



1 the same time, Sonic purports to be reserving its "right" to  
2 contest this Court's in personam jurisdiction over it because it  
3 is an Irish company with no employees in the United States.  
4 Sonic has also noted that there is an arbitration clause in  
5 effect as between it and debtor, but has not asked the Court to  
6 examine, much less enforce such a clause. Because neither of  
7 these issues have been pressed by either side, the Court offers  
8 no opinion on them at the present time.

9       The underlying facts are as follows. On or about March 29,  
10 2005 debtor applied to Sonic Payday, apparently over the  
11 internet, for a loan against a future paycheck, and assigned to  
12 Sonic the authority to draw on her account at the Bank of America  
13 for repayment of that loan on April 15, 2005. On April 14, 2005  
14 debtor asserts by declarations that she called Sonic by phone,  
15 spoke with a representative about her account, and told the  
16 representative that she "had" filed bankruptcy so Sonic was  
17 prohibited from withdrawing money from her account to repay the  
18 loan. She declares the conversation took place at 1 p.m. on  
19 April 14.

20       Sonic disputes that such a call was placed to it, and argues  
21 it may have been to one of her other payday loan creditors.  
22 Debtor insists the call was with a representative of Sonic Payday  
23 who had access to her account information. After having had  
24 months to do so, debtor has not provided a copy of a relevant  
25 phone bill.

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1           The Court need not resolve whether the debtor spoke with a  
2 representative of this creditor on April 14, 2005 at 1 p.m., as  
3 she asserts, because it is clear her bankruptcy petition had not  
4 been filed by that date and time. To the contrary, it is  
5 uncontroverted that debtor's petition was not filed until  
6 1:46 p.m. on that day. Accordingly, there was no automatic stay  
7 in place at 1 p.m. and any inquiry by Sonic would not have  
8 disclosed the existence of any bankruptcy filing or automatic  
9 stay at that time, as her counsel acknowledged at the hearing.  
10 The courts which have considered similar instances have been  
11 consistent in recognizing that such a statement by a debtor is of  
12 no meaningful effect in terms of constituting notice of the  
13 existence of an automatic stay. See, e.g., In re Bush, 169 B.R.  
14 34 (W.D. Va. 1994); In re Nelson, 335 B.R. 740 (Bankr. D. Kan.  
15 2004); In re Shriver, 46 B.R. 626 (Bankr. N.D. 1985).

16           Counsel for Sonic seems to labor under some misunderstanding  
17 about the automatic stay and notice. First, the stay is  
18 effective upon the filing of the bankruptcy petition, without  
19 regard to whether anyone knows of its existence. Knowledge is  
20 relevant in terms of possible liability for a violation. And  
21 knowledge can arise or be attributed a number of ways, including  
22 putting a creditor on inquiry notice. Sonic seems to think it  
23 must be correctly listed in the schedules and must receive proper  
24 notice from the court about the filing. Not so. If Sonic learns  
25 of the pendency of a debtor's bankruptcy, Sonic has to freeze in  
26 place while it determines whether the debtor it has learned of

1 owes it any money. That is not a necessary function of the  
2 debtor's schedules, or a list of the 20 largest unsecured  
3 creditors. Those may assist a creditor, but they do not absolve  
4 a creditor, once notified that a specific debtor has filed  
5 bankruptcy, from ascertaining whether they are a creditor of that  
6 debtor, knowing the debtor is protected by a stay.

7       Returning to the facts, at some point on April 15 Sonic  
8 Payday made demand on Bank of America to pay it \$875 in two  
9 chunks of \$437.50 each. In the meantime, debtor had contacted  
10 the bank, notified them of her filing, and instructed the bank  
11 not to honor the previously authorized draw by Sonic. Somehow,  
12 one chunk of \$437.50 was transferred to Sonic and the other was  
13 refused. Based on the present record it is clear that at the  
14 time of the transfer from the bank to Sonic, Sonic did not have  
15 notice of the filing of debtor's bankruptcy and the concomitant  
16 automatic stay. Accordingly, there was no knowing and willful  
17 violation of the stay by the act of accomplishing the transfer of  
18 the \$437.50 from debtor's account to Sonic. There was a  
19 violation of the stay, to be sure, but not one actionable at this  
20 chronological point under 11 U.S.C. § 362(h).

21       Later the same day, April 15, after learning of the  
22 withdrawal from the bank, debtor's counsel wrote a letter  
23 advising Sonic of the bankruptcy filing on April 14 and demanding  
24 return of the withdrawn funds by April 19. Although the mailing  
25 address on the letter was to a company in Idaho, not Ireland, the  
26 letter was faxed to Sonic Payday at a fax number that was correct

1 for this creditor. At the hearing, Sonic acknowledged that it  
2 had finally located the fax misplaced within its system after  
3 debtor's counsel had provided a copy.

4 So what this motion is really about is whether Sonic  
5 violated the stay by not restoring the \$437.50 to debtor's  
6 account before April 28, 2005 and, if so, what damages are  
7 appropriate. Sonic has contended that it did not learn of the  
8 bankruptcy until April 27, at which time it wrote off debtor's  
9 account. One day later, April 28, the funds were restored to  
10 debtor's account, although the Court has not been told how Sonic  
11 learned or decided it needed to do that, or when.

12 The case of Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210  
13 (9<sup>th</sup> Cir. 2002) is somewhat similar. There, post-petition, the  
14 creditor's collection agent filed suit against the debtor in  
15 state court, apparently not knowing of the bankruptcy. The  
16 bankruptcy court found the creditor unreasonably delayed in  
17 dismissing the complaint, having learned of the bankruptcy filing  
18 on September 6 and not dismissing until September 29. The  
19 creditor claimed the delay resulted "from problems with its  
20 process server and misplacing the case number to the state  
21 collection action." Damages of \$1,000 were awarded.

22 On appeal, the Ninth Circuit held "that 362(a)(1) imposes an  
23 affirmative duty to discontinue post-petition collection  
24 actions." Id. at 1215. The court reviewed the lower court's  
25 findings, and appellant's contentions. In rejecting those  
26 contentious, the court noted:

1 Nor does it [appellant] offer any evidence  
2 that once it received notice of the  
3 bankruptcy filing, that it moved  
4 expeditiously to cure the automatic stay  
5 violation or attempt to contact Leetien  
6 informing her that it halted and discontinued  
7 its collection activity.

8 309 F.3d at 1215. Most appropriately, the court observed:

9 Eskanos continues to assert that  
10 sanctions are inappropriate because any delay  
11 in dismissal was due to problems with its  
12 process server. We disagree. Eskano's  
13 internal disorder does not excuse it from  
14 complying with the automatic stay.

15 Id.

16 The Bankruptcy Appellate Panel for the First Circuit Court  
17 of Appeals, in In re Rijos & Nieves, 263 B.R. 382, 392 (2001)  
18 stated that once a creditor had notice of the pending bankruptcy,  
19 the creditor "had the burden of proving that it took steps to  
20 either prevent or reverse violations of the stay. This required  
21 the introduction of admissible evidence."

22 In In re Sharon, 234 B.R. 676 (6<sup>th</sup> Cir. BAP 1999), the  
23 creditor repossessed a vehicle prepetition. On the date the  
24 petition was filed, demand was made for return of the vehicle,  
25 accompanied by an offer of adequate protection. Several days  
26 later a motion was filed and the court ordered the vehicle  
returned. Debtor was out of possession for 11 days postpetition.  
The lower court found a willful violation of the stay for  
delaying, and awarded sanctions. The BAP affirmed.

In the instant case, Sonic has not offered any explanation  
of what happened to the misplaced fax of April 15; nor of how

1 Sonic did learn of the bankruptcy on or before April 26, when it  
2 wrote off the account; nor of what caused Sonic to restore the  
3 funds to debtor's account one day later, on April 28. Without  
4 such information, the Court is unable to conclude whether Sonic  
5 acted promptly to reverse its unknowing violation of the stay on  
6 April 15.

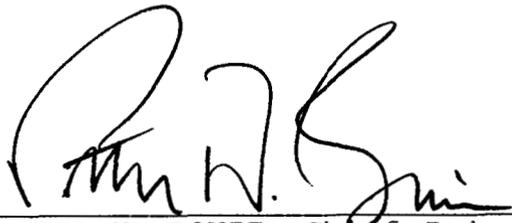
7 Debtor has sought multiple forms of compensation for Sonic's  
8 violation. The Court needs additional information from the  
9 debtor and her bank about the impact of Sonic's withdrawal of the  
10 funds. The Court has additional concerns raised by the bank  
11 statement provided concerning what appears to be debit card  
12 charges within a few days of the bankruptcy filing, and about the  
13 other payday loans listed on debtor's schedules.

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1           Accordingly, before the Court can make a complete ruling on  
2 the present motion, further competent evidence is required. It  
3 would seem an evidentiary hearing on the unresolved issues would  
4 be an appropriate way to proceed. Since it is debtor's motion,  
5 if debtor elects to continue to pursue the motion, debtor's  
6 counsel should contact the Court's calendar deputy clerk to  
7 ascertain a date for such a hearing. Debtor's counsel shall be  
8 responsible for coordinating with counsel for Sonic to obtain a  
9 time estimate and to find a mutually convenient date and time for  
10 further proceedings.

11           IT IS SO ORDERED.

12           DATED: JUL -7 2006

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16           PETER W. BOWIE, Chief Judge  
17           United States Bankruptcy Court  
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