United States Bankruptcy Court
District of New Mexico

Document Verification

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
LOUIS D. RATLIFF and
FIONA D. RATLIFF,
Debtors. No. 13-99-14052 SA

LOUIS D. RATLIFF, et al.,
Plaintiff,
v. Adv. No. 00-1186 S

SKJJ TURF FARM COMPANY,
and VICTOR TITUS,
Defendants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came before the Court for trial on the merits of Plaintiff's complaint. Plaintiffs appeared through their attorney Gary B. Ottinger. Defendants SKJJ Turf Farm Company ("SKJJ") and Victor Titus appeared through their attorney Donald Becker. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A) and (O). The issue in this case is whether a creditor who receives a notice of bankruptcy filing has an affirmative duty to stop a garnishment.

Starting on or about March 20, 1999, Walmart, Fiona Ratliff's employer, began garnishing Fiona Ratliff's paychecks to satisfy a judgment in favor of SKJJ. On July 13, 1999, Louis and Fiona Ratliff filed a pro se voluntary chapter 7 proceeding. They believed that filing a bankruptcy would stop the garnishment. Debtors had made several attempts to hire an

attorney, but many of the Farmington, New Mexico attorneys had conflicts. Debtors also believed they could not afford an attorney.

Fiona Ratliff contacted her employer when the garnishment started, and was told she needed a court order to stop the garnishment. And, while she told her manager on a personal level of her bankruptcy filing and she believed her bankruptcy was known locally, she never informed the personnel department in Arkansas or obtained an order regarding the garnishment. She testified that the garnishment made things difficult for her and her family, but offered no further evidence that quantified any damages.

SKJJ's attorney, Victor Titus, received prompt notice of the bankruptcy filing. On July 23, 1999, SKJJ filed a notice of bankruptcy in the state court garnishment action, but never took steps to stop the garnishment. The notice of bankruptcy indicates it was served on opposing counsel only, not Walmart.

Debtors filed a motion to dismiss their bankruptcy on September 28, 1999. The Chapter 7 Trustee objected to this motion, and the motion was eventually withdrawn.

On or about March 28, 2000, Attorney Felix Briones[1] wrote a letter to Victor Titus requesting that the garnishment be stopped. Briones testified that Titus refused to release the garnishment. Eventually Debtors traveled to Albuquerque and retained their present counsel who entered his appearance on August 7, 2000. Debtors then converted their case to Chapter 13 on August 18, 2000. The garnishment did not stop until September, 2000, approximately 14 months after the bankruptcy was filed and only after demand was made by their bankruptcy attorney and after this adversary proceeding was filed to recover the funds. Walmart held all funds garnished, $7,348.39, until returning them in October, 2000. No garnished funds had been paid to SKJJ. Debtors were without the use of these funds while Walmart held them.

Exhibit 34 consists of the Debtors' legal bills for the Chapter 13; the items related to the garnishment are checked off. Exhibit 35 contains a summary of legal fees related to the garnishment through April 19, 2001 and totals $2,305.80. Debtors incurred additional attorney fees between April 19, 2001 and the trial of this case. Debtors did not prove any damages other than attorney fees.

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[1]Briones represented the Debtors in the state court proceeding. He did not represent them in their bankruptcy.

Victor Titus testified that there was no doubt that he was aware of the automatic stay within a week of the bankruptcy petition. He believed that once he filed a notice of bankruptcy filing in the state court action it would be up to a bankruptcy trustee to notify Walmart and take steps to stop the garnishment.

Discussion

The automatic stay provisions of the bankruptcy code are contained in section 362, which provides in part:

> (a) [A bankruptcy] petition ... operates as a stay, applicable to all entities, of --
>
> (1) the commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> ...
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.
>
> ...
>
> (h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

11 U.S.C. § 362. The automatic stay is "one of the most fundamental protections accorded debtors under the bankruptcy laws", but also protects all creditors by preventing preferential treatment of some creditors. Internal Revenue Service v. Norton, 717 F.2d 767, 770-71 (3rd Cir. 1983). See also H.R. Rep. No. 595, 95th Cong., 1st Sess. 340-41 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97:

> The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

A creditor commits a willful violation of the automatic stay if it has notice of the automatic stay but takes action and then fails to restore the debtor to the status quo. Mountain America Credit Union v. Skinner (In re Skinner), 917 F.2d 444, 450 (10th Cir. 1990). Accord Fleet Mortgage Group, Inc. v. Kaneb, 196 F.3d 265, 269 (1st Cir. 1999)("A willful violation does not require a specific intent to violate the automatic stay. The standard for a willful violation of the automatic stay under § 362(h) is met if there is knowledge of the stay and the defendant intended the actions which constituted the violation.")(Citations omitted.); Goichman v.

Bloom (In re Bloom), 875 F.2d 224, 227 (9th Cir. 1989)("A 'willful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional.")(Quoting INSLAW, Inc. v. United States (In re INSLAW, Inc.), 83 B.R. 89, 165 (Bankr. D. D.C. 1988)).

Creditors that have obtained writs of garnishment before bankruptcy have an affirmative duty to release them upon learning of the bankruptcy. In re Briskey, 258 B.R. 473, 477 (Bankr. M.D. Al.)("It is clear beyond all doubt that garnishing creditors are required to take all necessary action to release their garnishments in order to implement the automatic stay, upon receiving notice of a bankruptcy filing." Citing cases.); In re Manuel, 212 B.R. 517, 518 (Bankr. E.D. Va. 1997)("There can be little question that the continuation postpetition of a garnishment proceeding against a debtor is a violation of the automatic stay..."); In re Mims, 209 B.R. 746, 748 (Bankr. M.D. Fl. 1997)("A creditor pursuing a garnishment simply cannot sit back and wait for the debtor to act because the effect is to continue to deprive the debtor of property in the possession of the garnishee or the state court

in violation of the automatic stay."); In re Timbs, 178 B.R. 989, 996 (Bankr. E.D. Tn. 1994)("[T]he courts have widely held that a creditor has an affirmative duty to halt all collection efforts, including garnishments which were set into motion prepetition, once the creditor receives notice of the bankruptcy filing. ... This duty has been extended to the creditor's attorney.");

> [C]ases widely agree that a garnishing creditor has an affirmative duty to stop garnishment proceedings when notified of the automatic stay. In re Dungey, 99 B.R. 814 (Bankr. S.D. Ohio 1989); In re Mitchell, 66 B.R. 73 (Bankr. S.D. Ohio 1986); In re O'Connor, 42 B.R. 390 (Bankr. E.D. Ark. 1984)(creditor cannot take default judgment against debtor's employer after filing); In re Dennis, 17 B.R. 558 (Bankr. M.D. Ga. 1982)(creditor has duty to dismiss garnishment proceedings instituted postpetition); In re Elder, 12 B.R. 491, 494 (Bankr. M.D. Ga. 1981)(creditor has affirmative duty to stop "downhill snowballing of a continuing garnishment").

Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343-44 (9th Cir. B.A.P. 1994). Cf. Ledford v. Tiedge (In re Sams), 106 B.R. 485, 489-90 (Bankr. S.D. Oh. 1989)(Creditor had affirmative duty to stop foreclosure sale upon learning of bankruptcy filing.) Compare In re Dencklau, 158 B.R. 796, 799 (Bankr. N.D. Ia. 1993)(Creditor that takes affirmative action to stop garnishment and return funds held not to be in violation of automatic stay.)

In the case at bar, SKJJ and its attorney knew of the bankruptcy within a week of its filing, but failed to take any steps until 14 months after the bankruptcy was filed and only after demand was made by debtors' attorney and after this adversary proceeding was filed to recover the funds. Furthermore, SKJJ and its attorney refused to release the garnishment even after being requested to by attorney Briones in March, 2000. The Court finds that SKJJ and its attorney Victor Titus committed willful violations of the automatic stay. They had an affirmative duty to stop the garnishment, but did not do so. While they did file a notice of bankruptcy in the state court case, they did not serve a copy of that notice on the employer. When attorney Briones asked them to release the garnishment, they refused.

SKJJ and Titus argue that they believed it was the Trustee's duty to stop the garnishment, or that it was the Debtors' duty to do so. This argument has been uniformly rejected. See Timbs, 178 B.R. at 997-98. See also Briskey, 258 B.R. at 478:

> [I]t simply is not necessary to obtain an individual bankruptcy court order to release each garnishment for each debtor. Creditors, or their lawyers, commit willful violations of the automatic stay when they fail to promptly release a garnishment and may be sanctioned as the equities of each individual case may dictate.

Also, to the extent this defense is a claim that SKJJ and Titus did not understand the law, "the courts are unanimous in their conclusion that a good faith mistake of the law, a legitimate dispute as to legal rights or even good faith reliance on an attorney's advice do not relieve a willful violator from the consequences of his act." Id. at 997. See also Wills v. The Heritage Bank (In re Wills), 226 B.R. 369, 376 (Bankr. E.D. Va. 1998)("Defendant's mistaken belief that its actions did not require court approval cannot be a factor in the Court's analysis.")

SKJJ and Titus argue that they were mislead by the Debtors' motion to dismiss the bankruptcy. Dismissal of a chapter 7 proceeding, however, is not automatic. See 11 U.S.C. § 707(a)(Court may dismiss chapter 7 case only after notice and a hearing and only for cause.) And, there is no exception in the automatic stay provisions that make the stay inapplicable if there is a pending motion to dismiss. Therefore the Court finds that it was unreasonable for SKJJ or Titus to rely on the Motion to Dismiss as an excuse to not take affirmative steps to terminate the garnishment. Furthermore, SKJJ and Titus should have already taken steps to terminate the garnishment by the time the motion to dismiss was filed on September 28, 1999.

SKJJ and Titus also argue that this case is different from the typical stay violation case because SKJJ received no economic benefit from the garnishments, because all amounts were retained by the employer. The Court disagrees that economic benefit to the creditor is a necessary element of a stay violation. The statute is based on damage to the debtor, not benefit to the creditor. See 11 U.S.C. § 362(h)(Debtor shall recover actual damages.)

In summary, the Court finds that SKJJ and Titus committed a willful violation of the automatic stay. "Where a willful violation of the stay has been found, compensatory damages are mandated." Timbs, 178 B.R. at 997. The party seeking damages under Section 362(h) has the burden of proving what damages were incurred and what relief is appropriate. Sucre v. MIC Leasing Corp. (In re Sucre), 226 B.R. 340, 349 (Bankr. S.D. N.Y. 1998). Compare In re Dungey, 99 B.R. 814, 818 (Bankr. S.D. Oh. 1989) (Court refused to award damages for embarrassment, humiliation, financial shortage and lost wages because no evidence presented on these damages.)

The Court finds that the Debtors were damaged 1) by incurring attorney fees to pursue this matter, and 2) by a loss of the use of the garnished wages. Debtors' counsel shall have fourteen days to file and serve upon defendants an

affidavit detailing services rendered between April 19, 2001 to the conclusion of the trial on this matter. Defendants shall then have fourteen days to file objections to the affidavit or to exhibit 34 or 35 (setting out costs and fees through April 19, 2001) or the rates charged or expenses incurred. If defendants file an objection the Court will conduct a further hearing.

With respect to the loss of use of wages, the Court finds that it would be appropriate to award interest. See Sucre, 226 B.R. at 349. The total amount garnished was $7,348.39 over a period of 18 months. Four months were prepetition, fourteen were postpetition. The Court will assume that the amounts garnished were all approximately the same. This means that approximately $1,633 would have been garnished prepetition, and approximately $5,715 postpetition. Debtors lost the use of $1,633 for the full fourteen months. Of the balance, the Debtors lost the use of, on average, one half of the total amount garnished postpetition for one half of the total time of 14 months, or $2,858 for 7 months. The Court will apply an interest rate of 5%. Therefore, the Court finds that the Debtors have been damaged as follows:

Amount	Time	Interest rate	Lost Interest
$1,633	14 months	5%	$ 95.26
$2,858	7 months	5%	83.36
		Total	$ 178.62

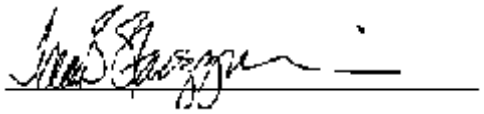
Debtors also seek an award of punitive damages.

> [P]unitive damages are awarded in response to particularly egregious conduct for both punitive and deterrent purposes. Such awards are "reserved ... for cases in which the defendant's conduct amounts to something more than a bare violation justifying compensatory damages or injunctive relief." To recover punitive damages, the defendant must have acted with actual knowledge that he was violating the federally protected right or with reckless disregard of whether he was doing so.

Timbs 178 B.R. at 998 (quoting Temlock v. Falls Bldg. Ltd. (In re Falls Bldg. Ltd.), 94 B.R. 471, 482 [(Bankr. E.D. Tn. 1988)]. Punitive damages are generally restricted to cases involving egregious factual circumstances. Wills, 226 B.R. at 376 (Citing cases).

The Court finds egregious facts in this case. SKJJ and Titus had knowledge of the Debtors' bankruptcy, but allowed a garnishment to continue for 14 months depriving debtors of the use of $7,348 in the process. Compare Dungey, 99 B.R. at 818 (Depriving debtor of $140 in wages for nearly four months was egregious conduct warranting punitive damages.) The Court

finds that an award of $500 in punitive damages would be appropriate to discourage similar behavior in the future.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on October 30, 2001, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

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