

SIGNED.

Dated: November 29, 2012



Randolph J. Haines

Randolph J. Haines, Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re) Chapter 13
RALPH DANIEL DELGADO and)
KAREN LYNN DEKGADO,)
Debtors.)
CASE NO. 0:11-bk-34313-RJH

RALPH D. DELGADO and)
KAREN L. DELGADO,)
Movant,)

vs.)

HACIENDA MINI STORAGE, LLC, a)
Delaware Limited Liability Company,)
Respondents.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
RE SANCTIONS FOR STAY
VIOLATION AND RETROACTIVE
STAY RELIEF

Debtors Ralph and Karen Delgado filed this contested matter seeking sanctions pursuant to Bankruptcy Code § 362(k) for an alleged violation of the automatic stay by Hacienda Mini Storage, LLC (“Hacienda”). In addition to responding on the merits, Hacienda responded by filing a motion for retroactive relief from the automatic stay, *nunc pro tunc* as of December 27, 2011. The Court held a combined trial on both claims on November 14, 2012, and heard live testimony from both parties and considered documentary evidence that was admitted. The Court has also considered the parties’ closing arguments that were simultaneously submitted on November 21.

The Court finds and concludes that the following facts are undisputed. The Delgados rented the storage unit from Hacienda pursuant to a rental contract that was signed by

1 the Delgados on or about July, 2010. The monthly rent was \$130, payable on the first of each
2 month. The Delgados were late on their rent payments in both September and October, 2011,
3 and Hacienda mailed them preliminary notices of lien, but in both cases the rent payments were
4 brought current together with a late fee and pre-lien charge.

5 The Delgados failed to make the rent payments due on November 1 and on
6 December 1, and Hacienda sent them another preliminary notice of lien on December 2, reciting
7 a total amount due of \$340. That notice stated in bold letters: "Dear Tenant: The Items In Your
8 Storage Unit Are About To Be Sold." It also stated "the amount must be brought current before
9 December 23 or "an owner's lien on any stored property will be imposed."

10 On or about December 9, 2011, Hacienda mailed to Karen Delgado a second and
11 final notice of lien proceedings reciting a total amount due of \$425. That notice stated that
12 unless the account was brought current by December 23, "the property will be sold at public
13 auction on the premises of the Hacienda Mini Storage to satisfy the lien."

14 The Delgados filed Chapter 7 bankruptcy on December 20, 2011. A master
15 mailing list of creditors was not filed with the petition, as required by Bankruptcy Code §
16 521(a)(1)(A) and Bankruptcy Rule 1007(a)(1). As a result of the failure to file a master mailing
17 list of creditors, the bankruptcy case was dismissed on December 28, 2011. The master mailing
18 list was not filed until December 29, 2011, and again on January 6, 2012, on which latter date
19 the Delgados moved to reinstate their case and an order reinstating the case was entered that
20 same day.

21 In the meantime, Hacienda had given public notice of the auction of the contents
22 of the Delgados' mini storage unit, which was scheduled for December 27. Approximately 31
23 bidders showed up at that time and an auction was held. The high bidder was Robert and
24 Kathleen Walker, who bid \$1,235. That same day the Walkers signed an acknowledgment
25 statement that the contents of the mini storage would only become theirs "after January 1, 2012
26 if there is no receipt of bankruptcy papers for the renter of the unit in that allotted time. If
27 papers are received I will receive a full refund of my purchase price." The sale became final and
28 the Walkers took possession of the contents of the storage unit on January 2, 2012, by which

1 time Hacienda had not received any written notice of the bankruptcy filing.

2 There is dispute in the testimony as to how and by whom it was provided, but it is
3 undisputed that Hacienda was orally informed on December 23 that the Delgados had filed
4 bankruptcy.

5 On or about January 8, 2012, Hacienda mailed to Karen Delgado the remaining
6 \$425 balance of the auction proceeds, after deducting the rental charges, late fees, lien notice
7 fees and auction costs. The Delgados subsequently cashed that check. On or about January 12,
8 Hacienda received notice from the Bankruptcy Court of an order reinstating the Delgados' case.

9 Based on these undisputed facts, the Court must find and conclude that a technical
10 violation of the automatic stay occurred when the auction was held on December 27. This is not
11 because the Delgados' property was actually sold on that day, but because the mere holding of
12 the auction was an act to enforce a lien against property of the estate that violated Bankruptcy
13 Code § 362(a)(4).

14 But because the sale did not conclude on December 27, the Court cannot find and
15 conclude that the Delgados were injured by that technical stay violation that occurred on
16 December 27. All of the Delgados' evidence attempting to demonstrate an injury within the
17 scope and meaning of § 362(k) only demonstrated an injury arising from the conclusion of the
18 sale, not any injury arising from the holding of the auction. Because the closing of the sale did
19 not occur until January 2, when there was no bankruptcy case pending and no automatic stay in
20 effect, the conclusion of the sale did not violate the automatic stay.

21 Theoretically, the only injury that the Court can conceive that could possibly arise
22 from the mere conducting of the bidding would arise if the existence of the bankruptcy case
23 chilled the bidding and therefore held down the price ultimately received when the sale closed.
24 But there is no evidence that the holding of the auction during the pendency of the bankruptcy
25 case and the automatic stay had any such negative effect on the amount ultimately paid.
26 Moreover, it is highly unlikely there could have been any such chilling effect, since some 31
27 bidders showed up to participate in the auction.

28 Therefore based on all the evidence, and particularly on the undisputed facts, the

1 Court must find and conclude that the actual sale of the contents of the storage unit, which
2 occurred on January 2, 2012, was not a violation of the automatic stay. Since it was not a
3 violation of the automatic stay, no damages can be awarded pursuant to 362(k).

4 The Delgados also failed to carry their burden of proof, much less present any
5 evidence, of any damage or injury arising from the holding of the auction of December 27. The
6 mere conduct of the bidding had no real effect upon the Debtors, but rather merely established
7 which of the bidders would have to pay what amount when the sale was concluded. Because
8 there was no evidence of any damage or injury arising merely from the conduct of the bidding
9 on December 27, even if it was a willful violation of the automatic stay, the Delgados are not
10 entitled to any relief pursuant to Bankruptcy Code § 362(k).

11 Moreover, even if there were some damages or other remedy appropriate for the
12 technical stay violation on December 27, the Court finds and concludes this an appropriate case
13 for *nunc pro tunc* stay relief pursuant to *In re National Environmental Waste Corp.*, 129 F.3d
14 1052, 1055 (9th Cir. 1997); *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 572 (9th
15 Cir. 1992); and *In re Fjeldsted*, 293 B.R. 12, 21 (9th Cir. BAP 2003). After considering all of the
16 facts and circumstances, the salient facts prove the existence of virtually all of the factors that a
17 court should consider in exercising its discretion to grant retroactive relief from the automatic
18 stay.

19 The Delgados have filed at least five bankruptcy cases since 2006. All of the
20 circumstances of those filings, including this case, and the testimony of Karen Delgado,
21 demonstrate that the intention of the repeat filings was to hinder and delay creditors, rather than
22 to obtain a discharge and a fresh start. There would be extensive prejudice to creditors and the
23 third party bidders if the stay were not made retroactive and the conduct of the bidding were
24 voided. The Debtors overall lacked good faith and could easily have avoided the unfortunate
25 but technical stay violation by providing Hacienda a copy of the bankruptcy petition, either
26 before the auction took place or any time thereafter up to January 2. Or, the Debtors could have
27 avoided this result by filing a master mailing list with their bankruptcy petition, as they were
28 absolutely required to do by the Bankruptcy Code and Rules. As noted, the Debtors did not

1 comply with the Bankruptcy Code and Rules. The purchase of the content of the mini storage
2 by a bona fide third purchaser, and that purchaser's ultimate disposition of the contents by
3 taking most of them to the dump, make it impossible to restore the parties to status *quo ante*.
4 Afer getting official notice of the bankruptcy filing, Hacienda did not take any further steps that
5 continued violation of the automatic stay, but rather immediately consulted with the trustee, and
6 learned that no stay had been in effect when the sale was concluded. Except for failing to make
7 the phone call to verify the bankruptcy filing, all of Hacienda's conduct was careful,
8 professional, and extremely respectful of its customers' rights.

9 Finally, all of the facts and circumstances demonstrate that the Delgados did not
10 really care about avoiding any possible violation of the automatic stay, but rather sought to use
11 the automatic stay as a sword rather than as a shield, in order to seek a large compensatory and
12 punitive damage award. This conclusion flows readily from the Delgados' failure to file a
13 master mailing list *with* their petition, when from the four previous filings they absolutely knew
14 that was their obligation. There is no other good explanation for Karen Delgado's failure to
15 provide Hacienda with a case number for their filing or any documentary evidence of the filing,
16 when she knew Hacienda asked for that and doubted whether there actually had been a filing.¹
17 And it flows from the Delgados' grossly inflated claim for the value of the contents of the
18 storage, which has allegedly doubled or quadrupled from their schedules filed in July, 2009, and
19 inexplicably includes *all* of the property listed on their schedules, even though they must have
20 had much of their most valuable and treasured personal property in their rental home.

21 Based on all of these factors and all of the facts and circumstances, the Court
22 concludes Hacienda is entitled to *nunc pro tunc* annulment of the automatic stay, effective as of
23 the date of the filing of the case. Indeed, the day the bidding occurred, December 27, was the
24 day the bankruptcy case should have been dismissed, within 7 days of the date of the filing of
25 the bankruptcy petition pursuant to Local Rule of Bankruptcy Procedure 1007-1.

26
27 ¹The failure to provide a case number or copy of the petition would not normally excuse a stay
28 violation nor preclude a finding that it was willful. But on these facts, they do show the Debtors' lack
of good faith.

1 Based on these findings and conclusions, the Court concludes that the Delgados
2 shall take nothing by their complaint pursuant to Bankruptcy Code § 362(k), Hacienda is
3 entitled to retroactive stay relief *nunc pro tunc* to the date of the petition, and all parties shall
4 bear their own costs and attorneys' fees.

5 DATED AND SIGNED ABOVE

6 Copy of the foregoing mailed/e-mailed
7 this 29th day of November, 2012, to:

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9 Karen L. Delgado
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12 Debtors

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