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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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In re Elva Maricely Funes,  
Debtor,

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Elva Maricely Funes,

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Appellant,

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v.

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Strategic Acquisitions, Inc.; and HSBC  
Bank USA, N.A.,

16

Appellees.

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No. CV 14-6003 PA

OPINION ON APPEAL FROM  
BANKRUPTCY COURT

Bankruptcy Case No. 1:13-bk-16987-MT

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Before the Court is an appeal filed by Elva Maricely Funes (“Funes”). Funes challenges an order issued on July 3, 2014, denying her Motion to Reopen Chapter 13 Bankruptcy. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument.

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I. Background

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On April 11, 2007, Funes executed a deed of trust against her residence located in Van Nuys, CA (the “Property”). (1 Excerpts of Record (“ER”) 42. The beneficiary of the deed of trust was Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for Mortgageit, Inc. Appellee HSBC Bank USA, N.A. (“HSBC”) eventually purchased the loan. (1 ER 42-43.) Funes defaulted on the loan and, on January 6, 2010, foreclosure

1 proceedings were initiated against the Property. (1 ER 64.) A notice of trustee’s sale was  
2 recorded, setting a sale date of August 26, 2013. (1 ER 75.) This sale date was continued to  
3 November 1, 2013. On that date, appellee Strategic Acquisitions, Inc. (“Strategic”)  
4 purchased the Property as the high bidder at the foreclosure sale. (1 ER 31, 35.)

5 Also on November 1, 2013, at 9:45 a.m., Funes filed for Chapter 13 bankruptcy. (1  
6 ER 1.)<sup>1/</sup> At that time, Funes was represented by Bruce A. Thomason of the Thomason Law  
7 Center. (1 ER 1.) Funes’ voluntary petition was a facepage petition. The filing did not  
8 include the required schedules or statement of affairs. (1 ER 1-7.) Funes never filed her  
9 schedules and the Bankruptcy Court issued a notice to Funes that she had 14 days to  
10 properly file her schedules and other documents or her case would be dismissed. (1 ER 8-9.)  
11 Funes failed to comply and her bankruptcy case was dismissed on November 13, 2014. (1  
12 ER 15.) The order of dismissal provided that the Bankruptcy Court retained jurisdiction  
13 over “all issues arising under Bankruptcy Code § 110, 329 and 362.” (1 ER 15.)

14 On the same day the case was dismissed, Strategic filed a motion to retroactively  
15 annul the automatic stay to allow the foreclosure sale to be completed by execution and  
16 delivery of the Trustee’s Deed Upon Sale (“TDUS”). (1 ER 16-88.) This motion was  
17 served on Funes by mail and on her counsel through the Bankruptcy Court’s ECF system.  
18 (Id.) Strategic additionally served Funes and her counsel with a “Notice of Intent by  
19 Movant, Strategic Acquisitions, Inc. to Proceed with Motion to Annul Automatic Stay and  
20 for Relief from the Automatic Stay after Dismissal of Case.” (1 ER 89-91.)

21 Neither Funes nor her counsel filed an opposition to Strategic’s motion or appeared at  
22 the hearing on December 11, 2013. (1 ER 92.) The Bankruptcy Court granted the motion as  
23 requested, found that the filing of the bankruptcy petition was in bad faith, and annulled the  
24 stay in order to validate the sale to Strategic. (1 ER 92-96.) The order expressly stated that  
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26 <sup>1/</sup> This was not Funes’ first bankruptcy petition. According to Funes, she had  
27 previously filed for Chapter 13 protection on December 15, 2011. Case No. 1:11-bk-24364-  
28 MT. (1 ER 99.) That prior bankruptcy case was dismissed on May 6, 2013, after Funes  
failed to make required plan payments. (1 ER 99, 103, 107.)

1 “Movant may enforce its remedies by completing the foreclosure sale of the Property.” (1  
2 ER 93.) The Bankruptcy Court served the order on both Funes and her counsel on  
3 December 20, 2013. (1 ER 96.) Funes never appealed this order or otherwise sought  
4 reconsideration or relief from the Bankruptcy Court. (1 ER 530.)

5 The Bankruptcy Court closed the case on January 8, 2014. (1 ER 97.) Eight days  
6 later, on January 16, 2014, Funes’ current counsel, Simon Resnik Hayes LLP, filed an ex  
7 parte motion to reopen the bankruptcy case and to vacate the order annulling the automatic  
8 stay. (1 ER 98.) The Bankruptcy Court granted the motion to reopen the case on January  
9 23, 2014, but denied the request to vacate the order annulling the stay. (1 ER 134-35.)  
10 Instead, the Bankruptcy Court concluded that Funes’s effort to reimpose the stay was  
11 procedurally improper because a debtor seeking to reimpose a stay must ordinarily file an  
12 adversary proceeding seeking injunctive relief. (Id.) Funes did not appeal the denial of her  
13 application to reimpose the stay. (1 ER 531.)

14 On January 31, 2014, Strategic filed a lawsuit in Los Angeles Superior Court (the  
15 “State Case”) seeking an order requiring HSBC to issue the TDUS to Strategic as a result of  
16 Strategic having been the winning bidder at the trustee’s sale on November 1, 2013. (1 ER  
17 273-75.) Funes, represented by her new counsel at Simon Resnik Hayes LLP, filed a  
18 crosscomplaint in the State Case against Strategic and HSBC. (Id.) As part of the State  
19 Case, Funes filed an ex parte application for a temporary restraining order to prevent HSBC  
20 from issuing the TDUS. (Id.) The Los Angeles Superior Court denied Funes’ ex parte  
21 application for temporary restraining order on April 18, 2014. (Id.) Funes then filed an ex  
22 parte application for reconsideration of the denial of her request for a temporary restraining  
23 order. (Id.) The Los Angeles Superior Court denied the ex parte application for  
24 reconsideration on May 12, 2014. (Id.)

25 While the parties were litigating the State Case, Funes never filed the adversary  
26 proceeding that the Bankruptcy Court had indicated was the procedurally proper method for  
27 obtaining a reimposition of the bankruptcy stay. Nor did Funes or her counsel at Simon  
28 Resnik Hayes LLP file anything else in the reopened bankruptcy case, including filing the

1 required bankruptcy schedules and statement of affairs that were not filed when Funes first  
2 filed the bankruptcy petition. (1 ER 531.) The Bankruptcy Court dismissed the reopened  
3 case on February 14, 2014, as a result of Funes' failure, for a second time, to file the  
4 required schedules. ( ER 133.)

5 After not pursuing her reopened bankruptcy case, and having it dismissed for the  
6 second time, Funes filed a new Chapter 13 case (her third) on April 8, 2014, as case number  
7 1:14-bk-11843-AA. On May 1, 2014, the Bankruptcy Court denied Funes' motion to  
8 impose an automatic stay because Funes was not eligible to file a second Chapter 13 petition  
9 in the same year and had not overcome the presumption of bad faith. (1 ER 289-90.)  
10 Strategic filed a motion to dismiss this new bankruptcy case on the grounds that Funes was  
11 ineligible to file bankruptcy under 11 U.S.C. § 109(g). Funes did not oppose the motion to  
12 dismiss and the Bankruptcy Court granted the motion and dismissed this third Chapter 13  
13 case on June 5, 2014. (1 ER 292-93.)

14 Strategic and HSBC resolved the issues regarding the TDUS contained in Strategic's  
15 State Case against HSBC. As a result of that settlement, HSBC executed and delivered the  
16 TDUS to Strategic. Strategic recorded the TDUS on May 21, 2014. (1 ER 259-60.)  
17 Strategic then dismissed its claims against HSBC in the State Case. (1 ER 273-75.)

18 After her third bankruptcy petition was dismissed on June 5, 2014, and her request for  
19 injunctive relief had been denied in the State Case, Funes filed, on June 17, 2014, a second  
20 motion to reopen in bankruptcy case number 1:13-bk-16987-MT. (1 ER. 139-239.) In her  
21 motion to reopen, Funes stated her intention to commence an adversary proceeding to  
22 reimpose the bankruptcy stay, annul the Bankruptcy Court's December 20, 2013 order  
23 granting Strategic's motion for relief from the automatic stay based on an argument that  
24 Strategic lacked standing to seek relief from the stay, and pursue a claim against Strategic  
25 and HSBC for violating the automatic stay. (Id.) Strategic and HSBC filed oppositions to  
26 Funes' motion to reopen. (1 ER 244-322, 441-96, 497-505.) The Bankruptcy Court held a  
27 hearing on Funes' motion to reopen on June 25, 2014, during which it denied the motion on  
28 the record. (2 ER 1-22.) Among other reasons for denying Funes' motion, the Bankruptcy

1 Court stated: “You have had so many bites at the apple, there’s like a core left. It’s  
2 ridiculous.” (2 ER 17:6-7.) The Bankruptcy Court entered a written order denying the  
3 motion on July 3, 2014. (1 ER 497.) In its written order, the Bankruptcy Court concluded:

4 [Strategic] did have standing to file a motion to annul the  
5 automatic stay and that the Debtor did not oppose or appeal that  
6 order. Those findings, along with the Debtor’s prior conduct  
7 and timing of this motion and the prior filing by the Debtor that  
8 were not prosecuted or acted upon with reasonable diligence, the  
9 Debtor’s conscious decision to pursue her remedies in other  
10 Courts, the Debtor’s forum shopping and the recordation of the  
11 trustee’s deed upon sale when there was no automatic stay and  
12 other factors support denial of the motion.

13 (1 ER 507-08.) Funes filed a notice of appeal on July 9, 2014. (1 ER 509.) Strategic  
14 elected to have the appeal heard in this Court. (1 ER 522.)

## 15 II. Jurisdiction

16 This Court possesses jurisdiction to consider the denial of a motion to reopen a  
17 bankruptcy case. See In re Staffer, 306 F.3d 967, 971 (9th Cir. 2002) (holding that the Ninth  
18 Circuit possesses jurisdiction over an appeal of a denial of a motion to reopen a bankruptcy  
19 case pursuant to 28 U.S.C. § 158(d)). Although Funes identifies two issues on appeal, first,  
20 whether the Bankruptcy Court erred in denying the motion to reopen, and second, whether  
21 the Bankruptcy Court erred when it concluded that Strategic had standing to request  
22 retroactive annulment of the automatic stay, only Funes’ appeal of the Bankruptcy Court’s  
23 July 3, 2014 denial of the motion to reopen was timely and properly appealed. See Fed. R.  
24 Bankr. P. 8002(a) (requiring a notice of appeal to be filed within 14 days of the entry of the  
25 appealed order). Because Funes did not appeal the Bankruptcy Court’s December 20, 2013  
26 order granting of Strategic’s motion for retroactive relief from the automatic stay, at all, let  
27 alone within 14 days of its entry, this Court lacks jurisdiction over any challenge to that  
28 order. See In re Mouradick, 13 F.3d 326, 327 (9th Cir. 1994) (“The provisions of

1 Bankruptcy Rule 8002 are jurisdictional; the untimely filing of a notice of appeal deprives  
2 the appellate court of jurisdiction to review the bankruptcy court’s order.”<sup>2/</sup>

3 III. Standard of Review

4 The denial of a motion to reopen a bankruptcy case is reviewed for an abuse of  
5 discretion. In re Staffer, 306 F.3d at 971. Under an abuse of discretion standard, this Court  
6 must affirm the Bankruptcy Court’s decision unless the Bankruptcy Court “applied the  
7 wrong legal standard or its findings were illogical, implausible or without support in the  
8 record. See TrafficSchool.com, Inv. v. eDriver, Inc., 653 F.3d 820, 832 (9th Cir. 2011).  
9 The Bankruptcy Court’s decision may be affirmed on any ground finding support in the  
10 record. Elliott v. Four Seasons Properties (In re Frontier Properties, Inc.), 979 F.2d 135,  
11 1364 (9th Cir. 1992).

12 IV. Discussion

13 A bankruptcy case “may be reopened in the court in which such case was closed to  
14 administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b).  
15 “[R]eopening of a closed bankruptcy case is a ministerial act that functions primarily to  
16 enable the file to be managed by the clerk as an active matter and that, by itself, lacks  
17 independent legal significance and determines nothing with respect to the merits of the  
18 case.” In re Menk, 241 B.R. 896, 912 (B.A.P. 9th Cir. 1999). A motion to reopen  
19 “legitimately presents only a narrow range of issues: whether further administration appears  
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22 <sup>2/</sup> Nor do Funes’ efforts to interject the standing issue as part of her argument in support  
23 of her motion to reopen, and in this appeal, allow her to collaterally attack the Bankruptcy  
24 Court’s order granting Strategic’s motion for relief from the automatic stay. See In re  
25 Grantham Bros., 922 F.2d 1438, 1442 (9th Cir. 1991) (“The failure of the debtors to seek  
26 any review, reconsideration, or stay of the bankruptcy court’s order precluded the collateral  
27 attack in Needler’s complaint.”). Moreover, even if the Court possessed jurisdiction to  
28 consider Funes’ attack on Strategic’s standing to seek relief from the automatic stay, the  
Ninth Circuit’s Bankruptcy Appellate Panel recently concluded, in nearly identical  
circumstances, that the winning bidder at a foreclosure sale had standing to move for relief  
from an automatic stay even without having received a trustee’s deed upon sale. See In re  
Cruz, 516 B.R. 594, 602-03 (B.A.P. 9th Cir. 2014).

1 to be warranted; whether a trustee should be appointed; and whether the circumstances of  
2 reopening necessitate payment of another filing fee.” Id. at 916-17.

3 A party’s lack of diligence may justify the denial of a motion to reopen. See  
4 Redmond v. Fifth Third Bank, 624 F.3d 793, 799 (7th Cir. 2010) (“The longer a party waits  
5 to file a motion to reopen a closed bankruptcy case, the more compelling the reason to  
6 reopen must be. In assessing whether a motion is timely, courts may consider the lack of  
7 diligence of the party seeking to reopen and the prejudice to the nonmoving party caused by  
8 the delay.”). Nevertheless, the Bankruptcy Court “has the duty to reopen an estate whenever  
9 prima facie proof is made that it has not been fully administered.” In re Herzig, 96 B.R. 264,  
10 266 (B.A.P. 9th Cir. 1989). “In order for the denial of a motion to reopen to constitute an  
11 abuse of discretion, assets of such probability, administrability and substance must appear to  
12 exist as to make it unreasonable under all the circumstances for the court not to deal with  
13 them. Where the chance of any substantial recovery for creditors appears too remote to  
14 make the effort worth the risk, a trial court does not abuse its discretion in denying a motion  
15 to reopen.” Id. (quotation marks and citations omitted). “[T]he decision whether to reopen  
16 should not become a battleground for litigation of the underlying merits. Neither the action  
17 nor its possible value should be litigated in order to decide whether to reopen the bankruptcy  
18 case.” In re Lopez, 283 B.R. 22, 28 (B.A.P. 9th Cir. 2002).

19 Here, Funes does not contend that reopening the case would benefit her creditors.  
20 Instead, Funes’ motion to reopen was merely the latest procedural machination designed to  
21 seek relief from the foreclosure that has already occurred. These procedural maneuvers,  
22 which have included at least three bankruptcy petitions, a prior motion to reopen, and the  
23 pursuit of claims in the State Case cannot continue indefinitely. This is particularly true  
24 given that Funes and her counsel have repeatedly failed to pursue the remedies available to  
25 them or to file the required schedules and pursue her bankruptcy remedies in good faith.  
26 Specifically, Funes never filed the required schedules in bankruptcy case number 1:13-bk-  
27 16987-MT, despite having been warned and having the case reopened once for that purpose.  
28 Nor did she commence the adversary proceeding that the Bankruptcy Court had advised her

1 was the procedurally-appropriate vehicle for her to seek the relief she requested. Instead,  
2 she pursued relief in the State Case until suffering adverse rulings. Only after she failed to  
3 get relief in the State Case did Funes seek, for a second time, to reopen this bankruptcy case.

4 Funes and her counsel have never acted with the diligence necessary to justify this  
5 second motion to reopen. The tactical decisions made by Funes and her counsel, and their  
6 failures to proceed diligently, have consequences. Under these circumstances, the  
7 Bankruptcy Court's conclusion that Funes was not entitled to yet another bite at the apple  
8 was not an abuse of discretion.

9 IV. Conclusion

10 For all of the foregoing reasons, the Court affirms the Bankruptcy Court's order  
11 denying Funes' motion to reopen.

12 IT IS SO ORDERED.

13 DATED: December 4, 2014



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Percy Anderson  
UNITED STATES DISTRICT JUDGE