

FILED

MAY 30 2014

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

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

| | | | |
|-----------------|---|-------------------------------|------------------|
| In re: |) | BAP No. | CC-13-1328-KiTad |
| |) | | |
| SHOLEM PERL, |) | Bk. No. | 13-26126-NB |
| |) | | |
| Debtor. |) | | |
| _____ |) | | |
| EDEN PLACE, LLC |) | | |
| |) | | |
| Appellant, |) | | |
| |) | | |
| v. |) | MEMORANDUM¹ | |
| |) | | |
| SHOLEM PERL, |) | | |
| |) | | |
| Appellee. |) | | |
| _____ |) | | |

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

Filed - May 30, 2014

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

Honorable Neil W. Bason, Bankruptcy Judge, Presiding

Appearances: _____
 Ronald N. Richards, Esq. of the Law Offices of
 Ronald Richard & 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.

¹ This disposition is not appropriate for publication.
 Although it may be cited for whatever persuasive value it may have
 (see Fed. R. App. P. 32.1), it has no precedential value. See 9th
 Cir. BAP Rule 8013-1.

1 Appellant Eden Place, LLC ("Eden Place") appeals an order
2 from the bankruptcy court that determined, in part, that the
3 postpetition lockout/eviction by the Los Angeles County Sheriff's
4 Department ("Sheriff") of the debtor from his residence on
5 June 27, 2013, made at the request of Eden Place violated the
6 automatic stay. Based on the Panel's decision in Williams v. Levi
7 (In re Williams), 323 B.R. 691, 699 (9th Cir. BAP 2005), aff'd,
8 204 F. App'x. 582 (9th Cir. 2006),² we AFFIRM.

9 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

10 **A. Prepetition events**

11 Appellee-debtor Sholem Perl ("Perl") and a joint tenant
12 (collectively, "Perls") owned a single-family duplex in Los
13 Angeles, California ("Residence"). In 2005, Perls refinanced
14 their mortgages in connection with the Residence; in 2009, Perls
15 fell behind in their mortgage payments.

16 After recording a notice of default and a notice of trustee's
17 sale, Bank of America sold the Residence on March 20, 2013 to Eden
18 Place. Eden Place timely recorded the trustee's deed on March 29,
19 2013.

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

24 On April 12, 2013, the Perls filed a complaint in state court
25

26 ² We acknowledge Eden Place submitted a letter under Fed. R.
27 App. P. 28(j). We discussed some of Eden Place's cited
28 authorities, specifically In re Williams, with its counsel at the
time of oral argument and were familiar with its other cited BAP
authorities.

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

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

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

22 **B. Postpetition events**

23 On June 20, 2013, Perl, acting pro se, filed a "skeletal"
24 chapter 13³ bankruptcy petition. Perl needed to file his
25 schedules, statement of financial affairs, chapter 13 plan and
26

27 ³ Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 other required documents by July 5, 2013. Although not listed as
2 a creditor, Eden Place received notice of Perl's bankruptcy
3 filing. On June 24, 2013, Perl's counsel faxed a letter to Eden
4 Place's counsel and to the Sheriff's department informing them of
5 the bankruptcy filing. In the letter, Perl's counsel asserted
6 that no landlord-tenant relationship existed between Perl and Eden
7 Place, so any exceptions to the automatic stay provided in
8 § 362(b)(22) did not apply. He also asserted, citing to
9 In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002), that CAL.
10 CODE CIV. P. § 715.050⁴ operated in contravention to the Code and
11 was therefore unconstitutional.

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

18 Later on June 24, 2013, Eden Place moved to remand the
19 Removed Actions ("Motion for Remand") and filed its application
20 for an order shortening time. The bankruptcy court scheduled the
21 Motion for Remand for hearing on June 28, 2013. Also on June 24,
22 Eden Place filed a motion in bankruptcy court for relief from stay
23 ("Stay Relief Motion"), pursuant to the provisions of § 362(d)(1)

24 ⁴ CAL. CODE CIV. P. § 715.050 provides, in relevant part:

25
26 Except with respect to enforcement of a judgment for money, a
27 writ of possession issued pursuant to a judgment for
28 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.

1 and (2). Alternatively it asserted that the automatic stay did
2 not apply. Eden Place asserted that it purchased the Residence at
3 the March 20, 2013 prepetition foreclosure sale, that the
4 trustee's deed had been properly recorded, that the UD Judgment
5 had been obtained as well as a Writ of Possession and that the
6 Residence was not property of Perl's bankruptcy estate. The
7 bankruptcy court set a hearing on the Stay Relief Motion for
8 July 9, 2013.

9 Notwithstanding the bankruptcy filing and Eden Place's
10 pending Stay Relief Motion, the Sheriff proceeded with Perls'
11 lockout on June 27, 2013, thereby evicting the Perls. Some of
12 Perls' personal belongings remained inside the Residence at the
13 time of the eviction.

14 Perl, with the assistance of counsel, filed his Amended
15 Emergency Motion to Enforce the Automatic Stay, Set Aside the
16 Eviction and for Order in Contempt ("Emergency Motion to Enforce
17 Stay") and his application for order shortening time. Perl
18 asserted that by continuing the eviction process against him and
19 eventually evicting him, Eden Place had violated the automatic
20 stay pursuant to § 362(a)(1)-(3). Specifically, Perl asserted
21 that his possessory interest in the Residence constituted an
22 equitable interest under § 541(a) protected by § 362(a)(3), citing
23 In re Butler and Di Giorgio v. Lee (In re Di Giorgio), 200 B.R.
24 664, 670 (C.D. Cal. 1996), vacated on mootness grounds, 134 F.3d
25 971 (9th Cir. 1998). Perl also asserted that his pending
26 litigation to set aside the sale and his dispute over the validity
27 of the UD Judgment created a protected equitable interest in the
28 Residence. Perl requested that his Emergency Motion to Enforce

1 Stay be heard on June 28 along with Eden Place's Motion for
2 Remand. A few hours later, Eden Place filed an objection to
3 Perl's Emergency Motion to Enforce Stay, contending that it was
4 moot and procedurally defective.

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

8 Just hours before the scheduled hearing, Eden Place filed
9 another objection to Perl's Emergency Motion to Enforce Stay.
10 Eden Place argued that, under California law, once the foreclosure
11 occurred and Eden Place recorded its trustee's deed on March 29,
12 2013, Perl had no legal or equitable interest in the Residence
13 protected by the automatic stay at the time of the eviction on
14 June 27, 2013; he was merely a squatter or trespasser with no
15 cognizable interest. Eden Place further argued that Perl's motion
16 failed to recognize ample authority which supports the position
17 that continued enforcement of a prepetition unlawful detainer
18 judgment is not a violation of the automatic stay. Citing Lee v.
19 Baca, 73 Cal.App.4th 1116, 1117-18 (1999), a case involving a
20 residential tenant and landlord, Eden Place argued that an
21 unlawful detainer judgment extinguishes the residential tenant's
22 interest in the property and that a postjudgment bankruptcy filing
23 does not affect the landlord's right to regain possession of the
24 property because it is not, at that point, property of the
25 tenant-debtor's estate. Eden Place also cited In re Smith,
26 105 B.R. 50, 53-54 (Bankr. C.D. Cal. 1989), which held that a
27 debtor-tenant has no legal or equitable interest in rented
28 property once a judgment for possession has been entered in favor

1 of the landlord. Based on these authorities, Eden Place argued
2 that Perl lost whatever possessory interest he might have had in
3 the Residence upon entry of the UD Judgment, so the Sheriff's
4 execution of the Writ of Possession did not affect property of the
5 estate. Eden Place also took the position that once the UD
6 Judgment and Writ of Possession were issued, the Sheriff had no
7 choice but to proceed with the eviction.

8 Eden Place acknowledged the holdings of In re Butler and
9 In re Di Giorgio, but argued that both cases were inapplicable
10 because they were "tenant" cases, not "squatter" cases. Eden
11 Place further argued that these cases were weakened with the
12 addition of § 362(b)(22) under the amendments of the Bankruptcy
13 Abuse Prevention and Consumer Protection Act of 2005, which
14 clarifies that residential tenants, subject to certain
15 limitations, are not protected by the automatic stay. Eden Place
16 contended that no federal courts of appeals have ever ruled that a
17 squatter who loses an unlawful detainer action still has a
18 cognizable property interest that would warrant invoking the
19 automatic stay. Alternatively, Eden Place argued that cause
20 existed to annul the stay retroactively to June 20, 2013.

21 The hearing on the Emergency Motion to Enforce Stay, the Stay
22 Relief Motion and the Motion for Remand proceeded on June 28,
23 2013. Counsel for both parties appeared. Before the parties
24 presented oral argument, the bankruptcy court opined that the
25 postpetition enforcement of the Writ of Possession on June 27
26 "seem[ed] to be something that would violate the automatic stay."
27 Hr'g Tr. (June 28, 2013) 2:19-20. After hearing brief argument
28 from counsel for Eden Place, the bankruptcy court made its initial

1 findings with respect to whether Eden Place violated the automatic
2 stay:

3 THE COURT: Okay. Well, let's back up a moment here. As
4 of the petition date, before the sheriff went in and
5 evicted, there was a possessory interest, correct, or am
6 I misunderstanding the facts?

7 MR. RICHARDS: Well, there was a possessory interest of
8 naked possession, yes.

9 THE COURT: Okay.

10 . . .

11 MR. RICHARDS: So other than a naked possessory interest,
12 that's all there was.

13 THE COURT: I understand. I do not follow In re Smith.

14 MR. RICHARDS: Okay.

15 THE COURT: And in my view, the bare possessory interest,
16 coupled with the possibility of some sort of relief, may
17 be sufficient to give the bankruptcy estate a protected
18 interest that is subject to the automatic stay.

19 Id. at 5:3-10, 15-23. The court also noted that despite Eden
20 Place's argument respecting a residential tenant under
21 § 362(b)(22), this was not a rental situation. Id. at 5:24-6:15.

22 Counsel then noted that In re Butler was also a landlord-tenant
23 case and not a case that dealt with squatters who lose their house
24 to foreclosure. Id. at 7:6-9.

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

28 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.

1 Now, when we're talking about a cause of action or claims
2 or defenses such as an assertion of a right to
3 possession, even if that's after a writ of possession,
4 there are still claims there.

5 Any by - if - it may be that the automatic stay applies
6 even to the more limited bundle of rights that still
7 exists. It may not even be a bundle. It might just be
8 the opportunity to seek some relief.

9 Id. at 34:17-35:7.

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

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

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1 Eden Place filed a status report on July 15, 2013.⁵ Despite
2 extensions to file his schedules and other required documents,
3 Perl never filed anything further in his bankruptcy case. The
4 case was ultimately dismissed on August 8, 2013, for Perl's
5 failure to appear at the scheduled § 341(a) meeting of creditors.

6 Eden Place timely appealed the Order.

7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
9 and 157(b) (2) (G). We have jurisdiction under 28 U.S.C. § 158.⁶

10 **III. ISSUE**

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

14 **IV. STANDARD OF REVIEW**

15 Whether the automatic stay provisions of § 362 have been
16 violated is a question of law we review de novo. McCarthy,
17 Johnson & Miller v. N. Bay Plumbing, Inc. (In re Pettit), 217 F.3d
18 1072, 1077 (9th Cir. 2000) (citing Cal. v. Taxel (In re Del Mission
19 Ltd.), 98 F.3d 1147, 1150 (9th Cir. 1996)).

22 ⁵ According to Eden Place, the Perls' lis pendens was
23 expunged. The UD Actions were closed. Perl's counsel filed a
24 state court appeal. Eden Place transferred the Residence to a new
25 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.

26 ⁶ On January 9, 2014, a motions panel determined that this
27 appeal was not moot, despite the dismissal of Perl's bankruptcy
28 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.

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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. (citations omitted). 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).

1 See also Ramirez v. Fuselier (In re Ramirez), 183 B.R. 583, 587
2 (9th Cir. BAP 1995) (automatic stay protects property of the estate
3 in which the debtor has a legal, equitable or possessory interest)
4 (citing Interstate Commerce Comm'n v. Holmes Transp., Inc.,
5 931 F.2d 984, 987 (1st Cir. 1991)). Bankruptcy courts must look
6 to state law to determine whether and to what extent the debtor
7 has any legal or equitable interests in property as of the
8 commencement of the case. Butner v. United States, 440 U.S. 48,
9 54-55 (1978).

10 Actions taken in violation of the automatic stay are void.
11 Griffin v. Wardrobe (In re Wardrobe), 559 F.3d 932, 934 (9th Cir.
12 2009) (citing Gruntz v. Cnty. of L.A. (In re Gruntz), 202 F.3d
13 1074, 1081-82 (9th Cir. 2000) (en banc)).

14 In determining whether Eden Place violated the automatic stay
15 by proceeding with the eviction of Perl, we must determine whether
16 Perl had any remaining interest in the Residence on the date he
17 filed bankruptcy. Because the Residence is located in California,
18 California law controls this determination. Here, it is
19 undisputed that Eden Place purchased the Residence and timely
20 recorded its trustee's deed prepetition. Under CAL. CIV. CODE
21 § 2924h(c), "the trustee's sale shall be deemed final upon the
22 acceptance of the last and highest bid, and shall be deemed
23 perfected as of 8 a.m. on the actual date of sale if the trustee's
24 deed is recorded within 15 calendar days after the sale[.]" "The
25 purchaser at a nonjudicial foreclosure sale receives title under a
26 trustee's deed free and clear of any right, title or interest of
27 the trustor. A properly conducted nonjudicial foreclosure sale
28 constitutes a final adjudication of the rights of the borrower and

1 lender." Wells Fargo Bank v. Neilsen, 178 Cal.App.4th 602, 614
2 (2009) (citations and quotation marks omitted). See also 4 Miller
3 & Starr, Cal. Real Estate § 10:208 (3d ed. 2009) (Under California
4 law, "[t]he purchaser at the foreclosure sale receives title free
5 and clear of any right, title, or interest of the trustor or any
6 grantee or successor of trustor."). Accordingly, title to the
7 Residence passed to Eden Place free and clear of any right, title
8 or interest of Perl's about three months before he filed his
9 chapter 13 bankruptcy petition. Thus, Perl's ownership interest
10 in the Residence was eliminated prepetition. Therefore, to find
11 that Eden Place violated the automatic stay, we must determine
12 whether Perl held some other sort of interest in the Residence
13 recognized by California law at the time he filed bankruptcy.

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

23 Where a real property nonjudicial foreclosure was
24 completed and the deed recorded prepetition, the debtor
25 has neither legal nor equitable title to the property at
26 the time the bankruptcy petition is filed. Although the
27 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.

28 Kathleen R. March and Alan M. Ahart, CALIFORNIA PRACTICE GUIDE:

1 BANKRUPTCY ¶ 8:1196 (2009) (emphasis in original). See Wells Fargo
2 Bank v. Edwards (In re Edwards), 454 B.R. 100, 106 (9th Cir. BAP
3 2011), as just one of many examples.

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

15 A distinction exists between the analyses required for stay
16 relief matters and violation of stay matters. In the former, the
17 creditor is summarily attempting to establish a colorable claim in
18 terms of an interest in a debtor's secured note or an interest in
19 debtor's property. In considering the interest in debtor's
20 property, an analysis is made as to the strength of debtor's
21 interest vis-a-vis creditor's interest in the same property.
22 Consequently, terms like "owner" and "squatter" appear. See
23 In re Edwards, 454 B.R. at 105-06. In the latter, the debtor is
24 attempting to establish that the creditor is violating the
25 automatic stay by taking some action against the debtor or against
26 property of the estate. In this instance, the strength of one's
27 interest is not determinative; but more importantly, if debtor or
28 the estate has "any" interest the question becomes: is the

1 creditor's action violative of the stay. Creditor's action may be
2 violative even if a minimal interest, such as a squatter's or
3 possessory interest, is held by the debtor or the estate. See
4 In re Di Giorgio, 200 B.R. at 672-74.

5 In a case factually similar to Nyamekye concerning whether a
6 party had violated the automatic stay, we held that a debtor-
7 borrower had a possessory interest in the real property at issue
8 by virtue of his or her physical occupancy. In re Williams,
9 323 B.R. at 699. In that case, we cited In re Butler, 217 B.R. at
10 867, with approval and for the proposition that under California
11 law "a debtor-tenant's mere physical possession of apartment
12 premises after writ of possession had issued in favor of landlord
13 in unlawful detainer action is an equitable interest in the
14 property, protected by the automatic stay." In other words, we
15 extended the holding of In re Butler to include a debtor-former
16 homeowner as opposed to only a debtor-tenant under a residential
17 lease. We also cited In re Di Giorgio, which similarly held that
18 under California law mere possession of real property, even after
19 a writ of possession has issued, creates a protected equitable
20 interest subject to the automatic stay. 200 B.R. at 671-73.

21 Granted, In re Di Giorgio, a case from 1996, involved a
22 residential tenant as opposed to a former homeowner, and, as we
23 discuss below, residential tenants are no longer given the
24 protection of the automatic stay if certain limitations are
25 satisfied. However, the holding in In re Di Giorgio appears
26 broad, and the district court did not limit its analysis as to
27 what constitutes a "possessory interest" under California law
28 strictly to residential tenants under a lease. "Under California

1 law, mere possession of real property creates a protected
2 interest." Id. at 671 (citing to CAL. CIV. CODE § 1006, which
3 states: "Occupancy for any period confers a title sufficient
4 against all except the state and those who have title").
5 "[T]he mere possession of real estate is constantly treated as
6 property which may be purchased and sold, and for the recovery of
7 which an action may be maintained against one having no better
8 title." King v. Goetz, 70 Cal. 235, 240, 11 Pac. 656, 658 (1886).
9 See 12 WITKIN ON REAL PROP., SUMMARY 10TH (2005) § 208 (possession
10 gives possessor substantial right).

11 In In re Williams, the debtor had transferred record title to
12 his condominium to his girlfriend prepetition, but was still
13 occupying the condo when he filed bankruptcy and at the time the
14 homeowners association foreclosed its lien on the property.
15 Recognizing that the debtor had no recorded interest in the condo
16 on the petition date, we determined that he nonetheless held a
17 possessory interest in it that was property of the estate under
18 § 541(a) and protected by the automatic stay. 323 B.R. at 699.
19 We remanded that portion of the order to have the bankruptcy court
20 determine whether any stay violation damages were appropriate.
21 Id. at 702.

22 Eden Place had not cited to In re Williams in its brief and
23 appeared to be unaware of it at the time of oral argument.
24 Instead, Eden Place argues that the bankruptcy court erred by not
25 following In re Smith and contends that we should adopt it, and
26 further contends that we should reject In re Butler. In
27 In re Smith, the bankruptcy court held that where a residential
28 landlord obtained an unlawful detainer judgment prepetition, the

1 debtor-tenant has no legal or equitable interest in the property
2 protected by the automatic stay. 105 B.R. at 54. The court
3 further held that the debtor-tenant's physical possession of the
4 property was not a property interest recognized by law. Id.
5 Notably, it did not cite to any California authority for this
6 proposition. The court went on to conclude that it was not
7 necessary for the movant to obtain relief from stay in order to
8 regain possession of the apartment. Id.

9 We decline to adopt In re Smith for two reasons. First, it
10 is contrary to our holding in In re Williams, and we are bound by
11 our precedent. Gaughan v. The Edward Dittlog Revocable Trust
12 (In re Costas), 346 B.R. 198, 201 (9th Cir. BAP 2006) (absent a
13 change in the law, we are bound by our precedent). For that same
14 reason, we are not inclined to reject In re Butler. Second, the
15 concerns expressed by the bankruptcy court in In re Smith
16 regarding what it viewed as a lack of power of residential
17 landlords have been addressed with the addition of § 362(b)(22).⁷
18 Under that provision, absent certain limitations not relevant
19 here, the automatic stay does not apply to cases under which the
20

21 ⁷ Section 362(b)(22) provides that the filing of a
22 bankruptcy petition does not create a stay "subject to subsection
23 (1), under subsection (a)(3), of the continuation of any eviction,
24 unlawful detainer action, or similar proceeding by a lessor
25 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[.]"

26 Section 362(1) provides, however, that a 30-day stay shall
27 apply if there is a rent default by a debtor-tenant, where the
debtor certifies with the bankruptcy petition that he or she can
28 cure the default and deposits with the clerk the amount of rent
due for the next 30 days.

1 debtor resides as a tenant under a lease or rental agreement and
2 where the lessor has obtained before the bankruptcy filing a
3 judgment for possession. As the bankruptcy court observed in the
4 instant case, we do not have a rental property situation, and
5 clearly, we have no lease or rental agreement between the parties.

6 Eden Place argues that In re Smith is consistent with
7 California law, where a judgment for possession has issued. CAL.
8 CODE. CIV. P. § 715.050 provides, in relevant part, that "a writ of
9 possession issued pursuant to a judgment for possession in an
10 unlawful detainer action shall be enforced pursuant to this
11 chapter without delay, notwithstanding receipt of notice of the
12 filing by the defendant of a bankruptcy proceeding." In other
13 words, CAL. CODE. CIV. P. § 715.050 provides that a writ of
14 possession obtained in an unlawful detainer action must be
15 executed despite a defendant's filing of a postjudgment bankruptcy
16 petition. Two courts have held that this statute is preempted by
17 federal bankruptcy law and is therefore unconstitutional on its
18 face. In re Di Giorgio, 200 B.R. at 675; In re Butler, 217 B.R.
19 at 876. One California Court of Appeal has held to the contrary.
20 See Lee, 73 Cal.App.4th at 1119-20 (relying on In re Smith to hold
21 that CAL. CODE. CIV. P. § 715.050 survives a preemption attack). We
22 are not persuaded by Lee and agree with the reasoning of
23 In re Butler and In re Di Giorgio. Clearly, with the statute's
24 express reference to the filing of a bankruptcy petition, its
25 purpose is to carve out an exception to the automatic stay
26 provided by federal law. This exception is preempted by § 362(a).
27 While state law determines the existence and scope of a debtor's
28 interest in property, federal law determines whether that property

1 interest is protected by the automatic stay. In re Di Giorgio,
2 200 B.R. at 673 n.4; In re Gruntz, 202 F.3d at 1082 ("The
3 automatic stay is an injunction issuing from the authority of the
4 bankruptcy court, and bankruptcy court orders are not subject to
5 collateral attack in other courts.").

6 Finally, Eden Place argues that the eviction did not violate
7 the automatic stay because it was a "ministerial act," and that
8 the Sheriff was on "auto pilot" and had no choice but to execute
9 the Writ of Possession. We fail to see where Eden Place raised
10 this argument before the bankruptcy court. We generally do not
11 consider arguments raised for the first time on appeal, and we do
12 not exercise our discretion to do so in this case. O'Rourke v.
13 Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957
14 (9th Cir. 1989). See also Moldo v. Matsco, Inc. (In re Cybernetic
15 Servs., Inc.), 252 F.3d 1039, 1045 n.3 (9th Cir. 2001) (Appellate
16 court will not explore ramifications of argument because it was
17 not raised below and, accordingly, was waived).

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

24 To "willfully" violate the automatic stay, the alleged
25 violator must have knowledge of the automatic stay and have
26 intentionally violated the stay. Ozenne v. Bendon (In re Ozenne),
27 337 B.R. 214, 220 (9th Cir. BAP 2006) (citations omitted). The
28 record reflects that Eden Place was on notice of Perl's bankruptcy

1 filing prior to the eviction on June 27, 2013, even if notice was
2 only based on counsel's faxed letter. "Knowledge of the
3 bankruptcy filing is legal equivalent of knowledge of the
4 automatic stay." Id. (citing In re Ramirez, 183 B.R. at 589).
5 Informal notice suffices. In re Ozenne, 337 B.R. at 220 (citing
6 Morris v. Peralta (In re Peralta), 317 B.R. 381, 389 (9th Cir. BAP
7 2004)). Further, the acts here were intentional. Whether Eden
8 Place believed in good faith that it had a right to the Residence
9 is irrelevant to the analysis of whether its act was intentional.
10 Id. at 221 (citations omitted). Accordingly, we conclude that
11 Eden Place violated the automatic stay when it did not advise the
12 Sheriff to desist in its efforts to lock out and evict Perl from
13 the Residence. We further note that changing the locks on the
14 Residence, locking inside Perl's personal property, which was also
15 property of the estate, was an act to exercise control over
16 property of the estate in violation of § 362(a)(3). See
17 In re Gagliardi, 290 B.R. 808, 815 (Bankr. D. Colo. 2003).

18 VI. CONCLUSION

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

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