

The document below is hereby signed.

Signed: October 11, 2016



A handwritten signature in black ink that reads "S. Martin Teel, Jr." with a stylized flourish at the end.

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
CLEMENT CHRISTOPHER CALLOWAY,)	Case No. 16-00361
)	(Chapter 7)
Debtor.)	Not for publication in
)	West's Bankruptcy Reporter.

MEMORANDUM DECISION AND ORDER RE
THE DEBTOR'S APPLICATION FOR ORDER
DIRECTING WALDE MANAGEMENT, INC., TO SHOW CAUSE

On September 6, 2016, the court held a hearing on the debtor's *Application For Order Directing Walde Management, Inc., To Show Cause Why It Should Not Be Held In Contempt For Willful Violation Of The Automatic Stay And Imposition Of Sanctions Under 11 U.S.C. § 362(k)* ("Application") (Dkt. No. 30). This *Memorandum Decision and Order* supplements the court's oral decision at that hearing.

The court determined that Walde Management, Inc., through the U.S. Marshal, had lawfully ended the debtor's right to possession of his rented premises before the debtor filed his petition at 10:18 a.m. on July 20, 2016, commencing this case. Therefore the eviction, in that regard, did not violate the

automatic stay of 11 U.S.C. § 362(a). However, the court determined that Walde Management, Inc. violated the automatic stay of § 362(a) by, after the filing of the petition, causing the destruction of the bulk of the debtor's personal property that had remained locked in the premises at the time of and for several hours after the filing of the petition.¹ As a matter of nonbankruptcy law, incident to an eviction, a landlord is entitled to remove items of personal property from the premises. However, in this case, such removal of the debtor's personal property was stayed by § 362(a) once the debtor filed his petition. The debtor's loss of his right to possess the rented premises did not divest the debtor of ownership of the items of personal property stored in the premises. The destruction of the debtor's personal property was plainly an act "to exercise control over property of the estate" within the meaning of

¹ The evidence suggests that when an eviction occurs in the District of Columbia ordinarily the landlord removes the tenant's items of personal property before the U.S. Marshal treats the debtor's right of possession ended and permits the landlord to change the locks on the premises. Typically, the tenant's personal property is removed to the curb in front of the apartment building. Here, the Marshal told Walde Management, Inc. that the debtor's personal property had been infested by cockroaches or other vermin to such an extent that the items could not be placed on the curb, and suggested that the items be thrown away. The Marshal permitted the premises to be locked by Walde Management, Inc. without the items of personal property having been removed. That ended the debtor's right to possession of the rented premises. However, Walde Management, Inc. did not remove the items of personal property and take them to the dump until well after the debtor had filed his bankruptcy petition.

§ 362(a)(3).

On the afternoon of July 20, 2016, Walde Management, Inc. caused such items of personal property to be hauled to the dump and thrown away.² This occurred well after the debtor had notified Walde Management, Inc.'s counsel, both orally and via fax, within an hour of filing the petition, that he had filed the case, and that he had complied with 11 U.S.C. § 362(l). Moreover, the debtor had notified Walde Management, Inc.'s counsel the previous day that he would be filing a bankruptcy case on the morning of July 20th.

Under 11 U.S.C. § 362(b)(22), the filing of a petition does not operate as a stay against the continuation of an eviction of the debtor from the property in which the debtor resides as a tenant if the lessor obtained a judgment for possession of the

² Walde Management, Inc. did not inform the debtor of its intention to do this. The debtor's friend, Mr. Bawa, remained outside the apartment building while the U.S. Marshal was at the premises, completing the divestment of the debtor from possession of the rented residence. Prior to the U.S. Marshal's arrival, Mr. Bawa told Walde Management, Inc.'s representative, Charles Adamavage, that he was the debtor's friend, and unsuccessfully attempted to give to Mr Adamavage an envelope from the debtor with documents evidencing the debtor's intention of filing a bankruptcy petition that morning. He remained there until after the U.S. Marshal and Walde Management, Inc.'s representative had left. Mr. Adamavage did not advise Mr. Bawa that the personal property would be removed and taken to the dump later that day. No representative of Walde Management, Inc. made any effort to directly communicate its intention to destroy the debtor's personal property to the debtor. It is unnecessary to address whether, under nonbankruptcy law, Walde Management, Inc. had an obligation to inform the debtor what was going to happen to his personal property.

property against the debtor before the date of the filing of the bankruptcy petition. However, § 362(b)(22) is explicitly subject to 11 U.S.C. § 362(1), which details procedures through which the debtor may secure a 30-day grace period following the filing of the petition during which the lessor may not move forward with the eviction unless and until the lessor successfully objects to the debtor's certification invoking § 362(1).

By reason of the debtor's compliance with § 362(1)(1), the exception of 11 U.S.C. § 362(b)(22) as to the stay of "the continuation of [the] eviction . . . proceeding" did not apply for 30 days unless the landlord objected to the certification under § 362(1)(3)(A) and the court sustained the objection. When Walde Management, Inc. took the next step in the eviction proceeding by disposing of the debtor's personal property located on the premises, it thus violated the 30-day stay set in place by the debtor, to which Walde Management, Inc. had failed to object. Had the debtor not complied with 11 U.S.C. § 362(1), Walde Management, Inc. might have been able to argue that the 11 U.S.C. § 362(b)(22) exception to the automatic stay applied to permit the disposition of the debtor's personal property as a "continuation of [the] eviction . . . proceeding" However, the debtor *did* comply with § 362(1)(1) when he filed the petition, and the § 362(b)(22) exception to the automatic stay did not apply when Walde Management, Inc.

exercised control over the debtor's personal property by taking it to the dump.³

The debtor argued that it was improper for Walde Management, Inc. to accept the deposit that the debtor made to secure the 30-day grace period under § 362(1) when the landlord contended that the U.S. Marshal had completed the eviction of the debtor from the rented residence and had departed from the premises prior to the debtor's filing of his bankruptcy petition. However, a step of the eviction had not been completed prior to the debtor's filing: the disposition of the debtor's personal property. The debtor is not entitled to both claim the benefit of § 362(1) as keeping the automatic stay in place, prohibiting Walde Management, Inc.'s continuation of the eviction, and object to Walde Management, Inc.'s acceptance of the deposit required under § 362(1). Thus, the acceptance of the deposit is inconsequential to this court's ruling.

In regards to damages, because the debtor failed to present evidence as to the value of his personal property that was destroyed, the court fixed \$1 as the nominal value of the property. Much of the property (like clothing and books) may

³ The debtor's certification under § 362(1)(1) was, unbeknownst to him, erroneous in asserting that under District of Columbia law he would be permitted to cure the monetary default; by the time he filed his petition, the U.S. Marshal had completed the steps necessary to deprive the debtor of any right to possess the rented premises. Nevertheless, the certification complied with § 362(1)(1).

have been of a character to be incurably infested by the roaches discovered in the premises, and as a consequence may have been of little value, but there were objects like pots and pans, tennis rackets, a desk, and photographs, that were likely free of roaches (or could be readily cleansed of any infestation) and that were of some value.

The debtor also suffered emotional damages based on the destruction of the property (which included, for example, photographs of his parents), and the court fixed \$4,000 as the recovery for such emotional damages. The court also ruled that Walde Management, Inc. ought to have had procedures in place to prevent its agents from proceeding to destroy the debtor's personal property in violation of the automatic stay once it learned of the filing of the bankruptcy case, and the debtor's compliance with 11 U.S.C. § 362(1). For that reason, the court awarded \$2,000 as punitive damages. As indicated at the hearing, the court will also award the debtor his reasonable fees and costs incurred in pursuing the *Application* with respect to the violation of the automatic stay. The debtor's counsel has already filed a statement of fees and costs, and Walde Management, Inc. has filed a response thereto. The statement and response will be set for a hearing pursuant to separate notice.

It is therefore

ORDERED that the debtor shall be entitled to a judgment for

\$6,001, plus reasonable attorney's fees and costs incurred in pursuing the *Application* with respect to the violation of the automatic stay.

[Signed and dated above.]

Copies to: Recipients of e-notification.