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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re: BIANCA NIKOLE RODRIGUEZ, Debtor.	BAP No. CC-25-1130-CNL Bk. No. 8:25-bk-10852-SC
LOCALI MANAGEMENT GROUP, LLC, Appellant, v. BIANCA NIKOLE RODRIGUEZ, Appellee.	OPINION

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

APPEARANCES

Larry Rothman of Larry Rothman & Associates argued for appellant; M.
Jonathan Hayes of RHM Law LLP argued for appellee.

Before: CORBIT, NIEMANN, and LAFFERTY, Bankruptcy Judges.

Opinion by Judge Corbit
Concurrence by Judge Niemann

CORBIT, Bankruptcy Judge:

INTRODUCTION

Creditor appeals the bankruptcy court's order determining that it

violated the automatic stay when it evicted chapter 7¹ debtor Bianca Nikole Rodriguez. Because the bankruptcy court did not err in its determination that the automatic stay was violated and its award of damages was not an abuse of its discretion, we AFFIRM.

FACTS²

A. Unlawful detainer action

Ms. Rodriguez entered into a residential lease agreement with LoCali Management Group, LLC (“LoCali”) for a property in Irvine, California (the “Premises”). Ms. Rodriguez resided at the Premises with her husband Steven Bouillon and her three children. Ms. Rodriguez stopped paying rent in November 2024.

On February 11, 2025, LoCali filed a complaint for unlawful detainer in the Orange County California Superior Court (“Unlawful Detainer Action”) based on Ms. Rodriguez’s failure to pay rent. On March 14, 2025, default judgment was entered against Ms. Rodriguez in the Unlawful Detainer Action, and a writ of possession was issued. On March 20, 2025, a sheriff posted the writ at the Premises giving Ms. Rodriguez and her family

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, all “Civil Rule” references are to the Federal Rules of Civil Procedure, and all “CCP” references are to the California Code of Civil Procedure.

² We exercise our discretion, when appropriate, to take judicial notice of documents electronically filed in the underlying bankruptcy case and related proceedings. See *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

five days to vacate the Premises.

On March 24, 2025, Ms. Rodriguez filed a motion in the Unlawful Detainer Action to vacate the default judgment, alleging that she was not adequately served with the summons and complaint. Ms. Rodriguez's motion was denied without prejudice by minute order on March 24, 2025, due to procedural defects. The minute order directed the Sherriff to "enforce the writ of possession forthwith."

On March 25, Ms. Rodriguez filed a petition for writ of supersedeas and requested a temporary stay. Later that day, the Fourth Appellate District Court denied the motion without prejudice to Ms. Rodriguez filing it with the proper court. On March 26, Ms. Rodriguez filed another motion to set aside/vacate the default judgment with the trial court in the Unlawful Detainer Action. Later that day, the trial court issued a minute order, scheduling a hearing on Ms. Rodriguez's motion for April 2, 2025, and ordered "[t]he lockout [] stayed pending a ruling" on the motion.

B. Chapter 13 bankruptcy petition

On the same date and around the same time as the hearing in the Unlawful Detainer Action, Ms. Rodriguez filed a skeletal chapter 13 bankruptcy petition. Ms. Rodriguez did not list LoCali on the bankruptcy petition and did not notify the trial court or LoCali of her bankruptcy petition.

C. Motion to vacate denied in the Unlawful Detainer Action

On April 3, 2025, the day after Ms. Rodriguez filed her bankruptcy

petition, the trial court in the Unlawful Detainer Action entered a minute order denying Ms. Rodriguez's motion to vacate the default judgment. The court found that Ms. Rodriguez's allegations that she did not receive the summons and complaint were contrary to the evidence presented by LoCali and the process server. The trial court terminated its stay and directed the Sheriff to proceed with the lockout. On the evening of April 3, 2025, after the trial court had ruled against her, Ms. Rodriguez sent an email to LoCali and the trial court informing them that she had filed a bankruptcy petition on April 2, 2025.

D. Automatic stay litigation

On April 22, 2025, Ms. Rodriguez filed an emergency motion to enforce the automatic stay. Ms. Rodriguez argued that any efforts by LoCali to evict her were subject to the automatic stay because she was still living at the Premises. Ms. Rodriguez further argued that the minute order issued in the Unlawful Detainer Action lifting the stay on the lockout was void because it was issued after she filed her bankruptcy case.

LoCali filed an opposition to the motion. Citing *Marquand v. Smith (In re Smith)*, 105 B.R. 50 (Bankr. C.D. Cal. 1989), LoCali asserted that, because the unlawful detainer judgment and writ of possession were issued before Ms. Rodriguez filed her bankruptcy petition, the automatic stay did not apply to its efforts to regain possession of the Premises.

On April 23, 2025, before the motion was heard, LoCali caused the Sheriff to proceed with the eviction and lockout (the "Lockout").

1. The bankruptcy court determines the Lockout violated the automatic stay.

On May 7, 2025, the bankruptcy court held a hearing on the motion to enforce the automatic stay. Prior to the hearing, the court issued the following tentative ruling:

For the reasons set forth below, the Court is inclined to find that creditor, LoCali . . . (“Landlord” or “Creditor”) willfully violated the automatic stay and award damages, as set forth below.

. . . .

On April 29, 2025, [Ms. Rodriguez] filed a Supplemental Declaration [Dk. 26] which . . . detailed the events surrounding the postpetition eviction which occurred on April 23, 2025, and detailed [Ms. Rodriguez’s] out of pocket damages totaling \$2,336 as of the date of the declaration. The Supplemental Declaration also includes a request for punitive damages related to emotional distress allegedly suffered by her as a result of the post-petition eviction.

Creditor essentially asserted to [Ms. Rodriguez] that it was not bound by the automatic stay as it obtained a pre-petition judgment and, indeed, an exception to the automatic stay does exist under certain circumstances under 11 U.S.C. § 362(b)(22). Under the facts of this case, however, § 362(b)(22) does not help Creditor . . . [because] enforcement of the judgment was prohibited until further order of the state court and the judgment was not “final.” *See, e.g., Nicholson v. IFG Timber, L.L.C. (In re Nicholson)*, 2019 Bankr. LEXIS 1921, *8 (9th Cir. BAP 2019) The postpetition state court ruling on [Ms. Rodriguez’s] motion to vacate the default judgment, which effectively lifted the state court stay, was a substantive ruling in violation of the automatic stay and is therefore void.

....

To award damages under § 362(k) for violation of the automatic stay, the bankruptcy court must find that the creditor willfully violated the stay[Ms. Rodriguez] has presented evidence that Creditor acted intentionally, with knowledge of the bankruptcy, and violated the automatic stay under 11 U.S.C. § 362, subjecting itself to sanctions under 11 U.S.C. § 362(k).

Bankruptcy Order, July 9, 2025, at 3-5.

At the May 7, 2025, hearing the bankruptcy court indicated that it was adopting its tentative ruling. The court allowed Ms. Rodriguez to supplement the record with additional testimony. LoCali's counsel did not generally dispute the events as described by Ms. Rodriguez. A further evidentiary hearing was scheduled on the issue of the appropriate damages to be awarded, with the parties encouraged to try to resolve between themselves in the meantime.

In mid-May, LoCali filed a motion for retroactive annulment of the automatic stay. LoCali argued that retroactive annulment was appropriate because the balance of the equities was in LoCali's favor as Ms. Rodriguez failed to list it as a creditor in any of her schedules, failed to retrieve her personal belongings at the Premises despite LoCali providing multiple opportunities, and demanded \$250,000 to settle. Ms. Rodriguez opposed the motion. Each party provided competing declarations as to Ms. Rodriguez's efforts to remove her belongings and LoCali's efforts to make the Premises accessible for moveout.

2. Evidentiary hearing on damages

On June 23, 2025, the bankruptcy court conducted the evidentiary hearing on the issue of Ms. Rodriguez's damages as a result of LoCali's willful violation of the automatic stay. At the hearing Ms. Rodriguez, her husband Mr. Bouillon, and her daughter Priscilla Bouillon testified. LoCali had its property manager, Nathan Poth, testify along with its attorney in the Unlawful Detainer Action, Kevin Mello, as a percipient witness.

Priscilla testified as to the events that morning, stating that approximately five deputies arrived at the Premises when she was leaving for school on April 23. Priscilla testified that she was scared and worried about what was going to happen next. According to Priscilla, in her haste to leave the Premises at the direction of the deputies, she left behind school items (schoolbooks, chargers) which she was required to return to her school before being allowed to walk at her graduation ceremony.

Ms. Rodriguez also testified as to the costs the family incurred as a result of the Lockout. LoCali disputed only the amount claimed for food.

Mr. Poth testified that he allowed the Sheriff to execute the Lockout because he believed there was no automatic stay in place as to the Premises. Mr. Poth testified that he facilitated the family's ability to access the Premises several times to retrieve their belongings, but that they failed to take advantage of such access. Mr. Poth testified that he turned off the power to the Premises asserting it was necessary to prevent access to the Premises. Mr. Poth additionally testified that he believed the bankruptcy

was filed in error and, therefore, not legitimate. Mr. Mello also testified that it was his understanding that if a judgment was entered in a residential eviction prior to a bankruptcy filing, which happened in this case, the automatic stay did not apply.

E. The bankruptcy court's rulings

At the conclusion of the parties' testimony, the bankruptcy court concluded that, pursuant to the holding in *Nicholson v. IFG Timber, LLC* (*In re Nicholson*), BAP No. ID-18-1161-BKuF, 2019 WL 2524291 (9th Cir. BAP June 18, 2019), the landlord must obtain a final, non-appealable judgment for possession . . . prior to the petition date in order for the stay exception [provided in § 362(b)(22)] to apply." The bankruptcy court determined that Ms. Rodriguez's time to appeal had not expired, therefore, LoCali did not have a final, non-appealable judgment and the § 362(b)(22) exception did not apply.

The bankruptcy court determined that Ms. Rodriguez was entitled to damages in the amount of \$753.78 for food, \$513 for three days' loss of work, \$611.48 for a rental car, \$17,478 (equivalent to one year's tuition at a California state university), for emotional distress, and \$10,000 in punitive damages.

On July 9, 2025, the bankruptcy court entered a written order consistent with its oral ruling ("Stay Violation Order"). The bankruptcy court found that pursuant to the "procedural rules governing the appeal of an unlawful detainer judgment" as described in *Stein v. York*, 181 Cal. App.

4th 320, 324 (2010), the time for Ms. Rodriguez to appeal the unlawful detainer had not expired.³ Therefore, LoCali had not obtained a final, non-appealable judgment for possession prior to the petition date, as required under *Nicholson* for the application of the § 362(b)(22) exception to the automatic stay.

The Stay Violation Order next addressed the issue of damages under § 362(k). In explaining the basis for its award of emotional distress damages, the bankruptcy court stated:

[T]he evidentiary record as a whole reflects an obvious case of significant emotional distress experienced by [Ms. Rodriguez] as a result of Landlord's enforcement actions in violation of the stay Accordingly, the Court awards [Ms. Rodriguez] \$17,478 in damages for emotional distress resulting from the willful violation of stay, which the Court calculated as one year of college tuition expenses at a University of California public university in consideration of the fact that much of the emotional distress stemmed from actions involving [Ms. Rodriguez's] minor children and their educational experience.

Stay Violation Order, July 9, 2025, at 14.

In awarding punitive damages, the bankruptcy court found that both

³ The bankruptcy court asserted that the “[c]ourt in *Stein v. York*, 181 Cal. App. 4th 320 (2010), succinctly described the procedural rules governing the appeal of an unlawful detainer,” and then excerpted the part of the *Stein* decision describing the appellate process pursuant to Cal. Rules of Court § 8.108(c). It is unclear why the bankruptcy court cited this case for that proposition. The *Stein* case was not an unlawful detainer action and indeed, makes no reference to unlawful detainer or the process or right to appeal such judgments. In *Stein*, the defendants were appealing damages awarded pursuant to a default judgment in a personal injury case.

Mr. Bouillon and Ms. Rodriguez attempted to prevent the Lockout by informing Mr. Poth (by email and in person) that the automatic stay protected them from eviction. The bankruptcy court found that Mr. Poth “responded dismissively” and threatened Ms. Rodriguez with arrest if she “failed to leave the [Premises] by 9:00 p.m.” According to the bankruptcy court:

It would have been a minimal and reasonable precaution for Landlord to suspend its enforcement actions and further inquire into the legitimacy of [Ms. Rodriguez’s] repeated assertions of her legal rights, thereby avoiding the unnecessary and detrimental distress inflicted on [Ms. Rodriguez] and her family. To deter such indifferent disregard for the rights of others, the Court finds good cause to impose upon Landlord \$10,000 in punitive damages pursuant to section 362(k).

Stay Violation Order, July 9, 2025, at 15.

F. Motion for reconsideration

LoCali filed a motion for reconsideration of the Stay Violation Order. LoCali argued that unlawful detainer actions are discrete, possession-only judgments of limited scope, and summary in nature. Therefore, LoCali asserted that general rules of appeal do not apply. According to LoCali, pursuant to CCP § 1086 the only available avenue for review is a petition for writ of mandate. LoCali argued that while the judgment is entered and effective upon the court’s decision, its finality for purposes of execution and forfeiture relief is subject to the statutory timeframes outlined in CCP § 1174. Accordingly, LoCali argued that the bankruptcy court erred when it

determined that it did not have a judgment for possession prior to the petition date.

LoCali further argued that the bankruptcy court erred in awarding punitive damages. LoCali argued the bankruptcy court did not take “any evidence of the resources of the alleged wrongdoers which it sought to punish.” LoCali asserted that the facts did not demonstrate the necessary malice, oppression, or fraud necessary for an award of punitive damages and thus were not within constitutional constraints.

The bankruptcy court denied the motion for reconsideration (“Order Denying Reconsideration”). The bankruptcy court determined that LoCali failed to demonstrate clear error because its decision was consistent with the holding of *Nicholson* and the punitive damages it awarded were modest, proportionate, and appropriate for deterrence.

LoCali timely appealed the Stay Violation Order and the Order Denying Reconsideration.

JURISDICTION

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

ISSUES

Whether the bankruptcy court erred in determining LoCali violated the automatic stay.

Whether the bankruptcy court’s award of damages was an abuse of its discretion.

Whether the bankruptcy court's Order Denying Reconsideration was an abuse of discretion.

STANDARDS OF REVIEW

"A bankruptcy court's determination that the automatic stay was violated is a question of law subject to de novo review." *Yellow Express, LLC v. Dingley (In re Dingley)*, 514 B.R. 591, 595 (9th Cir. BAP 2014), *aff'd on other grounds*, 852 F.3d 1143 (9th Cir. 2017). "De novo review requires that we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

We review for an abuse of discretion the bankruptcy court's award of damages resulting from a willful violation of the automatic stay. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191 (9th Cir. 2003). A denial of a motion for reconsideration is also reviewed for an abuse of discretion. *Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 875 (9th Cir. BAP 2007). A bankruptcy court abuses its discretion if it applies an incorrect legal standard or misapplies the correct legal standard, or if its factual findings are illogical, implausible, or without support from evidence in the record. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

We review the court's underlying factual findings, including whether the violation was willful, for clear error. *Eskanos & Adler, P.C.*, 309 F.3d at 1213. Findings of fact are clearly erroneous only if they are illogical, implausible, or without support in the record. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010). We give particular deference to the

bankruptcy court's credibility findings. *Id.*

We may affirm on any basis supported by the record. *Black v. Bonnie Springs Fam. Ltd. P'ship (In re Black)*, 487 B.R. 202, 211 (9th Cir. BAP 2013).

DISCUSSION

There are two issues that frame our discussion. The first is whether pursuant to *Eden Place LLC v. Perl (In re Perl)*, 811 F.3d 1120 (9th Cir. 2016), LoCali's unlawful detainer judgment and writ of possession terminated Ms. Rodriguez's legal and equitable interest in the Premises prepetition, such that the automatic stay did not apply. The second issue is if the automatic stay applied to Ms. Rodriguez, whether LoCali had a judgment for possession before Ms. Rodriguez filed her bankruptcy petition such that the § 362(b)(22) eviction exception to the automatic stay applied.

A. The automatic stay applied.

1. The automatic stay is broad.

Filing a petition under the Bankruptcy Code imposes an automatic stay prohibiting virtually all actions against the debtor to collect prepetition debts. § 362(a). Specifically, § 362(a) operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case . . . , or to recover a claim against the debtor that arose before the commencement of the case . . . ;

...

(3) 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. . . .; [and]

. . . .

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case

Therefore, actions taken in an eviction or unlawful detainer proceeding against a debtor-tenant's possessory interest may fall within the scope of the automatic stay. *Ozenne v. Bendon (In re Ozenne)*, 337 B.R. 214, 219 (9th Cir. BAP 2006). We look to state law to ascertain whether a debtor maintains a possessory interest in property that is subject to the automatic stay. *Butner v. United States*, 440 U.S. 48, 54-55 (1979). If Ms. Rodriguez maintained a property interest in the Premises as of the petition date, and if LoCali's actions did not otherwise fall within an exception to § 362(a), the Lockout would violate the automatic stay.

Under California law, a plaintiff who is awarded a judgment for possession is entitled to the immediate issuance of a writ of possession to effectuate the defendant's eviction. CCP §§ 1170.5(a), 1174(c) and (d). In some cases, the entry of an unlawful detainer judgment and the issuance of a writ of possession "extinguishes all other legal and equitable possessory interests in the real property at issue." *In re Perl*, 811 F.3d at 1127-28.

Here, LoCali obtained both a prepetition unlawful detainer judgment and a writ of possession. Absent any further developments, *Perl* might

have instructed us that Ms. Rodriguez lost any interest in the Premises.⁴ But unlike *Perl*, the state court stayed any enforcement of the Lockout. Thus, at the time Ms. Rodriguez filed for bankruptcy protection, LoCali lacked the ability to evict Ms. Rodriguez and, as a result, Ms. Rodriguez was not fully divested of any interest in the Premises at the time of the Lockout.

Consequently, to avoid a stay violation LoCali must establish that its actions fell within the purview of an exception to § 362(a).

2. The § 362(b)(22) eviction exception.

LoCali argues that its actions fell within the exception found in § 362(b)(22). Congress added § 362(b)(22) to the Code in 2005 “to prevent abuse of the automatic stay as a last-minute eviction shield.” *Allegheny Cnty. Hous. Auth. v. Marciniak (In re Marciniak)*, 676 B.R. 148, 151 (Bankr. W.D. Pa. 2026). Section 362(b)(22) provides that the filing of a bankruptcy petition does not create an automatic stay of the continuation of any eviction proceeding by a lessor against a debtor involving residential real property “in which the debtor resides as a tenant under a lease or rental

⁴ It is unclear if *Perl* applies to other unlawful detainer cases. *Perl* differs from this case because it dealt with a holdover after a foreclosure sale and thus implicated a different statute from the statute applicable to the unlawful detainer action here. Compare CCP § 1161a (applicable in the post-foreclosure context), with CCP § 1161 (applicable in the landlord-tenant context).

As we discuss herein, whether or not *Perl* would otherwise apply to a landlord-tenant case, the state court’s stay of the writ of possession is enough to distinguish this case from *Perl*.

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.”⁵

3. The eviction exception in § 362(b)(22) did not apply.

Thus, the issue of whether the § 362(b)(22) eviction exception applied depends on whether LoCali had a judgment for possession before the date Ms. Rodriguez filed her bankruptcy petition.⁶

Here, the facts of the case are generally not disputed. It is undisputed that LoCali obtained a judgment for possession and obtained and served a writ of possession prior to Ms. Rodriguez filing her bankruptcy petition. However, it is also undisputed, and we believe more important, that at the time Ms. Rodriguez filed her bankruptcy petition the state court had stayed

⁵ While § 362(b)(22) is an exception to the automatic stay, the Bankruptcy Code also provides an “exception to the exception” of the automatic stay by allowing debtors who are tenants in a residential lease to obtain, in essence, a temporary 30-day stay (with the possibility of obtaining an extended stay) through the certification process of § 362(l). This exception is inapplicable as Ms. Rodriguez did not attempt to use the certification process which would have required Ms. Rodriguez to deposit with the clerk of court any rent that would become due during the 30-day period after filing the bankruptcy petition. § 362(l)(1)(B).

⁶ As discussed in the Facts Section, the bankruptcy court relied on *In re Nicholson*, 2019 WL 2524291, to determine that LoCali did not have a “judgment for possession” because LoCali had not obtained a “final, non-appealable judgment for possession” prior to the debtor’s bankruptcy filing. In addition to the fact that *Nicholson* is unpublished, and therefore not binding, *Nicholson* involved Idaho law. Moreover, we question whether it is appropriate to add the words “final” and “non-appealable” to the plain language of § 362(b)(22), which requires only a “judgment for possession.” In any event, as discussed below, we believe § 362(b)(22) was inapplicable to this case for other reasons.

the Lockout. Thus, regardless of Ms. Rodriguez's appellate rights in the Unlawful Detainer Action at the time she filed for bankruptcy,⁷ LoCali could not enforce its judgment for possession because of the state court stay. Therefore, while LoCali is correct that a judgment is enforceable upon entry (CCP § 683.010), an unlawful detainer judgment remains subject to modification by the trial court any time before restoration of the premises

⁷ Relative to new trials and appeals, the unlawful detainer statutes state that they adopt the provisions generally applicable to civil actions "**except** insofar as they are **inconsistent** with the provisions of [the unlawful detainer statutes]." CCP § 1178. CCP § 1176(a) provides that "[a]n appeal taken by the defendant shall not automatically stay proceedings upon the judgment." CCP § 1176(a). Rather, the defaulted tenant must first petition the trial court by demonstrating that the tenant would suffer "extreme hardship in the absence of a stay" and the landlord would not be "irreparably injured by its issuance." CCP § 1176(a). If the trial court denies the stay, the tenant may immediately file a petition for an extraordinary writ with the appropriate appeals court. *See e.g. Myers v. Sundby*, No. D080011, 2023 WL 386772, at *8 (Cal. Ct. App. Jan. 25, 2023) (explaining that tenant had five days after the prevailing party mailed notice of the ruling denying tenant's motion to vacate a default judgment to file a writ of mandate under CCP § 1167.4(b)).

A recent California case specifically discussed, as a matter of apparent first impression, the appealability of a possession-only judgment entered after a tenant's default in an unlawful detainer proceeding. *Eshagian v. Cepeda*, 112 Cal. App. 5th 433, 446-455 (2025), *review denied* (Oct. 1, 2025). The *Eshagian* court determined because of the unresolved damages, a possession-only judgment does not "terminate[] the litigation between the parties . . . leav[ing] nothing to be done" and therefore, the possession-only judgment is interlocutory and not immediately appealable. *Id.* at 448. In reaching the decision, the court explained that often in unlawful detainer actions, the underlying complaint seeks both possession and related damages such as unpaid rent and attorney's fees. *Id.* at 446-450. While the judgment for possession may issue quickly pursuant to the efficient and summary nature of the statutes covering unlawful detainer actions, the damages claim may remain pending. *Id.* at 446. The court determined that the only way for a defaulted tenant to seek review of a possession-only judgment would be by filing a petition for writ of mandate. *Id.* at 450. This holding is consistent with CCP § 1176(a).

to the landlord. *See e.g.* CCP § 918(a) (“the trial court may stay the enforcement of any judgment or order”); CCP § 1179 (“The court has the discretion to relieve any person against forfeiture on its own motion”); *SRO Hous. v. Dyce*, 223 Cal. App. 4th Supp. 1, *4 (2014).

Here, the unlawful detainer judgment and writ of possession were not enforceable at the time Ms. Rodriguez filed her bankruptcy petition because they were stayed pending the trial court’s review of Ms. Rodriguez’s motion to vacate the default judgment. Thus, we determine that LoCali did not have an enforceable judgment for possession as of the petition date. Unlike *Nicholson*, we reach this conclusion not by analyzing the finality or appealability of the judgment held by LoCali, but simply by giving effect to the state court’s orders effective on the petition date.

Accordingly, the bankruptcy court did not err in determining that § 362(b)(22) did not apply and that the Lockout was a violation of the automatic stay.

B. Damages

The automatic stay is a critical component of bankruptcy. It is liberally interpreted and strenuously enforced. *Am.’s Servicing Co. v. Schwartz–Tallard* (*In re Schwartz–Tallard*), 803 F.3d 1095, 1100 (9th Cir. 2015) (en banc) (discussing the history and liberal application of § 362(k) and stating “that Congress sought to encourage injured debtors to bring suit to vindicate their statutory right to the automatic stay’s protection, one of the

most important rights afforded to debtors by the Bankruptcy Code”). Thus, when a creditor violates the stay, Congress has provided in § 362(k) a “robust remedy” for debtors and a deterrent to creditors in the form of damages resulting from such violation. *Id.* Section 362(k)(1) provides that, subject to an exception that does not apply here, “an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.”

“A willful violation is satisfied if a party knew of the automatic stay, and its actions in violation of the stay were intentional.” *Koeberer v. Cal. Bank of Com. (In re Koeberer)*, 632 B.R. 680, 687 (9th Cir. BAP 2021) (quoting *Eskanos & Adler, P.C.*, 309 F.3d at 1215); see also *Morris v. Peralta (In re Peralta)*, 317 B.R. 381, 389 (9th Cir. BAP 2004) (“No specific intent is required; a good faith belief that the stay is not being violated is not relevant to whether the act was ‘willful’ or whether compensation must be awarded.”) (citation modified).

The record supports the bankruptcy court’s determination that Ms. Rodriguez established the elements of § 362(k). First, LoCali admitted at trial that it had notice of Ms. Rodriguez’s bankruptcy on or about April 3, 2025.⁸ Under § 362(k), a party with knowledge of bankruptcy

⁸ A creditor may be held liable for willfully violating the automatic stay even if it did not receive a formal, court-issued notice of the bankruptcy filing. See *Rushmore Loan Mgmt. Servs., LLC v. Moon (In re Moon)*, BAP Nos. NV-20-1057-BGTa and NV-20-1070-BGTa, 2021 WL 62629, at *8 (9th Cir. BAP Jan. 7, 2021) (“Notice of a bankruptcy filing

proceedings is charged with knowledge of the automatic stay. *In re Dyer*, 322 F.3d at 1191. Second, LoCali's efforts to secure possession of the Premises, including the Lockout on April 23, 2025, were intentional. Because LoCali was aware of the automatic stay and its actions that violated the stay were intentional, LoCali willfully violated the automatic stay regardless of whether it had a good faith belief that its actions were authorized. *Goichman v. Bloom (In re Bloom)*, 875 F. 2d 224, 227 (9th Cir. 1989) ("A 'willful violation' does not require a specific intent to violate the automatic stay.") (citation modified).

1. The bankruptcy court's award of actual damages was not an abuse of its discretion.

On appeal, LoCali generally disputes the award of damages but does not dispute with any specificity the amount of actual damages awarded to Ms. Rodriguez. The record supports the bankruptcy court's award of \$4,382.26 in actual damages (food, rental car, hotel, toiletries) to Ms. Rodriguez.

The bankruptcy court also awarded \$17,478 in emotional distress damages. In *Dawson v. Washington Mutual Bank, F.A. (In re Dawson)*, the Ninth Circuit determined that "actual damages" included emotional distress damages. 390 F.3d 1139, 1146 (9th Cir. 2004), *abrogation on other*

need not be formal for knowledge of the automatic stay and for the purposes of a willful stay violation."). "Informal notice suffices[.]" and once a creditor is given actual notice of a bankruptcy filing, that creditor "ha[s] a duty to ascertain the correctness of the information, not disregard it." *Id.*

grounds recognized in *Gugliuzza v. FTC (In re Gugliuzza)*, 852 F.3d 884, 896-97 (9th Cir. 2017). An award of emotional distress damages is permissible if: (1) the individual suffered “significant harm,” as opposed to “[f]leeting or trivial anxiety or distress”; (2) the significant harm is “clearly establish[ed]”; and (3) there is “a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process).” *Id.* at 1149. Emotional distress may be “readily apparent” without the need for corroborating evidence, such as when a creditor engages in egregious conduct or the circumstances make it obvious that a reasonable person would suffer significant emotional harm. *Bauer v. N.E. Neb. Fed. Credit Union (In re Bauer)*, BAP No. EC-09-1281-DMkH, 2010 WL 6452899, at *9 (9th Cir. BAP Apr. 8, 2010).

The testimony that convinced the bankruptcy court to award emotional distress damages came almost exclusively from Ms. Rodriguez’s daughter Priscilla. Priscilla provided testimony regarding the impact of the Lockout, including that the Lockout triggered the possibility that she would be unable to participate in her high school graduation ceremony and that the Lockout would tarnish her memories of her senior year. Priscilla also stated that it was not “convenient to do schoolwork in a hotel room.”

In the Stay Violation Order, the bankruptcy court explained that it was awarding \$17,478 because it was what “the Court calculated as one

year of college tuition expenses at a University of California public university in consideration of the fact that much of the emotional distress stemmed from actions involving [Ms. Rodriguez's] minor children and their educational experience."

There is no set formula for determining damages. Rather, the "bankruptcy court as the fact finder has considerable discretion in fixing damages." *In re Moon*, 2021 WL 62629, at *8. As noted above, we review the bankruptcy court's findings of fact for clear error. *Eskanos & Adler, P.C.*, 309 F.3d at 1213. "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1984). In this case, the bankruptcy court observed Priscilla at trial during her testimony and determined her to be a credible witness. Based on our review of the record, the bankruptcy court's conclusions with respect to its award of emotional distress damages were not illogical, implausible, or unsupported by the record. Thus, we do not have a "definite and firm conviction" that the bankruptcy court erred in awarding emotional distress damages in the amount of \$17,478. *Id.*

2. The bankruptcy court's award of punitive damages was not an abuse of its discretion.

LoCali's primary focus on appeal is its disagreement as to the amount of punitive damages awarded. Unlike actual damages under § 362(k), which are mandatory, the bankruptcy court has the discretion to award punitive damages "in appropriate circumstances." § 362(k)(1). In the Ninth

Circuit, something more than mere willfulness is required. *In re Bloom*, 875 F.2d at 228. Courts have determined that punitive damages are appropriate where the conduct was malicious, wanton, or oppressive, *Ramirez v. Fuselier (In re Ramirez)*, 183 B.R. 583, 590 (9th Cir. BAP 1995), or if the violator engaged in “egregious, intentional misconduct.” *McHenry v. Key Bank (In re McHenry)*, 179 B.R. 165, 168 (9th Cir. BAP 1995) (citation modified). When reviewing the constitutionality of the amount of damages awarded, the Supreme Court instructs us to consider: (1) the degree of reprehensibility of the defendant’s misconduct⁹; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded and civil penalties authorized or imposed in comparable cases. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003). “Generally speaking, there are two underlying purposes for punitive damage awards: to punish outrageous conduct and to deter future similar conduct.” *In re Moon*, 2021 WL 62629, at *7 (citation modified). “The bankruptcy court has considerable discretion in granting or denying

⁹ To determine reprehensibility, courts consider whether “the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *State Farm*, 538 U.S. at 419.

punitive damages under § 362 (k).” *In re Koeberer*, 632 B.R. at 691 (citation modified).

On appeal, LoCali argues that the amount of the award was arbitrary because the bankruptcy court did not consider its financial ability or whether it had previously violated the automatic stay. LoCali also asserts that the award was imposed under the bankruptcy court’s “contempt authority of § 105(a)” and was a “serious punitive sanction” violating constitutional due process. Beyond these conclusory assertions, LoCali fails to demonstrate that the bankruptcy court abused its discretion in awarding punitive damages.

First, a bankruptcy court may, but is not required to, consider the finances and repetitiveness of the offender’s actions. Second, the due process clause of the Fifth and Fourteenth Amendments prohibits “grossly excessive” punitive damages awards. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568 (1996). LoCali did not articulate how the damages were “grossly excessive” where the bankruptcy court awarded less in punitive damages than actual damages. *See e.g. Swinton v. Potomac Corp.*, 270 F.3d 794, 818 (9th Cir. 2001) (upholding an award of \$1,000,000 in punitive damages and \$35,600 in compensatory damages); *Bains LLC v. Arco Prods. Co.*, 405 F.3d 764, 776 (9th Cir. 2005) (finding a 9:1 ratio acceptable). Finally, the bankruptcy court awarded the punitive damages pursuant to § 362(k), not its contempt authority under § 105. *See In re Dyer*, 322 F.3d at 1189 (explaining that a bankruptcy trustee is ineligible to receive damages under

§ 362(k) because the trustee is not an “individual” but may recover damages for violations of the automatic stay as a sanction for ordinary civil contempt). Because Ms. Rodriguez is an “individual” there was no need for the bankruptcy court to resort to its contempt authority.

A review of the record demonstrates that the bankruptcy court applied the correct legal rule, and its factual findings were not illogical, implausible, or unsupported by the record. Based on the evidence before it, the bankruptcy court found that LoCali displayed “indifferent disregard,” noting that “despite receiving repeated notice and having substantial experience in property management,” LoCali did not take the “minimal and reasonable precaution . . . [of] suspend[ing] its enforcement actions and further inquir[ing] into the legitimacy of [Ms. Rodriguez’s] repeated assertions of her legal rights.” On this record, the bankruptcy court did not abuse its discretion in awarding \$10,000 in punitive damages. .

C. The bankruptcy court did not abuse its discretion in denying LoCali’s motion for reconsideration.

A motion for reconsideration filed within 14 days of the underlying order is treated as a motion to alter or amend a judgment under Rule 9023, incorporating Civil Rule 59(e). *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001). The Ninth Circuit has instructed that “altering or amending a judgment under Rule 59(e) is an ‘extraordinary remedy’ usually available only when (1) the court committed manifest errors of law or fact, (2) the court is presented with

newly discovered or previously unavailable evidence, (3) the decision was manifestly unjust, or (4) there is an intervening change in the controlling law.” *Rishor v. Ferguson*, 822 F.3d 482, 491-92 (9th Cir. 2016)(citing *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)). A party may not use a Civil Rule 59(e) motion to present a new legal theory for the first time, to raise legal arguments which could have been made in connection with the original motion, or to rehash the same arguments already presented. *Wall St. Plaza, LLC v. JSJF Corp. (In re JSJF Corp.)*, 344 B.R. 94, 103 (9th Cir. BAP 2006), *aff’d and remanded*, 277 F. App’x 718 (9th Cir. 2008).

In this case, LoCali used its motion for reconsideration to merely rehash the same arguments the bankruptcy court previously rejected. Because LoCali failed to establish a manifest error of fact, a manifest error of law, or the existence of newly discovered evidence, the bankruptcy court did not abuse its discretion in denying LoCali’s reconsideration motion.

CONCLUSION

Based upon the foregoing, we AFFIRM.

Concurrence begins on next page.

NIEMANN, Bankruptcy Judge, concurring.

I agree our review of the Stay Violation Order is framed by a two-step analysis. First, did Ms. Rodriguez have “any protectable legal, equitable, or possessory interest” in the Premises as of the petition date, such that the automatic stay applied. *Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1127 (9th Cir. 2016). If the automatic stay did apply to the Premises, we must then consider whether one of the exceptions to the automatic stay applied to LoCali’s actions with respect to the Premises. § 362(b). I write separately because my analysis of those steps is slightly different than that of the majority.

A. The automatic stay applied to the Premises.

The majority holds the automatic stay applied to the Premises because, at the time the bankruptcy case was filed, the writ of possession was stayed by the state court and LoCali lacked the ability to evict Ms. Rodriguez. I would hold the automatic stay applied to the Premises, absent the application of a potential exception, regardless of the temporary stay in place by the state court.

1. Unlawful detainer under California law is a summary proceeding determining the right to possession.

“Unlawful detainer is a unique body of [California] law and its procedures are entirely separate from the procedures pertaining to civil actions generally.” *Palm Prop. Invs., LLC v. Yadegar*, 194 Cal. App. 4th 1419, 1424 (2011) (citation omitted). An unlawful detainer action is a summary

proceeding to evict an occupant. CCP § 1161. “The statutory scheme is intended and designed to provide an expeditious remedy for the recovery of possession of real property. Unlawful detainer actions are, accordingly, of limited scope, generally dealing only with the issue of right to possession and not other claims between the parties, even if related to the property.” 65283 *Two Bunch Palms Bldg. LLC v. Coastal Harvest II, LLC*, 91 Cal. App. 5th 162, 167 (2023) (citations omitted).

A judgment for possession in an unlawful detainer action sets in motion the termination of a tenant’s possessory interest in the property. A plaintiff who is awarded a judgment for possession is entitled to immediate issuance of a writ of possession to effect the defendant-tenant’s eviction. CCP §§ 1170.5(a), 1174(c) and (d). Once a writ of possession has been issued, the occupants of the property must be given five days from the date of service of the writ, with such deadline specified in the writ, to voluntarily vacate the property. CCP §§ 715.010(b)(2), 1174(d). If the occupants do not vacate the premises in the five days provided, the levying officer is authorized to remove them by force, if necessary, and place the landlord in possession. CCP § 715.020(c).

In very limited circumstances, the tenant may have a right to reinstate the lease during this five-day notice period. This option is only available if the lease is unexpired and a forfeiture of the lease was not declared by the landlord in the original statutory notice of nonpayment.

CCP § 1174(c). If those circumstances are not present, the judgment for possession “shall also declare the forfeiture of that lease.” CCP § 1174(a).

The judgment issued in the Unlawful Detainer Action was not provided in the parties’ excerpts of record. However, there is no assertion Ms. Rodriguez cured the payment defaults within the five-day period given. Nor did Ms. Rodriguez list the lease in her bankruptcy schedules. The only rights asserted in the Premises by Ms. Rodriguez arise from her continued possession of the Premises as of the bankruptcy petition date.

2. Ms. Rodriguez had a possessory interest as of the petition date.

Several courts have held the entry of an unlawful detainer judgment and writ of possession, prior to a tenant’s bankruptcy filing, extinguishes the tenant’s right to possession, leaving no interest to become part of the bankruptcy estate. LoCali cited and relied upon two of those cases—*Marquand v. Smith (In re Smith)*, 105 B.R. 50 (Bankr. C.D. Cal. 1989), and *Lee v. Baca*, 73 Cal. App. 4th 1116 (1999).

The background of *Smith* is virtually identical to the facts presented here. The tenant stopped paying rent on her apartment and the landlord obtained a default judgment for possession in an unlawful detainer action. Before the landlord could enforce the judgment and regain possession, the tenant filed a bankruptcy petition. The landlord brought a motion for relief from the bankruptcy automatic stay so he could enforce a judgment for unlawful detainer. The bankruptcy court held that relief from the stay was

not required because the tenant's retention of physical possession of the property "is not a property interest recognized by law." *Smith*, 105 B.R. at 54 (footnote omitted).

Five years after *Smith*, California added CCP § 715.050 which provides, in pertinent part, as follows:

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.**

CCP § 715.050 (emphasis added).

Five years after the enactment of CCP § 715.050 came *Lee v. Baca*. The preliminary facts of *Lee* are also almost identical to those presented here. The tenants stopped paying under a lease and the landlord brought an unlawful detainer action. The landlord obtained a judgment for possession by default and delivered the writ of possession to the sheriff for execution. The tenants then filed a bankruptcy petition and notified the sheriff. The sheriff alerted the landlord and advised the landlord that the sheriff would not enforce the writ of possession until the landlord obtained an order for relief from stay from the bankruptcy court. The tenants abandoned the property a few weeks later. The landlord filed a petition for a writ of mandate and a complaint for declaratory and injunctive relief and damages against the sheriff relying on CCP § 715.050. The sheriff argued that federal bankruptcy law, specifically the automatic stay provisions of § 362(a), was

in conflict with and preempted CCP § 715.050. The trial court found in the sheriff's favor. The court of appeal reversed, citing *Smith*.

After *Lee*, however, two bankruptcy cases came out the other way and found that, under California law,¹ a debtor-tenant's mere physical possession of the premises after a writ of possession had issued in favor of the landlord in an unlawful detainer action is an equitable interest in the property, protected by the automatic stay. *Westside Apartments, LLC v. Butler (In re Butler)*, 271 B.R. 867 (Bankr. C.D. Cal. 2002)²; *Williams v. Levi (In re Williams)*, 323 B.R. 691 (9th Cir. BAP 2005).³ *Butler* also arose under the

¹ *Westside Apartments, LLC v. Butler (In re Butler)*, 271 B.R. 867, 870-71 (Bankr. C.D. Cal. 2002), relied upon California Civil Code § 1006, which provides:

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 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.

² *Butler* also held that CCP § 715.050 is preempted by § 362 and is therefore unconstitutional. *Butler*, 271 B.R. at 876.

³ Prior to *Lee*, the Central District of California also found a possessory interest as of the petition date in *Di Giorgio v. Lee (In re Di Giorgio)*, 200 B.R. 664 (C.D. Cal. 1996), *vacated and remanded as moot*, 134 F.3d 971 (9th Cir. 1998). The facts in *Di Giorgio* were the same landlord-tenant unlawful detainer circumstances presented here. The tenant-debtor sought and obtained an order from the bankruptcy court permanently enjoining the sheriff from enforcing the writ of possession under CCP § 715.050. In *Di Giorgio*, the district court considered and rejected *Smith*. The district court also cited the possessory interest long recognized under California Civil Code § 1006 and agreed that CCP § 715.050 is preempted by § 362. The Ninth Circuit vacated and remanded, however, finding the tenant-debtors had lost their personal interest in challenging appellant-sheriff's use of CCP § 715.050 when they abandoned the premises prior to the hearing before the bankruptcy court.

same landlord-tenant facts presented here. *Williams* cited *Butler* with approval for the proposition that a possessory interest as of the petition date was protected by the automatic stay, but the underlying facts of *Williams* were very different. *Williams* did not involve a landlord-tenant, but instead a former owner of a condo who remained in possession after a foreclosure sale by a homeowners' association.

The Ninth Circuit has subsequently rejected the reasoning of *Williams*, and its application of *Butler* and *Di Giorgio*, in the post-foreclosure context in *Perl*. *In re Perl*, 811 F.3d at 1127-28. The debtor in *Perl* was the co-owner with a joint tenant of a duplex in Los Angeles. After refinancing his interest, Perl defaulted on his mortgage and the bank foreclosed. Eden Place bought the property at the foreclosure sale and brought an unlawful detainer action against Perl. A judgment and writ of possession were issued in favor of Eden Place. The sheriff posted the writ and Perl moved for a stay from the state court. After the stay was denied by the state court, Perl filed a bankruptcy petition. Eden Place then moved for relief from stay from the bankruptcy court. Before the motion for relief from stay was heard by the bankruptcy court, the sheriff proceeded with the lockout and evicted Perl.

The bankruptcy court found 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." *Eden Place, LLC v. Perl (In re Perl)*, 513 B.R. 566, 570 (9th

Cir. BAP 2014). The bankruptcy court found the eviction violated the automatic stay and was void. Eden Place appealed to the Panel. The Panel affirmed the bankruptcy court's decision. The Panel rejected the application of *Smith* as (1) contrary to our holding in *Williams*, and (2) superseded, in the landlord-tenant context not present in *Perl*, by the addition of § 362(b)(22). *Id.* at 575.

Eden Place appealed to the Ninth Circuit, which reversed, finding “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” and, therefore, no interest to which the automatic stay might apply.⁴ *In re Perl*, 811 F.3d at 1130. The Ninth Circuit rejected the application of *Williams* and the *Butler* and *Di Giorgio* cases upon which *Williams* relied. *Id.* at 1129. However, in so doing, the Ninth Circuit relied upon CCP § 1161a, which applies in the post-foreclosure sale context and is “expressly designed to determine who has superior title to the property, including the right to immediate possession.” *Id.* at 1130. Absent application of CCP § 1161a, however, the Ninth Circuit's decision recognized that “legal and **equitable possessory rights** . . . would otherwise be protected by the automatic stay.” *Id.* (emphasis added).⁵

⁴ The Ninth Circuit's decision noted it expressed “no view” on whether CCP § 715.050 is preempted by the Bankruptcy Code, because it resolved the case without relying upon the provisions of CCP § 715.050. *In re Perl*, 811 F.3d at 1129, n.6.

⁵ For this reason, LoCali's continued reliance on *Smith* and *Lee* is misplaced.

CCP § 1161a does not apply to the facts presented here.

Ms. Rodriguez was a tenant, not a holdover former owner, of the Premises. The Unlawful Detainer Action was brought instead under CCP § 1161.⁶ Therefore, we are left with a possessory interest by Ms. Rodriguez as of the petition date, subject to the automatic stay unless an exception applies.

B. The § 362(b)(22) eviction exception is limited.

LoCali alternatively argues that the exception found at § 362(b)(22) applies. As the majority correctly notes, Congress added § 362(b)(22), as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), “to prevent abuse of the automatic stay as a last-minute eviction shield.” *Allegheny Cnty. Hous. Auth. v. Marciniak (In re Marciniak)*, 676 B.R. 148, 151 (Bankr. W.D. Pa. 2026). The breadth of the automatic stay had provided unexpected opportunities for abuse, which resulted in a proliferation of bankruptcy cases “filed solely for the purpose of staying enforcement of unlawful detainer judgments.” *Smith*, 105 B.R. at 51. In its report to Congress, the National Bankruptcy Review Commission, citing *Smith* among its authorities, advised of “persistent, systematic abuse of the automatic stay by residential tenants who have successfully forestalled

⁶ CCP § 1161 defines the controlling elements for an unlawful detainer action, which are, by definition, limited to the landlord-tenant scenario. In contrast, the “removal” of a former owner holding over in possession after the sale of a property—through a foreclosure or otherwise—is authorized by CCP § 1161a.

eviction for months by filing a bankruptcy petition.”⁷ The findings of that Commission would eventually result in the enactment of BAPCPA, which included two new pro-landlord exceptions to the automatic stay directly pertaining to residential leases. Section 362(b)(22) provides an exception if the landlord has obtained a judgment of possession prepetition. Section 362(b)(23) provides an exception based on endangerment of the property. *See In re Williams*, 371 B.R. 102, 105-06 (Bankr. E.D. Pa. 2007) (detailing the legislative history behind § 362(b)(22) and (23)).

Section 362(b)(22) provides that the filing of a bankruptcy case does not operate as a stay —

subject to subsection (l), 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[.]

§ 362(b)(22). The respective interests and rights of both tenants and landlords were balanced in this provision, with the entry of a judgment for possession serving as the brightline test.⁸ Congress addressed the

⁷ Nat'l Bankruptcy Review Commission, Final Report, Bankruptcy: The Next Twenty Years, Chapter 5: Individual Commissioner Views, at 1107 and n.104 (1997), <http://govinfo.library.unt.edu/nbrc/reporttitlepg.html> (last visited July 9, 2026).

⁸ This balancing of interests is comparable to § 362(c)(3), which was also added by BAPCPA. If the debtor had another pending bankruptcy case that was dismissed

limitations it deemed appropriate for § 362(b)(22) in § 362(l), which is referenced at the beginning of § 362(b)(22). *See also In re Marciniak*, 676 B.R. at 150-51 (“Section 362(b)(22) is self-executing subject to a temporal safe harbor found in § 362(l).”).

Section 362(l), in turn, allows a debtor who would be permitted under applicable nonbankruptcy law to “cure the entire monetary default that gave rise to the judgment for possession” to apply for a 30-day stay of the relief afforded under § 362(b)(22).⁹ “If the debtor fails to comply with the provisions of § 362(l), . . . the stay is terminated automatically without further need for a motion for relief from stay.” *In re Unutoa*, No. 21-00045-GS, 2021 Bankr. LEXIS 3698, at *3 (Bankr. D. Alaska Aug. 12, 2021) (citing 11 U.S.C. § 362(l)(4)).

Here, it is undisputed that LoCali obtained a judgment for possession prior to Ms. Rodriguez filing her bankruptcy petition. It is also clear

within 1 year of filing the current bankruptcy case, § 362(c)(3) limits the automatic stay to 30 days unless, during that 30-day period, a motion to extend the stay is heard and granted.

⁹ To obtain such a stay, the debtor must file, with the bankruptcy petition, a certification under penalty of perjury that such nonbankruptcy law rights apply. § 362(l)(1)(A). The debtor must also deposit with the clerk of court any rent that would become due during the 30-day period. § 362(l)(1)(B). The debtor must then further certify, within the 30 days given, that the lease has been cured. § 362(l)(2). The lessor has the opportunity to object to the certification. § 362(l)(3). The debtor is required by § 362(l)(5) to: (1) indicate on her bankruptcy petition if a judgment for possession has been entered; (2) provide the name and address of the lessor that obtained the prepetition judgment; and (3) indicate whether the debtor is seeking the 30-day stay.

Ms. Rodriguez did not pursue relief under § 362(l).¹⁰ However, the facts presented do not end there.

1. *Nicholson* does not apply.

Relying on *Nicholson v. IFG Timber, LLC (In re Nicholson)*, BAP No. ID-18-1161-BKuF, 2019 WL 2524291 (9th Cir. BAP June 18, 2019), the bankruptcy court found that § 362(b)(22) did not apply because LoCali did not have a “final, non-appealable judgment for possession” prior to the bankruptcy filing. I, like the majority, disagree. In addition to the points noted by the majority distinguishing *Nicholson*, *Nicholson* also does not stand for the proposition that a judgment for possession must be final and non-appealable for § 362(b)(22) to apply. Instead, after describing cases from other jurisdictions so holding, *Nicholson* noted that, unlike those cases, the judgment at issue there had already been appealed and affirmed, and was thus “final” prior to the petition date.

2. Temporary stay of the Lockout impacted application of § 362(b)(22).

The other factor emphasized by the bankruptcy court, in finding § 362(b)(22) did not apply, was the stay of the Lockout issued by the state court. The majority finds that this stay made the judgment for possession

¹⁰ Ms. Rodriguez also did not inform the state court of her bankruptcy filing during the hearing on her motion to vacate the default judgment. Only after the state court indicated, via an email to the parties from the clerk, that the motion would be denied, did Ms. Rodriguez reply to alert the state court and LoCali of the bankruptcy filing.

not enforceable as of the petition date and, for that reason, § 362(b)(22) does not apply. However, I think this reasoning presents the same problems as the bankruptcy court's reliance on *Nicholson*. Just as § 362(b)(22) does not say "final, non-appealable" it also does not say "non-stayed."¹¹ Section 362(b)(22) simply requires "a judgment for possession," which existed in this case, albeit unenforceable.¹²

The application of § 362(b)(22) does not, in my opinion, fail here because of the lack of a judgment for possession. Rather, under the facts presented, the fatal clause in § 362(b)(22) is its limitation to subsection (a)(3).

Unlike other exceptions set forth in § 362(b), the exception permitted by § 362(b)(22) is limited to acts stayed under § 362(a)(3), not to all acts under § 362(a).¹³ The hearing before the state court on Ms. Rodriguez's motion for relief from the judgment was more than a ministerial action related to the judgment for possession, which might be covered under

¹¹ The existence of a stay by the state court did not negate the judgment for possession. Even if the motion to vacate the default judgment on the basis of alleged ineffective service had been granted by the state court, the judgment would not be automatically void. *See* CCP § 473.5(c) (default judgment "may [be] set aside" upon a showing that complaint was not properly served and "that the party's lack of actual notice in time to defend the action was not caused by the party's avoidance of service or inexcusable neglect")

¹² It was not the judgment for possession that was stayed by the state court, but rather the writ of possession. Section 362(b)(22) does not hinge upon, or even reference, a writ of possession.

¹³ Of the exceptions to the automatic stay provided in § 362(b), only § 362(b)(22) and (23) are limited in their application to subsection (a)(3).

§ 362(a)(3) and (b)(22). See *In re Williams*, 371 B.R. at 110-11 (discussing at length the legislative history of § 362(b)(22) and its carveout of (a)(3)). It was instead a “judicial proceeding” subject, postpetition, to § 362(a)(1). *Id.* at 111 (noting a “judicial act is the exercise of discretion or judgment” while an “action is ministerial where the law not only allows it, but demands it, and where the duty is clear and indisputable”). As such, the hearing and subsequent order by the state court violated the automatic stay and were void.

The facts of this case are somewhat unique. Had the state court not stayed the Lockout or set the matter for hearing prior to the petition date, the result would likely be quite different. Just an argument that she might be entitled to relief from the judgment for possession would have put Ms. Rodriguez squarely within the parameters, and requirements, of § 362(l). In this context we ought to be mindful that it may sometimes be unclear what the debtor’s rights were on the petition date, and whether the stay protected an interest of the estate. In such cases, parties regularly go to the bankruptcy court to request clarification as to whether various actions violate the stay or not.

All LoCali had to do to avoid taking potentially violative action was promptly bring the issue to the bankruptcy court. It certainly would have been better practice for LoCali to have waited until after the hearing on Ms. Rodriguez’s motion to enforce the stay before proceeding with the Lockout, particularly once the bankruptcy court independently set the

matter for hearing. There were many deficiencies in Ms. Rodriguez's arguments and actions that could, and should, have been timely raised.

Rather than take such cautionary and protective action in this case, LoCali's agent made the unilateral decision that Ms. Rodriguez's bankruptcy filing was "ineffective," and LoCali was entitled to resort to self-help. That is precisely the outcome we never want to encourage.