

JUN 15 2018

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**ORDERED PUBLISHED**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

5	In re:	)	BAP No.	NC-17-1152-FBTa
		)		
6	SYDNEY EILEEN SORENSEN,	)	Bk. No.	16-52281
		)		
7	Debtor.	)	Adv. No.	17-05018
		)		
8	_____	)		
		)		
9	SCHNITZEL, INC., dba R&J	)		
	JEWELRY & LOAN,	)		
10	Appellant,	)		
		)		
11	v.	)	<b>OPINION</b>	
		)		
12	SYDNEY EILEEN SORENSEN,	)		
		)		
13	Appellee.	)		
		)		
14	_____	)		

Argued and submitted on May 25, 2018  
at San Francisco, California

Filed - June 15, 2018

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Honorable Stephen J. Johnson, Bankruptcy Judge, Presiding

Appearances: Jon Webster, The Law Offices of Jon Webster,  
argued on behalf of appellant Schnitzel, Inc., dba  
R&J Jewelry & Loan; David A. Boone, The Law  
Offices of David A. Boone, argued on behalf of  
appellee Sydney Eileen Sorensen.

Before: FARIS, BRAND, and TAYLOR, Bankruptcy Judges.

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1 FARIS, Bankruptcy Judge:  
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3 **INTRODUCTION**

4 Appellant Schnitzel, Inc., dba R&J Jewelry & Loan ("R&J"),  
5 appeals from the bankruptcy court's ruling prohibiting R&J from  
6 disposing of chapter 13<sup>1</sup> debtor Sydney Eileen Sorensen's pawned  
7 jewelry. R&J argues that the bankruptcy court erred because the  
8 jewelry was excluded from Ms. Sorensen's estate by § 541(b)(8),  
9 and she could not extend her right to redeem the property through  
10 the bankruptcy process. We AFFIRM.

11 **FACTUAL BACKGROUND**

12 R&J is a licensed pawnbroker in the state of California. In  
13 March 2016, Ms. Sorensen pledged five pieces of jewelry as  
14 collateral for five pawn loans with R&J. Four months later, she  
15 obtained replacement loans that had a termination date of  
16 November 18, 2016.

17 Prior to the termination date of the loans, Ms. Sorensen  
18 filed for chapter 13 bankruptcy protection. Her schedules  
19 identified R&J as a creditor holding claims secured by the pawned  
20 jewelry. Her proposed chapter 13 plan listed R&J as a secured  
21 creditor and sought to repay the loans and retain the jewelry.

22 On November 18, 2016, R&J issued a notice of loan  
23 termination, providing a ten-day right to redemption required by  
24 state law. Ms. Sorensen did not redeem the jewelry during the  
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26 <sup>1</sup> Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, and all "Civil Rule" references are to the Federal  
Rules of Civil Procedure.

1 ten-day period.

2 Ms. Sorensen filed an amended chapter 13 plan,<sup>2</sup> which again  
3 identified R&J as a secured creditor and proposed to make \$50  
4 monthly payments on each of the five loans. R&J did not oppose  
5 plan confirmation.

6 Meanwhile, counsel for R&J and Ms. Sorensen communicated  
7 about the status and characterization of the pawn loans. R&J  
8 offered Ms. Sorensen two more extensions of her redemption  
9 rights; the final deadline was March 3, 2017.

10 On March 1, Ms. Sorensen filed an adversary proceeding  
11 complaint for injunctive and declaratory relief against R&J. She  
12 requested that the court issue an injunction preventing R&J from  
13 disposing of the jewelry, which she contended was part of the  
14 bankruptcy estate and therefore subject to the automatic stay.

15 Ms. Sorensen also filed an application for a temporary  
16 restraining order ("TRO Motion") to prevent R&J from disposing of  
17 the jewelry. She argued that she satisfied the standard for a  
18 temporary restraining order ("TRO") because she had "every  
19 intention to retain the liens and make payment on those liens to  
20 redeem possession of her jewelry, [and] she had clearly stated  
21 her intentions to retain the liens and redeem the property in her  
22 Chapter 13 Plan . . . ."

23 In opposition to the TRO Motion, R&J argued that Ms.  
24 Sorensen was unlikely to succeed on the merits because the

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26 <sup>2</sup> The chapter 13 trustee raised several objections to the  
27 original plan, including whether R&J had properly received notice  
28 of the plan. The amended plan addressed the trustee's concerns,  
including notice to R&J.

1 jewelry was excluded from the bankruptcy estate pursuant to  
2 § 541(b)(8). It contended that, under § 541(b)(8)(C) and  
3 § 108(b), the redemption period relevant to a pawn loan expires  
4 on the later of (1) the loan termination date under state or  
5 local law or (2) sixty days from the date of the bankruptcy  
6 filing. Under California law, Ms. Sorensen had four months  
7 (until November 18, 2016) to redeem her jewelry; R&J then issued  
8 the statutorily-required grace notice extending the right of  
9 redemption until November 28. It contended that, because Ms.  
10 Sorensen did not redeem her property within the statutory period,  
11 the jewelry was excluded from the bankruptcy estate under  
12 § 541(b)(8), and the automatic stay never applied to the jewelry.

13 On March 28, 2017, the bankruptcy court confirmed Ms.  
14 Sorensen's amended plan. Later that same day, the bankruptcy  
15 court heard Ms. Sorensen's TRO Motion. In light of the earlier  
16 plan confirmation and additional arguments raised by Ms.  
17 Sorensen, the bankruptcy court ordered supplemental briefing and  
18 continued the hearing.

19 On March 31, R&J filed a motion to dismiss the adversary  
20 complaint ("Motion to Dismiss") under Civil Rules 12(b)(1) and  
21 (b)(6), made applicable in bankruptcy by Rule 7012(b), arguing  
22 that the bankruptcy court lacked subject matter jurisdiction over  
23 the pawned jewelry because it was excluded from the bankruptcy  
24 estate. It repeated that, under § 541(b)(8), the jewelry was not  
25 part of the bankruptcy estate: due to Ms. Sorensen's and "the  
26 Trustee's failure to redeem the property in the statutorily  
27 prescribed time limit, the property never entered the bankruptcy  
28 estate. If Plaintiff wished to include the pledged items in the

1 estate, Plaintiff was required to redeem them pursuant to Section  
2 541(b)(8)(C) and Section 108(b).” It also argued that Ms.  
3 Sorensen failed to state a claim upon which relief could be  
4 granted: the “automatic stay does not in any way affect the  
5 statutory redemption period of Section 108 and Section  
6 541(b)(8)(C). Plaintiff has not alleged, and cannot allege, that  
7 Debtor-Plaintiff or the Trustee attempted to redeem the property  
8 within the time prescribed by Section 108.”

9       Following a hearing on the continued TRO Motion and the  
10 Motion to Dismiss, the bankruptcy court orally held that  
11 (1) R&J’s notice of loan termination was likely void for  
12 violating the automatic stay; and (2) Ms. Sorensen’s confirmed  
13 chapter 13 plan - including its treatment of the jewelry - was  
14 binding on the parties. It considered the interplay between  
15 three factors: state law, bankruptcy law, and the confirmed plan.

16       First, the court noted that California law allows a four-  
17 month loan period that expired on November 18, 2016. At that  
18 time, if R&J properly provided statutory notice and a ten-day  
19 redemption period to Ms. Sorensen, then, “[p]ursuant to  
20 California Finance Code Section 21201, R&J would be vested with  
21 all right, title, and interest in the jewelry after the  
22 expiration of the ten-day period.”

23       Second, the bankruptcy court considered how Ms. Sorensen’s  
24 bankruptcy case affected the parties’ rights. It stated that,  
25 when she filed her petition, her estate included her option to  
26 redeem the jewelry. However, under § 541(b)(8), certain tangible  
27 property pledged to pawnbrokers is excluded from property of the  
28 estate unless the debtor redeems the property within the time

1 allowed under § 108(b). That section provides that the  
2 redemption period is the later of sixty days after the petition  
3 is filed or the period set by state law. But the bankruptcy  
4 court noted that the time period under state law had not expired  
5 because the ten-day notice that R&J sent violated the automatic  
6 stay:

7           Here, R&J never sent a proper notice of loan  
8 termination. Section 362(a)(6) enjoins any act to  
9 collect, [assess], or recover a claim against the  
10 debtor that arose before the property of the – the  
11 commencement of the case. Nothing in 541(b)(8), which  
12 is the section that talks about ownership[ ] of these  
13 assets[,] creates an exception to the automatic stay.  
14 So relief from stay is required before any collection  
15 action can begin. And the reference here is 5 Collier  
16 on Bankruptcy, at 541 – paragraph 541.24.

17           R&J never moved for relief from stay, which likely  
18 would have been granted in view of Section 541(b)(8).  
19 And it would have allowed R&J to send the notice  
20 required by California law. As everyone knows, actions  
21 taken in violation of the stay are void. So it is as  
22 if R&J never sent the notice and the ten-day redemption  
23 period never began. Accordingly, title to the property  
24 was never vested in R&J.

25           Third, the bankruptcy court considered the effect of Ms.  
26 Sorensen's confirmed plan. It stated that the plan controlled  
27 the disposition of the jewelry under § 1327(a) and Espinosa v.  
28 United Student Aid Funds, Inc., 553 F.3d 1193 (9th Cir. 2008),  
aff'd, 559 U.S. 260 (2010). The court entered an order granting  
the TRO Motion and denying the Motion to Dismiss ("Order").

          R&J filed a timely notice of appeal from the Order and a  
motion for leave to appeal. The BAP motions panel remanded the  
case to the bankruptcy court for a determination whether the  
Order granted a TRO, and is thus interlocutory, or whether the  
Order granted a preliminary injunction and is immediately  
reviewable on appeal. The bankruptcy court clarified that,

1 despite language indicative of a TRO, the Order constituted a  
2 preliminary injunction. The bankruptcy court also supplemented  
3 the reasoning behind the Order, stating that Ms. Sorensen sought  
4 to retain ownership of the jewelry through a confirmed plan that  
5 "treated the Property as collateral for a secured claim held by  
6 R&J and called for payment of that secured claim over time. R&J  
7 did not object to any of Plaintiff's Chapter 13 plans. . . . The  
8 Court continues to believe the confirmed Chapter 13 plan controls  
9 the Property."

#### 10 **JURISDICTION**

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
12 §§ 1334 and 157(b) (1) and (b) (2) (B). We have jurisdiction under  
13 28 U.S.C. § 158.

#### 14 **ISSUE**

15 Whether the bankruptcy court erred in denying R&J's Motion  
16 to Dismiss and granting Ms. Sorensen a preliminary injunction  
17 preventing R&J from disposing of the jewelry.

#### 18 **STANDARD OF REVIEW**

19 The issues before the Panel are purely questions of law,  
20 which we review de novo. Great Lakes Higher Educ. Corp. v.  
21 Pardee (In re Pardee), 218 B.R. 916, 919 (9th Cir. BAP 1998),  
22 aff'd, 193 F.3d 1083 (9th Cir. 1999) ("We review conclusions of  
23 law, including the bankruptcy court's interpretation of the  
24 Bankruptcy Code, de novo."). De novo review is independent and  
25 gives no deference to the trial court's conclusion. Roth v.  
26 Educ. Credit Mgmt. Agency (In re Roth), 490 B.R. 908, 915 (9th  
27 Cir. BAP 2013).

1 DISCUSSION

2 **A. R&J did not validly terminate Ms. Sorensen's right to redeem**  
3 **the jewelry.**

4 The overarching question before the Panel is whether the  
5 pawned jewelry is still property of the bankruptcy estate. This  
6 appears to be a question of first impression in this circuit. We  
7 agree with the bankruptcy court's reasoning.

8 **1. When Ms. Sorensen filed for bankruptcy protection, her**  
9 **interest in the jewelry became part of the bankruptcy**  
10 **estate.**

11 We must first decide how Ms. Sorensen's bankruptcy petition  
12 affected the parties' respective interests in the jewelry.

13 Under § 541(a), an estate is created at the filing of a  
14 bankruptcy petition that contains, subject to certain exceptions,  
15 "all legal or equitable interests of the debtor in property as of  
16 the commencement of the case." § 541(a)(1). "[A  
17 pre-foreclosure right to redeem is a property right under section  
18 541 . . . ." Harsh Inv. Corp. v. Bialac (In re Bialac), 712 F.2d  
19 426, 431 (9th Cir. 1983). This includes rights that a debtor  
20 retains in her pawned property. See Title Max v. Northington (In  
21 re Northington), 876 F.3d 1302, 1309-10 (11th Cir. 2017)

22 (agreeing that the debtor "retained property interests in the  
23 [pawned property] that became 'property of the estate' under 11  
24 U.S.C. § 541. In particular, the parties agree that the car,  
25 which remained in [the debtor's] possession, as well as the  
26 associated right to redeem it – which at that time had not yet  
27 expired – entered the estate with the filing of his petition").

28 In the present case, when Ms. Sorensen filed her bankruptcy  
petition, all of her interests in her jewelry at that time became



1 part of her bankruptcy estate. See Cty. of Imperial Treasurer-  
2 Tax Collector v. Stadtmueller (In re RW Meridian LLC), 564 B.R.  
3 21, 28 (9th Cir. BAP 2017) ("The nature and extent of the  
4 debtor's interests in property must be determined by  
5 nonbankruptcy law."); Cal. Fin. Code. § 21201(a), (f). The  
6 bankruptcy court correctly held that her estate included her  
7 right to redeem her jewelry.

8 **2. Under California law, § 541(b)(8) does not**  
9 **automatically exclude pawned property from the**  
10 **bankruptcy estate without notice to the pawnor.**

11 R&J argues that the plain language of § 541(b)(8)  
12 automatically exempts the pawned property from the bankruptcy  
13 estate. That subsection provides that:

14 (b) Property of the estate does not include--

15 . . .

16 (8) subject to subchapter III of chapter 5, any  
17 interest of the debtor in property where the  
18 debtor pledged or sold tangible personal property  
19 (other than securities or written or printed  
20 evidences of indebtedness or title) as collateral  
21 for a loan or advance of money given by a person  
22 licensed under law to make such loans or advances,  
23 where -

24 (A) the tangible personal property is in the  
25 possession of the pledgee or transferee;

26 (B) the debtor has no obligation to repay the  
27 money, redeem the collateral, or buy back the  
28 property at a stipulated price; and

(C) neither the debtor nor the trustee have  
exercised any right to redeem provided under  
the contract or State law, in a timely manner  
as provided under State law and section  
108(b) [.]

§ 541(b)(8). The parties do not dispute that subsections (A) and  
(B) are satisfied; only (C) is at issue in this appeal. We thus  
look to § 108(b) and the relevant state law.

1 Section 108(b) provides:

2 (b) Except as provided in subsection (a) of this  
3 section, if applicable nonbankruptcy law, an order  
4 entered in a nonbankruptcy proceeding, or an agreement  
5 fixes a period within which the debtor or an individual  
6 protected under section 1201 or 1301 of this title may  
7 file any pleading, demand, notice, or proof of claim or  
8 loss, cure a default, or perform any other similar act,  
9 and such period has not expired before the date of the  
10 filing of the petition, the trustee may only file,  
11 cure, or perform, as the case may be, before the later  
12 of -

13 (1) the end of such period, including any  
14 suspension of such period occurring on or after  
15 the commencement of the case; or

16 (2) 60 days after the order for relief.

17 § 108(b).

18 In this case, California law provides the longer period for  
19 redemption of pawned property. California Financial Code section  
20 21201 provides that, if a pawned item is not redeemed before the  
21 end of the loan period, the pawnbroker must give notice of the  
22 loan termination and provide a ten-day redemption period:

23 (d) If any pledged article is not redeemed during the  
24 loan period as provided herein, and the pledgor and  
25 pawnbroker do not mutually agree in writing to extend  
26 the loan period, **the pawnbroker shall notify the  
27 pledgor within one month after expiration of the loan  
28 period.** If the pawnbroker fails to notify the pledgor  
within one month after the expiration of the loan  
period, the pawnbroker shall not charge interest from  
the day after the expiration of the one-month period.  
**The pawnbroker shall notify the pledgor at his or her  
last known mailing or electronic address of the  
termination of the loan period,** by a means for which  
verification of mailing or, at the sole option of the  
pledgor, electronic transmission of the notification  
can be provided by the pawnbroker, **and extending the  
right of redemption, during posted business hours, for  
a period of 10 days from date of mailing or electronic  
transmission of that notice.**

29 Cal. Fin. Code § 21201(d) (emphases added). California law  
30 specifies that the pawnbroker only becomes vested with full

1 ownership of the property after the ten-day period expires:

2 (f) If any pledged article is not redeemed within the  
3 10-day notice period, **the pawnbroker shall become**  
4 **vested with all right, title, and interest of the**  
5 **pledgor, or his or her assigns, to the pledged article,**  
6 to hold and dispose of as his or her own property.

7 Cal. Fin. Code § 21201(f) (emphases added); see Cal. Fin. Code  
8 § 21002(b) (“‘Vested property’ is property the title to which has  
9 been transferred from the pledgor to the pawnbroker pursuant to  
10 Section 21201. Vested property is not pledged property.”).

11 In other words, the right to redeem pawned property under  
12 California law does not expire until ten days after the  
13 pawnbroker gives proper notice to the pledgor.

14 In the present case, Ms. Sorensen filed for bankruptcy  
15 protection on August 9, 2016. The replacement loans terminated  
16 on November 18, 2016. Pursuant to California Financial Code  
17 section 21201(d), R&J then issued the notice of the ten-day right  
18 of redemption. Ms. Sorensen did not redeem the jewelry during  
19 the ten-day period.

20 R&J contends that, because Ms. Sorensen failed to redeem the  
21 jewelry during the ten-day period, the pawned jewelry was  
22 excluded from the bankruptcy estate under § 541(b)(8)(C). But as  
23 we explain in the next section, the ten-day notice was void  
24 because R&J issued it in violation of the automatic stay.

25 **3. The statutory redemption notice was void because R&J**  
26 **failed to seek relief from stay.**

27 The automatic stay prevents a creditor from taking certain  
28 actions against property of the bankruptcy estate. In relevant  
part, § 362 provides:

1 (a) Except as provided in subsection (b) of this  
2 section, a petition filed under section 301, 302, or  
3 303 of this title . . . operates as a stay, applicable  
4 to all entities, of -

5 . . .

6 (3) any act to obtain possession of property of  
7 the estate or of property from the estate or to  
8 exercise control over property of the estate;

9 . . .

10 (5) any act to create, perfect, or enforce against  
11 property of the debtor any lien to the extent that  
12 such lien secures a claim that arose before the  
13 commencement of the case under this title;

14 (6) any act to collect, assess, or recover a claim  
15 against the debtor that arose before the  
16 commencement of the case under this title[.]

17 § 362(a) (3), (5), (6).

18 R&J's issuance of the ten-day notice was an act "to exercise  
19 control over property of the estate[,]"<sup>3</sup> to "enforce a lien  
20 [that] . . . secures a claim[,]" and "to collect, assess, or  
21 recover a claim against the debtor[.]"<sup>4</sup> It thus violated  
22 § 362(a). "Actions taken in violation of the automatic stay are  
23 void." In re RW Meridian LLC, 564 B.R. at 28. Because the ten-  
24 day notice was void ab initio, R&J did not satisfy the notice

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25 <sup>3</sup> R&J already had "control" of the jewelry in the sense of  
26 physical possession. The notice (if effective) would have given  
27 it complete control by permitting it to sell the jewelry and keep  
28 the proceeds. Cal. Fin. Code § 21201(d), (f). Therefore, the  
notice violated § 362(a) (3).

<sup>4</sup> R&J's loans were nonrecourse, meaning that if the proceeds  
of sale of the jewelry were insufficient to repay the loans in  
full, R&J had no recourse against Ms. Sorensen for the  
deficiency. This is immaterial, because § 102(2) provides that  
"claim against the debtor" includes claim against property of  
the debtor . . . ." In other words, nonrecourse claims are  
"claims" for bankruptcy purposes.

1 requirement in California Financial Code section 21201(d).

2 Accordingly, the ten-day redemption period never began to  
3 run under subsection (d), Ms. Sorensen's redemption right was  
4 never extinguished, R&J never took title to the jewelry under  
5 subsection (f), and § 541(b)(8) did not remove the jewelry from  
6 the estate.

7 This case is distinguishable from cases decided in other  
8 jurisdictions with different state statutes. For example, in  
9 Northington, the Eleventh Circuit held that, under state law  
10 automatically vesting title in the pawnbroker at the expiration  
11 of the redemption period, the pawned property "dropped out" of  
12 the estate pursuant to § 541(b)(8). 876 F.3d at 1306. In that  
13 case, the debtor failed to redeem prepetition pawned property,  
14 and the pawnbroker sought relief from stay and argued that the  
15 property was excluded from the estate pursuant to § 541(b)(8).  
16 The Eleventh Circuit started with the proposition that the  
17 debtor's interest in the pawned property became property of the  
18 estate when he filed his bankruptcy petition. Id. at 1309. But  
19 it stated that "an estate is not necessarily 'frozen in time,'  
20 but rather can, in certain circumstances, expand or contract in  
21 accordance with the operation of underlying state-law property  
22 rules." Id. at 1314. The court held that, by operation of state  
23 law, the pawned property "dropped out" of the estate:

24 Properly understood, the Bankruptcy Code takes an  
25 estate's constituent property interests as it finds  
26 them. If an asset is by its state-law nature static,  
27 then it remains so in the bankruptcy estate. **If, by  
28 contrast – as is often the case – state law imbues an  
estate asset with a sort of internal dynamism, then  
that characteristic will follow the asset into the  
estate. . . .**

1 But increase will not always be the result –  
2 sometimes the dynamism will reduce (or even eliminate)  
3 an asset's value. Think, for instance, about a debtor  
4 whose bankruptcy estate includes an option contract.  
5 If the debtor fails to exercise the option in  
6 accordance with state law, then the right to buy  
7 disappears. This case reflects the same basic  
8 phenomenon. Under Georgia's pawn statute, following  
9 his loan's maturity date, Wilber had a conditional  
10 right to possess the Charger as well as a right to  
11 redeem it during the statutory period. But after the  
12 expiration of the prescribed period, Wilber had no  
13 rights in the car, possessory or otherwise. Rather,  
14 his rights had been "automatically . . . extinguished"  
15 and "automatically forfeited to [TitleMax]."

16 Id. at 1314-15 (emphasis added).

17 We agree with the Northington court's analysis,<sup>5</sup> but the  
18 result here is different because Georgia's pawnshop law differs  
19 from California's. In Georgia, following a statutory redemption  
20 period, the interest in the pawned property is **automatically**  
21 vested in the pawnbroker; the pawnbroker does not need to take  
22 any action. Ga. Code Ann. § 44-14-403(b)(3) ("Pledged goods not  
23 redeemed within the grace period shall be automatically forfeited  
24 to the pawnbroker by operation of this Code section, and any  
25 ownership interest of the pledgor or seller shall automatically  
26 be extinguished as regards the pledged item."). In contrast,  
27 California Financial Code section 21201(d) required R&J to send  
28 notice to Ms. Sorensen before it obtained legal title to the

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29 <sup>5</sup> In particular, we agree that pawned property "drops out"  
30 of the estate if the redemption right is not timely exercised.  
31 R&J argues that pawned property does not enter the estate at all  
32 unless and until the debtor or trustee timely exercises the  
33 redemption right. The Northington court's view is more  
34 consistent with the language and structure of § 541(b)(8). That  
35 section expressly permits the debtor **or the trustee** to redeem the  
36 property. If the redemption right were not property of the  
37 estate, the trustee could not exercise it.

1 jewelry. That notice, as discussed above, was void because it  
2 violated the automatic stay.<sup>6</sup>

3 R&J points out that this analysis treats California  
4 pawnshops differently from pawnshops in other states that do not  
5 require the pawnbroker to give notice of termination of the  
6 redemption right.<sup>7</sup> R&J argues that this result is unfair and

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7  
8 <sup>6</sup> This is not to say that § 362(a), rather than § 108(b),  
9 controls the redemption period. We agree with other courts in  
10 our circuit that have held that § 362(a) does not toll redemption  
11 periods. See, e.g., In re York, No. 16-01964-FPC13, 2016 WL  
12 6157432, at \*3 (Bankr. E.D. Wash. Oct. 21, 2016) (“This court  
13 finds more persuasive courts finding that § 362(a) does not toll  
14 the running of the time period for redemption, and that the only  
15 available extension of time for such periods is the 60 days  
16 provided for in § 108(b). . . .”); In re Mosher, No. 07-60007-13,  
17 2007 WL 1487399, at \*7 (Bankr. D. Mont. May 17, 2007) (“Debtors’  
18 argument that their redemption period was tolled by the automatic  
19 stay is contradicted by the plain language of § 541(b)(8)(C)  
20 which specifically invokes § 108(b) for determining whether a  
21 debtor or trustee has exercised any right to redeem in a timely  
22 manner.”); see also In re Northington, 876 F.3d at 1313  
23 (rejecting the notion that “the automatic-stay provision applies  
24 to toll an as-yet-unexpired state-law redemption period  
25 indefinitely, thereby preventing the period from lapsing and (in  
26 effect) keeping pawned assets in the estate”). Section 362(a) is  
27 still relevant, however, in cases like this one, where a  
28 redemption period does not start running until the creditor gives  
a notice, and the automatic stay prevents the creditor from  
giving that notice.

<sup>7</sup> Pawnshop laws vary widely from state to state. See, e.g.,  
Del. Code Ann. § 2307(b) (prohibiting the pawn of prosthetic  
limbs); Clark County, Nev. Ord. 6.24.150 (stating that it is  
illegal to accept pawned goods from someone known to be a  
“habitual drunkard” or “an insane person”). Most state laws  
provide that pawned property “automatically” vests in the  
pawnbroker when the redemption period expires, but a minority  
(including California) require the pawnbroker to give notice to  
the pawnor before the pawnbroker acquires full title to the  
property or sells the property. Thirteen jurisdictions  
(California, Kentucky, Massachusetts, New Jersey, New Mexico, New  
(continued...)

1 inappropriate. We agree that application of state law in this  
2 context produces different results in different states, but this  
3 is neither wrong nor even unusual. "Property interests are  
4 created and defined by state law. Unless some federal interest  
5 requires a different result, there is no reason why such  
6 interests should be analyzed differently simply because an  
7 interested party is involved in a bankruptcy proceeding." Butner  
8 v. United States, 440 U.S. 48, 55 (1979). "[U]ndefined  
9 considerations of equity provide no basis for adoption of a  
10 uniform federal rule" displacing state property law. Id. at 56.

11 Accordingly, Ms. Sorensen's redemption rights did not  
12 terminate because R&J did not obtain relief from the automatic  
13 stay before giving the ten-day notice. The bankruptcy court did  
14 not err.

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17 <sup>7</sup>(...continued)  
18 York, Ohio, Oregon, Pennsylvania, South Carolina, Wisconsin,  
19 District of Columbia, and Guam) require notice. See, e.g., Ohio  
20 Rev. Code Ann. § 4727.11 ("the licensee shall notify the pledgor  
21 . . . [that] the pledged property shall be forfeited to the  
22 licensee"); Or. Rev. Stat. § 726.400(3) ("the pawnbroker may not  
23 deem a pledge to be forfeited until: (a) The pawnbroker notifies  
24 the pledgor that the pledge is at risk of forfeiture . . .");  
25 Wis. Stat. Ann. § 138.10 ("A pawnbroker shall not sell any pledge  
26 unless due notice of such contemplated sale has been forwarded to  
27 the pledgor . . ."). A few other jurisdictions require that  
28 the pawnshop give public notice of the upcoming sale. See 19  
R.I. Gen. Laws Ann. § 19-26-10; V.I. Code Ann. tit. 9 § 228.  
Still others have no pawnshop laws or leave the regulation up to  
local government. But the majority of jurisdictions do not  
require further notice or simply do not speak to any further  
notice requirement prior to the pawnshop acquiring full interest  
in the pawned property. Our holding here only applies where  
applicable nonbankruptcy law requires the pawnbroker to give  
notice in order to terminate the pawnor's rights in the property.



1 **B. We need not decide whether the plan has preclusive effect.**

2 The bankruptcy court alternatively held that R&J was bound  
3 by the terms of the confirmed plan, which treated R&J as a  
4 secured creditor and provided for redemption of the pawned  
5 jewelry. We do not reach this issue on appeal because we are  
6 affirming the decision on another, independently sufficient  
7 ground.

8 **CONCLUSION**

9 The bankruptcy court did not err when it denied the Motion  
10 to Dismiss and granted the TRO Motion. We AFFIRM.

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