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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 In re:

11 CLAIRE LEVINE,

12 Debtor.

District Ct. Case No.: CV 17-00576-AB

Bankr. Case no.: 12-22639-ER

Chapter: 7

13 Related Case No.: CV17-01069-AB

14 PACIFIC WESTERN BANK

15 Appellant

16 v.

17 HOWARD M. EHRENBERG,

18 Appellee

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**ORDER AFFIRMING
BANKRUPTCY COURT'S ORDERS
DENYING IN PART RELIEF FROM
AUTOMATIC STAY**

21 Appellant Pacific Western Bank (“Bank”) appeals the bankruptcy court’s
22 tentative and final orders denying in part Bank’s Motion for Relief from Automatic
23 Stay. Bk. Dkt. Nos. 360, 361, 429. Appellee Howard M. Ehrenberg, Chapter 7
24 Trustee (“Trustee”) for debtor Claire Levine’s bankruptcy estate, filed a responsive
25 brief, and Bank filed a reply brief. Claire Levine (“Levine”) and Gerald Goldstein
26 (“Goldstein”) together filed a responsive brief, and Bank filed another reply brief.
27 The Court therefore has considered the following memoranda: Dkt. Nos. 22, 39, 44,
28

1 46, and 54. For the following reasons, the Court **AFFIRMS** the bankruptcy court's
2 orders.

3 **I. BACKGROUND**

4 Goldstein and Levine were in a long-term romantic relationship, but never
5 married. During their relationship, Goldstein and Levine purchased multiple
6 properties together, including:

- 7 • A property at 1027 Napoli Drive, Pacific Palisades, California 90272 (the
8 “Napoli Property”), which Goldstein and Levine purchased as trustees of the
9 Amadeus Trust;
- 10 • A property at 3800 Wailea Aluani, Apartment B101, Maui, Hawaii 96753 (the
11 “B101 Apartment”), which Goldstein and Levine purchased as Tenants by the
12 Entirety as “husband and wife”;
- 13 • A property at 3800 Wailea Aluani, Apartment E201, Maui, Hawaii 96753 (the
14 “E201 Apartment”);
- 15 • A property at 11847 Gorham Avenue, Number 303, Los Angeles California
16 90049 (the “Brentwood Condo”);
- 17 • A property at 15 East 69th Street, Number 4d, New York, NY 10027 (the “New
18 York Apartment”), which Goldstein and Levine purchased as trustees of the
19 Amadeus Trust; and
- 20 • A property at 888 Napoli Drive, Pacific Palisades, California 90272, which
21 Goldstein and Levine purchased as trustees of the Amadeus Trust.

21 AA Vol. 1, pp. 145, 147-50, 152, 160-63, 165-68, 170-72; AA Vol. 2, p. 573 (¶ 1).

22 According to Levine, the Amadeus Trust was a revocable living trust in which Levine
23 and Goldstein were settlors, trustees, and beneficiaries. AA Vol. 1, p. 278 (¶ 53).

24 In 2008, the romantic relationship between Goldstein and Levine ended, and
25 Levine filed a palimony lawsuit against Goldstein. Levine alleged that she purchased
26 nine real estate properties, including those listed above, with her separate property.

27 AA Vol. 1, pp. 277-281. She claimed that she had revoked the Amadeus Trust in
28 2008 and that the real properties she purchased should revert back to her. AA Vol. 1,

1 pp. 277-280.

2 In April 2012, Levine filed for Chapter 11 bankruptcy. Bk. Dkt. No. 1. The
3 bankruptcy case was later converted to a Chapter 7 bankruptcy, and Trustee was
4 appointed to administer Levine's bankruptcy estate. Bk. Dkt. Nos. 78, 81. Goldstein
5 filed a creditor's claim against Levine's bankruptcy estate, claiming \$5.5 million for
6 expenses Amadeus Trust paid for real properties. AA Vol. 1, pp. 305-08.

7 In September 2014, Goldstein, Trustee, and Levine entered into a settlement
8 agreement (the "Settlement Agreement"). AA Vol. 2, pp. 572-85. The Settlement
9 Agreement resolved the palimony lawsuit between Levine and Goldstein, as well as
10 Goldstein's creditor's claim against the bankruptcy estate. AA Vol. 2, p. 572. The
11 agreement was contingent on the Short Sale or Early Sale of the B101 Apartment. AA
12 Vol. 2, p. 573 (¶ 2.a). Once the B101 Apartment was sold pursuant to the Settlement
13 Agreement's terms, Levine would take sole title to the Napoli Property and the
14 Brentwood Condo, while Goldstein would take sole title to the E201 Apartment. AA
15 Vol. 2, pp. 574-75 (¶ 3.a). The bankruptcy court approved the Settlement Agreement
16 on September 24, 2015. Bk. Dkt. No. 326.

17 The parties were unable to sell the B101 Apartment pursuant to the Settlement
18 Agreement's terms. For that reason, they amended the Settlement Agreement in
19 September 2016. AA Vol. 2, pp. 561-70. The amendment provided that the
20 Settlement Agreement would be entirely contingent on the Short Sale of the B101
21 Apartment to HAR-Bronson Diversified LLC ("Bronson"). AA Vol. 2, p. 561 (¶ 2.a).
22 It also instructed Bronson to resell the B101 Apartment following the Short Sale. AA
23 Vol. 2, p. 562 (¶ 2.e). Bronson would receive \$5.3 million of the proceeds from the
24 resale, Levine would receive \$1.1 million, and Trustee would receive \$300,000. AA
25 Vol. 2, p. 563 (¶ 2.g). If money from the resale was left over, Nemecek & Cole, a law
26 firm that represented Goldstein, could receive \$150,000 as partial satisfaction of fees
27 and costs Goldstein owed the firm. AA Vol. 2, p. 563 (¶ 2.g.8). The bankruptcy court
28 approved the amendment to the Settlement Agreement, over Bank's objection, on

1 January 19, 2017. AA Vol. 3, pp. 991-993.

2 In separate proceedings, Bank obtained two state court judgments against
3 Goldstein on July 8, 2016. First, the state court entered a \$1,044,277.73 judgment
4 against Goldstein and his company Far Out Productions, plus interest. AA. Vol. 1, pp.
5 249-252. Second, it entered a \$2,870,012.65 judgment against Goldstein and his
6 company Audio Visual Entertainment, Inc., plus interest. AA Vol. 1, pp. 256-257.

7 In an effort to enforce the judgments against Goldstein, Bank filed a motion for
8 relief from the automatic stay. AA Vol. 1, pp. 190-236. It sought to record abstracts
9 of judgment against Goldstein's separate interest in properties he co-owned with
10 Levine. AA Vol. 1, pp. 199-200. It also sought to record notices of judgment liens
11 against Goldstein's personal property. AA Vol. 1, pp. 200-201.

12 On October 3, 2016, the bankruptcy court issued a tentative ruling that granted
13 Bank relief from the automatic stay with respect to Goldstein's personal property, but
14 denied Bank relief from the automatic stay with respect to Levine's real properties.
15 AA Vol. 2, pp. 504-12. It explained that "[a]llowing [Bank] to record abstract
16 judgments against Goldstein's interest in [real properties] . . . may cloud title and
17 hamper the administration of [Levine's] bankruptcy estate." AA Vol. 2, p. 510. The
18 bankruptcy court conditioned its ruling, however, on a signed settlement agreement
19 being filed within 30 days. AA Vol. 2, pp. 514-15. After the bankruptcy court
20 granted an extension to file a settlement agreement, Trustee filed the amended
21 Settlement Agreement for approval on December 5, 2016. AA Vol. 2, pp. 538-630.
22 Then, on January 19, 2017, the bankruptcy court entered a final order accepting its
23 tentative ruling. AA Vol. 3, pp. 995-96. Bank filed notices of appeal regarding both
24 the tentative ruling and the final order. AA Vol. 3, pp. 958-62, 998-1004.

25 Bank has represented that Goldstein and Levine lost the E201 Apartment in a
26 foreclosure sale and that the New York Apartment was sold in 2013. Dkt. No. 22, at
27 p. 16, n.3; AA Vol. 1, p. 86. The bankruptcy court previously terminated the
28 automatic stay of the property at 888 Napoli Drive. Bk. Dkt. No. 40. Thus, Bank,

1 through its appeal, only seeks leave to record abstracts of judgment against the B101
2 Apartment, the Napoli Property, and the Brentwood Condo (together, the “Real
3 Properties”).

4 **II. ISSUE PRESENTED**

5 The issue presented on appeal is whether an automatic bankruptcy stay protects
6 a non-debtor’s separate interest in property he co-owns with a bankruptcy debtor
7 where the non-debtor’s separate interest would be extinguished by the effectuation of
8 a settlement agreement.

9 **III. STANDARD OF REVIEW**

10 Courts review questions of law *de novo*. See *Hillis Motors, Inc. v. Hawaii Auto.*
11 *Dealers’ Ass’n*, 997 F.2d 581, 585 (9th Cir. 1993). The scope of an automatic stay is
12 a question of law subject to *de novo* review. See *In re Chugach Forest Prods., Inc.*,
13 23 F.3d 241, 244 (9th Cir. 1994). However, a bankruptcy court can, in its discretion,
14 grant relief from an automatic stay. 11 U.S.C. § 362(d). Courts apply an abuse of
15 discretion standard of review to such discretionary decisions. *Benedor Corp. v.*
16 *Conejo Enters., Inc.*, 96 F.3d 346, 351 (9th Cir. 1996). The proper standard of review
17 therefore depends on whether an appellant challenges a bankruptcy court’s assessment
18 of the scope of an automatic stay or its decision to grant (or deny) relief from an
19 otherwise applicable automatic stay.

20 Here, Bank contends that the bankruptcy court erred because it overextended
21 the scope of the automatic stay. Instead of arguing that the bankruptcy court
22 improperly failed to grant relief from an applicable automatic stay, Bank claims the
23 automatic stay cannot, as a matter of law, apply to Goldstein’s interest in the Real
24 Properties. Because Bank challenges the bankruptcy court’s legal determination about
25 the scope of the automatic stay, a *de novo* standard of review applies.

26 **IV. DISCUSSION**

27 As soon as a bankruptcy case is filed, an automatic stay goes into effect that
28 prevents creditors from taking actions against the property of the bankruptcy estate.

1 11 U.S.C. § 362(a). The stay prohibits, among other things, “the enforcement, against
2 the debtor or against property of the estate, of a judgment obtained before the
3 commencement of the case under this title” and “any act to obtain possession of
4 property of the estate or of property from the estate or to exercise control over
5 property of the estate.” *Id.* § 362(a)(2-3). The automatic stay protects both the debtor
6 and creditors. It gives the debtor breathing space while she attempts to regain her
7 financial footing. *See Hillis Motors*, 997 F.2d at 585; *In re Schwartz*, 954 F.2d 569,
8 571 (9th Cir. 1992). At the same time, it protects creditors from each other by
9 preventing a rush to the courthouse that would favor whichever creditor acted first to
10 the detriment of all other creditors. *See In re Bialac*, 712 F.2d 426, 431 (9th Cir.
11 1983) (citing H.R. Rep. No. 95–595, 95th Cong., 2d Sess. at 340 (1977)). In so doing,
12 the automatic stay helps ensure the orderly distribution of estate property in a way that
13 will maximize the benefit to creditors. *Id.*

14 Levine filed for bankruptcy on April 10, 2012. Bk. Dkt. No. 1. The bankruptcy
15 filing automatically protected her from attempts to enforce judgments against her and
16 her bankruptcy estate. Here, Bank is attempting to enforce the judgments it obtained
17 against Goldstein, not Levine. Bank’s enforcement efforts therefore are not targeted
18 at the bankruptcy debtor in this case. However, by seeking to record abstracts of
19 judgment against the Real Properties, Bank attempts to take enforcement actions
20 against property in which Levine has an interest. The question before the Court is
21 whether those enforcement actions are directed at property of the estate that is
22 protected by the automatic stay.

23 **A. Ownership of the Real Properties**

24 Property of the estate includes “all legal or equitable interests of the debtor in
25 property as of the commencement of the case” “wherever located and by whomever
26 held.” 11 U.S.C. § 541. Courts assess whether property falls into a bankruptcy estate
27 with the help of state law. *See Butner v. United States*, 440 U.S. 48, 55 (1979).

28 Here, Bank claims Goldstein and Levine own the Real Properties as tenants in

1 common. Dkt. No. 22, at pp. 19-20. This, Bank argues, means that Goldstein
2 possesses a separate interest in the Real Properties. *Id.*, at p. 22. But Levine contends
3 that the Real Properties are her separate property that she purchased with her own
4 assets. Dkt. No. 46, at pp. 5-6. Thus, Levine claims, Goldstein does not have any
5 ownership interest in the Real Properties. *Id.*

6 Goldstein and Levine litigated their respective ownership of the Real Properties
7 in state court. The Settlement Agreement resolved that litigation, and it grants Levine
8 the entirety of the remaining Real Properties upon the Short Sale of the B101
9 Apartment. As Bank points out, the Settlement Agreement has not yet taken effect
10 because the B101 Apartment has not been sold. But, at the very least, Levine owns a
11 contingent interest in the entirety of the Real Properties that will vest upon the Short
12 Sale of the B101 Apartment. As explained below, that contingent interest is sufficient
13 to include the entirety of the Real Properties within the scope of the automatic stay.
14 The Court therefore need not decide the exact extent of Goldstein's and Levine's
15 current interests in the Real Properties to resolve Bank's appeal.

16 **B. Application of the Automatic Stay**

17 An automatic stay generally does not extend to the property of non-debtors.
18 *Chugach Forest Prods.*, 23 F.3d at 246. However, "Congress clearly intended the
19 automatic stay to be quite broad." *In re Stringer*, 847 F.2d 549, 552 (9th Cir. 1988).
20 It attaches to all of the debtor's property interests, even if the interests are conditional,
21 future, or contingent. *In re Neuton*, 922 F.2d 1379, 1382 (9th Cir. 1990); *In re*
22 *Anders*, 151 B.R. 543, 545 (Bankr. D. Nev. 1993). It protects property the debtor
23 jointly owns with a non-debtor where enforcement actions against the non-debtor's
24 interest might deprive the bankruptcy estate of a future property interest. *See Bialac*,
25 712 F.2d at 432.

26 In *Bialac*, a debtor owned a one-sixth interest in a surplus cash note, the rest of
27 which was owned by his family members. *Id.* at 428. An investment company
28 obtained a state court judgment against the family members and gave notice that it

1 intended to foreclose on the surplus cash note. *Id.* Before the foreclosure sale, the
2 debtor filed for bankruptcy. *Id.* The investment company proceeded with the sale, but
3 only sold five-sixths of the surplus note, not the debtor's one-sixth interest. *Id.* The
4 debtor challenged the sale, arguing that it violated the automatic stay. *Id.* The court
5 agreed with the debtor, for two reasons. *Id.* at 432. First, the automatic stay should be
6 interpreted to achieve "the orderly disposition of all property in which the debtor has
7 some interest." *Id.* Restricting the automatic stay would frustrate the purposes of the
8 Bankruptcy Act. *Id.* Second, the debtor had a redemption right to the entirety of the
9 surplus cash note under applicable foreclosure laws, and that right had been cut off by
10 the sale. *Id.* Even though the redemption right was a contingent one, it was still
11 property of the bankruptcy estate protected by the automatic stay. *Id.* at 431.

12 Like the debtor in *Bialac*, Levine owns a contingent interest in the entirety of
13 the Real Properties. If the B101 Apartment is sold in a Short Sale pursuant to the
14 Settlement Agreement, then Levine, and therefore her bankruptcy estate, will take the
15 Napoli Property and Brentwood Condo as her sole, separate property. At that point,
16 the B101 Apartment will have been sold, with Goldstein receiving none of the direct
17 proceeds from the Short Sale.¹ The Settlement Agreement could, therefore, operate to
18 grant Levine and her bankruptcy estate the entirety of the Real Properties. Because
19 Levine has a contingent interest in the entirety of the Real Properties, including
20 whatever separate interest Goldstein currently has in them, Bank cannot take
21 enforcement actions against the Real Properties without also affecting the bankruptcy
22 estate's property rights. Accordingly, the Real Properties fall entirely within the scope
23 of the automatic stay.

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25 ¹ Depending on the resale price, Goldstein's attorneys might receive a portion of the
26 proceeds from the resale of the B101 Apartment, which would be credited against the
27 fees Goldstein owes. AA Vol. 2, p. 563 (¶ 2.g.8). However, Goldstein could also
28 receive no monetary benefit from the resale. The resale provision therefore does not
alter the Court's conclusion that Levine has a contingent interest in the entirety of the
Real Properties.

1 Bank argues that it only seeks to record abstracts of judgment against
2 Goldstein's separate interest in the Real Properties, and, because Goldstein is not the
3 bankruptcy debtor, the bankruptcy estate cannot extend to his separate interest. In
4 asserting this argument, Bank primarily relies on *In re Miller*, 853 F.3d 508 (9th Cir.
5 2017). There, a bankruptcy debtor and his wife owned a cooperative apartment in San
6 Francisco, California. *Id.* at 512. A bank, which had obtained a judgment against the
7 debtor, filed an adversary proceeding seeking a declaration that it held an enforceable
8 judgment lien on the co-op, which would give it priority over the proceeds of a
9 foreclosure sale. *Id.* at 513. The court determined that, under California law, the
10 debtor and his wife held the co-op as tenants in common. *Id.* at 519. Because the
11 debtor was a tenant in common, he had a separate interest in the co-op. *Id.* at 512.
12 That separate interest was subject to enforcement of the judgment lien, which allowed
13 the bank to participate in the distribution of the debtor's bankruptcy estate. *Id.* at 519.

14 Bank makes much more of *Miller* than the case merits. All *Miller* held was
15 that, as a tenant in common, the debtor had a separate interest in the co-op. Once the
16 court determined that the debtor had a separate interest in the co-op, the bank, as his
17 creditor, could benefit from the proceeds of the co-op's sale just as any other creditor
18 would. Stated simply, the court held that the debtor's separate interest in the co-op
19 was part of his own bankruptcy estate.

20 Here, Bank does not make the uncontroversial argument that, like in *Miller*,
21 Levine's separate interest in the Real Properties is included in her own bankruptcy
22 estate. Bank argues the inverse – that Goldstein's interest in the Real Properties is
23 excluded from the bankruptcy estate in a way that allows Bank to take enforcement
24 actions against it. While the court's decision in *Miller* added property to the
25 bankruptcy estate, Bank would have the Court remove property from Levine's
26 bankruptcy estate despite the estate's contingent interest in that property. *Miller* does
27 not support such a result.

28 Bank's position also neglects the practical effect of excluding Goldstein's

1 interest in the Real Properties from the scope of the automatic stay. Courts do not
2 determine the scope of an automatic stay in a vacuum. Instead, they examine the
3 extent to which a party’s exercise of control over a property will impact the
4 bankruptcy estate. *See Bialac*, 712 F.2d at 432 (explaining that property “should be
5 protected by the stay if the purposes of the [Bankruptcy] Act, the orderly disposition
6 of all property in which the debtor has some interest, are to be achieved”); *In re Bibo*,
7 *Inc.*, 200 B.R. 348, 351 (B.A.P. 9th Cir. 1996), *opinion vacated, appeal dismissed due*
8 *to mootness*, 139 F.3d 659 (9th Cir. 1998) (finding that an automatic stay applied
9 where a foreclosure would have “a sufficient impact on Debtor’s interest”); *In re*
10 *Allentown Ambassadors, Inc.*, 361 B.R. 422, 440 (Bankr. E.D. Pa. 2007) (examining
11 cases and creating a three part test to determine whether an act violates an automatic
12 stay, which includes an examination of “the degree of impact on the bankruptcy
13 estate”).

14 Bank’s proposed enforcement actions would inhibit the orderly distribution of
15 Levine’s bankruptcy estate. As the bankruptcy court explained, “[a]llowing [Bank] to
16 record abstract judgments against Goldstein’s interest in [the Real Properties] . . . may
17 cloud title and hamper the administration of [Levine’s] bankruptcy estate.” AA Vol.
18 2, p. 510. By taking enforcement actions against the B101 Apartment, Bank could
19 inhibit the property’s sale. And, because the Settlement Agreement is contingent on
20 the B101 Apartment’s sale, Bank’s proposed enforcement actions threaten to
21 dismantle an agreement that resolves multiple disputes. Indeed, Bank’s papers
22 suggest that the very purpose of this appeal is to prevent the Settlement Agreement
23 from taking effect.² Such a result should be avoided to satisfy the purpose of the
24

25 ² Bank explained in its papers that it wanted to record abstracts of judgment against
26 the Real Properties so that it would have standing to object to the Settlement
27 Agreement on the grounds that Goldstein is not receiving a sufficient return in
28 exchange for giving up his potential interest in the Real Properties. Dkt. No. 22, at p.
29, n.5. In other words, Bank’s motivation in filing this appeal is to disrupt the
Settlement Agreement, which has been approved by the bankruptcy court.

1 Bankruptcy Act – the orderly disposition of the bankruptcy estate’s property. The
2 practical implications of Bank’s requested relief therefore support the Court’s
3 conclusion that the automatic stay extends to Goldstein’s interest in the Real
4 Properties.

5 **V. CONCLUSION**

6 For the foregoing reasons, the Court **AFFIRMS** the bankruptcy court’s orders
7 denying in part Bank’s Motion for Relief from Automatic Stay.

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9 **IT IS SO ORDERED.**

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11 Dated: January 8, 2018



12 _____
13 HONORABLE ANDRÉ BIROTTE JR.
14 UNITED STATES DISTRICT COURT JUDGE

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CC: Bankruptcy Court and BAP