WRITTEN DECISION - NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re: INGRID FRANCES GUIDO, Debtor.	Bankruptcy No. 19-02571-LT7 Adversary No. 21-90004-LT
INGRID FRANCES GUIDO, Plaintiff, v. STRATEGIC FUNDING SOURCE, INC. and MORTGAGE RECOVERY LAW GROUP, LLP and DOES 1 through 10, Defendants.	MEMORANDUM DECISION[1]

INTRODUCTION

This case arises after a collision between a state court collection action set for trial and a pre-trial chapter 7 bankruptcy case. Debtor claims a stay violation injury resulted.

When debtor Ingrid Frances Guido initiated her bankruptcy and filed her chapter 7[2] list of creditors, she gave an erroneous address for the collection action plaintiff. As a result,

[1] This opinion is intended only to resolve the dispute between these parties and is not intended for publication.

[2] Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code,

it filed a stay-violative motion without knowledge of the bankruptcy case. But this adversary proceeding does not arise from this inadvertent act; the plaintiff promptly withdrew the motion once it received informal notice of the bankruptcy. Instead, Ms. Guido argues that a continuing stay violation exists because plaintiff did not take the additional step of either filing a formal notice of stay with the state court or dismissing the state court action.

The Court disagrees.

Background.[3]

Prepetition, Strategic Funding Source, Inc. ("Strategic"), represented by Mortgage Recovery Law Group, LLP ("MR Law"), filed a collection action (the "State Court Action") against Ms. Guido in the California Superior Court. Doan Law, LLP ("Doan Law") filed a general denial on Ms. Guido's behalf, and the case proceeded. Eventually, the State Court set a trial date.

With trial now looming, Ms. Guido abandoned her state court defense; on April 30, 2019, Doan Law filed her chapter 7 petition. Three days later, it filed a substitution of counsel[4] in the State Court Action that left Ms. Guido to represent herself.

The record before the Court evidences that neither Strategic nor MR Law received immediate notice of Ms. Guido's bankruptcy. Neither Doan Law nor Ms. Guido promptly filed and served a notice of stay in the State Court Action. And the list of creditors initially filed in the bankruptcy case used an erroneous address for MR Law and, thus, Strategic[5]; neither received notice of the bankruptcy filing from the bankruptcy noticing center or otherwise. So, as far as Strategic and MR Law knew, trial was on the horizon, and they

---

11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. "Civil Rule" references are to the Federal Rules of Civil Procedure, Rule 1-86. State Court Rule references are to the California Rules of Court applicable to civil cases, Rule 1.1-3.2300.

[3] The relevant facts are not in dispute.

[4] Ms. Guido signed the substitution on April 26, 2019.

[5] The creditor matrix gave an address for Strategic "c/o MR Law." Unfortunately, it then used the wrong address for MR Law.

needed to prepare. Thus, MR Law filed a motion to compel discovery responses on May 29, 2019.

On June 6, 2019, Doan Law gave Strategic and MR Law notice of the bankruptcy. Attorney Michael Doan sent a letter to MR Law in which he opined: "[y]ou and your clients [sic] present actions are considered willful violations of the automatic stay, and are subject to damages." Mr. Doan further threatened: "[i]f the Motion to Compel is not immediately withdrawn and the matter stayed or dismissed, we will be filing suit under 11 U.S.C. § 362 for violating the automatic stay."

The next day, Doan Law and MR Law exchanged emails. MR Law pointed out the address error in the bankruptcy filings and confirmed that neither it nor Strategic were aware of the Bankruptcy Case previous to June 6th. Mr. Doan then correctly noted that if the stay violation was inadvertent: "then there would be no damages under 362k." But he also reasonably stated: "Please take correct of [sic] action and it should solve all the issues."

Three days later, MR Law took the motion to compel discovery off calendar. And on June 26, 2019, Doan Law filed an amendment with the Bankruptcy Court to correct the address for Strategic.

At this point, the dispute could have ended; but it didn't.

Instead, on June 28, 2019, the email exchanges resumed. Mr. Doan advised MR Law of the address correction and threatened sanctions if it did not dismiss or stay the State Court Action. MR Law responded explaining that it took the motion to compel off calendar. Mr. Doan then erroneously stated that he was no longer counsel for Ms. Guido in the State Court Action on the petition date and asserted that after April 30, 2019, Ms. Guido had no authority to do anything further in the State Court Action. MR Law responded; it disclaimed responsibility for providing a notice of the bankruptcy stay to the state court, but it also agreed to do so as a courtesy to the state court if Doan Law or Ms. Guido refused to do so.

The emails having ended, on July 1, 2019, Ms. Guido filed a California Rule 3.650 Notice of Stay of Proceedings in the state Court Action.

And, again, the dispute could have ended here. But terminate, it did not.

Approximately six months later, Doan Law filed the complaint commencing this adversary proceeding. In it, Ms. Guido seeks actual damages under § 362(k) for an alleged stay violation based on the failure of MR Law and Strategic (collectively, "Defendants") to dismiss or stay the State Court Action once they had notice of the bankruptcy case. The complaint sought recovery for actual damages based on alleged non-specific damages arising from or consisting of:

(a) Emotional distress, pain and suffering, sleeplessness, hopelessness, annoyance, aggravation, anxiety, marital problems;

(b) Out-of-pocket costs; and

(c) Loss of time, among other things.

It also sought punitive damages.

Strategic moved for dismissal of the Complaint under Rule 12(b)(6). The Court granted the motion after determining, as a matter of law, that there was no stay violation under the facts as pled in the complaint. It granted leave to amend; a timely amended complaint was not filed.

Dismissal under Rule 12(b)(6) was appropriate because the alleged facts, even if true, do not constitute a violation of the § 362(a) stay.

Civil Rule 12(b)(6) applies to motions to dismiss complaints in adversary proceedings. Fed. R. Bankr. P. 7012(b). A Civil Rule 12(b)(6) dismissal may be based on either a "lack of cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys.,* 534 F.3d 1116, 1121 (9th Cir. 2008) (cleaned up).

In reaching a determination on this motion, the Court was required to consider the material facts set forth in the complaint in the light most favorable to Ms. Guido and, together with all reasonable inferences therefrom, to take them as true. *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). And that was easily done here because there are no

factual disputes. It is undisputed that Defendants did not give the State Court Rule 3.650 Notice and did not dismiss the State Court Action after they learned of the bankruptcy.

So, the questions here are of law; were Defendants required to provide the State Court Rule 3.650 Notice as a matter of California law and did the failure to either file this notice or dismiss the State Court Action constitute a stay violation?

In order to establish a legal duty in this regard, Ms. Guido's complaint cannot rely on mere labels and conclusions; the actions must be based on legally cognizable rights of action. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And in its analysis, the Court was not required to accept as true threadbare recitals of a stay violation's elements, supported by mere conclusory statements. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The two-prong analysis set out in *Iqbal,* required the Court to first identify the conclusory pleadings, which are not entitled to the assumption of truth; then, after discounting those pleadings, if there remain well-pleaded factual allegations, the Court should assume their truth and then determine whether they plausibly give rise to an entitlement to relief. *See Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009) ("for a complaint to survive a motion to dismiss, the non-conclusory "factual content," and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.")

The automatic stay arose on the petition date; the California Rule 3.650 Notice is merely informative.

Once a debtor files bankruptcy the automatic stay of § 362(a) arises automatically and § 362(a)(1) stays the continuation of pending state court collection litigation against a debtor. *See In re Gruntz,* 202 F. 3d 1074 (9th Cir. 1999). No one disputes these points. Further, no one questions that actions taken in violation of this stay are void. *In re Schwartz,* 954 F.2d 569 (9th Cir. 1992).

So, the State Court Action was stayed on the petition date notwithstanding the failure to immediately file the State Court Rule 3.650 Notice or to otherwise advise the State Court. And the Defendants' withdrawal of the motion to compel was required once they learned of Ms. Guido's bankruptcy case. Finally, when Ms. Guido filed the State Court Rule 3.650

notice, she made probable, if not certain, that the State Court Action would not birth further void orders and actions. At this point, the State Court Action continues in a stayed and dormant state.

But Ms. Guido requires more. She argues that all applicable law required Defendants to file the State Court Rule 3.650 notice and that the only alternative under Ninth Circuit authority, given their failure to do so, was dismissal of the State Court Action. She, in effect, claims that a continuing stay violation exists under these facts.

Ms. Guido relies on *Eskanos & Alder, P.C. v. Leetien,* 309 F.3d 1210 (9th Cir.2002), in which the Ninth Circuit read § 362(a)(1) as imposing a duty on a stay violating creditor to dismiss or stay a state court action. At oral argument, counsel for Ms. Guido insisted on reading language from *Eskanos* in an almost incantatory manner. And the Court acknowledges that the reading was accurate. *Eskanos* in fact said that the creditor there had an affirmative obligation to dismiss or stay.

But reliance on *Eskanos* in this case is inapt. In his demand letter, Mr. Doan stated that *Eskanos* involved a prepetition collection action. That statement is inaccurate. Instead. *Eskanos* involved a post-petition collection action and an uncooperative creditor who delayed its dismissal. The Ninth Circuit determined under these facts that a stay violation occurred when the litigation was filed, that the creditor was responsible for remedying the stay violation by dismissing or staying the void litigation, that the failure to do so caused the debtor to incur attorneys' fees, and that the creditor had to pay them as a sanction. Because *Eskanos* involved the initiation of post-petition state court litigation, for every day that litigation continued, undismissed and unstayed, a stay violation continued. In such a circumstance the Ninth Circuit correctly placed the burden of stopping the stay violation on the creditor. The Court agrees with the reasoning in *Eskanos* completely.

In this case, the stay violative act that warranted application of the rule in *Eskanos* was the filing of the post-petition discovery motion. While Defendants acted without any knowledge of the bankruptcy, such that sanction were not immediately appropriate, the situation would have changed if they had not promptly withdrawn the stay violative motion.

But they did so and met their obligation under *Eskanos* – Ms. Guido's complaint does not assert otherwise.

Ms. Guido, instead, asks for an expansion of the holding in *Eskanos* to require a non-debtor to dismiss or formally stay pre-petition litigation. This request borders are on the nonsensical.

Pre-petition litigation remains valid and not stay violative after a bankruptcy case commences. Indeed, in some cases, a bankruptcy court will lift the stay to allow resolution of issues in the pre-petition forum. In other cases, the debtor may not obtain any discharge or may not obtain a discharge of a debt at issue in the pre-petition litigation; litigation could then continue after the bankruptcy case concludes. And even if a debtor obtains a discharge, it is subject to revocation for a year, so, a resumption of pending litigation could be appropriate. See 11 U.S.C. § 727(d). And finally, if the bankruptcy case is dismissed before discharge, pre-petition litigation can resume. It is not a stay violation to allow pre-petition state court litigation to lie dormant during a bankruptcy case.

Eskanos should be cabined and limited to its facts. Where a creditor violates the stay through the filing of post-petition litigation or actively continues pre-petition litigation, the acts are void and the stay violator – not the debtor – must remedy the situation or risk sanctions. But *Eskanos* does not require action when litigation existed pre-bankruptcy and continues in an inactive state.

The Court determines that Strategic satisfied its responsibility under the Code and *Eskanos*.[6] Within three days of receiving notice of the petition, it withdrew its motion to compel, the only active motion in the matter. Ms. Guido does not allege that Strategic took any other post-notice action in the State Court Action.

Strategic, however, requests that the Court go farther than merely recognizing that *Eskanos* does not apply as argued by Debtor. Instead, it cites to the recent Supreme Court

[6] The court found only support for its view. *See In re Long*, 2009 WL 981134 (Bankr. D. Mont. Jan. 9, 2009), which involved a collection action initiated prepetition, in which the creditor did not dismiss the action and did not file a notice of stay.

decision in *City of Chicago v. Fulton*, 208 L. Ed. 2d 384, 389 (2021) to argue that *Eskanos* is no longer good law. The Court disagrees.

In *Fulton*, the Supreme Court held that postpetition retention of cars repossessed prepetition did not, without more, violate § 362(a)(3). It determined that the stay did not impose a duty on the creditors to return the cars. *Fulton* is not directly on point; it was decided under § 362(a)(3) which prohibits "any act" while § 362(a)(1) prohibits the continuation of an action. More to the point here, it in no way supports that a creditor is not required to cure a stay violation arising from a post-petition action. But while the *Fulton* decision is not squarely applicable, it does support the Court's view that a stay violation did not occur on the facts as pled by Ms. Guido. In short, *Fulton* indicates a shift away from the conclusion that a stay violation exists where a creditor merely maintains an otherwise non-stay violative *status quo*.

California law did not require Defendants to file the State Court Rule 3.650 notice.

The Complaint also asserts that Defendants were required to file the State Court Rule 3.650 Notice and should be sanctioned for failing to do so. The Court concludes that if the Defendants violated a California Rule of Court in the State Court Action any violation should be policed in that forum. But because Ms. Guido asserts that this alleged failure constitutes a stay violation and seeks damages in this regard, the Court will identify whether Defendants – as opposed to Ms. Guido or her attorneys – had the obligation under state law.

State Court Rule 3.650 provides for "notice of stay." It provides in relevant part:

> Duty to notify court and others of stay
>
> (a) Notice of stay
>
> The party who requested or caused a stay of a proceeding must immediately serve and file a notice of the stay and attach a copy of the order or other document showing that the proceeding is stayed. If the person who requested or caused the stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of the stay and attach a

> copy of the order or other document showing that the proceeding is stayed. The notice of stay must be served on all parties who have appeared in the case.
>
> (b) When notice must be provided
>
> The party responsible for giving notice under (a) must provide notice if the case is stayed for any of the following reasons:…
>
> (4) Automatic stay caused by a filing in another court, including a federal bankruptcy court.

California Rules of Court, Civil Rule 3.650.

This notice is important to state court operations, but it neither creates nor expands a bankruptcy stay. Instead, the State Court Rule 3.650 Notice allows a state court to properly manage its docket, to conserve judicial resources, and to avoid inadvertent violation of the bankruptcy stay.

The Court concludes that language of the Rule is clear; Ms. Guido, as the party that caused the stay, had the duty to file the State Court Rule 3.650 Notice. And the form used to give the required notice supports this conclusion. Notice of stay under State Court Rule 3.650 is provided using California Form C-180 which is to be submitted by the party "who requested the stay." In this case that is Ms. Guido. The Form requires filing by another case participant only if "the party who requested the stay has not appeared in this case or is not subject to the jurisdiction of this court." If Defendants filed the State Court Rule 3.650 Notice, they would do so as a courtesy to the State Court – not due to any State Court Rule requirement.

Ms. Guido argues that the burden under State Court Rule 3.650 shifted to Defendants because the state court lacked jurisdiction over Ms. Guido. But none of the cases cited by Ms. Guido support her argument that a state court loses all jurisdiction over a debtor the moment the debtor files bankruptcy. And the controlling statutes are to the contrary.

28 U.S.C. § 1334(b) provides that the District Court – and pursuant to an order of reference this Court – " . . . have original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11." Here the State Court Action does not arise under Title 11 nor did it arise in the case as it predates the bankruptcy. Thus, this Court has jurisdiction only as and to the extent it is a proceeding related to Ms. Guido's bankruptcy. This jurisdictional statute, thus, provides for concurrent, original, but not exclusive federal bankruptcy-related jurisdiction of the State Court Action.

Underscoring this determination is 28 U.S.C. § 1334(c) which provides for permissive abstention in sub-section (c)(1) and mandatory abstention in sub-subsection (c)(2). A bankruptcy court cannot abstain to a court that lacks jurisdiction.

And this section interfaces with the automatic stay provisions. A bankruptcy court may decline to exercise its concurrent jurisdiction, recognize that the state court has concurrent jurisdiction, and lift the automatic stay to allow all or a portion of the case to proceed in state court. The plain statutory language makes clear that the stay requires cessation of state court litigation, but it does not deprive the state court of jurisdiction.

Consistent with this statutory analysis, the Ninth Circuit has held that the California courts can make independent determination of their continued jurisdiction once a petition is filed. *See Lockyer v. Mirant Corp.,* 398 F.3d 1098, 1105-06 (9th Cir. 2005). And California courts have held that they have both the jurisdiction and the authority to sanction a debtor in bankruptcy for the failure to comply with court rules—including the failure to file the required notice of stay under State Court Rule 3.650. *See Sino Century Dev. Ltd. v. Farley*, 211 Cal. App. 4th 688 (2012) (imposing sanctions against a debtor for failing to notify the court and opposing party of his bankruptcy filing until the day before the state court trial).

But even if Ms. Guido had no obligation to give the State Court Rule 3.650 notice, Doan Law did.

State Court Rule 1.5(a) states that the rules and standards of the California Rules of Court must be liberally construed to ensure the just and speedy determination of the proceedings that they govern. So, interpretation of a specific rule should be undertaken with

this important consideration as its foundation. State Court Rule 1.5(b) states that the definition of "must" is mandatory. And State Court Rule 1.6(15) defines "Party" as: ".... a person in an action. Parties include both self-represented persons and person represented by an attorney of record. . . . "Party" . . . or any other designation of a party includes the party's attorney of record."

Taking these provisions into consideration when interpreting State Court Rule 3.650 requires the Court to construe it as follows: The Party, [which includes the Party's attorney of record] who requested or caused the stay of a proceeding must [this is mandatory] immediately serve and file a notice of the stay and attach a copy of the order or other documents showing that the proceeding is stayed. So, a represented party has this obligation, but so too does their attorney. Here Doan Law filed the bankruptcy and continued as counsel of record in the State Court Action until after the automatic stay went into effect. Thus, Doan Law, as well as its client, was obligated to file the State Court Rule 3.650 Notice.

The appropriateness of this analysis is underscored by the requirement that the rule be construed in order to ensure just and speedy determination of the proceedings. In order to adequately, and justly, manage its docket, the state court must have prompt information when a matter is stayed as a result of a bankruptcy action.

By so doing, an attorney also acts appropriately in his role as officer of the court. It ensures that the state court does not take unnecessary actions that are unintentionally stay violative. It provides notice that the state court cannot continue with this action and, as a result, is free to focus on other matters and use trial time to resolve other disputes.

And while beyond the facts of this case – Doan Law was counsel of record in the State Court Action when Ms. Guido commenced bankruptcy – it is worth noting that the California Rules of Professional Conduct might require counsel to file or at least prepare the State Court Rule 3.650 Notice any time they resign from representation prior to and as a result of a bankruptcy filing. Professional Conduct Rule 1.16(d) states:

> A lawyer shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client....

Here, Doan Law filed a complaint requesting damages for a cavalcade of alleged harms and requesting punitive damages. Taking the complaint as written, one must conclude that Doan Law could not appropriately terminate its representation until it had taken the very reasonable step of complying with State Court Rule 3.650 so as to avoid this avalanche of alleged terrors or, at a minimum, assisting its former client in doing so.

Thus, the Court concludes that the confluence of the California Rules of Court and the Rules of Professional Conduct mandate that an attorney representing a party in a state court action pending when its client files bankruptcy must file the State Court Rule 3.650 Notice, prepare it for a former client when it resigns in anticipation of bankruptcy, or ascertain that it is otherwise filed. And where the lawyer is also the party directly responsible for initiating the bankruptcy as debtor's counsel, this obligation, if anything, is heightened.

CONCLUSION

The Court determines that the facts as pled in the initial complaint do not support a determination of a violation of the automatic stay as a matter of law. The Court allowed amendment; an amended complaint was not filed by the deadline established by the Court. As a result,

judgment for Strategic is appropriate. It should submit the required separate judgment promptly.

DATED: June 1, 2021

LAURA S. TAYLOR, JUDGE
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

INGRID FRANCES GUIDO v. STRATEGIC FUNDING SOURCE, INC. and MORTGAGE RECOVERY LAW GROUP, LLP and DOES 1 through 10, Adv. No. 21-90004-LT
(In re INGRID FRANCES GUIDO, Bk. No. 19-02571-LT7)

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified employee in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

MEMORANDUM DECISION

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed via first class mail to the party at their respective address listed below:

Ingrid Frances Guido
418 Helix Way
Oceanside, CA 92057-8000

Karen Spicker
Doan Law Firm
1930 S. Coast Hwy. Suite 206
Oceanside, CA 92054

Strategic Funding Source, Inc.
120 W. 45th Street, 4th Floor
New York, NY 10036

Brian T. Harvey
Buchalter Nemer
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017

Mortgage Recovery Law Group, LLP
700 N. Brand Blvd., Suite 830
Los Angles, CA 91203

Yuriko M. Shikai
Neufeld Marks
250 E. 1st Street, Suite 1101
Los Angeles, CA 90012

Said envelopes containing such document was deposited by me in the City of San Diego, in said District on June 1, 2021.

/s/ Regina A. Fabre
Regina A. Fabre, Judicial Assistant