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LONG AND EXPENSIVE RIDE FOR STAY VIOLATORS

December 28, 2017

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When a person takes an action against an individual debtor in bankruptcy in violation of the automatic stay imposed under Section 362(a) the debtor is entitled to recover damages under Section 362(k)(1) to include costs and attorneys' fees. An issue regarding the extent of damages to be recovered has centered on whether the fees that shall be awarded are limited to those incurred in ending the stay violation, or if they also include the fees incurred in pursuing the damage award, including defending the award on appeal.

The 11th Circuit answered that question emphatically in Mary Beth Mantiply v.Richard D. Horne, Case No. 16-16789 filed Dec. 5, 2017. In that case, Mantiply, an attorney, filed a civil action on behalf of her clients in state court after the debtors had filed for bankruptcy under Chapter 7. Even after being informed of the automatic stay, she refused to dismiss the action. It was eventually dismissed.

After finding that Matiply had violated the automatic stay, the bankruptcy court awarded the debtors $81,714.31 in damages, which included $41,714.31 in attorneys' fees and costs. At that point, the fun begins.

Mantiply appealed the decision to the district court, which affirmed the award and awarded an additional $34,551.28 in fees incurred in the appeal. Mantiply then filed motions in both the district and bankruptcy court seeking the bankruptcy judge's recusal. The bankruptcy court denied the recusal motion, which was appealed to the district court. The district court affirmed the decision but denied the debtors' motion for attorneys' fees in defending the appeal of the recusal order.

Not giving up, Mantiply appealed the denial of the recusal order to the 11th Circuit and the debtors cross appealed the denial of their attorneys' fees for the appeal. The 11th Circuit affirmed on the recusal motion and remanded for attorneys fees, which resulted in an additional $14,918.60 in fees to the debtors. Not to be deterred, Mantiply petitioned the Supreme Court for a writ of certiorari to review the denial of her recusal motion. The debtors filed a brief in response and the petition was denied. The district court awarded an additional $92,495.86 in appellate fees and costs, all of which was appealed to the 11th Circuit.

On appeal, Mantiply contended that the fees and costs recoverable under Section 362(k)(1) are limited to those incurred in ending the stay violation, but not in pursuing damages or defending the award on appeal. The 11th Circuit disagreed and held, as a matter of first impression, that nothing in Section 362(k)(1) limits the scope of the attorneys' fees to solely ending the stay violation. Instead, the broad language of the statute, permits recovery of fees incurred in stopping the stay, pursuing damages for the violation and defending the judgments on appeal. To put the final icing on the cake, the 11th Circuit awarded the debtor's an additional $30,559.98 in fees and costs for the appeal to that court.

The simple lesson from this case is that when you find yourself in a hole, stop digging. An initial award of fees and costs of $41,714 ballooned to a total of $214,240.03. As it has in the past, the 11th Circuit has made it clear that it takes the automic stay very seriously and that one violates it at his own peril.

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