in order to regain possession of the apartment. Id.

We decline to adopt In re Smith for two reasons. First, it is contrary to our holding in In re Williams, and we are bound by our precedent. Gaughan v. The Edward Dittlof Revocable Trust (In re Costas), 346 B.R. 198, 201 (9th Cir. BAP 2006) (absent a change in the law, we are bound by our precedent). For that same reason, we are not inclined to reject In re Butler. Second, the concerns expressed by the bankruptcy court in In re Smith regarding what it viewed as a lack of power of residential landlords have been addressed with the addition of § 362(b)(22).[6] Under that

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[6] Section 362(b)(22) provides that the filing of a bankruptcy petition does not create a stay "subject to subsection (1), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor[.]"

Section 362(1) provides, however, that a 30-day stay shall apply if there is a rent default by a debtor-tenant, where the

provision, absent certain limitations not relevant here, the automatic stay does not apply to cases under which the debtor resides as a tenant under a lease or rental agreement and where the lessor has obtained before the bankruptcy filing a judgment for possession. As the bankruptcy court observed in the instant case, we do not have a rental property situation, and clearly, we have no lease or rental agreement between the parties.

Eden Place argues that In re Smith is consistent with California law, where a judgment for possession has issued. CAL. CODE CIV. P. § 715.050 provides, in relevant part, that "a writ of possession issued pursuant to a judgment for possession in an unlawful detainer action shall be enforced pursuant to this chapter without delay, notwithstanding receipt of notice of the filing by the defendant of a bankruptcy proceeding." In other words, CAL. CODE CIV. P. § 715.050 provides that a writ of possession obtained in an unlawful detainer action must be executed despite a defendant's filing of a postjudgment bankruptcy petition. Two courts have held that this statute is preempted by federal bankruptcy law and is therefore unconstitutional on its face. In re Di Giorgio, 200 B.R. at 675; In re Butler, 217 B.R. at 876. One California Court of Appeal has held to the contrary. See Lee, 73 Cal. App. 4th at 1119-20 (relying on In re Smith to hold that CAL. CODE CIV. P. § 715.050 survives a preemption attack). We are not persuaded by Lee and agree with the reasoning of In re Butler and In re Di Giorgio. Clearly, with the statute's

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debtor certifies with the bankruptcy petition that he or she can cure the default and deposits with the clerk the amount of rent due for the next 30 days.

express reference to the filing of a bankruptcy petition, its purpose is to carve out an exception to the automatic stay provided by federal law. This exception is preempted by § 362(a). While state law determines the existence and scope of a debtor's interest in property, federal law determines whether that property interest is protected by the automatic stay. In re Di Giorgio, 200 B.R. at 673 n.4; In re Gruntz, 202 F.3d at 1082 ("The automatic stay is an injunction issuing from the authority of the bankruptcy court, and bankruptcy court orders are not subject to collateral attack in other courts.").

Finally, Eden Place argues that the eviction did not violate the automatic stay because it was a "ministerial act," and that the Sheriff was on "auto pilot" and had no choice but to execute the Writ of Possession. We fail to see where Eden Place raised this argument before the bankruptcy court. We generally do not consider arguments raised for the first time on appeal, and we do not exercise our discretion to do so in this case. O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957 (9th Cir. 1989). See also Moldo v. Matsco, Inc. (In re Cybernetic Servs., Inc.), 252 F.3d 1039, 1045 n.3 (9th Cir. 2001) (appellate court will not explore ramifications of argument because it was not raised below and, accordingly, was waived).

We conclude that, based on our holding in In re Williams, Perl's physical occupation of the Residence conferred a possessory interest under California law that was protected by the automatic stay. Even Eden Place must have thought that Perl possibly had some sort of interest or it would not have filed the Stay Relief Motion.

To "willfully" violate the automatic stay, the alleged violator must have knowledge of the automatic stay and have intentionally violated the stay. Ozenne v. Bendon (In re Ozenne), 337 B.R. 214, 220 (9th Cir. BAP 2006). The record reflects that Eden Place was on notice of Perl's bankruptcy filing prior to the eviction on June 27, 2013, even if notice was only based on counsel's faxed letter. "Knowledge of the bankruptcy filing is legal equivalent of knowledge of the automatic stay." Id. (citing In re Ramirez, 183 B.R. at 589). Informal notice suffices. In re Ozenne, 337 B.R. at 220 (citing Morris v. Peralta (In re Peralta), 317 B.R. 381, 389 (9th Cir. BAP 2004)). Further, the acts here were intentional. Whether Eden Place believed in good faith that it had a right to the Residence is irrelevant to the analysis of whether its act was intentional. Id. at 221 (citations omitted). Accordingly, we conclude that Eden Place violated the automatic stay when it did not advise the Sheriff to desist in its efforts to lock out and evict Perl from the Residence. We further note that changing the locks on the Residence, locking inside Perl's personal property, which was also property of the estate, was an act to exercise control over property of the estate in violation of § 362(a)(3). See In re Gagliardi, 290 B.R. 808, 815 (Bankr. D. Colo. 2003).

VI. CONCLUSION

Based on the foregoing reasons, we AFFIRM the portion of the Order ruling that the postpetition lockout/eviction by the Sheriff of the debtor from his residence on June 27, 2013, violated the automatic stay and is void.

APPENDIX C

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Ronald Richards, Esq. SBN176246 P.O. Box 11480 Beverly Hills, CA 90213 310-556-1001 Office 310-277-3325 Fax Email: ron@ronaldrichards.com ☐ *Attorney for Movant(s)* X *Movant(s) appearing without an attorney*	FOR COURT USE ONLY FILED & ENTERED JUN 28 2013
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION	
In re: SHOLEM PERL AKA ADRIAN SHOLEM PERL AKA ARON SHOLEM PERL Debtor(s).	CASE NO.: 2:13-bk-26126-NB CHAPTER: 13 **ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (REAL PROPERTY)** DATE: June 28, 2013 TIME: 1:00 COURTROOM: 1545 PLACE: 255 E. Temple St. Los Angeles, CA 90012

1. The Motion was:

   ☒ Opposed ☐ Unopposed

   ☐ Settled by stipulation

2. The Motion affects the following real property (Property):

   Street address: 348-350 N. Orange Dr.
   Unit number:
   City, state, zip code: Los Angeles, CA 90036

   Legal description or document recording number (including county of recording):

   ☐ See attached page.

3. The Motion is granted under:

   ☒ 11 U.S.C. § 362(d)(1) ☐ 11 U.S.C. § 362(d)(2)
   ☐ 11 U.S.C. § 362(d)(3) ☐ 11 U.S.C. § 362(d)(4)

4. As to Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is:

   a. ☐ Terminated as to Debtor and Debtor's bankruptcy estate.
   b. ☐ Annulled retroactively to the date of the bankruptcy petition filing.
   c. ☒ ***Modified or conditioned and granted in part and denied in part as set forth in paragraph 10 of this Order.***

5. ☐ Movant may enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable nonbankruptcy law, but may not pursue any deficiency claim against the Debtor or property of the estate except by filing a Proof of Claim pursuant to 11 U.S.C. § 501.

6. Movant must not conduct a foreclosure sale before the following date (*specify*):

7. ☐ The stay shall remain in effect subject to the terms and conditions set forth in the Adequate Protection Attachment to this Order.

8. ☐ In chapter 13 cases, the trustee must not make any further payments on account of Movant's secured claim after entry of this Order. The secured portion of Movant's claim is deemed withdrawn upon entry of this Order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the trustee any payments received from the trustee on account of Movant's secured claim after entry of this Order.

9. ☐ The filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either:

    ☐ transfer of all or part ownership of, or other interest in, the Property without the consent of the secured creditor or court approval.

    ☐ multiple bankruptcy filings affecting the Property.

    If recorded in compliance with applicable state law governing notices of interests or liens in the Property, this Order is binding and effective under 11 U.S.C. § 362(d)(4)(A) and (B) in any other bankruptcy case purporting to affect the Property filed not later than 2 years after the date of entry of this Order, except that a debtor in a subsequent bankruptcy case may move for relief

from this Order based upon changed circumstances or for good cause shown, after notice and a hearing. Any federal, state or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of this Order for indexing and recording.

10. This court further orders as follows:

a. ☒ The 14-day stay as provided in FRBP 4001(a)(3) is waived.

b. ☐ The provisions set forth in the Extraordinary Relief Attachment shall also apply (attach Optional Form F 4001-1.RFS.EXT.RELIEF.ATTACH).

c. ☒ The eviction of the debtor by the Sheriff, at the request of the movant, after the bankruptcy petition was filed violated the automatic stay and is void, and the request for retroactive annulment of the automatic stay is denied. Nevertheless, the automatic stay is modified on a prospective basis such that the parties may continue their litigation in nonbankruptcy court, provided that no further acts may be taken in reliance on the eviction or to further dispossess the debtor from the property through 5:00 p.m. on July 12, 2013.

d. The parties are directed to meet and confer regarding access to the premises or any other aspect of possession.

e. The motion is continued regarding remedies for violation of the automatic

stay and a status conference will be held on July 30, 2013 at 3:00 p.m.

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Date: June 28, 2013

Neil W. Bason
United States Bankruptcy Judge