

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

IN RE:

BARTOLO A MONTOYA

Case No. 15-12528-j7

**MOTION TO ENFORCE AUTOMATIC STAY AND FOR AWARD OF MANDATORY
SANCTIONS PURSUANT TO 11 U.S.C. §362(k)**

BARTOLO MONTOYA, (“Debtor”), Pro Se, hereby moves this Court for an order enforcing the provisions of 11 U.S.C. §362(a) as it applies to BARTOLO MONTOYA and awarding mandatory sanctions for willful violation of the automatic stay against Pueblo of Isleta Tax Administration and Isleta Pueblo Tribal Court as provided by 11 U.S.C. §326(k). This Motion is made pursuant to 11 U.S.C. §§ 105 and 362(a) and (k), and is supported is supported with the following points and authorities.

POINTS AND AUTHORITIES
I. FACTUAL BACKGROUND

1. On September 24, 2015, Debtor filed a Voluntary Petition under Chapter 7 of the Bankruptcy Code.

2. As of the Petition Date, Debtor is party to a lawsuit in the Isleta Tribal Court, Case No.: CV-CM-0111-2014, which is pending before Associate Judge POI Vincent L. Knight, Sr. Pueblo of Isleta Tax Administration is listed as a Petitioner.
3. The Pueblo of Isleta Tax Administration and the Pueblo of Isleta Tribal Court were listed as creditors in the Chapter 7 bankruptcy filing and all parties were noticed.
4. On October 5, 2015 the Pueblo of Isleta Tax Administration filed an executed Order on Motion For Tax Lien and Stay of Proceeding Against Real and Personal Property ("Order") signed by Associate Judge POI Vincent L. Knight, Sr. in contravention to the Automatic Stay.
5. The Order in relevant part page 2 ¶P.2(1) states "Petitioner's motion is hereby granted and a tax lien in favor of the Pueblo of Tax Administration in the amount of \$386,875.89 is hereby issued against any personal and real property of the Respondent." See attached Order **Exhibit A**.
6. Carolyn Abeita from the Isleta Tax Administration, in her official capacity entered the jurisdiction of the Bankruptcy Court attended and participated the Meeting of the Creditors on October 23, 2015 and was aware of the automatic stay.

II. LEGAL DISCUSSION
THE TRIBAL COURT PLAINTIFFS ARE WILLFULLY VIOLATING THE
AUTOMATIC STAY BY CONTINUING TO PROSECUTE THE TRIBAL COURT
ACTION DESPITE KNOWING OF DEBTOR'S BANKRUPTCY

7. 11 U.S.C. §362(a)(1) operates as a stay of "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a

claim against the debtor that arose before the commencement of the case under this title.” The scope of protections embodied in the automatic stay is quite broad, and serves as one of the most important protections in bankruptcy law.” *Eskanos v. Leetien*, 309 F.3d 1210, at 1214 (9th Cir. 2002); see *In re Stringer*, 847 F.2d 549, 552 (9th Cir. 1988).

8. The automatic stay under 11 U.S.C. § 362(a) is a statutory halt of litigation, lien enforcement and actions (judicial or otherwise) that attempt to enforce or collect prepetition claims. It also stays a wide range of actions that would affect or interfere with property of the estate, property of the debtor or property in custody of the estate. Unless excepted by § 362(b) or unless relief from stay has been granted by the bankruptcy court (which is called a “lift-stay order”), the filing of a bankruptcy petition automatically stays (halts) Tribal court civil proceedings, evictions, foreclosures, wage garnishments, repossessions, and other litigation or acts against the debtor and the debtor’s property. 11 U.S.C. § 362.
9. In the present case, the Tribal Court Plaintiffs are violating the automatic by continuing collection efforts on a prepetition debt. Tribal Court Plaintiffs are prosecuting an action in Tribal Court to collect a debt on debtor’s personal and real property and costs awarded pursuant to a court order. Tribal Court Plaintiffs were provided notice of the bankruptcy. Their continued collection efforts are a willful violation of the automatic stay.

III. TRIBAL COURT PLAINTIFFS' WILLFUL VIOLATION OF THE AUTOMATIC STAY WARRANTS AN AWARD OF ACTUAL AND PUNITIVE DAMAGES

10. A “willful violation” of 11 U.S.C. §362 occurs when the defendant has knowledge of the automatic stay and acts intentionally to violate it. *In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992). “Knowledge of the bankruptcy filing is the legal equivalent of knowledge of the automatic stay provided under §362.” *Ramirez*, 183 B.R. at 589. A “willful violation” does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant’s actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was “willful” or whether compensation must be awarded. *In re Bloom*, 875 F.2d 224, 227 (9th Cir. 1989). A willful violation of the automatic stay results in a mandatory imposition of actual damages, costs and attorneys fees under §362(k)(1). *In re Ramirez*, 183 B.R. 583, 589 (Bankr. 9th Cir. 1995). Specifically, 11 U.S.C. §362(k)(1) provides:

Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.

See also *In re Del Mission Ltd.*, 98 F.3d at 1152 (Section 362(k)(1) “mandates the award of actual damages to an individual injured by any willful violation of a stay.”). According to the Bankruptcy Appellate Panel for the Ninth Circuit, “actual damages” as used in §362(k)(1) requires an award that returns a debtor to the position he was in before the stay violation occurred. See *In re Walsh*, 219 B.R. 873, 878 (B.A.P. 9th

Cir. 1998) (rejecting an alternative reading of the statute under which, according to the BAP, “the injured party is not made whole”). In *In re Pace*, 159 B.R. 890, 900 (B.A.P. 9th Cir. 1993), the BAP stated that “an award of attorneys’ fees is appropriate where a debtor must resort to the Court to enforce his or her rights in consequence of a violation of the automatic stay.”

11. The automatic stay imposes on non-debtor parties an affirmative duty of compliance.

In re Del Mission Ltd., 98 F.3d 1147, 1151-52 (9th Cir. 1996). There, the Ninth Circuit explained that “the onus to return estate property is placed upon the possessor; it does not fall on the debtor to pursue the possessor.” *Id.* at 1151.

Similarly, in *In re Dyer*, 322 F.3d 1178, 1191-92 (9th Cir. 2003), the Ninth Circuit held that the post-bankruptcy petition recordation of a deed of trust by a creditor was a willful violation of the automatic stay because the creditor “had an affirmative duty to remedy his automatic stay violation . . . such as by attempting to undo the recordation process.” These principles extend to legal counsel for a creditor *Id.* at 1214-16.

12. In the present case, the Tribal Court Plaintiffs have continued to prosecute this matter despite knowing of the bankruptcy and the automatic stay. Instead of seeking relief from this Court, they have stood firm on their position the automatic stay does not apply and have continued in their efforts to recover property from the debtor, their attorneys’ fees and costs. Tribal Court Plaintiffs are ignoring Federal Law by continuing to wrongfully prosecute the action without an order from this Court. The automatic stay prohibits any action against the Debtor and property of the estate

without court order. Tribal Court Plaintiffs have taken the position the stay does not apply to them. Their actions are a willful disregard of Federal Law.

13. The automatic stay is automatic. A debtor is not required to do anything affirmative for it to take effect. Conversely, Tribal Court Plaintiffs have an affirmative duty to seek this Court's permission prior to pursuing Debtor for a debt. They willfully chose not to obtain this Court's permission and should be required to make Debtor whole at a minimum.
14. An award sanctions under 11 U.S.C. §362(k) is warranted given Tribal Court Plaintiffs relentless debt collection efforts. Tribal Court Plaintiffs should be required, at a minimum, to pay sanction and costs incurred by Debtor in dealing with this automatic stay issue and being forced to bring this Motion to stop further action against him in Tribal Court. Further, given the deliberate disregard for bankruptcy law, they should be required to pay something more to the Debtor.

IV. THE TRIBAL COURT DOES NOT HAVE JURISDICTION TO MAKE DECISIONS RELATED TO THE AUTOMATIC STAY

15. A bankruptcy court has original and exclusive jurisdiction over bankruptcy cases. See 28 U.S.C. § 1334(a); *In re Birthing Fisheries, Inc.*, 300 B.R. 489 (B.A.P. 9th Cir. 2003). The bankruptcy court's exclusive encompasses "all matters *connected with* the bankruptcy estate." Gruntz, 202 F.3d at 1080 (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995)) (emphasis added). The Ninth Circuit further explained that exclusive jurisdiction exists over "core" proceedings. 28 U.S.C. § 157. A " 'core proceeding' is one 'that invokes a substantive right provided by title 11 or ... a proceeding that, by its nature, could arise

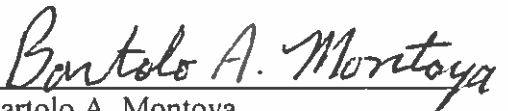
only in the context of a bankruptcy case’.” *Gruntz*, 202 F.3d at 1081 (quoting *Wood v. Wood* (In re Wood), 825 F.2d 90, 97 (5th Cir.1987)). Put another way, “core” proceedings are those that “arise under the Bankruptcy Code or arise in a bankruptcy case.” *McCowan v. Fraley* (In re McCowan), 296 B.R. 1, 3 (9th Cir. BAP 2003). Core proceedings include, but are not limited to: motions to terminate, annul, or modify the automatic stay. *Id.*

16. Judicial proceedings in violation of the automatic stay are void. In re Gruntz, 202 F.3d 1074, 1082 (9th Cir. 2000), *Parker v. Bain*, 68 F.3d 1131, 1138 (9th Cir. 1995).
17. In the present case, as a result of Tribal Court Plaintiffs continued collection efforts against the Debtor. The Isleta Tribal Court conduct issue an Order in favor the Tribal Court Plaintiff’s was willful, malicious, fraudulent, oppressive and/or recklessly committed, with wanton disregard of the Debtor’s stay of protection.
18. Upon the bankruptcy filing, the Tribal Court was divested of jurisdiction to enter an order relating to the automatic or any other order affecting the Debtor. The Isleta Tribal Court was noticed as listed in the List of Creditors. The Bankruptcy Court is the Court with exclusive jurisdiction to make determinations relating to the automatic stay. Any ordered entered by the Isleta Tribal Court is void. Thus, this Court should enter an order enforcing the automatic stay.
19. Based on the foregoing, Debtor respectfully requests this Court enter an order enforcing 11 U.S.C. §362 and halting the Tribal Court Action with respect to Debtor,

voiding the Order issued October 5, 2015, and awarding Debtor damages and costs and something more for Tribal Court Plaintiff's willful and deliberate violations of the automatic stay.

DATED this 06th Day of November, 2015

Respectfully Submitted,


Bartolo A. Montoya
Debtor Pro Se
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Email: bartolomontoya1208@gmail.com

CERTIFICATE OF SERVICE

We certify that on November 06, 2015 I served, in accordance with Fed. R. Bankr. P. 9014, this Motion to Enforce Automatic Stay and For Award of Mandatory Sanctions Pursuant to 11 U.S.C. §362(k), by first class mail postage prepaid on the following:

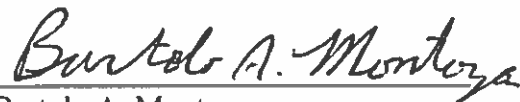
Philip J. Montoya
Trustee
3800 Osuna Rd NE STE #2
Albuquerque, NM 87109

Pueblo of Isleta Tax Administration
P.O. Box 1270
Isleta, NM 87022

Isleta Tribal Court
P.O. Box 729
Isleta, NM 87022

Carolyn Abeita
1201 Lomas Blvd.
Albuquerque, NM 87102

Green Tree Services
c/o Rueben Gallegos
116 14th St. SW
Albuquerque, NM 87102



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ENDORSED
FILED IN MY OFFICE THIS

IN THE ISLETA TRIBAL COURT
ISLETA PUEBLO, NEW MEXICO

OCT 05 2015

Pueblo of Isleta Tax Administration,

[Signature]
CLERK ISLETA TRIBAL COURT

Petitioner,

v.

Case No. CV-CM-0111-2014

Bartolo A. Montoya, d/b/a Smoke Warehouse

Respondent.

**ORDER ON MOTION FOR TAX LIEN AND STAY OF PROCEEDINGS AGAINST REAL AND
PERSONAL PROPERTY**

THIS MATTER having come before the Court upon a Motion made by Petitioner at a duly noticed hearing on September 29, 2015, requesting an Order recognizing a Tax Lien in favor of Petitioner and issuing a stay of any proceeding against real and personal property of Respondent. The Court finds the Motion is well taken and finds as follows:

1. Petitioner has filed a Petition for Entry of Judgement for Non-Payment of Tribal Cigarette Taxes for an amount of \$386,875.89 as of the date of filing in August 2014. That amount remains unpaid as of the date of the hearing and the Pueblo claims a tax lien for such unpaid taxes.

2. Respondent has other legal proceedings filed against him for debts owed and has also filed for bankruptcy.

3. Respondent has certain real and personal property located within the exterior boundaries of the Isleta Pueblo which may or may not be subject to attachment and sale to pay creditors in all of these proceedings.

4. Pending such a determination, Petitioner requests the Court recognize a tax lien in favor of the Pueblo of Isleta Tax Administration that shall remain in effect until the liability for payment of the tax debt is satisfied or extinguished, and that the Court issue a stay on any proceedings, sale or disposal involving any real or personal property of the Respondent located




within the exterior boundaries of the Pueblo of Isleta that may be subject to attachment by any party for debts owed. In order to protect the property from unauthorized sale or legal waste.

5) The Court is not determining the priority of any lien claimed against the assets of the Respondent.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT

- 1) Petitioner's motion is hereby granted and a tax lien in favor of the Pueblo of Tax Administration in the amount of \$386,875.89 is hereby issued against any personal and real property of the Respondent.
- 2) A stay or restraining order is issued against the Respondent from selling or otherwise disposing of any such property in lieu of payment of the tax lien or committing any legal waste.
- 3) The Respondent as filed bankruptcy in federal court and an automatic stay has been issued against all proceedings against the Respondent in collecting any debts owed including taxes owed the Pueblo.
- 4) The stay or restraining order will remain in effect until a the proper forum shall make a determination that any such property in Isleta Pueblo may be subject to sale and attachment for payment of creditors, including POI Tax Administration in any legal proceedings, including the priority of such liens.
- 5) This court will not make any determinations of any priority of liens at this time.

IT IS SO ORDERED ON THIS 5TH DAY OF OCTOBER, 2015.


Vincent L. Knight, Sr.
Associate Judge POI

Certificate of Service

I hereby certify that a true and correct copy of the foregoing order was mailed, postage prepaid, to each party, Bartolo A. Montoya, 203 Tribal Rd. 10, Bosque Farms, NM 87068; POI Tax Administration, through counsel, Carolyn Abeita, 1201 Lomas Blvd. ABQ, NM 87102, and Green Tree Services, c/o R. Reuben Gallegos 116 14th St. SW, ABQ, NM 87102 on this 14th day of October, 2015.