



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
June 21, 2021

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 21-10230-MKN
	)	Chapter 7
ELIZABETH ANN RAMSEY,	)	
	)	
Debtor.	)	Date: April 7, 2021
	)	Time: 1:30 p.m.
	)	

**ORDER ON MOTION TO LIFT AUTOMATIC STAY NUNC PRO TUNC  
OR TO LIFT THE STAY<sup>1</sup>**

On April 7, 2021, the court heard the Motion to Lift Automatic Stay Nunc Pro Tunc or to Lift the Stay ("RAS Motion"), brought in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

The instant matter requires consideration of a specific civil action that was pending prior to the commencement of these bankruptcy proceedings and which remains pending in the Eighth Judicial District Court, Clark County, Nevada ("State Court").

**A. The State Court Action.<sup>2</sup>**

<sup>1</sup> In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the Clerk of the Court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRE" are to the Federal Rules of Evidence.

<sup>2</sup> Counsel for the parties in this matter have provided this court with copies of only some of the relevant materials filed in the State Court Action. The court therefore takes judicial notice under FRE 201 of the balance of the materials of public record in the State Court Litigation. See

1 On October 23, 2017, Eugene Tumbarello and Shamrock Painting, Inc. (collectively  
2 “Tumbarello”) filed a civil action against defendants Elizabeth Ramsey (“Ramsey”) and Gregg  
3 Chambers (“Chambers”), denominated Case No. A-17-763560-C (“State Court Action”).  
4 Tumbarello’s complaint (“State Complaint”) primarily focused on two parcels of real property  
5 located at 1201 Westlund Drive and 1207 Westlund Drive, Las Vegas, Nevada 89102. The  
6 State Complaint alleged a variety of causes of action, theories or remedies, including deceit,  
7 unjust enrichment, declaratory relief, breach of contract, breach of covenant of good faith and  
8 fair dealing, civil conspiracy and concert of action, misrepresentation, negligent  
9 misrepresentation, violation of contractors licensing statutes, conversion, injunctive relief, quiet  
10 title, and constructive trust. After defaults were taken against both defendants, both defendants  
11 filed separate motions to set aside the defaults.

12 On March 16, 2018, an order was entered denying without prejudice a motion to set aside  
13 default and granting other relief regarding certain real property. Both defendants appealed that  
14 order to the Nevada Supreme Court.

15 On March 29, 2018, defendants filed a renewed motion to set aside defaults.

16 On May 17, 2018, the State Court entered an order denying Ramsey’s request to set aside  
17 the default but granting Chambers’ request. Both defendants initiated appeals to the Nevada  
18 Supreme Court.

19 On December 1, 2018, Tumbarello filed a motion to enforce a settlement reached during  
20 the Nevada Supreme Court appeal. The settlement required, *inter alia*, that Chambers and  
21 Ramsey execute a promissory note in favor of Tumbarello in the amount of \$200,000, secured by  
22 the 1201 Westlund Drive and 1207 Westlund Drive properties. The settlement was encompassed  
23 by a Memorandum of Understanding signed by the parties on August 15, 2018.

24 On February 10, 2019, both defendants filed an opposition to the settlement enforcement  
25 motion.

26  
27 U. S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); Conde v. Open Door Mktg., LLC, 223 F.  
28 Supp. 3d 949, 970 n.9 (N.D. Cal. 2017); Gree v. Williams, 2012 WL 3962458, at \*1 n.1 (D. Nev.  
Sept. 7, 2012); Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee  
Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

1 On February 12, 2019, the settlement enforcement motion was heard by the State Court  
2 and granted on the record.

3 On March 8, 2019, the State Court entered an order granting Tumbarello's settlement  
4 enforcement motion ("Settlement Enforcement Order"). The Settlement Enforcement Order  
5 entered a judgment against Chambers and Ramsey ("State Judgment"), in favor of Tumbarello,  
6 in the amount of \$221,735.99, and ordered that the judgment amount constitute a deed of trust  
7 lien against the 1201 Westlund Drive and 1207 Westlund Drive properties. The Settlement  
8 Enforcement Order also directed that the order could be recorded in the county records as a  
9 substitute for a prior *lis pendens* against the two real properties.

10 On April 9, 2019, Chambers and Ramsey filed a notice of appeal of, *inter alia*, the  
11 Settlement Enforcement Order.

12 On May 27, 2019, Ramsey filed a claim of a homestead exemption with respect to the  
13 1201 Westlund Drive property and Chambers filed a claim of a homestead exemption with  
14 respect to the 1207 Westlund Drive property.

15 On May 29, 2019, Tumbarello filed objections to the homestead exemptions claimed by  
16 both Ramsey and Chambers.

17 On May 30, 2019, Tumbarello filed a further objection to the homestead exemption  
18 claimed by Ramsey that added a motion to set aside fraudulent transfer of Ramsey's interest in  
19 the 1207 Westlund Drive property to Chambers.

20 On June 4, 2019, both Ramsey and Chambers filed a motion seeking to stay a sheriff's  
21 sale of the 1201 Westlund property and the 1207 Westlund property, pending their request for  
22 clarification of the Settlement Enforcement Order.

23 On June 4, 2019, both Ramsey and Chambers filed separate responses to Tumbarello's  
24 objections to their respective homestead claims.

25 On June 17, 2019, Tumbarello filed an opposition to the motion for stay brought by  
26 Ramsey and Chambers.

27 On July 9, 2019, Tumbarello's objections to the homestead exemptions claimed by  
28 Ramsey and Chambers were heard and sustained on the record. The motion to stay the sheriff's

1 sale of the 1201 Westlund Drive property and the 1207 Westlund Drive property was granted on  
2 the condition that a supersedeas bond be posted in the full amount of the State Judgment on or  
3 before July 23, 2019.

4 On July 22, 2019, the State Court entered its written order (“July 22, 2019 Order”)  
5 denying the respective homestead exemptions claimed by both Ramsey and Chambers, but  
6 granting a stay of the sheriff’s sales only on the condition that a supersedeas bond in the full  
7 State Judgment amount be posted on or before July 23, 2019.<sup>3</sup> In the event a bond was not  
8 timely posted, no stay would issue preventing a sheriff’s sale of the properties.

9 On July 24, 2019, Tumbarello filed a status memorandum indicating that supersedeas  
10 bond required by the July 22, 2019 Order had not been posted by Ramsey or Chambers, resulting  
11 in an expiration of any stay of the sheriff’s sale.

12 On August 8, 2019, a sheriff’s certificate of sale was filed indicating that on August 1,  
13 2019, the 1201 Westlund Drive property was sold to Tumbarello by a credit bid \$50,000 of its  
14 State Judgment. On the same date, a separate sheriff’s certificate was filed indicating that the  
15 1207 Westlund Drive property also was sold to Tumbarello on August 1, 2019, by a credit bid on  
16 \$50,000 of its State Judgment.

17 On May 15, 2020, the Nevada Supreme Court entered an order dismissing the appeal of  
18 the Settlement Enforcement Order that had been filed by Chambers and Ramsey.

19 On July 18, 2020, Ramsey apparently redeemed the 1201 Westlund Drive property  
20 pursuant to Nevada law and regained title.

21 On August 7, 2020, Ramsey filed, in pro se, another claim of exemption with respect to  
22 the 1201 Westlund Drive property as well as various items of personal property, including  
23 amounts held in a bank account maintained at Bank of America (“BOA Account”).  
24

---

25 <sup>3</sup> The State Court’s order included the following: “THE COURT FURTHER FINDS that  
26 the homestead asserted by Judgment Debtor GREGG CHAMBERS in and to the 1207 Westlund  
27 property does not apply and that Judgment Debtor GREGG CHAMBERS has failed to meet his  
28 burden to prove that Judgment Debtor is entitled to the claimed exemptions in the 1207  
Westlund Property. Maki v. Chong, 119 Nev. 390, 394, 75 P.3d 376, 379 (2003).” July 22,  
2019 Order at 3:22-27.

1 On August 11, 2020, Tumbarello filed an objection to Ramsey's re-assertion of the  
2 homestead exemption in the 1201 Westlund Drive property as well as her attempt to exempt an  
3 excessive amount in the BOA Account.

4 On September 21, 2020, Ramsey filed a response to Tumbarello's objection.

5 On September 22, 2020, Tumbarello's objection to the re-asserted homestead exemption  
6 as well as the excessive amount in the BOA Account was heard by the State Court and sustained  
7 on the record.

8 On September 30, 2020, the State Court entered an order denying Ramsey's reasserted  
9 homestead exemption in the 1201 Westlund Drive property as well as her excessive exemption in  
10 the BOA Account.

11 On October 8, 2020, the State Court entered another order denying Ramsey's re-asserted  
12 homestead exemption in the 1201 Westlund Drive property and excessive BOA Account  
13 exemption ("October 8, 2020 Order"), to which was attached a revised certificate of service  
14 reflecting that the order was served on additional parties.<sup>4</sup>

15 On October 18, 2020, the Ramsey filed a motion for reconsideration of the October 8,  
16 2020 Order with respect to the BOA Account.

17 On November 20, 2020, Tumbarello filed an opposition to the motion for reconsideration  
18 with respect to the BOA Account.

19 On December 15, 2020, the motion for reconsideration with respect to the BOA Account  
20 was heard by the State Court and denied on the record.

---

21  
22 <sup>4</sup> The October 8, 2020 Order entered against Ramsey included the following: "**THE**  
23 **COURT FURTHER FINDS** that this Court has ruled in 2019 that any homestead asserted by  
24 Judgment Debtor ELIZABETH RAMSEY in and to the 1201 Westlund property does not apply  
25 because an individual using fraudulently obtained funds to purchase real property should not be  
26 protected by the homestead exemption because the exemption's purpose is to provide protection  
27 to individuals who file the homestead exemption in good faith and that Judgment Debtor  
28 ELIZABETH RAMSEY had failed to meet her burden to prove that Judgment Debtor is entitled  
to the claimed exemptions in the 1201 Westlund Property. Maki v. Chong, 119 Nev. 390, 394,  
75 P.3d 376, 379 (2003)." October 8, 2020 Order at 2:12-20. Although Chambers was a party to  
the Settlement Enforcement Order and the July 22, 2019 Order, he was not a participant in the  
October 8, 2020 Order.

On December 24, 2020, the State Court entered an order denying Ramsey's motion for reconsideration with respect to the BOA Account ("December 24, 2020 Order").

**B. The Current Bankruptcy Case.**<sup>5</sup>

On January 19, 2021, Ramsey filed a voluntary petition commencing the above-captioned Chapter 7 proceeding. (ECF No. 1).<sup>6</sup> As a result of the filing of the bankruptcy petition, the automatic stay arose under Section 362(a). The case was assigned to Chapter 7 panel trustee Lenard Schwartz (Chapter 7 Trustee).

On January 21, 2021, Ramsey filed a notice of appeal from the December 24, 2020 Order denying the motion for reconsideration as well as the October 8, 2020 Order denying Ramsey's re-asserted homestead exemption.<sup>7</sup> Ramsey had not obtained relief from the automatic stay nor had the Chapter 7 Trustee authorized the appeal to be filed.

On February 2, 2021, Ramsey filed her schedules of assets and liabilities ("Schedules") as well as her statement of financial affairs ("SOFA").<sup>8</sup> (ECF No. 23). On her property Schedule "A/B," Ramsey listed as her residence the same real property located at 1201 Westlund

---

<sup>5</sup> Ramsey had a prior Chapter 13, denominated Case No. 20-11877-MKN, that was commenced on April 7, 2020 ("Prior Chapter 13 Case"). On July 21, 2020, an order was entered dismissing the case that included a 180-day bar to filing of another bankruptcy petition. On November 6, 2020, Ramsey filed a motion to reopen the Prior Chapter 13 Case, but the motion was denied by an order entered on January 4, 2021. Because the Prior Chapter 13 Case was dismissed on July 21, 2020, the automatic stay in that proceeding terminated on that date pursuant to Section 362(c)(2)(B).

<sup>6</sup> The Chapter 7 petition was a "skeleton" petition inasmuch as it did not include the schedules and statements providing the information required under Section 521(a).

<sup>7</sup> There is some indication that Ramsey filed her notice of appeal on or about January 28, 2021, rather than on January 21, 2021. See 362(c)(3) Order, *infra*, at 8:1-22 & n.12. In either event, there is no dispute that the notice of appeal was filed in the Nevada Supreme Court after the Chapter 7 petition was filed.

<sup>8</sup> Ramsey attested that the Residence was sold at a sheriff's sale on August 1, 2019, but that she redeemed the property on July 18, 2020. See SOFA, Item 10. If that redemption occurred on July 18, 2020, it would have happened before the Prior Chapter 13 Case was dismissed on July 21, 2020. There is nothing in the record of the Prior Chapter 13 Case indicating that Ramsey obtained prior court authorization to make that expenditure.

1 Drive (“Residence”). On her Schedule “C,” Ramsey again claimed the Residence as her  
2 homestead under Nevada law. The July 22, 2019 Order by the State Court, as well as the  
3 October 8, 2020 Order, however, already had determined that Ramsey was not entitled to claim  
4 the Nevada homestead exemption. On her Schedule “E/F,” Ramsey listed Tumbarello as an  
5 unsecured creditor holding a disputed claim based on a judgment entered in the State Court  
6 Action.

7 On February 17, 2021, an order was entered on Ramsey’s motion under Section 362(c)(3)  
8 to continue the automatic stay (“362(c)(3) Order”). (ECF No. 32). Continuance of the automatic  
9 stay was necessary because the Prior Chapter 13 Case was dismissed within one year and the  
10 automatic stay would terminate in a subsequent case after 30 days under Section 362(c)(3)(A)  
11 unless continued by court order. The 362(c)(3) Order determined that the automatic stay under  
12 Section 362(a) would terminate as to Ramsey on February 18, 2021, but remained in effect as to  
13 property of the Chapter 7 bankruptcy estate.

14 On February 24, 2021, the Chapter 7 Trustee concluded Ramsey’s meeting of creditors.

15 On February 25, 2021, the Chapter 7 Trustee reported that there are no assets available  
16 for distribution to creditors in this case. (ECF No. 35).

17 On March 6, 2021, Ramsey filed the instant RAS Motion, along with a notice of hearing,  
18 and served creditors in the case. (ECF Nos. 36, 37, and 38). She seeks to relief to annul the  
19 automatic stay under Section 362(d) so that her filing of the notice of appeal of the October 8,  
20 2020 Order and December 24, 2020 Order would no longer be a violation of the automatic stay.  
21 Ramsey would then proceed with her appeal of those orders to the Nevada Supreme Court.<sup>9</sup> The  
22 RAS Motion was noticed to be heard on April 7, 2021.

---

23  
24 <sup>9</sup> The notice of appeal does not encompass the Settlement Enforcement Order, nor does it  
25 reference the July 22, 2019 Order. The Nevada Supreme Court already dismissed defendants’  
26 appeal of the Settlement Enforcement Order. The latest notice of appeal only encompasses the  
27 October 8, 2020 Order as well as the December 24, 2020 Order. The December 24, 2020 Order,  
28 however, addressed reconsideration only with respect to the October 8, 2020 ruling denying  
Ramsey’s attempt to exempt an excessive amount in the BOA Account. No reconsideration was  
sought of the State Court’s October 8, 2020 ruling denying Ramsey’s attempt to re-assert a  
homestead exemption in the Residence that previously was denied by the July 22, 2019 Order.  
There is nothing in the State Court’s register of actions indicating that the defendants ever



1 On March 8, 2021, Tumbarello filed an objection to Ramsey's homestead exemption  
2 ("Homestead Objection") that was scheduled to be heard on April 14, 2021. (ECF Nos. 40 and  
3 49).

4 On March 9, 2021, the Chapter 7 Trustee filed his response to the RAS Motion. (ECF  
5 No. 42). The Chapter 7 Trustee does not object to annulment of the automatic stay based on his  
6 determination that the outcome of Ramsey's attempted appeal will not affect whether any assets  
7 are available for distribution to unsecured creditors.

8 On March 17, 2021, Tumbarello separately commenced Adversary Proceeding No. 21-  
9 01039-MKN against Ramsey, seeking a determination that its claims are excepted from  
10 discharge under Sections 523(a)(2, 4, and 6) ("523 Action"). (ECF No. 45).

11 On March 24, 2021, Tumbarello filed an opposition to the RAS Motion ("Opposition").  
12 (ECF No. 51).

13 On March 24, 2021, Ramsey certified that she has completed the required personal  
14 financial management course. (ECF No. 52).

15 On March 30, 2021, the Office of the United States Trustee ("UST") reported that no  
16 presumption of abuse under Section 707(b)(2) has arisen in Ramsey's Chapter 7 case. (ECF No.  
17 54).

18 On March 31, 2021, Ramsey filed her reply in support of the RAS Motion. (ECF No.  
19 55).

20 On March 31, 2021, Tumbarello filed a supplemental opposition to the RAS Motion.  
21 (ECF No. 56).

22  
23  
24 \_\_\_\_\_  
25 appealed the July 22, 2019 Order. The register of actions indicates that the July 22, 2019 Order,  
26 October 8, 2020 Order, and December 24, 2020 Order, were entered after hearings before the  
27 State Court in which Ramsey was represented by counsel, i.e., none were entered by default.  
28 Under these circumstances, it is not entirely clear whether Ramsey has ever filed a timely appeal  
of the October 8, 2020 Order with respect to the denial of the re-asserted homestead exemption.  
More important, it is unclear whether Ramsey's current appeal could ever disturb the State  
Court's July 22, 2019 Order that originally denied Ramsey's claim of a Nevada homestead  
exemption in the Residence, especially because numerous actions subsequently occurred as a  
result of the July 22, 2019 Order.



On March 31, 2021, Ramsey filed an opposition to the Homestead Objection. (ECF No. 57).

### DISCUSSION

There is no dispute that the automatic stay arose under Section 362(a) when Ramsey filed her Chapter 7 petition on January 19, 2021. There is no dispute that her right to appeal any orders entered by the State Court was a legal interest on the petition date that constitutes property of the Chapter 7 bankruptcy estate under Section 541(a)(1). See, e.g., Delannoy v. Woodlawn Colonial, L.P. (In re Delannoy), 2018 WL 4190874, at \*6-7 (B.A.P. 9th Cir. Aug. 31, 2018), aff'd, 833 Fed. Appx. 116 (9th Cir. 2020) (Chapter 7 trustee may sell an individual debtor's appeal rights arising from an adverse state court judgment).<sup>10</sup> There is no dispute that the Chapter 7 Trustee had exclusive control over property of the estate after the bankruptcy petition was filed. See, e.g., In re Zavala, 444 B.R. 181, 189 (Bankr. E.D. Cal. 2011)(Chapter 7 trustee control over individual debtor's bank accounts). There is no dispute that Ramsey filed a notice of appeal from certain State Court orders after the bankruptcy petition was filed. There is no dispute that Ramsey did not obtain relief from the automatic stay nor have permission from the Chapter 7 Trustee to file the notice of appeal. There is no dispute that the filing of the notice of appeal was a violation of the automatic stay and was *void ab initio*. See, e.g., In re Ward, 2019 WL 5875106, at \*3 (Bankr. D. Nev. June 10, 2019) (recording notice of delinquent assessment lien, notice of default and notice of sale without relief from stay were *void ab initio*).

There is no dispute that a party in interest may seek to annul the automatic stay for "cause" under Section 362(d)(1) which has the effect of granting "*nunc pro tunc*" or "retroactive relief" from the automatic stay. See Merriman v. Fattorini (In re Merriman), 616 B.R. 381 (B.A.P. 9th Cir. 2020).<sup>11</sup> There is no dispute that annulment of the automatic stay will validate

---

<sup>10</sup> As previously mentioned, the Chapter 7 Trustee does not oppose the RAS Motion because he concluded that the outcome of the appeal would not impact the distribution to creditors. It is unknown whether Tumbarello ever offered to purchase Ramsey's right to appeal the orders arising from the State Court Action.

<sup>11</sup> The court in Merriman distinguished the Supreme Court's earlier decision Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano, 140 S. Ct. 696 (2020). In the latter decision, the Supreme Court concluded that a court cannot issue a *nunc pro tunc* order

actions that previously were void. See Lonestar Sec. & Video, Inc. v. Gurrola (In re Gurrola), 328 B.R. 158, 172 (B.A.P. 9th Cir. 2005). In typical cases, the determination of whether cause exists to annul the automatic stay requires a balance of “a number of factors, including the number of filings, whether the circumstances indicate an intention to delay or hinder creditors, and the debtor’s good faith, among others.” Toromanova v. Wilmington Savings Fund Society, FSB (In re Toromanova), 2020 WL 4334105, at \*3 (D.Nev. July 27, 2020), citing In re Fjeldsted, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). See also In re Leeds, 589 B.R. 186, 193-94 (Bankr. D. Nev. 2018) (listing twelve “Fjeldsted” factors).

There is no dispute that the RAS Motion and notice of hearing were served on all parties in interest, including the Chapter 7 Trustee and all of Ramsey’s creditors. In most cases, retroactive relief from stay is sought by creditors or other parties in interest who are being threatened with sanctions under Section 362(k) from an individual debtor injured by willful violation of the automatic stay. See, e.g., In re Martinez, 2020 Bankr.LEXIS 637 (Bankr. D. Nev. Mar. 4, 2020) (order granting creditor’s motion to annul automatic stay filed in response to individual debtors’ motion for sanctions). In other cases, retroactive relief from stay is sought by a third party who engages in a transaction involving estate property that would be void if the transaction was initiated while the automatic stay was in effect. See, e.g., In re Leeds (annulment obtained by post-discharge purchaser of debtor’s residence at HOA foreclosure sale that was commenced during chapter 7 case without obtaining relief from the automatic stay). While creditors and third parties can seek relief from the automatic stay, it is well established that creditors and third parties cannot assert the automatic stay to protect their own interests. See Tilley v. Vucurevich (In re Pecan Groves of Ariz.), 951 F.2d 242, 245 (9th Cir. 1991); The Bank of New York Mellon v. Barrett (In re Barrett), 833 Fed.Appx. 668, 671 (9th Cir. 2020).

In this instance, the Chapter 7 Trustee does not object to annulment of the automatic stay because he has concluded that the outcome of Ramsey’s appeal will not impact distributions to \_\_\_\_\_ that creates facts conferring prior jurisdiction on another court. 140 S.Ct. at 700-701. Annulment of the automatic stay under Section 362(d)(1) simply does not create facts establishing jurisdiction that never existed.

1 creditors of the estate. No creditors of Ramsey's estate object to annulment of the automatic stay  
2 to allow Ramsey to defend her Nevada homestead claim by appeal to the Nevada Supreme  
3 Court. The Chapter 7 Trustee has not objected to Ramsey receiving a Chapter 7 discharge under  
4 Section 727(b). No other creditors have objected to Ramsey receiving a Chapter 7 discharge nor  
5 have any other creditors objected to the discharge of a particular debt under Section 523(a). Not  
6 surprisingly, only creditor Tumbarello objects to Ramsey's efforts to pursue an appeal of the  
7 State Court determination denying her Nevada homestead, and only Tumbarello objects to  
8 Ramsey receiving a discharge of any of the debts in this case.

9       Having considered the equities and arguments raised by the parties, as well as the entire  
10 record, the court concludes that cause exists to annul the automatic stay as of the date the notice  
11 of appeal was filed. In this instance, Ramsey previously commenced one Chapter 13 case but it  
12 was dismissed on July 21, 2020, with a 180-day bar to filing another bankruptcy petition. The  
13 State Court orders that are the subject of the Nevada appeal were entered after the automatic stay  
14 in the Chapter 13 case had terminated, and during the period in which Ramsey was prohibited  
15 from filing another bankruptcy petition. The 180-day bar to refiling expired, but this time  
16 Ramsey sought to liquidate under Chapter 7 rather than attempt to reorganize under Chapter  
17 13.<sup>12</sup> The court denied Ramsey's motion to continue the automatic stay based solely on her  
18 failure to overcome the statutory presumption of a lack of good faith, but expressly reserved any  
19 finding on the issue of good faith. See 362(c)(3) Order at 9:18-21. The Chapter 7 Trustee has  
20 concluded that there are no assets available to pay creditors. The UST has concluded that no  
21 presumption of Chapter 7 abuse has arisen from the filing of the instant case. Neither the  
22 Chapter 7 Trustee, the UST, nor any creditors have objected to Ramsey receiving a Chapter 7  
23 discharge. In essence, there is no history of repetitive bankruptcy filings that impacts any party  
24 in interest other than Tumbarello.

---

25       <sup>12</sup> Under Section 108(b), a bankruptcy trustee is afforded a limited time to file pleadings  
26 or notices or perform any other similar acts required by nonbankruptcy law, necessary to meet  
27 unexpired deadlines. The Chapter 7 Trustee has filed nothing to pursue an appeal arising from  
28 the State Court Action. It is not clear whether Ramsey can timely appeal from the material  
rulings of the State Court but that is an issue for the Nevada courts to decide.

Annulment of the automatic stay will not preclude Tumbarello from pursuing the 523 Action against Ramsey. Annulment of the automatic stay will not preclude Tumbarello from pursuing its Homestead Objection to prevent Ramsey from claiming a homestead in this Chapter 7 proceeding. More important, because the dischargeability of Tumbarello's claim is legally distinct from Ramsey's ability to claim a Nevada homestead, the appeal arising from the State Court Action may have limited relevance to the outcome of the 523 Action or the Homestead Objection.<sup>13</sup> For these reasons, the court concludes that Tumbarello will suffer no significant legal prejudice if the automatic stay is annulled.

Based on the foregoing, the court concludes that cause exists under Section 362(d)(1) to annul the automatic stay as of the date that Ramsey filed the aforementioned notice of appeal in the State Court Action on or about January 21, 2021.

**IT IS THEREFORE ORDERED** that the Motion to Lift Automatic Stay Nunc Pro Tunc or to Lift the Stay, brought by Elizabeth Ann Ramsey, Docket No. 36, be, and the same hereby is, **GRANTED**.

**IT IS FURTHER ORDERED** that the automatic stay in this proceeding is annulled as of the date in which the debtor in the above-captioned case filed her notice of appeal on or about January 21, 2021, in Case No. A-17-763560-C, commenced in the Eighth Judicial District Court, Clark County, Nevada.

Copies sent via BNC to all parties and via CM/ECF ELECTRONIC FILING

Copies sent via BNC to:  
ELIZABETH ANN RAMSEY  
1201 WESTLUND DRIVE  
LAS VEGAS, NV 89102

---

<sup>13</sup> In the 523 Action, Tumbarello will have the burden of proving by a preponderance of the evidence all of the elements of the claims under Sections 523(a)(2), 523(a)(4), and 523(a)(6). To the extent Tumbarello relies on any factual findings made by the State Court, it will have to demonstrate that principles of issue preclusion under Nevada law will support application of any findings to each of the elements required by its dischargeability claims. In the Homestead Objection, Tumbarello also must demonstrate that Ramsey is not entitled to assert the Nevada homestead exemption in her Chapter 7 proceeding. The factual findings underlying the July 22, 2019 Order as well as the October 8, 2020 Order, may or may not be material as long as the State Court's prior determinations remain in effect.