

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

In re: Gina Nunez

Debtor.

Bankruptcy Case No. 00 B 71184

Chapter 7

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Debtor's Motion for Sanctions for Violation of Stay. The creditors, Anthony and Mary Davies (the "Creditors"), and their attorney, Theodore Liebovich, filed a Response to the Motion. The parties agree that there are no factual issues.

JURISDICTION

This Court has jurisdiction pursuant to 11 U.S.C. § 1334. This matter is a core proceeding pursuant to 11 U.S.C. § 157(b)(2)(A).

UNCONTROVERTED FACTS

Gina Nunez, the Debtor (the "Debtor"), filed a Chapter 7 bankruptcy petition on April 12, 2000. The Debtor listed a claim due Anthony and Mary Davies c/o Attorney Theodore Liebovich in the sum of \$25,000. The first time the creditors and their attorney became aware of the Debtor's bankruptcy petition was on or about May 1, 2000, when the Debtor's attorney, Bernard Natale, sent Attorney Liebovich a copy of the petition at his request. After the bankruptcy information was received, the creditors took no further action to recover the debt to them including any action to pursue the warrant issued by the Circuit Court for the Debtor's failure to appear on a citation and rule to show cause and the Circuit Court's finding of contempt.

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On April 10, 2000, a warrant of arrest was issued by the Circuit Court of Winnebago County in a lawsuit instituted by the Creditors against the Debtor. The Debtor received a discharge on July 25, 2000. On December 29, 2000, the Debtor was arrested by Winnebago County Officers, posted \$500 for bail and was required to appear in court on January 8, 2001. The Debtor appeared at that court hearing with her attorney, at which time the warrant was vacated and the bail money was returned to her. The Debtor is a self-employed nail technician. As a result of her arrest, she was unable to keep numerous scheduled appointments, resulting in a loss of income and additional attorneys fees.

#### DISCUSSION

The creditors and their attorney acknowledge that the filing of the Debtor's bankruptcy petition places an affirmative duty to cease all collection activity. The issue presented is whether the automatic stay imposes an affirmative duty to recall a bench warrant issued pre-petition in conjunction with collection proceedings. Under 11 U.S.C. § 362(a) provides in pertinent part:

A petition filed under section 301 . . . operates as a stay, applicable to all entities, of-- (1) the commencement or continuation, including the issuance or employment of process, 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.

11 U.S.C.A. 362(a) (West Supp. 2000)

Although this case involves an arrest warrant and the posting of bail by the Debtor, there is no allegation that this matter is exempt under § 362(b) relating to criminal or various domestic relations actions.

The legislative history of § 362 reflects the Congressional intent to provide broad protection to debtors:

"The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy. H.R.Rep. No. 595, 95th Cong., 1st Sess. 340-42 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 54-55 (1978); reprinted in 1978 U.S.C.C.A.N. 5787, 5840, 6296-97.

*In re Denise Banks*, 253 B.R. 25, 29 (Bankr.E.D.Mich. 2000).

The Clerk of the Bankruptcy Court serves a notice of the filing of the bankruptcy petition on those creditors listed on the debtor's schedules pursuant to Federal Rule of Bankruptcy Procedure 2002 (f) and (o). The stay, however, is effective without regard to whether a particular person or entity has received notice. The fact that a party may not have notice of the filing is relevant only on the question of whether that party violated the automatic stay willfully pursuant to § 362(h). However, informal notice, even by telephone, is sufficient to put the creditor on notice of a bankruptcy. "The creditor has an affirmative duty to ascertain the correctness of the information or advice; it may not disregard information of the bankruptcy case." *In re Walters*, 219 B.R. 520, 526 (Bankr. W.D. Ark. 1998).

Based on the language of 362(a)(1) many courts have emphasized the obligation incumbent upon creditors to take the necessary steps to halt or reverse any pending State Court actions or other collection efforts commenced prior to the filing of a bankruptcy petition, including garnishment of wages, repossession of an automobile, foreclosure of a mortgage or a judgment lien and, thereby maintain, or restore, the status quo as it existed at the time of the filing of the bankruptcy petition. This responsibility is placed on the creditor and not the debtor ... because "[t]o place the onus on the debtor ... to take affirmative legal steps to recover property seized in violation of the stay would subject the debtor to the financial pressures the automatic stay was designed to temporarily abate,

and render the contemplated breathing spell from his creditors illusory. *In re Banks*, 253 B.R. 25, 30 (citing *Ledford v. Tiedge (In re Sams)*, 106 B.R. 485, 490 (Bankr. S.D. Ohio 1989) (citations omitted)).

"Section 362(a) not only imposes a stay of proceedings against the debtor, it creates an affirmative duty on the creditor to cease actions which may violate the stay. Indeed, a creditor is required to act affirmatively to reverse actions which, if carried out, would violate the automatic stay." *In re Walters*, 219 B.R. at 526. This would appear to be the plain meaning of the words commencement or continuation under 11 U.S.C. 362(1). The word continuation cannot be limited to those acts which a creditor carries out personally and directly, but must include any instrumentality or process by which a creditor pursues his claim. Thus, a creditor who initiates a process for the collection of a debt may not simply abandon that process to its own conclusion, but must affirmatively take steps to terminate that process and any consequence to the debtor resulting from that process. "If for example, a wage order or garnishment is in place prepetition, the creditor is under an affirmative duty to refuse the funds as well as reverse, suspend or halt the garnishment." *Id.* (citing *In re Roberts*, 175 B.R. 339 (9th Cir. BAP 1994)).

The facts of the present case most resemble those in the case of *In re Atkins*. In that case a bench warrant was issued against the debtor, and the creditor's attorney failed to cancel the warrant after notice of the bankruptcy filing and the imposition of the automatic stay. *In re Atkins*, 176 B.R. 998, (Bankr. D. Minn. 1994). While the *Atkins* court found that the violation of the stay was not willful because the attorney involved had simply forgotten about the warrant, the Court nonetheless reaffirmed the obligation of the creditor to take affirmative steps to have the warrant withdrawn.

In the present case, the Creditors became aware of the bankruptcy filing no later than May 1, 2000, when their attorney received a copy of the petition. On April 10, 2000, a warrant was issued by the Circuit Court of Winnebago County, apparently in a supplemental proceeding by the Creditors against the Debtor. The Debtor was arrested on the bench warrant on December 29, 2000, posted \$500 for bail and had to attend the court hearing on January 8, 2001. The state court vacated the bench warrant and returned the \$500 posted for bail. Because the Creditors and their attorney had notice of the bankruptcy filing and failed to recall the bench warrant, this Court finds that the Creditors willfully violated the automatic stay pursuant to § 362(h). While a debtor may recover sanctions for a willful violation of the automatic stay, the Debtor is not seeking sanctions for the Creditors' violation. Thus, the Court will not address the issue of damages.

#### **CONCLUSION**

Because the Creditors and their attorney were notified of the bankruptcy petition and failed to recall the bench warrant issued in state court in connection with collection proceedings, the Creditors committed a willful violation of the automatic stay.

THEREFORE, IT IS ORDERED the Debtor's Motion for Sanctions for Violation of Stay is granted.

The foregoing constitutes findings of fact and conclusions of law as required by  
Fed. R. Civ. P. 52(a) and Fed. R. Bankr. P. 7052.

Signed: March 19, 2001



MANUEL BARBOSA  
United States Bankruptcy Judge