

1

2

3
4
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5

6

7 In re PAUL AND MELODY DEN BESTE,
8 Debtors.

No. C 12-4522 PJH

Bankr. Case No. 10-13558

9

10
/ ORDER AFFIRMING ORDER
OF THE BANKRUPTCY COURT

11

12

13

14

Appellant and debtor Paul Den Beste (“Den Beste”), appearing pro se, appeals the bankruptcy court’s August 8, 2012 order granting appellee Edith Mazzaferri’s (“Mazzaferri”) motion to annul the automatic stay. For the reasons set forth below, the court AFFIRMS the order of the bankruptcy court.

15

BACKGROUND

16

A. Summary of State Court Proceedings

17

18

19

The following summary of background facts is taken from the allegations of the pleadings filed in the underlying state court litigation cited by Den Beste in his bankruptcy proceedings and in his papers on appeal.

20

21

22

23

24

25

26

27

28

In June 2010, Mazzaferri, as trustee of the Fiorani Living Trust, filed a lawsuit in San Francisco Superior Court against Den Beste and several other defendants, including her son, Ronald Mazzaferro (“Mazzaferro”). See *Mazzaferri v. Mazzaferro, et al.*, Case No. CGC 10-500462 (San Francisco Superior Court, complaint filed June 3, 2010). Mazzaferri, as trustee, seeks recovery of property that she alleged was removed unlawfully from an irrevocable trust. According to the allegations of Mazzaferri’s complaint, her aunt and her aunt’s husband, Anna and Luciano Fiorani, had a daughter, Lucia Fiorani, who suffers from developmental disabilities. On January 25, 2000, Anna and Luciano Fiorani executed the Fiorani Living Trust, of which Anna and Luciano Fiorani were the sole trustors and grantors,

1 as well as the initial co-trustees. The Fiorani Living Trust named Lucia Fiorani as the sole
2 beneficiary of a special needs trust to care for Lucia for her lifetime. The Fiorani Living
3 Trust named Mazzaferro as successor trustee and remainder beneficiary. Mazzaferri was
4 named as the second successor trustee.

5 Anna Fiorani died in March 2000, and Luciano Fiorani died in April 2000. At the time
6 of her parents' death, Lucia Fiorani was 53 years old and homeless, suffering from
7 emotional, psychiatric and medical disorders. Mazzaferri's complaint alleged that at the
8 time of Luciano Fiorani's death, the assets of the trust included a duplex on Filbert Street in
9 San Francisco and significant cash accounts. In April 2000, Mazzaferro became the
10 trustee of the Fiorani Living Trust. Mazzaferro allegedly converted the trust assets to his
11 own benefit and did not provide care for Lucia. Mazzaferri's complaint further alleged that
12 on June 23, 2004, a fraudulent deed of trust was executed which encumbered the Filbert
13 Street property for the amount of \$2,980,000, and named Den Beste as the trustee,
14 although Den Beste has never been a trustee of the Fiorani Living Trust.

15 In June 2004, and again in July 2004, Lucia Fiorani sent Mazzaferro a letter
16 requesting information about her parents' estate. In February 2005, she petitioned the
17 probate division of the San Francisco Superior Court for an order requiring Mazzaferro to
18 provide an accounting and requiring him to petition the court for settlement of the account.
19 See *In the Matter of The Fiorani Living Trust*, Case No. PTR-05-286962 (San Francisco
20 Superior Court, petition filed Feb. 1, 2005).

21 On March 15, 2005, Den Beste allegedly executed a fraudulent deed as trustee of
22 the Fiorani Living Trust granting the Filbert Street property to the Lotchk Corporation, which
23 was incorporated in Nevada in March 2004. This transfer was allegedly made for about
24 \$108,000, but the property was allegedly valued at about \$1,621,000.

25 In May 2005, the superior court ordered Mazzaferro to provide an accounting of his
26 administration of the Fiorani Living Trust, which he failed to do. In January 2006, the
27 superior court issued a warrant of attachment of the body of Mazzaferro for contempt, and
28 issued a second warrant in January 2007. In September 2009, Lucia Fiorani petitioned the

1 superior court to remove Mazzaferro as trustee, and to appoint Mazzaferri as successor
2 trustee.

3 In October 2009, Lotchk Corporation allegedly executed a fraudulent deed
4 transferring title of the Filbert Street property to Great Sunset Ventures, Inc., a Wyoming
5 corporation.

6 In December 2009, the superior court issued an order removing Mazzaferro as
7 trustee, appointing Mazzaferri as trustee, and requiring Mazzaferro to turn over all assets,
8 books and records of The Fiorani Living Trust. In April 2010, the superior court issued a
9 third warrant of attachment for contempt as to Mazzaferro.

10 On June 3, 2010, Mazzaferri filed the action in superior court against Mazzaferro,
11 Den Beste and others, alleging claims for breach of trust, breach of contract, breach of
12 fiduciary duty, intentional misrepresentation, negligent misrepresentation, conversion,
13 conspiracy, negligence, unjust enrichment and quiet title. Several of the defendants,
14 including Den Beste, filed motions to strike Mazzaferri's complaint under the anti-SLAPP
15 (strategic lawsuit against public participation) statute, which the superior court denied by
16 order entered December 10, 2010. The superior court found that the special motions to
17 strike were frivolous and solely intended to cause unnecessary delay, and ordered the
18 moving defendants jointly and severally to pay Mazzaferri fees and costs in the amount of
19 \$11,150. On January 7, 2011, the superior court ordered that a writ of execution be issued
20 on the order for payment of attorney's fees and that an abstract of judgment be issued.
21 The superior court also ordered that Den Beste and his co-defendants were jointly and
22 severally liable for an additional \$4,150 in fees and costs incurred in enforcing the
23 December 10, 2010 order. Den Beste and his co-defendants appealed from the order and
24 judgment awarding fees and costs to Mazzaferri.¹ See *Mazzaferri v. Mazzaferro, et al.*,
25 Case No. A131076 (Cal. Ct. App., 1 Dist.). On November 9, 2011, the court of appeal

27 ¹ The defendants in the *Mazzaferri* action separately appealed from the superior
28 court's order denying their anti-SLAPP motions, which the court of appeal affirmed on
November 9, 2011. See *Mazzaferri v. Mazzaferro, et al.*, Case No. A131261 (Cal. Ct. App.,
1 Dist.).

1 reversed the orders awarding sanctions on the grounds that the superior court failed to
2 specify its reasons for imposing the sanctions and erred by using a summary procedure,
3 rather than a noticed motion, to impose further sanctions. The court of appeal remanded
4 for reconsideration and to allow Mazzaferri to renew her motions for sanctions.² The court
5 of appeal also issued an order declaring Den Beste and his co-defendants vexatious
6 litigants, and prohibited any of them from filing any new litigation in the state courts
7 appearing in propria persona without first obtaining leave of the presiding judge of the court
8 where the litigation would be filed.

9 The individual defendants filed petitions for review of the vexatious litigant order.
10 See *Mazzaferri v. Mazzaferro*, Case No. S198851 (Cal.). On January 6, 2012, the
11 supreme court ordered Den Beste's petition stricken for failure to complete his application
12 for waiver of court fees. On January 25, 2012, the supreme court denied the remaining
13 petitions for review. On January 27, 2012, the court of appeal entered the prefiling order
14 naming Den Beste and the other individual defendants as vexatious litigants. *Mazzaferri v.*
15 *Mazzaferro, et al.*, Case No. A131076 (Cal. Ct. App., 1 Dist.).

16 On January 31, 2012, Lucia Fiorani's conservator, William Parisi, filed a petition for
17 damages in the probate proceedings on Lucia's behalf against Mazzaferro, Den Beste, and
18 others, alleging claims for financial abuse of a dependent adult, fraud, constructive fraud,
19 return of property and judicial determination of fiduciary abuse. See *Parisi v. Mazzaferro,*
20 *et al.*, Case No. PTR-05-286962 (San Francisco Superior Court, subsequent petition filed
21 Jan. 31, 2012). That petition remains pending before the state court.

22 On February 27, 2012, Den Beste filed a notice of removal of the *Mazzaferri* action,
23 in which the individual defendants joined. See *Mazzaferri v. Mazzaferro, et al.*, Case No.
24

25
26 On remand, the superior court granted Mazzaferri's noticed motion for an award
27 of sanctions against Den Beste and his co-defendants for filing a frivolous anti-SLAPP motion
28 to strike, in the amount of \$31,649 for expenses incurred by Mazzaferri in opposing the initial
motion to strike, attempting to enforce the court's order on the initial motion, responding to the
defendants' appeal, and bringing the current motion for sanctions. *Mazzaferri*, Case No. CGC-
10-500462 (San Francisco Superior Ct., order filed Jan. 16, 2013).

1 12-992 PJH (N.D. Cal.). By order entered May 15, 2012, the court remanded the action to
2 superior court.

3 In March 2012, Den Beste filed a notice of stay of proceedings in the *Mazzaferri*
4 state court action and in the probate proceedings, citing his bankruptcy petition.

5 **B. Bankruptcy Proceedings**

6 Den Beste and his wife, Melody Den Beste, (collectively, “debtors”) filed a chapter
7 13 bankruptcy petition on September 15, 2010, case number 10-13558 (Bankr. N.D. Cal.).
8 On October 21, 2010, debtors converted their case to chapter 7.

9 **1. Adversary Proceedings**

10 On February 11, 2011, Den Beste filed a complaint against Mazzaferri for violation of
11 the automatic bankruptcy stay. Den Beste filed the complaint in the district court, which
12 transferred the action to the bankruptcy court. See *Den Beste v. Mazzaferri*, Adv. No. 11-
13 1109 (Bankr. N.D. Cal.). By order entered June 30, 2011, the bankruptcy court dismissed
14 the action for lack of prosecution. The bankruptcy court subsequently denied Den Beste’s
15 motion for relief from the order of dismissal after holding a hearing on August 26, 2011, and
16 issued a written order on December 1, 2011, denying relief from dismissal.

17 On November 30, 2011, Den Beste filed another adversary proceeding against
18 Mazzaferri and four other defendants for violating the automatic bankruptcy stay. See *Den*
19 *Beste v. Harrington, et al.*, Adv. No. 11-1298 (Bankr. N.D. Cal.). Den Beste alleged that
20 after Mazzaferri filed a lawsuit against him in state court in June 2010, Mazzaferri was
21 aware of Den Beste’s bankruptcy filing, yet obtained the judgment against him in January
22 2011 granting an award of sanctions. On April 24, 2012, Mazzaferri and three co-
23 defendants filed a motion for summary judgment in the adversary proceedings on the
24 ground that under Ninth Circuit authority, an award of attorney’s fees as a sanction for
25 improper conduct in litigation is exempt from the automatic bankruptcy stay, citing *In re*
26 *Berg*, 230 F.3d 1165, 1168 (9th Cir. 2000). By order entered June 18, 2012, the
27 bankruptcy court granted Mazzaferri’s motion for summary judgment and dismissed the
28

1 adversary proceeding with prejudice.³ The bankruptcy court also granted Mazzaferri's
2 motion for attorney's fees in the amount of \$15,000, by order entered September 5, 2012.
3 Den Beste filed a motion to vacate the award of attorney's fees, which the bankruptcy court
4 denied, after holding a hearing, by order entered November 13, 2012. Den Beste filed an
5 appeal, now pending, in the district court from the bankruptcy court's order denying his
6 motion to vacate the fee award in his adversary proceeding. See *[Den] Beste v.*
7 *Harrington, et al.*, Case. No. 12-6189 SBA (N.D. Cal.).

8 On February 17, 2012, the bankruptcy court issued a pre-filing order requiring prior
9 leave of the bankruptcy court before either Den Beste or Melody Den Beste could
10 commence an adversary proceeding in any bankruptcy court. In so ordering, the
11 bankruptcy court noted that "debtors have been abusing their status as debtors to harass
12 creditors by filing adversary proceedings having no merit for alleged violations of the
13 automatic stay."

14 On March 19, 2012, the bankruptcy court issued a judgment in case number 10-
15 13558, denying debtors' discharge. The bankruptcy court issued this judgment after
16 holding a trial in an adversary proceeding brought against debtors by their principal
17 creditor, Mandy Power dba Judgment Enforcement USA. See *Power v. Den Beste*, Adv.
18 No. 11-1184 (Bankr. N.D. Cal.). Power filed a complaint seeking denial of discharge,
19 alleging that debtors knowingly and fraudulently filed materially false bankruptcy schedules.
20 Power alleged that debtors failed to schedule various assets, including 60 acres of
21 property, bank accounts, horses, vehicles (including a Hummer, a Corvette and a Harley
22 Davidson motorcycle), and their beneficial interest in a family trust. The bankruptcy court
23 found that "the Den Bestes knowingly and fraudulently filed false schedules under oath with

24
25 ³ In the interim between the filing of Mazzaferri's motion for summary judgment
26 and the bankruptcy court's order granting summary judgment in her favor, Den Beste filed a
27 motion in the district court to withdraw the reference on May 10, 2012. See *In re Paul Den*
28 *Beste*, Case. No. 12-2354 SBA (N.D. Cal.). After the bankruptcy court issued the judgment
for defendants in Den Beste's adversary proceeding on June 18, 2012, Den Beste filed notice
in the district court that the motion to withdraw reference was moot. The district court
accordingly dismissed the action by order entered September 17, 2012.

1 the intent to thwart Power in her efforts to enforce the judgments lawfully assigned to her
2 and with the intent to conceal material assets from her.” The bankruptcy court concluded
3 that debtors “are accordingly not entitled to a discharge pursuant to § 727(a)(4)(A) of the
4 Bankruptcy Code, as well as § 727(a)(2)(B).”

5 Debtors appealed the bankruptcy court’s order denying their motion to dismiss
6 Power’s adversary proceeding and the bankruptcy court’s post-trial judgment denying them
7 a discharge under § 727(a)(4)(A)2 for knowingly and fraudulently making false oaths on
8 their bankruptcy schedules. The bankruptcy appellate panel affirmed both orders, and
9 debtors appealed the BAP rulings. On January 4, 2013, the Ninth Circuit dismissed the
10 appeal for failure to file an opening brief. See *In re Paul Den Beste*, Case. No. 12-60048
11 (9th Cir.).

12 **2. Present Appeal**

13 On June 28, 2012, Mazzaferri filed a motion to annul the automatic stay retroactively
14 pursuant to 11 U.S.C. § 362(d)(1), on the grounds that the Den Bestes acted in bad faith
15 and abused their status as debtors to harass Mazzaferri, other parties of interest, and
16 creditors by filing meritless adversary proceedings for alleged violations of the automatic
17 stay. Mazzaferri also filed an ex parte application for an order relieving her of the obligation
18 to file a Relief From Stay Cover Sheet with her motion to annul, as required by Bankruptcy
19 Local Rule 4001-1(b), which the bankruptcy court granted by order entered July 2, 2012.
20 Den Beste, through his attorney, filed an opposition to the motion to annul. The chapter 7
21 trustee filed a response to the motion and to Den Beste’s opposition, clarifying that the
22 trustee did not oppose Mazzaferri’s motion to the extent that retroactive annulment of the
23 automatic stay was limited to those acts by Mazzaferri against the debtors, and did not
24 extend to all acts taken against the estate.

25 On August 8, 2012, the bankruptcy court granted Mazzaferri’s motion to annul the
26 automatic stay and ordered that all post-bankruptcy actions in the proceedings in San
27 Francisco Superior Court, Case No. 10-500462, were deemed not to have violated the
28

1 automatic stay. This appeal followed. Den Beste filed an opening brief on October 22,
2 2012. Mazzaferri filed an answering brief on November 7, 2012.

3 On November 12, 2012, Mazzaferri filed a motion for sanctions, which the court
4 denied without prejudice. Den Beste subsequently filed a notice that he was awaiting a
5 revised briefing schedule from the court for a new deadline to file his reply brief. By order
6 entered November 27, 2012, the court *sua sponte* extended the time to file a reply brief, but
7 noted, “As debtor recognizes, the order entered November 14, 2012 vacated only the
8 briefing schedule and hearing date noticed for the motion for sanctions. The court did not
9 vacate the briefing deadline for debtors’ reply brief, which was not timely filed.” Doc. no.
10 12. Den Beste did not file a reply brief, and the appeal was deemed submitted as of
11 December 5, 2012.

12 By letter filed December 11, 2012, Den Beste requested that the appeal be stayed
13 for 45 days pending his inspection of the record with respect to the bankruptcy record on
14 appeal. The court held that the manual filing of the bankruptcy court record did not warrant
15 a stay and denied Den Beste’s motion to stay. Doc. no. 15.

16 **ISSUES PRESENTED**

17 Den Beste presents the following issues on appeal:

18 (1) Did Mazzaferri have standing to seek relief from the automatic stay?
19 (2) Did the bankruptcy court abuse its discretion in granting Mazzaferri’s motion
20 to annul the automatic stay as to her state court action against Den Beste?

21 **STANDARDS OF REVIEW**

22 The court reviews the bankruptcy court’s conclusions of law *de novo*, and its findings
23 of fact for clear error. *Citibank v. Eshai (In re Eshai)*, 87 F.3d 1082, 1086 (9th Cir. 1996). A
24 factual finding is clearly erroneous if, after examining the evidence, the reviewing court “is
25 left with the definite and firm conviction that a mistake has been committed.” *Anderson v.*
26 *City of Bessemer*, 470 U.S. 564, 573 (1985).

27

28

1 A decision of the bankruptcy court to retroactively lift the automatic stay is reviewed
2 for an abuse of discretion. *In re Nat'l Envtl. Waste Corp.*, 129 F.3d 1052, 1054 (9th Cir.
3 1997) (citing *Mataya v. Kissinger (In re Kissinger)*, 72 F.3d 107, 108 (9th Cir. 1995)).

DISCUSSION

A. Legal Standard

6 Pursuant to 11 U.S.C. § 362, a petition in bankruptcy operates as a stay against acts
7 that may affect property of the bankruptcy estate. The automatic stay is designed to
8 “protect debtors from all collection efforts while they attempt to regain their financial
9 footing.” *Nat'l Envtl. Waste Corp.*, 129 F.3d at 1054 (quoting *Schwartz v. United States (In*
10 *re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992)). Actions taken in violation of the stay are
11 void. *Id.* However, section 362(d) “gives the bankruptcy court wide latitude in crafting
12 relief from the automatic stay, including the power to grant retroactive relief from the stay.”
13 *Id.* (quoting *Schwartz*, 954 F.2d at 572).

14 Section 362 provides that the bankruptcy court may order relief from the stay "for
15 cause."

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

20 11 U.S.C. § 362(d)(1). A decision to lift the automatic stay under § 362 is within the
21 discretion of the bankruptcy court. *In re Kissinger*, 72 F.3d at 108.

To determine “cause” to annul the automatic stay retroactively, the bankruptcy court applies a “balancing of the equities” test. *Nat'l Envtl. Waste Corp.*, 129 F.3d at 1055. While a mechanistic application of factors is inappropriate in making this determination, two significant factors may be considered as an aid to the court in weighing the equities to determine whether cause exists to annul the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor. *In re Fjeldsted*, 293 B.R. 12, 24 (B.A.P.

1 9th Cir. 2003) (citing *Nat'l Envtl. Waste Corp.*, 129 F.3d at 1055). These two factors are not
2 dispositive, however, and the cause determination requires a case by case analysis. *Nat'l*
3 *Envtl. Waste Corp.*, 129 F.3d at 1055. The courts may consider other factors which
4 "further examine the debtor's and creditor's good faith, the prejudice to the parties, and the
5 judicial or practical efficacy of annulling the stay." *Fjeldsted*, 293 B.R. at 24-25.

6 **B. Bankruptcy Court's Ruling**

7 During a hearing on Mazzaferri's motion to annul and other motions, the bankruptcy
8 court determined that there was good cause to annul the automatic stay as to any actions
9 related to Mazzaferri's state court litigation. The bankruptcy court noted that in the state
10 court action, Den Beste brought the anti-SLAPP motion to strike after he filed the
11 bankruptcy petition, and that the superior court's ruling on his anti-SLAPP motion "went all
12 the way up to the appellate courts." July 27, 2012 Transcript at 4. The bankruptcy court
13 stated that it "had no problem annulling the stay as to any actions in relation to that,
14 because it's for a specific purpose, and obviously the Debtor started it. And obviously the
15 State Court spent a lot of time adjudicating that matter. I don't want that to be for naught."
16 *Id.* at 4-5. The bankruptcy court found that Mazzaferri's motion to annul was overbroad and
17 declined to annul the automatic stay entirely, but granted the motion to annul the stay from
18 the beginning of the Mazzaferri state court litigation "to validate all the work that the State
19 Courts did," noting that the litigation continued with Den Beste's "full cooperation" even
20 after he filed for bankruptcy. *Id.* at 5.

21 The bankruptcy court also held that Mazzaferri was excused from the obligation to
22 file a proof of claim, and overruled Den Beste's objection to Mazzaferri's standing to seek
23 annulment because she did not file a proof of claim in the bankruptcy proceedings and
24 never filed a motion for relief from stay. *Id.* at 6-7. Accordingly, the bankruptcy court
25 ordered that all post-bankruptcy actions in the *Mazzaferri v. Mazzaferro, et al.* lawsuit, San
26 Francisco Superior Court Case Number CGC-10-500462, were deemed not to have
27 violated the automatic stay. *In re Den Beste*, Case No. 10-13558 (Bankr. N.D. Cal., Aug. 8,
28 2012).

1 **C. Analysis**

2 **1. Mazzaferri's Standing to Seek Annulment of Stay**

3 On the threshold issue whether Mazzaferri had standing to file the motion to annul
4 the automatic stay, Den Beste challenges Mazzaferri's standing to seek annulment
5 because she had never filed a proof of claim in the bankruptcy proceedings. At the hearing
6 on the motion for annulment, counsel for Den Beste argued that Mazzaferri lacked standing
7 because she did not file a proof of claim and never filed a motion for relief from the stay.
8 The bankruptcy court rejected this argument and excused Mazzaferri from the obligation to
9 file a proof of claim, holding that filing a proof of claim was not necessary for seeking relief
10 from the automatic stay under section 362(d). Aug. 15, 2012 Transcript at 7 ("A Proof of
11 Claim does not have anything to do with it. They can file a claim or not file a claim, but
12 we're just talking about the automatic stay.").

13 Standing to bring a motion to annul the stay is a legal issue subject to de novo
14 review. See *In re Kronemyer*, 405 B.R. 915, 919 (B.A.P. 9th Cir. 2009); *In re Advanced*
15 *Ribbons & Office Products, Inc.*, 125 B.R. 259, 262 (B.A.P. 9th Cir. 1991) (citing *In re*
16 *Brooks*, 871 F.2d 89, 90 (9th Cir. 1989)). Section 362(d) authorizes the bankruptcy court to
17 grant relief from the automatic stay "[o]n request of a party in interest." The issue
18 presented on appeal, therefore, is whether Mazzaferri is a "party in interest" in Den Beste's
19 bankruptcy case.

20 "The term 'party in interest' is not defined in the Bankruptcy Code. Status as 'a party
21 in interest' under § 362(d) 'must be determined on a case-by-case basis, with reference to
22 the interest asserted and how [that] interest is affected by the automatic stay.'" *In re*
23 *Kronemyer*, 405 B.R. 915, 919 (B.A.P. 9th Cir. 2009) (quoting *In re Woodberry*, 383 B.R.
24 373, 378 (Bankr. D.S.C. 2008)). In *Kronemyer*, the bankruptcy appellate panel cited out-of-
25 circuit precedent for the "narrow view that *only* creditors have standing to bring a motion for
26 relief from the automatic stay." *Id.* at 921 (citing *Roslyn Sav. Bank v. Comcoach Corp. (In*
27 *re Comcoach Corp.)*, 698 F.2d 571, 573-74 (2d Cir. 1983)). However, as the district court
28 noted in *In re Cini*, 2012 WL 2374224, *13 (Bankr. D. Mont. June 22, 2012), this view

1 contrasts with precedent in the Ninth Circuit which is “appropriately lenient with respect to
2 standing for stay relief.” *Id.* (citing *Veal v. Amer. Home Mortg. Servicing, Inc. (In re Veal)*,
3 450 B.R. 897, 913-14 (9th Cir. BAP 2011)). In *Veal*, the bankruptcy appellate panel
4 recognized that its prior precedent applied a lenient view of standing for stay relief:
5 “[c]reditors may obtain relief from the stay if their interests would be harmed by continuance
6 of the stay.” 450 B.R. at 913-14 (citing *Kronemyer*, 405 B.R. at 921). “Collier uses a
7 similarly expansive statement: ‘Any party affected by the stay should be entitled to seek
8 relief.’” *Id.* (citing 3 Collier on Bankruptcy ¶ 362.07[2] (Henry Sommer and Alan Resnick,
9 eds., 16th ed. 2011)).

10 With respect to Den Beste’s argument that Mazzaferri lacks standing to seek relief
11 from the stay because she did not file a proof of claim and is therefore not entitled to
12 distribution from the chapter 7 estate, filing a proof of claim is not determinative of being a
13 party in interest who has standing to seek annulment of an automatic stay. “[A] party
14 seeking stay relief need only establish that it has a colorable claim to enforce a right
15 against property of the estate.” *Veal*, 450 B.R. at 914–15.

16 Mazzaferri contends that she is a party in interest under section 362(d) because Den
17 Beste named her as a defendant in Adversary Proceeding No. 11-1298, alleging that she
18 violated the automatic stay by obtaining a judgment awarding sanctions against Den Beste
19 in state court. Mazzaferri does not cite authority for the proposition that she is a party in
20 interest by virtue of being named as a defendant in an adversary proceeding filed by the
21 debtor in the bankruptcy proceedings. However, the record supports a finding that
22 Mazzaferri has a colorable claim under state law against Den Beste in her superior court
23 action, and is therefore a party in interest under the expansive view of standing articulated
24 in *Kronemyer*, 405 B.R. at 921 (“[c]reditors may obtain relief from the stay if their interests
25 would be harmed by continuance of the stay”). *Cf. Veal*, 450 B.R. at 917 (Wells Fargo
26 lacked standing to seek relief from the stay where it failed to show that it was entitled to
27 enforce the note against the property of the estate and therefore lacked a colorable claim).
28 Mazzaferri, acting as trustee of the Fiorani trust, has asserted claims against Den Beste for

1 recovery of the trust assets, and her interest in litigating those claims in state court were
2 subject to the automatic stay. *Kronemyer*, 405 B.R. at 919 (status as a party in interest is
3 “determined on a case-by-case basis, with reference to the interest asserted and how [that]
4 interest is affected by the automatic stay.”). Mazzaferri therefore has standing to seek
5 annulment of the stay.

6 **2. Cause for Annulment of Stay**

7 The court reviews the bankruptcy court’s decision to annul the automatic stay as to
8 the *Mazzaferri v. Marraferro, et al.* state court litigation for an abuse of discretion. The
9 Ninth Circuit has articulated a two-part test to determine objectively whether there is an
10 abuse of discretion. *United States v. Hinkson*, 585 F.3d 1247, 1261–62 (9th Cir. 2009).
11 First, the court must determine de novo whether the bankruptcy court identified the correct
12 legal rule to apply to the relief requested. *Id.* If the bankruptcy court failed to do so, it
13 abused its discretion.

14 If the bankruptcy court identified the correct legal rule, the court moves to the second
15 step which examines the bankruptcy court’s factual findings under the clearly erroneous
16 standard. *Id.* at 1262 & n. 20. The court must affirm the bankruptcy court’s factual findings
17 unless those findings are “(1) illogical, (2) implausible, or (3) without support in inferences
18 that may be drawn from the facts in the record.” *Id.* (citations and internal quotation marks
19 omitted). If the bankruptcy court’s decision resulted from a factual finding that was illogical,
20 implausible or without support in the record, the decision must be reversed for an abuse of
21 discretion.

22 Applying this two-part test to the decision below, the court concludes that the
23 bankruptcy court did not abuse its discretion by granting the motion to annul the automatic
24 stay as to the *Mazzaferri* state court litigation.

25 The bankruptcy court identified the correct legal rule applicable to Mazzaferri’s
26 motion to annul, that is, under § 362(d)(1), the bankruptcy court may annul and/or terminate
27 the automatic stay for cause. See *Christensen v. Tucson Estates, Inc. (In re Tucson*
28

1 *Estates, Inc.*), 912 F.2d 1162, 1166 (9th Cir. 1990). “Cause” has no clear definition, so it is
2 determined on a case-by-case basis. *Id.*

3 Under Ninth Circuit authority, the bankruptcy court must balance the equities in
4 determining whether cause exists to annul the automatic stay. *Nat'l Envtl. Waste Corp.*,
5 129 F.3d at 1055. In doing so, the bankruptcy court focuses on two factors: (1) whether the
6 creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in
7 unreasonable or inequitable conduct, or unfair prejudice would result to the creditor. *Id.*
8 These factors are not dispositive, however, on the question whether cause exists to annul
9 the stay. *Fjeldsted*, 293 B.R. at 24. The courts may consider other factors which further
10 examine the debtor's and creditor's good faith, the relative prejudice to the parties, and the
11 judicial or practical efficacy of annulling the stay. *Id.* at 24-25. “Among factors appropriate
12 to consider in determining whether relief from the automatic stay should be granted to allow
13 state court proceedings to continue are considerations of judicial economy and the
14 expertise of the state court.” *Kronemyer*, 405 B.R. at 921 (citing *MacDonald v. MacDonald*
15 (*In re MacDonald*), 755 F.2d 715, 717 (9th Cir. 1985)).

16 Here, the bankruptcy court narrowly granted Mazzaferri's motion to annul the stay as
17 to her lawsuit in state court after finding that Den Beste filed an anti-SLAPP motion to strike
18 in her state court action after he had filed for bankruptcy. The bankruptcy court determined
19 that the “litigation continued after the bankruptcy with the Debtor's full cooperation.” Aug.
20 15, 2012 Transcript at 5. The bankruptcy court further found that Den Beste's motion to
21 strike “ended up going up to the appellate court,” and that the state courts “spent a lot of
22 time adjudicating that matter.” Aug. 15, 2012 Transcript at 4-5, 6. The bankruptcy court
23 determined that there was cause to annul the stay as to Mazzaferri's state court litigation
24 based on the limited scope of annulment, Den Beste's own involvement in continuing the
25 state court litigation after filing for bankruptcy, and validation of “all the work that the State
26 Courts did.”

27 Den Beste contends that he did not violate the automatic stay by appealing the
28 judgment of the superior court issuing sanctions against him and the other defendants in

1 the *Mazzaferri* lawsuit for filing a frivolous anti-SLAPP motion to strike. The fact that Den
2 Beste filed an appeal is not relevant, however, to the bankruptcy court's finding that Den
3 Beste voluntarily filed his initial motion to strike in the superior court after he filed his
4 bankruptcy petition. This finding that Den Beste continued to litigate the *Mazzaferri* action
5 after he filed for bankruptcy was based on the filing of the motion to strike, not the filing of
6 the appeal.

7 The bankruptcy court also considered judicial economy in finding that the state
8 courts had invested significant time in adjudicating the issues raised on appeal, which
9 followed Den Beste's post-petition motion to strike. Den Beste contends that he won the
10 appeal in that the court of appeal reversed the award of sanctions. Den Beste overlooks
11 the reasoning of the court of appeal, which reversed the sanctions ruling solely on
12 procedural grounds, holding that the superior court failed to specify its reasons for imposing
13 sanctions, as required by the anti-SLAPP statute, and that the superior court imposed
14 further sanctions in an ex parte proceeding, without providing the defendants with adequate
15 notice and an opportunity to be heard. *Mazzaferri v. Mazzaferro, et al.*, Case No. A131076
16 (Cal. Ct. App., opinion filed Nov. 9, 2011). The court of appeal granted Mazzaferri leave to
17 file a noticed motion for sanctions on remand, and held that "the record would support a
18 sanctions order, and we therefore remand for the trial court's reconsideration." *Id.* at 8.
19 Thus, the court of appeal remanded for compliance with the requirements of the anti-
20 SLAPP statute but concluded that the record would support an award of sanctions. By
21 separate order, the court of appeal affirmed the superior court's denial of the anti-SLAPP
22 motion and sanctioned the defendants for pursuing a frivolous appeal. *Mazzaferri v.*
23 *Mazzaferro, et al.*, Case No. A131261 (Cal. Ct. App., opinion filed Nov. 9, 2011). The
24 record supports the bankruptcy court's findings that Den Beste filed the motion to strike in
25 state court (on December 10, 2010), after he filed his bankruptcy petition (on September
26 15, 2010). The record also supports the finding that significant time and resources were
27 spent by the superior court in adjudicating Den Beste's motion to strike and awarding
28 sanctions for filing a frivolous motion to strike, and by the court of appeal in affirming the

1 ruling denying the anti-SLAPP motion, awarding sanctions for filing a frivolous appeal, and
2 reversing the sanctions orders on procedural grounds and remanding for reconsideration.

3 Den Beste further argues that Mazzaferri had knowledge of his bankruptcy filing at
4 least as early as December 22, 2010, but obtained a state court judgment, based on the
5 award of sanctions against Den Beste, in violation of the stay. The bankruptcy court did not
6 make a specific finding as to whether Mazzaferri was aware of Den Beste's bankruptcy
7 petition, but that factor did not appear to be disputed by Mazzaferri and is not dispositive as
8 a matter of law on whether there was cause for annulment. *Fjeldsted*, 293 B.R. at 24. The
9 bankruptcy court considered other relevant factors, primarily that Den Beste himself
10 continued to engage in litigation in state court and that the superior court and the court of
11 appeal had adjudicated Den Beste's anti-SLAPP motion and other issues in the *Mazzaferri*
12 lawsuit. The bankruptcy court did not abuse its discretion in concluding that these factors,
13 taken together, established cause to annul the stay as to that particular state court action.

14 Den Beste contends on appeal that the bankruptcy court abused its discretion by
15 ordering annulment of the stay because “[b]ased on past performance of [Mazzaferri] and
16 her counsel as associates of and with convicted felon embezzler Mansuetto Anthony Lenci,
17 the ORDER GRANTING EDITH MAZZAFERRI'S MOTION TO ANNUL AUTOMATIC STAY
18 UNDER 11 U.S.C. § 362(d) will be broadly construed by corrupt state court proceedings
19 that are designed to harass debtor in violation of Title 11 U.S.C. 362.” Notice of Appeal at
20 4. Den Beste did not present this argument to the bankruptcy court in his opposition to
21 Mazzaferri's motion to annul, and cannot raise it for the first time on appeal. *In re Enewally*,
22 368 F.3d 1165, 1173 (9th Cir. 2004) (citing *United States v. Flores-Payon*, 942 F.2d 556,
23 558 (9th Cir. 1991)).

24 Mazzaferri contends that the bankruptcy court also found that Den Beste engaged in
25 bad faith as cause for the annulment. Appellee Brief at 4. Mazzaferri relies on the
26 bankruptcy court's findings in support of its order denying the discharge, where the
27 bankruptcy court found that Den Beste and his wife “knowingly and fraudulently filed false
28 schedules . . . with the intent to conceal material assets” from their principal creditor,

1 Powers. *In re Den Beste*, Adv. No. 11-1184 (Bankr. N.D. Cal, memorandum filed March
2 19, 2012). Upon review of the record, however, the court determines that the bankruptcy
3 court did not rely on the findings it made in support of the order denying discharge, or
4 otherwise make a finding of bad faith, in support of its ruling on Mazzaferri's motion to
5 annul the automatic stay. Rather, the bankruptcy court gave specific reasons for narrowly
6 granting the motion to annul as to the *Mazzaferri* lawsuit, citing Den Beste's cooperation in
7 the state court litigation and the time and resources spent by the state courts in
8 adjudicating that matter, particularly the anti-SLAPP motion to strike. See *In re Wardrobe*,
9 559 F.3d 932, 937 (9th Cir. 2009) ("an order granting limited relief from an automatic stay to
10 allow a creditor to proceed to judgment in a pending state court action is effective only as to
11 those claims actually pending in the state court at the time the order modifying the stay
12 issues, or that were expressly brought to the attention of the bankruptcy court during the
13 relief from stay proceedings").

14 In light of this record, the bankruptcy court did not abuse its discretion in narrowly
15 ordering annulment of the automatic stay only as to the *Mazzaferri* state court litigation.

16 **CONCLUSION**

17 For the reasons set forth above, the court AFFIRMS the order of the bankruptcy
18 court granting Mazzaferri's motion to annul the automatic stay.

19 **IT IS SO ORDERED.**

20
21 Dated: April 19, 2013


22 PHYLIS J. HAMILTON
23 United States District Judge

24
25
26
27
28