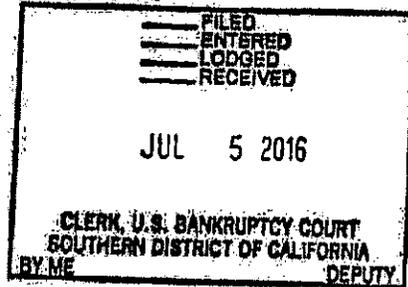


WRITTEN DECISION - FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:
RW MERIDIAN LLC,

Debtor,

) BANKRUPTCY NO: 16-00629-MM7
)
) CHAPTER: 7
)
) MEMORANDUM DECISION RE
) MOTION FOR COMFORT ORDER
) RE AUTOMATIC STAY FILED BY
) THE COUNTY OF IMPERIAL
) TREASURER-TAX COLLECTOR
)
) DATE: April 7, 2016
) TIME: 10:00 a.m.
) CRTRM: 1
)
) JUDGE: Margaret M. Mann

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1 Before the court is a motion for a comfort order regarding the automatic stay
2 ("Motion") filed on February 12, 2016 by the County of Imperial Treasurer-Tax Collector
3 ("County"). In its Motion, the County requests the court confirm that the automatic stay
4 was not violated by the conclusion of County's post-petition tax sale ("Sale") of a 58.53
5 acre parcel of unimproved land located in Imperial County ("Property") on February 9,
6 2016. The County claims Debtor RW Meridian, LLC ("Debtor") held no interest in the
7 Property when it filed its Chapter 7 petition commencing this case on February 8, 2016
8 because Debtor's right of redemption under Cal. Rev. & Tax. Code ("Tax Code") §
9 3707(a)(1) expired pre-petition, and that the County's conduct of the Sale post-petition
10 was a ministerial act. Debtor's Chapter 7 Trustee Ronald E. Stadtmueller ("Trustee")
11 opposes the County's Motion and contends that the Sale not only violated the automatic
12 stay, but it is also void.

13 The County's argument rests on the holding of *In re Tracht Gut, LLC*, 503 B.R.
14 804, 812 (B.A.P. 9th Cir. 2014) that the automatic stay was inapplicable under 11
15 U.S.C. § 362(a)(3)¹ in a case where the tax sale and the expiration of the right of
16 redemption under Cal. Rev. & Tax. Code ("Tax Code") § 3707(a)(1) had both occurred
17 pre-petition. The Sale here occurred post-petition, not pre-petition as it did in *Tracht*
18 *Gut*. Whether this factual distinction compels a different outcome is an issue with which
19 other bankruptcy courts have grappled.

20 After consideration of the controlling authorities, the court concludes that the Sale
21 did violate the automatic stay and is void. This is not only because Debtor held valuable
22 state law rights in the Property at the time of its bankruptcy, including title, possession,
23 and contingent redemption rights, but also because the Sale was an action to enforce a
24 lien and to collect a debt after bankruptcy. Accordingly, each of §§ 362(a)(3), (4) and (6)
25 was violated by the conduct of the Sale post-petition, and the conduct of the Sale itself
26 was not a ministerial act but one exercised with ample discretion by the County.

27
28 ¹ All statutory references for the remainder of this decision are to Title 11, United States
Code, unless otherwise noted.

1 The court must deny the County's Motion since the holding of *Tracht Gut*, 503
2 B.R. at 812 cannot be stretched to the facts of this case.

3 I. **Background**

4 Debtor was the record owner of the Property on February 5, 2016. At this time,
5 the property taxes had not been paid on the Property for more than five years. Due to
6 the default, the Property was scheduled for sale in an internet auction commencing on
7 Saturday, February 6, 2016. Debtor's right of redemption in regard to the Sale expired at
8 5:00 p.m. on Friday, February 5, 2016 pursuant to Tax Code § 3707(a)(1). After
9 Debtor's redemption rights expired and the internet auction commenced, but before the
10 auction concluded and the Property was sold to the highest bidder, Debtor filed
11 bankruptcy. Despite this, the auction continued and the Property was sold the day after
12 the bankruptcy with a successful bid of \$343,000.

13 The County is still holding the auction proceeds and has not completed the Sale
14 by recording the deed to the successful bidder. The County requested a comfort order
15 from this court seeking to confirm its understanding that the Debtor had no interest in
16 the Property that was protected by the automatic stay at the time this case was filed.
17 The County also wants permission to finalize the Sale without violating the stay.

18 Trustee seeks to administer the Property as property of the Debtor's bankruptcy
19 estate since he received an offer to buy the Property for \$526,770. Since the only debt
20 against the Property is the tax lien owed to the County totaling approximately \$167,000,
21 this leaves potential equity of \$330,000. Trustee also contends the automatic stay
22 applied on the petition date because Debtor held valuable rights at the time of the filing.

23 The court issued a Tentative Ruling in connection with this matter on April 5,
24 2016 ("Tentative"). At the later hearing held on April 8, 2016, the court continued the
25 matter for further briefing on whether Debtor's redemption rights provided under Tax
26 Code § 3707(a)(2) and (d) provided the estate an interest in the Property on the petition
27 date sufficient to trigger the automatic stay. Trustee and the County filed supplemental
28 briefing on June 9, 2016 which the court has considered.

1 **II. Analysis**

2 **A. The Sale Was Void Under Several Provisions of the Bankruptcy Code**

3 The County's analysis focuses too narrowly on § 362(a)(3) and its assessment of
4 Debtor's rights in the Property on the petition date. Although the court finds Debtor's
5 rights in the Property are sufficient to trigger the automatic stay provided in § 362(a)(3),
6 as a preliminary matter the court notes that this subsection is not the only potentially
7 applicable provision of the automatic stay to these facts.

8 In addition to violating § 362(a)(3), the County's Sale of the Property also violated
9 § 362(a)(4) and (a)(6). Section 362(a) lists a wide range of actions that are prohibited by
10 the automatic stay: subsection (a)(4) bars acts to create, perfect, or enforce a lien
11 against property of the estate and subsection (a)(6) stays any act to collect, assess, or
12 recover a prepetition claim against the debtor. Wholly apart from whether Debtor had
13 any remaining rights in the Property as of the petition date, the County's post-petition
14 Sale of the Property was an action to enforce its tax lien post-petition to collect its
15 prepetition claim against the Debtor, and the County violated § 362(a)(4) and (a)(6).

16 The most cogent authority as to the breadth of the automatic stay where a tax
17 sale occurs post-petition is contrary to the County's argument. See *40235 Wash. St.*
18 *Corp. v. Lusardi*, 329 F.3d 1076, 1080 (9th Cir. 2003), *cert. denied*, 540 U.S. 983 (Nov.
19 3, 2003) (No. 03-297). In *Lusardi*, the Ninth Circuit applied § 362(a)(4) and held "[w]hen
20 [the debtor] filed its bankruptcy petition, the automatic stay took effect, [and] the . . .
21 County tax sale, conducted to enforce the tax lien on the property, was void." It
22 reasoned that "the filing of a bankruptcy petition creates an automatic 'stay, applicable
23 to all entities, of, inter alia, 'any act to create, perfect, or enforce any lien against
24 property of the estate.'" *Id.* Although the Ninth Circuit did not reference § 362(a)(4)
25 specifically, its paraphrase of the statutory language evidenced this was its intent.

26 As to § 362(a)(6), deeming collection activities a violation of the automatic stay is
27 also subject to a broad interpretation. See *Pennsylvania Dept. of Public Welfare v.*
28 *Davenport*, 495 U.S. 552, 560 (1990) ("Section 362(a) automatically stays a wide array

1 of collection and enforcement proceedings."). As stated in *Gonzales v. Parks*, 830 F.2d
2 1033, 1035 (9th Cir. 1987) (quoting *In re M. Frenville Co., Inc.*, 744 F.2d 332, 334 (3rd
3 Cir. 1984)), *cert. denied*, 469 U.S. 1160 (1985): "Congress' intent in enacting § 362(a) is
4 clear--it wanted to stop collection efforts for all antecedent debts."

5 While the County attempts to distinguish *Lusardi* by extrapolating from the sale
6 date mentioned in the case to argue that the right of redemption had not expired, the
7 expiration of the right of redemption neither appears in the decision nor is discussed as
8 a basis for the Ninth Circuit's ruling. Instead, the Ninth Circuit based its decision on §
9 362(a)(4)'s prohibition against enforcement of liens post-petition. *Id.* at 1080.

10 *Tracht Gut*, 503 B.R. at 812, did not need to address the effect of §§ 362(a)(4)
11 and (6) since in that case, unlike here, the property was sold *before* the petition date. As
12 such, the lien had already been fully enforced prepetition, and § 362(a)(4) was not
13 applicable. Similarly, there were no collection activities as the lien had been satisfied, so
14 § 362(a)(6) also did not apply. All that remained for the sale to be complete was the
15 recordation of the deed of sale, which the B.A.P. found was a ministerial act in that
16 context as discussed more fully below. *Id.* at 811.

17 **B. Debtor Retained Real Property Interests In the Property on the Petition**
18 **Date**

19 Although the County clearly violated the automatic stay under §§ 362(a)(4) and
20 (6), the court also finds the County violated the automatic stay under § 362(a)(3), which
21 prohibits acts to take possession or control of property of the estate. On the petition
22 date, it is undisputed that Debtor held legal title, physical possession, and an interest in
23 proceeds from the Sale if the Property was not sold during the tax auction. These rights
24 were unaffected by the expiration of Debtor's right of redemption contained in Tax Code
25 § 3707(a)(1). These were of course the same rights held by the debtor in *Lusardi*, 329
26 F.3d at 1080, even if the right of redemption had expired.

27 All rights held by Debtor on the petition date became property of the estate under
28 § 541 on the petition date. *See United States v. Whiting Pools*, 462 U.S. 198, 204

1 (1983) ("Congress intended a broad range of property to be included in the estate,"
2 including debtor's rights to recover property seized by the IRS where title had not yet
3 transferred until the tax sale was concluded). Until the Sale, Debtor retained rights in the
4 Property because equitable and legal title had not transferred. See *Rodgers v. Cty. of*
5 *Monroe (In re Rodgers)*, 333 F.3d 64, 68 (2d Cir. 2003) ("It is axiomatic that defendants'
6 title and right to possession of the mortgaged premises . . . continued until the equity of
7 redemption was extinguished at the foreclosure sale."); *Tracht Gut*, 503 B.R. at 818
8 ("[d]ebtor did not redeem the Properties prior to the sales" and "the transfer of the
9 Properties in this case at the sales on October 22, 2012" was before the petition date).

10 This full complement of real property rights that Debtor retained on the petition
11 date despite the contingent expiration of the redemption right under Tax Code §
12 3707(a)(1), is quite different from the debtor in *Eden Place, LLC v. Perl (In re Perl)*, 811
13 F.3d 1120, 1130 (9th Cir. 2016) relied upon by the County. The debtor Perl did not hold
14 any legal or equitable rights in the real property itself when he filed bankruptcy because
15 state law had "bestowed legal title and all rights of possession upon Eden Place." *Id.* at
16 1129. At the time of the filing of the bankruptcy petition, Perl held illegal possession of
17 the property in question and a litigation claim to set aside the foreclosure, neither of
18 which amounted to an equitable right of possession under California law. *Id.* at 1128.
19 These rights under California law were insufficient to trigger the automatic stay to
20 prevent the landlord's eviction of Perl, as the landlord held superior rights to possession
21 than the debtor held under California law. *Id.* at 1130. The foreclosure sale in *Perl*,
22 unlike here, had occurred by the time of the petition, so like the county in *Tracht Gut*,
23 Eden Place's actions were not an action to enforce a lien or an action to collect a debt.
24 *Id.* at 1123. See also *Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi)*, 764 F.3d 1168,
25 1170 (9th Cir. 2014) (debtors lack standing to claim damages for a creditor's violation of
26 the automatic stay under § 362(a)(3) because debtors do not have the right to possess
27 or control property of the estate, and the stay was inapplicable after the property
28 became exempt). In *Mwangi*, *id.* at 1172, § 362(a)(3) was again the only applicable stay

not contingent.

1 provision because the bank was not trying to collect a debt.

2 **C. The Redemption Right Was Revivable and Amounted to a Viable**
3 **Property Right on the Petition Date**

4 In addition to Debtor's remaining ownership and possessory rights discussed
5 above, Debtor also had a contingent right of redemption under state law that separately
6 triggered the automatic stay of § 362(a)(3). *Butner v. United States*, 440 U.S. 48, 55
7 (1979) ("Property interests are created and defined by state law."). Although Debtor's
8 right of redemption under Tax Code § 3707(a)(1) had expired, it was subject to revival
9 under other applicable subsections of the Tax Code: § 3693.1 (redemption revives upon
10 forfeiture of the purchaser's deposit), § 3706.1 (redemption revives upon postponement
11 of the sale), § 3707(a)(2) (redemption revives upon failure of purchaser to meet credit
12 transaction terms), and § 3707(d) (redemption revives if the property is not sold at the
13 scheduled auction). These contingent redemption rights existed when Debtor filed
14 bankruptcy and became property of the bankruptcy estate. *In re Gallardo*, 35 B.R. 321,
15 322 (Bankr. N.D. Ohio 1983) (contingent rights become property of the estate).

16 Debtor retained these revival rights until the Sale as was recognized by the
17 County. The declaration of Karen Vogel, the Imperial County Treasurer-Tax Collector
18 ("Vogel"), avers that on December 23, 2015, a Notice of Sale was sent to Debtor which
19 stated his right of redemption would terminate at 5:00 p.m. on the last business day
20 prior to the start of the scheduled sale. The Notice further provided, "If the property is
21 not sold, the right of redemption will *revive* up to the close of business of the last
22 business prior to the next scheduled sale" (emphasis added).

23 The County contends that the contingent revival of the right of redemption set
24 forth in Tax Code § 3707(d) is not property of the estate because the contingency is not
25 in the Debtor's control. It cites no law for this proposition. In fact, property of the
26 bankruptcy estate encompasses conditional, future, speculative and equitable interests
27 of debtors regardless of who controls them. See *In re Flippin*, 334 B.R. 434, 436 (Bankr.
28 W.D. Ark. 2005), *aff'd in part, supplemented in part*, *Clark v. Flippin*, No. 05-3066, 2006

1 U.S. Dist. LEXIS 71739, at *11 (W.D. Ark. Sept. 29, 2006) (a debtor's recognizable,
2 Inchoate dower interest in her husband's real property, which was contingent upon her
3 husband's death during her lifetime, was property of the estate as it was an interest in
4 property, despite the fact that she could not legally control her husband's death); *In re*
5 *Jones*, 487 B.R. 224, 229 (Bankr. D. Ariz. 2012), *aff'd*, *Jones v. Mullen (In re Jones)*,
6 2014 Bankr LEXIS 488, at *15 (B.A.P. 9th Cir. 2014) (a debtor's grandmother executed
7 a beneficiary deed in favor of the debtor, conveying property upon her death, and died
8 three days after filing of petition; the debtor had a contingent interest in property that
9 rendered it property of the estate pursuant to § 541(a)(1) even though the grandmother
10 could have revoked the deed before her death). Control by the debtor over the property
11 rights is clearly not a prerequisite to the status of property rights as property of the
12 estate.

13 Because Debtor had valuable property rights on the day it filed bankruptcy under
14 state law which were only in part contingent, the court finds the Sale violated
15 § 362(a)(3), (a)(4) and (a)(6) and should be set aside by the County.

16 **D. The County's Discretion Regarding the Conduct of the Sale Eliminated**
17 **the Ministerial Act Exception to the Automatic Stay**

18 Despite the court's conclusion that the County violated several sections of the
19 automatic stay by proceeding with the Sale post-petition, it must still consider whether
20 the ministerial act exception to the automatic stay applies. This exception was
21 announced in *McCarthy, Johnson & Miller v. North Bay Plumbing, Inc. (In re Pettit)*, 217
22 F.3d 1072, 1080 (9th Cir. 2000) ("[A] judicial 'proceeding' within the meaning of section
23 362(a) ends once a decision on the merits has been rendered. Ministerial acts or
24 automatic occurrences that entail no deliberation, discretion, or judicial involvement do
25 not constitute continuations of such a proceeding.").

26 *Tracht Gut*, 503 B.R. at 812, applied the ministerial act exception to validate a
27 prepetition tax sale even though the deed was not recorded until post-petition. Relying
28 upon Tax Code § 3708.1, the B.A.P. concluded that after execution of the tax sale and

1 that the court ignore controlling Ninth Circuit and statutory authority to the detriment of
2 valuable property rights held by the Trustee. Regardless of whether the redemption right
3 was revivable or not, the Sale was void because collection and lien enforcement efforts
4 must cease on the date of bankruptcy.

5 The County's motion for a comfort order is denied.

6 IT IS SO ORDERED.

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8 Dated: July 5, 2016



MARGARET M. MANN, JUDGE
United States Bankruptcy Court

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991**

In re RW Meridian LLC
Bankruptcy Case No. 16-00629-MM7

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**MEMORANDUM DECISION RE MOTION FOR COMFORT ORDER RE AUTOMATIC STAY
FILED BY THE COUNTY OF IMPERIAL TREASURER-TAX COLLECTOR**

was enclosed in a sealed envelope bearing the lawful frank of the Bankruptcy Judges and mailed to each of the parties at their respective address listed below:

RW MERIDIAN LLC
2015 HUGHES DR
Fullerton, CA 92833
Debtor

Ronald E. Stadtmueller
10755 Scripps Poway Pkwy., #370
San Diego, CA 92131
Chapter 7 Trustee

Francisco J. Aldana
Law Offices of Francisco Javier Aldana
3033 5th Avenue, Suite 201
San Diego, CA 92103
Attorney for Debtor

Laurel Lee Hyde, Esq.
SCHWARTZ HYDE & SULLIVAN, LLP
401 "B" Street, Suite 2400
San Diego, CA 92101-4200
*Attorneys for County of Imperial Treasurer -
Tax Collector*

United States Trustee
Office of the U.S. Trustee
402 West Broadway, Suite 600
San Diego, CA 92101-8511

Brian A. Kretsch
Law Office of Brian A. Kretsch, A.P.C.
810 Jamacha Road, Suite 202
El Cajon, CA 92019
Attorney for Chapter 7 Trustee

Said envelope(s) containing such document were deposited by me in a regular United States mail box in the City of San Diego, in said district on July 5, 2016.


Michele McConnell, Judicial Assistant