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Violations of the Automatic Stay: Willful or Technical? Void or Voidable? Distinctions Without a Difference.

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A decision issued last month by Hon. Christopher D. Jaime of the U.S. Bankruptcy Court, Eastern District of California, touches upon several aspects of bankruptcy law which are of interest to creditors and debtors alike. *Valentine v. Holmes, et al.*, 2022 WL 17408093, Case No. 22-21184-B-13, Adversary No. 22-2086 (Bankr. E.D. Cal. Dec. 2, 2022). While the important points are distilled below, a reading of the entire decision is encouraged due to the specifics of the case.

The *Valentine* decision does away with the distinction between willful and technical violations of the automatic stay of 11 U.S.C. § 362(a) and holds that *all* acts taken in violation of the stay "are void and of absolutely no effect whatsoever regardless of whether the acts are willful or so-called 'technical' automatic stay violations."[1] We have discussed issues related to the automatic stay provision in prior alerts[2] and cannot overstress the need for creditors to remain vigilant and wary of potential violations.

As highlighted previously, stay violations come in two flavors – willful and technical.

A willful violation exists when a party knew of the automatic stay and the actions taken in violation of the stay were intentional.[3] The presence of intention is irrelevant, however, as only the actions taken must be intentional.[4]

Meanwhile, a technical violation may occur when actions are taken without notice of the bankruptcy case or knowledge of the automatic stay.[5]

Judge Jaime rejects the so called "*Brooks* exception" holding that, "all acts that violate the automatic stay are void without regard to any knowledge or notice of a bankruptcy case or the automatic stay."[6] He notes the difference in types of violations acknowledging there may be support among the judiciary for the notion that, while willful violations are always void, technical violations may only be voidable.

This case is another reminder of the importance of observing the restrictions of the automatic stay upon the filing of a bankruptcy case. Lack of knowledge of the filing of a petition in bankruptcy or of the existence of the stay may not longer act as a defense to allegations of stay violations or allow a creditor to argue that a violation is merely voidable, not void.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding the impact of bankruptcy filings and the protects afforded by the automatic stay, please contact Michael H. Traison (mtraison@cullenllp.com) at 312.860.4240 or Jocelyn E. Lupetin (jlupetin@cullenllp.com) at 516.296.9109.

Footnotes

[1] *Valentine*, p. 1

[2] To Trade and Secured Creditor Clients: Measure Twice, Cut Once and Done Violate the Automatic Stay! ; Questioning Willful Violations of the Automatic Stay: Third Circuit Gives University the Third Degree ; Purdue Pharma: Is Protection of Third Parties by the Automatic Stay an Oxymoron? ; Automatic Stay Violators and Prepetition Seizures ; Beware of the Automatic Stay! Bankruptcy Court Sanctions Law Firm and Client for "Willful" Violation of the Automatic Stay ; Supreme Court to Decide Whether Creditor's Inaction Violates the Automatic Stay ; Automatic Stay Violators and Prepetition Seizures ; Yet Another Court Addresses Violation of the Automatic Stay ; The Automatic Stay: Even Pre-Petition Seizures May Be Covered ; Bank Freezes and the Automatic Stay

[3] *See Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002).

[4] *See In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992).

[5] *See In re Iezzi*, 504 B.R. 777, 792 (Bankr. E.D. Pa. 2014).

[6] *Valentine*, p. 15.

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