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WORKSHOP: Oops, They Did It Again: Litigating Automatic Stay and Discharge Violations

Steven M. Berman

Shumaker, Loop & Kendrick, LLP; Tampa, Fla.

Hannah W. Hutman

Hoover Penrod PLC; Harrisonburg, Va.

Hon. Sage M. Sigler

U.S. Bankruptcy Court (N.D. Ga.); Atlanta

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***Oops, They Did It Again:
Litigating Automatic Stay and Discharge Violations***

Steven M. Berman
Shumaker, Loop & Kendrick, LLP
Tampa, Florida

Hannah W. Hutman
Hoover Penrod PLC
Harrisonburg, Virginia

Hon. Sage M. Sigler
U.S. Bankruptcy Court (N.D. Ga.)
Atlanta, Georgia

I. The Automatic Stay:

a. Statutory Framework

i. 11 USC § 362(a)

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) 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;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4)any act to create, perfect, or enforce any lien against property of the estate;

(5)any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6)any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7)the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8)the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

ii. Remedy for violations: 11 USC § 362(k)

(1)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.

(2)If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

iii. Jurisdiction and Contempt power of the Bankruptcy Court

1. Jurisdiction. The bankruptcy court has exclusive jurisdiction over sanctions for a stay violation.

a. This jurisdiction over a stay violation proceeding extends even if the underlying bankruptcy case is dismissed.

2. Implied authority under 11 U.S.C. § 105(a):

(a)The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or

appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

b. Procedural Requirements

- i. Rule 9020 governs contempt proceedings and simply states that Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.

- ii. Rule 9014. Contested Matters

(a) Motion. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

(b) Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004...

- iii. Elements / Burden of proof

1. The debtor must prove a willful stay violation by a preponderance of the evidence. *See e.g. In re Johnson*, 501 F.3d 1163, 1171 (10th Cir. 2007); see also *Heghmann v. Indorf (In re Heghmann)*, 316 B.R. 395, 404-05 (B.A.P. 1st Cir. 2004).

- a. The party asserting a violation of the stay has the burden of proof. *In re Spinner*, 398 B.R. 84, 94-95 (Bankr. N.D. Ga. 2008); *In re Kallabat*, 482 B.R. 563, 570 (Bankr. E.D. Mich. 2012)

- b. The debtor must prove that the creditor was provided with actual notice. While there may be instances where a creditor has the obligation to determine whether or not the

automatic stay is in place, if the creditor was not provided notice of the case filing, it is much more difficult to prove a stay violation.

- i. At a minimum, if a debtor discovers that a creditor was not provided notice of the case filing and the debtor believes the creditor is violating the automatic stay, the creditor should be provided notice prior to the debtor asserting a stay violation.
 - c. In cases where a creditor received actual notice of the automatic stay imposed under 11 U.S.C.S. § 362(a), courts must presume that a violation of the stay was deliberate. The debtor has the burden of providing the creditor with actual notice. Where a party has actual knowledge of a bankruptcy, and despite such knowledge intentionally undertakes actions that violate the stay, the party's ignorance of the legal effect of the stay is no defense. In re Manuel, 212 B.R. 517 (Bankr. E.D. Va. 1997); In re Peterkin, 102 B.R. 50, 53-54 (Bankr. E.D.N.C. 1989).
2. To prevail in an action against a creditor for violation of the stay, the debtor must show:
- a. That a bankruptcy petition was filed;
 - b. That the creditor had notice of the petition; Notice need not be official notice. Actual notice is enough.

c. That the creditor's actions were willful. Willful under this section means any deliberate action of the creditor taken in violation of the stay, which the creditor knows about the petition. Further, there is not a requirement of specific intent to violate the stay.

d. That the debtor sustained damages

In re Sori, 513 B.R. 728, 732 (Bankr. N.D. Ill. 2014).

3. Does *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019) alter the “willful violation” standard or make it more difficult to prove a violation?

An overview of *Taggart's* application to stay violations is included with these materials.

c. Damages

i. Actual Damages.

1. Once a debtor proves an intentional violation of the stay, §362(k) requires that they recover actual damages, including costs and attorney's fees.

a. The debtor must be prepared to support a claim of damages with evidence. Damages must be proximately caused by and reasonably incurred as a result of the stay violation and must be proven by a preponderance of the evidence. In re Baer, No. 11-8062, 2012 WL 2368698, at *10 (B.A.P. 6th Cir. June 22, 2012) (quoting Grine v. Chambers (In re Grine), 439 B.R. 461, 471 (Bankr. N.D. Ohio 2010) (citing

Archer v. Macomb County Bank, 853 F.2d 497 (6th Cir. 1988)))

- b. Note the limitation in §362(k) if the action was taken with a good faith belief that the stay did not apply.

2. Emotional Distress Damages. Damages for emotional distress may be awarded, if proved, and if there is a corresponding financial injury. Emotional injury is not compensable where there is financial loss to “hitch it to.” Aiello v. Providian Financial Corp., 239 F.3d 876, 880 (7th Cir. 2001).

- a. To recover “actual” damages for emotional distress, a plaintiff must, *at minimum*:

- i. suffer significant emotional distress;
 - ii. clearly establish the significant emotional distress;
- and

1. This prong can be satisfied if:

- a. plaintiff offers corroborating medical evidence or non-expert testimony (for example, by family members, friends, or co-workers) about the manifestations of mental anguish; or
- b. where significant emotional distress is readily apparent even without corroborative evidence, such as

where the violator may have engaged
in egregious conduct.

- iii. demonstrate a causal connection between that
significant emotional distress and the violation of
the automatic stay. Lodge v. Kondaur Capital Corp.,
750 F.3d 1263 (11th Cir. 2014).

3. Technical Stay Violations. Beware of pursuing sanctions for
violations that do not result in any actual damages.

- a. “[N]ot every violation of the section 362 automatic stay
should result in punishment to the offender. . . . [C]ertain
section 362 stay violations are technical in nature and need
no punishment to deter further violations.” McHenry v. Key
Bank (In re McHenry), 179 B.R. 165, 168-69 (B.A.P. 9th
Cir. 1995) (expressing concern over “the lack of measure
for punitive damages where no actual damage has been
sustained by the offended party”).

- i. The debtor must suffer an actual injury as a result of
the violation. If the costs incurred to file and
prosecute the motion for sanctions are the only
damages incurred by the debtor, many courts will
refuse to award sanctions against a creditor.

ii. Punitive Damages.

1. Section 362(k) allows for an award of punitive damages in appropriate circumstances. The imposition of punitive damages is left to the court's discretion. Most often awards of punitive damages are limited to cases that involve conduct that is egregious, vindictive, or intentionally malicious.
2. Once a court finds that appropriate circumstances exist for an award of punitive damages, the next issue is the proper amount. The Supreme Court has looked at "(1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases" in determining the amount of punitive damages. State Farm v. Chambers, 538 U.S. at 418. The Court called the first factor "perhaps the most important indicium of the reasonableness of a punitive damages award." BMW of North America, Inc. v. Gore, 517 U.S. 559, 574 (1996).

iii. Duty to Mitigate Damages.

1. Debtors must give adequate notice to creditors and cannot obtain an unfair advantage by delaying in notifying a creditor of a pending bankruptcy case.

- a. “The automatic stay was not designed to be used as a kind of spring-loaded gun against creditors who wander into traps baited by the debtor.” Clayton v. King (In re Clayton), 235 B.R. 801, 807 (Bankr. M.D.N.C. 1998)
2. There is no requirement that a debtor warn a creditor of a stay violation prior to moving for sanctions, however, “the debtor is under a duty to exercise due diligence in protecting and pursuing [its] rights and in mitigating [its] damages with regard to such violations.” In re Oksentowicz, 324 B.R. 628, 630 (Bankr. E.D. Mich. 2005) (J. Rhodes) (quoting Clayton v. King, 235 B.R. at 811).
- iv. Attorney Fees. Debtor’s counsel should review their 2016(b) disclosure and file a supplemental statement if expecting to recover attorney fees for pursuing a stay violation Motion. Failure to amend a 2016(b) disclosure could preclude debtor’s counsel from being awarded fees *See Adams v. Halls (In re Adams)*, 2023 Bankr. LEXIS 1622, at *7 n.9 (Bankr. E.D. Va. June 23, 2023).
- d. The Exceptions/Tricky Issues
 - i. Criminal Proceedings—11 U.S.C. §362(b)(1)
 1. The automatic stay provisions do not operate as a stay -- of the commencement or continuation of a criminal action or proceeding against the debtor. 11 U.S.C. § 362(b)(1).

2. When a debtor is prosecuted for a financial crime, courts have considered whether the real purpose of the prosecution is to enforce the criminal law or to pressure the debtor into paying a debt through restitution.
 3. In deference to the state's interest in its criminal prosecutions, most courts have refused to stay a criminal proceeding absent a finding of bad faith on the part of the creditor, i.e., intent to circumvent the bankruptcy process. 3 Collier on Bankruptcy ¶ 362.05 (16th 2023).
 4. For a plaintiff to prevail on a claim for violation of the automatic stay by the initiation of criminal proceedings for theft, he would have to show that the criminal prosecution exceptions of the Bankruptcy Act do not apply because the criminal prosecution was done in bad faith, or for the purpose of collecting a dischargeable debt. Ehrlich v. Badiner, 2001 U.S. Dist. LEXIS 21149, *1 (D.Mn. 2001).
- ii. Divorce/Custody Proceedings—11 U.S.C. §362(b)(2)
1. Note the exception is §362(b)(2)(iv) for a proceeding that seeks to determine the division of property that is property of the estate. These types proceeds are subject to the automatic stay.

II. Discharge Injunction

a. Statutory Framework:

i. 11 USC § 524(a)

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

ii. Also 11 USC § 727(b)

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

iii. No specified statutory remedy for violations

1. The remedy relies on Section 105: “(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

2. Civil contempt, imposed under the court's section 105 powers, is the normal sanction for violations of the discharge injunction. *See Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 204 L. Ed. 2d 129 (2019).
- b. Procedure to bring action before the Court
 - i. Case will need to be reopened, if already closed.
 1. A proceeding to enforce the discharge injunction is a core proceeding under section 157(b)(2)(O) of title 28, and courts should readily reopen a closed bankruptcy case to ensure that the essential purposes of the discharge are not undermined. 4 Collier on Bankruptcy P 524.02 (16th 2023)
 - ii. Adversary Proceeding v. Motion for Contempt
 1. Local practice may dictate which form of pleading is required or preferred. The issue here is proper notice. Therefore, regardless of the form of pleading, notice should be provided under Rule 7004.
 - c. Burden of proof. As the party seeking relief, the debtor has the burden of proving that the creditor violated the discharge injunction and is in civil contempt by clear and convincing evidence, then damages must be established by a preponderance of the evidence. *In re Gen. Motors Corp.*, 110 F.3d 1003, 1018 (4th Cir. 1997); *Cadle Co. v. Kazin (In re Kazin)*, 2009 Bankr. LEXIS 4645.
 - i. *Taggart v. Lorenzen* found that a court may hold a creditor in civil contempt for violating a discharge order if there was "no fair ground of doubt" as to whether the order barred the creditor's conduct. 139 S. Ct.

1795 (2019). Under this "no fair ground of doubt" standard, civil contempt may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope. *Id.* at 133.

1. Reliance on advice of counsel is not a defense to civil contempt.

Beckhart v. NewRez LLC, 31 F.4th 274, 278 (4th Cir. 2022);

Adams v. Halls (In re Adams), 2023 Bankr. LEXIS 1622, *9.

d. Damages.

- i. The appropriate remedy for civil contempt lies within the bankruptcy court's broad discretion. Beckhart v. Newrez LLC, 31 F.4th 274
- ii. Section 524 does not expressly authorize any relief other than injunctive relief. However, most courts will award compensatory damages when a creditor fails to comply with the discharge order.
- iii. There is a split of authority among the bankruptcy courts as to whether punitive damages may be awarded for a violation of the discharge injunction. Where a creditor continued collection efforts post-discharge even after repeatedly being contacted by Debtor's counsel, punitive damages were awarded in the amount of \$12,000.00. In re Burch, 2011 Bankr. LEXIS 2931 (Bankr. S.C. July 26, 2011). The court held that "punitive damages may be awarded in the case of a discharge injunction violation when a creditor has engaged in "egregious conduct," "malevolent intent" or "clear disregard of the bankruptcy laws." Burch at 11-12 citing In re Kirkbride, 2010 Bankr. LEXIS 4103, 2010 WL 4809334

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(Bankr. E.D.N.C. Nov 19, 2010) and In re Adams, 2010 Bankr. LEXIS 2207, 2010 WL 2721205 (Bank. E.D.N.C. July 7, 2010).

- iv. Reasonable attorney's fees may be permissible in civil contempt proceedings. In re Gen. Motors Corp., 61 F.3d at 259; Skaggs v. Gooch (In re Skaggs), No. 17-50941, 2023 WL 322559 at *1, 2023 Bankr. LEXIS 128 at **1-3 (Bankr. W.D. Va. Jan. 19, 2023).

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Survey of *Taggart*'s Application to Stay Violations

Prepared by:

JORDAN A. GREER
Law Clerk to the Hon. Sage M. Sigler
U.S. Bankruptcy Court, N.D. Georgia
Atlanta, GA

Decided in 2019, *Taggart v. Lorenzen* stands for the proposition that a court may hold a creditor in civil contempt for violating a discharge order if there was no fair ground of doubt as to whether the order barred the creditor's conduct. 139 S. Ct. 1795 (2019). Under this "no fair ground of doubt" standard, civil contempt may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope. *Id.* at 133. While the Court did not rule on whether *Taggart* would apply to violations of the automatic stay, it did distinguish between the purposes served by the automatic stay and that of the discharge injunction: "A stay aims to prevent damaging disruptions to the administration of a bankruptcy case in the short run, whereas a discharge is entered at the end of the case and seeks to bind creditors over a much longer period." *Id.* at 137-38.

The Supreme Court's dictum appears to cause much of the confusion surrounding the issue of whether *Taggart* should apply to stay violations or whether the "willful violation" standard pursuant to section 362(k) should remain in use. Notably, field experts predict that courts will eventually do just that. 10 Collier on Bankruptcy ¶ 9020.01 (Richard Levin & Henry J. Sommers, eds., 16th ed.) ("It is apparent that the Court's decision is not confined to the discharge injunction but will extend, for example, to conduct violating the automatic stay of section 362(a).").

Since *Taggart*, approximately seventeen courts have confronted the question of whether the decision changed the standard by which courts evaluate stay violations. Those courts have answered in three ways: (A) seven courts have refused to apply the *Taggart* framework to violations of the automatic stay and continue to apply the "willful violation" standard under section 362(k); (B) six courts effectively pass on the question by incorporating the *Taggart* standard into "willful violation" standard under section 362(k); and (C) four courts have explicitly ruled that *Taggart* is the new standard by which to evaluate violations of the automatic stay.

It appears that most courts (outside of the Ninth Circuit) will continue to at least incorporate the *Taggart* Standard into the Willful Violation Standard under section 362(k) when evaluating potential violations of the automatic stay until the Supreme Court makes a definitive ruling.

A. *Taggart* Does Not Apply to Stay Violations

- i. *In re Denby-Peterson*, 941 F.3d 115, 122-23 & fn.27 & 30 (3d Cir. 2019). (In an appeal in a Chapter 13 case out of New Jersey, the third circuit applied ‘willful act’ standard to potential violations of the stay while citing *Taggart*’s dicta about difference in the purpose of the automatic stay.).
- ii. *Windstream Holdings, Inc. v. Charter Commc’ns Inc. (In re Windstream Holdings, Inc.)*, 634 F. Supp. 3d 99, 113 (SDNY 2022) (In an appeal in a Chapter 11 case, the court ruled that “[i]t should be clear from the nature of *Taggart*’s reservation regarding breaches of the automatic stay that applying a standard that is more *lenient* to potential violators of the automatic stay than the objective ‘fair ground of doubt’ approach is highly unlikely.”).
- iii. *Harker v. Eastport Holdings, LLC (In re GYPC, Inc.)*, 634 B.R. 983, 991 (Bankr. S.D. Ohio 2021) (In a converted Chapter 7 case, the Court ruled that “*Taggart* fundamentally is contrasting § 362(k), a congressionally approved private right of action for individuals, and the separate and more general language under § 105 supporting contempt proceedings. As Congress has chosen to limit any private right of action for stay violations to those against individuals, the court believes it must apply *Taggart* to § 105 contempt actions not covered by § 362(k) (or another private right of action).”).
- iv. *In re Rice*, 613 B.R. 690, 695 (Bankr. N.D. Ill. 2020) (In a Chapter 13 case where the debtor sought sanctions against the City of Chicago for violating the automatic stay by refusing to return her impounded vehicle after she filed for bankruptcy, the court applied the “willful” standard under 362(k) and ruled that “in *Taggart*, the Supreme Court specifically declined to address whether the word “willful” in the context of the automatic stay provision should be based on the same standard as determining civil contempt for violations of a discharge

order. . . Until the Supreme Court holds otherwise, the Seventh Circuit’s standard remains the law of this circuit.”).

- v. *Adams v. Halls (In re Adams)*, 2023 Bankr. LEXIS 1622, at *7 n.9 (Bankr. E.D. Va. June 23, 2023) (In a Chapter 7 case out of Richmond, Judge Huennekens held that “*Taggart* makes clear that automatic stay violations and discharge injunctions do not require the same mental state. 139 S. Ct. at 1803-04. Thus, *Atlas*’s holdings regarding mental state are inapposite here.”).
- vi. *In re Payne*, No. 20-30524-KLP, 2021 Bankr. LEXIS 700, at *8 n.5 (Bankr. E.D. Va. Mar. 22, 2021) (In a Chapter 13 case, the Court stated that it “found no decision in the Fourth Circuit that has imported the *Taggart* definition of willfulness into § 362.”).
- vii. *Valentine v. Valentine (In re Valentine)*, Nos. 19-40593-705, 19-04022-705, 2020 Bankr. LEXIS 147, at *48 (Bankr. E.D. Mo. Jan. 17, 2020) (In a chapter 7 case, the court ruled that “[t]he automatic stay obligations are not subject to the fair ground of doubt standard discussed in *Taggart*.”).

B. *Taggart* Incorporated Into “Willful Violation” Standard Under § 362(k)

- i. *Schneorson v. Franklyn (In re Schneorson)*, 645 B.R. 146, 161 (Bankr. E.D.N.Y. 2022) (In this Chapter 7 case, the court applied both standards at the same time, reasoning that “[t]o hold a party in civil contempt for a violation of the automatic stay, the party must have violated the stay willfully. . . [t]here must be ‘no fair ground of doubt’ that the automatic stay applied to the party’s action.”).
- ii. *In re LeGrand*, 612 B.R. 604, 607 (Bankr. E.D. Cal. 2020) (the court in this Chapter 7 case, while ruling that a creditor “willfully violated the stay,” the court stated that “[t]he stay-violating conduct having been ‘willful’ within the meaning of § 362(k)(1) and there also being ‘no fair ground of doubt as to whether’ the automatic stay and the discharge injunction barred the garnishments, § 362(k)(1) stay violation remedies, including punitive damages, are appropriate.”).
- iii. *In re Abril*, 2021 Bankr. LEXIS 2003, at *1 (Bankr. M.D. Fla. June 24, 2021) (In this Chapter 7 case the court ruled that “[t]his Court has not

decided whether *Taggart* applies to a violation of the automatic stay under § 362(k)(1) and does not need to do so here [as] [u]nder any standard, a willful violation of the stay occurred.”).

- iv. *Tate v. Fairfax Vill. I Condo. (In re Tate)*, Nos. 19-00237, 2020 Bankr. LEXIS 369, at *7 n.2 (Bankr. D.D.C. Feb. 10, 2020) (In this Chapter 13 case, the court ruled that “[i]t follows that in the case of civil contempt, an objective test applies that civil contempt does not lie where there is a fair ground of doubt as to the wrongfulness of the defendant’s conduct. *Taggart*, 139 S.Ct. at 1801, 1804. The same test applies to a proceeding under § 362(k): a violation of the automatic stay is not ‘willful’ when there is fair ground of doubt as to whether the creditor’s conduct violated the automatic stay.”).
- v. *In re Sanders*, No. 8:20-bk-02731-RCT, 2020 Bankr. LEXIS 2840, at *7 (Bankr. M.D. Fla. Sep. 15, 2020) (In this Chapter 13 case, the court ruled that “[t]his Court declines to cast a vote on the issue of whether *Taggart* changed the ‘willfulness’ standard under § 362(k) because under either standard, the Court concludes that the Association’s actions were willful.”).
- vi. *In re Jones*, 2019 Bankr. LEXIS 3241, 2019 WL 5061166, at *4-5 (Bankr. S.D. Miss. July 22, 2019) (In this Chapter 13 case where the debtor filed a motion for contempt against the City of Jackson for violating the automatic stay by shutting off her water, the court applied both standards and found that “application of the ‘no fair ground of doubt’ standard did not change its finding that the city was in civil contempt of the court and that the debtor was entitled to damages arising out of the city’s violations of the automatic stay.”).

C. *Taggart* Applies to Stay Violations

- i. *Suh v. Anderson (In re Jeong)*, 2020 Bankr. LEXIS 714, 2020 WL 1277575, *4 (9th Cir. BAP 2020) (In this appeal in a chapter 7 case, the Court applied (in accord with pre-*Taggart* Ninth Circuit precedent) *Taggart*’s “no fair ground of doubt” standard to motions for contempt for violation of the automatic stay.).
- ii. *In re McConathy*, No. 90-13449, 2022 Bankr. LEXIS 1429, at *31-32 (Bankr. W.D. La. May 20, 2022) (In a Chapter 7 case where debtor

sought damages for a lawsuit filed in violation of the automatic stay, the court concluded that “there was no ‘fair ground of doubt’ that the stay applied or that the actions of Debtor and his counsel violated the stay.”).

- iii. *In re Sorelle*, 2020 Bankr. LEXIS 3612, at *10 (Bankr. D. Nev. Dec. 28, 2020) (The court applied the “willful” standard under section 362, however, in a footnote the court stated that “[i]f that standard is applied to the instant Motion, there appears to be no fair ground of doubt that Respondents violated Section 362(a)(1) when they commenced the Malpractice Action after Harding filed his proof of claim in the Chapter 11 case.”).
- iv. *In re Arcapita Bank B.S.C.(c)*, 648 B.R. 489, 497 (Bankr. SDNY 2019) (In this Chapter 11 case, the court ruled that it “applies the *Taggart* standard to the question of whether [the creditor] should be held in civil contempt for violating the automatic stay in *Arcapita*’s bankruptcy case.”).

D. Decisions by Circuit

i. Second Circuit (Split)

a. Court of Appeals:

b. District Court:

- 1. *Windstream Holdings, Inc. v. Charter Commc’ns Inc. (In re Windstream Holdings, Inc.)*, 634 F. Supp. 3d 99, 113 (SDNY 2022) (“Willful” standard under section 362(k)).

c. Bankruptcy Court:

- 1. *In re Arcapita Bank B.S.C.(c)*, 648 B.R. 489, 497 (Bankr. SDNY 2019) (*Taggart* Standard).
- 2. *Schneorson v. Franklyn (In re Schneorson)*, 645 B.R. 146, 161 (Bankr. E.D.N.Y. 2022) (Mixed Standard).

ii. Third Circuit: (“Willful” standard under section 362(k))

a. Court of Appeals:

- 1. *In re Denby-Peterson*, 941 F.3d 115, 122-23 & nn.27 & 30 (3d Cir. 2019). (“Willful” standard under section 362(k)).

- b. District Court:**
 - c. Bankruptcy Court:**
 - 1. *In re Busby*, 642 B.R. 409, 423 (Bankr. E.D. Pa. 2022) (“Willful” standard under section 362(k)).
 - 2. *In re Krisiak*, 613 B.R. 606, 611 (Bankr. M.D. Pa. 2020) (“Willful” standard under section 362(k)).
- iii. **Fourth Circuit: (Split)**
 - a. Court of Appeals:**
 - b. District Court:**
 - 1. *Palazzo v. Bayview Loan Servicing LLC*, 2023 U.S. Dist. LEXIS 57322, at *28 (D. Md. Mar. 31, 2023) (Mixed Standard)).
 - c. Bankruptcy Court:**
 - 1. *Adams v. Halls (In re Adams)*, 2023 Bankr. LEXIS 1622, at *7 n.9 (Bankr. E.D. Va. June 23, 2023) (“Willful” standard under section 362(k)) .
 - 2. *In re Payne*, No. 20-30524-KLP, 2021 Bankr. LEXIS 700, at *8 n.5 (Bankr. E.D. Va. Mar. 22, 2021) (“Willful” standard under section 362(k)).
- iv. **Fifth Circuit: (Split)**
 - a. Court of Appeals:**
 - b. District Court:**
 - c. Bankruptcy Court:**
 - 1. *In re Jones*, 2019 Bankr. LEXIS 3241, 2019 WL 5061166, at *4-5 (Bankr. S.D. Miss. July 22, 2019) (Mixed Standard).
 - 2. *In re McConathy*, No. 90-13449, 2022 Bankr. LEXIS 1429, at *31-32 (Bankr. W.D. La. May 20, 2022) (*Taggart* Standard).
- v. **Sixth Circuit: (“Willful” standard under section 362(k))**
 - a. Court of Appeals:**
 - b. District Court:**
 - c. Bankruptcy Court:**
 - 1. *Harker v. Eastport Holdings, LLC (In re GYPC, Inc.)*, 634 B.R. 983, 991 (“Willful” standard under section 362(k)).

2. *In re Caldwell*, Case No. 18-32346-jda, 2019 Bankr LEXIS 3397, at *4-8, 2019 WL 5616908, at *2-3 (Bankr. E.D. Mich. Oct. 30, 2019) (“Willful” standard under section 362(k)).

vi. Seventh Circuit: (“Willful” standard under section 362(k))

a. Court of Appeals:

b. District Court:

c. Bankruptcy Court:

1. *In re Rice*, 613 B.R. 690, 695 (Bankr. N.D. Ill. 2020) (“Willful” standard under section 362(k)).

vii. Eighth Circuit: (“Willful” standard under section 362(k))

a. Court of Appeals:

b. District Court:

c. Bankruptcy Court:

1. *Valentine v. Valentine (In re Valentine)*, Nos. 19-40593-705, 19-04022-705, 2020 Bankr. LEXIS 147, at *48 (Bankr. E.D. Mo. Jan. 17, 2020 (“Willful” standard under section 362(k)).

viii. Ninth Circuit: (Taggart Standard*)

a. Court of Appeals:

1. *Taggart* originates out of the 9th Circuit.
2. Pre-existing precedent*: *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1189 (9th Cir. 2003) “the Trustee may be entitled to recovery for violation of the automatic stay “under section 105(a) as a sanction for ordinary civil contempt.”).
3. *Suh v. Anderson (In re Jeong)*, 2020 Bankr. LEXIS 714, 2020 WL 1277575, *4 (9th Cir. BAP 2020) (*Taggart* Standard).

b. District Court:

c. Bankruptcy Court:

1. *In re Sorelle*, 2020 Bankr. LEXIS 3612, at *10 (Bankr. D. Nev. Dec. 28, 2020) (*Taggart* Standard).
2. *In re LeGrand*, 612 B.R. 604, 607 (Bankr. E.D. Cal. 2020) (Mixed Standard).

- ix. **Eleventh Circuit: (Mixed Standard)**
 - a. **Court of Appeals:**
 - b. **District Court:**
 - c. **Bankruptcy Court:**
 - 1. *In re Sanders*, No. 8:20-bk-02731-RCT, 2020 Bankr. LEXIS 2840, at *7 (Bankr. M.D. Fla. Sep. 15, 2020) (Mixed Standard).
 - 2. *In re Abril*, 2021 Bankr. LEXIS 2003, at *1 (Bankr. M.D. Fla. June 24, 2021) (Mixed Standard).

- x. **DC Circuit: (Mixed Standard)**
 - a. **Court of Appeals:**
 - b. **District Court:**
 - c. **Bankruptcy Court:**
 - 1. *Tate v. Fairfax Vill. I Condo. (In re Tate)*, Nos. 19-00237 (Chapter 13), 19-10009, 2020 Bankr. LEXIS 369, at *7 n.2 (Bankr. D.D.C. Feb. 10, 2020) (Mixed Standard).

Faculty

Steven M. Berman is a partner in the Tampa, Fla., office of Shumaker, Loop & Kendrick, LLP, specializing in the firm's bankruptcy and creditors' rights practice group. He also chairs the firm's Financial Institutions and Insurance Business Sector. Mr. Berman has more than 30 years of bankruptcy experience and focuses his practice on business bankruptcy litigation, representing creditors, investors, distressed-debt lenders, trustees, committees and business entities litigating disputes in bankruptcy court. Mr. Berman is Board Certified by the American Board of Certification in both Creditors' Rights Law and Business Bankruptcy Law, and he is a member of the Florida, California, District of Columbia, New York and Puerto Rico (Federal) bars. He is also admitted to practice before the Eleventh Circuit Court of Appeals and the U.S. Supreme Court. Mr. Berman serves on the boards of directors for ABI and the American Board of Certification. He serves on ABI's Endowment Committee and its Task Force on Veterans and Servicemembers Affairs, and he routinely volunteers and speaks at its seminars and other programs. In addition, he volunteers in providing *pro bono* bankruptcy and insolvency services and training for U.S. Navy servicemembers, including Judge Advocate General officers and staff. On a local level, Mr. Berman is a member of the Tampa Bay Bankruptcy Bar Association, the Bankruptcy Bar Association of the Southern District of Florida, the Southwest Florida Bankruptcy Professionals Association, the San Diego Bankruptcy Forum and the California Bankruptcy Forum. He also guest lectures at the University of Florida College of Law and Stetson University College of Law, both in the advanced bankruptcy courses. Mr. Berman is AV-rated by Martindale-Hubbell and was listed in *Florida Super Lawyers* from 2013-22. He received his B.S. in multinational business operations in 1987 from Florida State University and his J.D. in 1990 from the University of Florida Levin College of Law.

Hannah W. Hutman is a partner at Hoover Penrod, PLC in Harrisonburg, Va., where she represents businesses and individuals in bankruptcy proceedings and creditor negotiations. Her practice areas include bankruptcy, debtor and creditor rights, and general corporate work. In addition to representing businesses and individuals in bankruptcy proceedings, Ms. Hutman has represented national and regional banks in all aspects of commercial collections, including restructuring obligations, asset liquidations and dispositions, and foreclosure. She also is a member of the panel of chapter 7 trustees for the Western District of Virginia, a frequent presenter on a wide variety of insolvency-related topics, and co-author of a chapter in *Bankruptcy Practice in Virginia*. She has been active in the Virginia network of the International Women's Insolvency & Restructuring Confederation and is a past chair of the Board of Governors for the Bankruptcy Law Section of the Virginia State Bar. Ms. Hutman is AV-rated by Martindale-Hubbell, has routinely been listed in *Super Lawyers* as a "Rising Star" and selected as a member of Virginia's "Legal Elite," and was honored as one of ABI's "40 Under 40" in 2018. Ms. Hutman received her B.A. *summa cum laude* from Columbia Union College in Takoma Park, Md., and her J.D. from the Marshall Wythe School of Law at the College of William and Mary in Williamsburg, Va.

Hon. Sage M. Sigler is a U.S. Bankruptcy Judge for the Northern District of Georgia in Atlanta, appointed in March 2018. She succeeded Hon. Mary Grace Diehl, for whom she clerked after graduating from law school. Prior to her appointment to the bench, Judge Sigler was a partner in Alston & Bird LLP's Bankruptcy Group. She is an active member of ABI's Board of Directors, NCBJ, IWIRC,

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TMA and the Bankruptcy Section of the Atlanta Bar Association, and she has been a volunteer presenter for the Credit Abuse Resistance Education (CARE) program. Judge Sigler was an honoree in ABI's inaugural class of "40 Under 40" in 2017. She received her B.A. in political science from the University of Florida in 2001 and her J.D. in 2006 from Emory University School of Law, where she was the executive symposium editor of the *Emory Bankruptcy Developments Journal*.