

ORDERED.

Dated: January 26, 2022

  
Caryl E. Delano  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

Case No. 8:21-bk-04917-CED  
Chapter 11

Kurtis James Vandermolen  
dba Grace Changes Everything Ministries,

Debtor.

**ORDER DENYING DEBTOR'S MOTION FOR STAY OF ALL ORDERS  
RELATED TO THE LEWIS ZIPKIN TRUST PENDING APPEAL**

THIS CASE came before the Court without a hearing to consider Debtor's *Motion for Stay of All Orders Related to the Lewis Zipkin Trust Pending Debtor's Appeal* (the "Stay Motion").<sup>1</sup> After carefully considering the record, and for the reasons explained herein, the Court will deny the Stay Motion.

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<sup>1</sup> Doc. No. 138.

## I. BACKGROUND

Beginning in 2020, Debtor leased a residential condominium in Siesta Key, Florida (the “Condominium” and the “Lease”) from Lewis A. Zipkin, Trustee (“Landlord”). In April 2021, Debtor entered into an addendum to the Lease under which the termination date of the Lease was extended to August 20, 2024, and Debtor agreed to pay monthly rent of \$4,900 to Landlord (the “Lease Extension Agreement”).<sup>2</sup>

On September 27, 2021 (the “Petition Date”), Debtor, representing himself *pro se*, filed a Chapter 11 bankruptcy petition.<sup>3</sup> In his *Chapter 11 Case Management Summary*, Debtor described his business as “Non-Profit Ministry, Ecclesiastical in Nature & For-Profit Small Business Start-Up Marketing Consulting.”<sup>4</sup>

On October 1, 2021, the Bankruptcy Noticing Center served Debtor’s creditors with Court’s Official Form 309E1 *Notice of Chapter 11 Bankruptcy Case*, including on Landlord at its Ohio address by U.S. Mail.<sup>5</sup>

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<sup>2</sup> Doc. No. 96-2.

<sup>3</sup> Doc. No. 1. Although not directly relevant to this case, Debtor has filed nine prior bankruptcy cases: Case No. 94-82106, a Chapter 7 filed in Michigan on 05/06/1994; Case No. 95-86062, a Chapter 13 filed in Michigan on 11/21/1995; Case No. 96-87622, a Chapter 13 filed in Michigan on 10/29/1996; Case No. 04-14326, a Chapter 7 filed in Michigan on 11/19/2004; Case No. 12-34646, a Chapter 7 filed in Colorado on 12/05/2012; Case No. 15-09038, a Chapter 13 filed in Florida on 10/26/2015; Case No. 16-01094, a Chapter 13 filed in Florida on 02/22/2016; Case No. 16-03373, a Chapter 13 filed in Michigan on 06/24/2016; and Case No. 20-01818, a Chapter 11 filed in Michigan on 05/20/2020.

<sup>4</sup> Doc. No. 19.

<sup>5</sup> Doc. Nos. 8, 12.

Shortly after filing his bankruptcy case, Debtor filed motions for sanctions against three creditors seeking damages for their alleged violations of the automatic stay,<sup>6</sup> including a motion for sanctions against Landlord (the “Sanctions Motion”).<sup>7</sup> In the Sanctions Motion, Debtor alleged that Landlord willfully violated the automatic stay when, on October 8, 2021 – after Debtor filed his bankruptcy case – Landlord delivered a 3-day notice to pay or vacate the Condominium (the “3-Day Notice”).

On November 30, 2021, the Court conducted a hearing on the Sanctions Motion. Debtor, despite having been served with notice of the hearing,<sup>8</sup> did not appear. The Court denied the Sanctions Motion at the hearing, noting on the record that Debtor alleged in the Sanctions Motion that he had emailed Landlord’s agent a *Notice of Chapter 11 Bankruptcy Case* (the “Notice”) on September 23, 2021 – *four days prior* to the Petition Date.<sup>9</sup> The Notice, which Debtor attached to the Sanctions Motion, did not include a case number and erroneously stated that the bankruptcy

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<sup>6</sup> Doc. Nos. 32, 38, 39.

<sup>7</sup> Doc. No. 32.

<sup>8</sup> Doc. Nos. 34 and 37. (Debtor later informed the Court that he attempted to retain an attorney to represent him at the hearing but that the attorney was unable to connect to the Court’s Zoom hearing.)

<sup>9</sup> Doc. No. 32, pp. 5, 6. The Federal Express envelope in which Debtor’s bankruptcy petition was delivered to the Court (Doc. No. 1-1) reflects a shipping date of September 25, 2021, and a delivery date of September 27, 2021.

case was filed on September 23, 2021.<sup>10</sup> On December 8, 2021, the Court entered its order denying the Sanctions Motion (the “Sanctions Order”).<sup>11</sup>

On November 30, 2021, Debtor timely filed a motion for reconsideration of the Sanctions Order (the “Reconsideration Motion”),<sup>12</sup> and on December 13, 2021, Landlord filed a motion for relief from the automatic stay (the “Automatic Stay Motion”).<sup>13</sup> In the Automatic Stay Motion, Landlord requested relief from the automatic stay to commence a state court eviction action against Debtor on the grounds that Debtor had failed to pay rent due under the Lease Extension Agreement and had violated a number of other non-monetary terms of the Lease Extension Agreement.

On January 12, 2022, the Court conducted a hearing on the Reconsideration Motion, the Automatic Stay Motion, and other matters in Debtor’s Chapter 11 case. Debtor appeared at the hearing and fully participated in the matters before the Court.<sup>14</sup> The Court explained to Debtor that he was required to pay rent to Landlord commencing with the rent due for October 1, 2021; in response to the Court’s inquiries, Debtor stated that he could pay the rent due for October 1 and November 1,

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<sup>10</sup> Doc. No. 32, p. 6.

<sup>11</sup> Doc. No. 90.

<sup>12</sup> Doc. No. 76.

<sup>13</sup> Doc. No. 96. Landlord alleged that Debtor’s check for rent due August 21, 2021, was returned for insufficient funds and Debtor has failed to pay any rent since that time.

<sup>14</sup> Doc. No. 121.

2021, totaling \$9,800, by January 19, 2022, and that he could pay the rent due for December 1, 2021 and January 1, 2022, totaling \$9,800, by January 26, 2022.

The Court announced its rulings at the hearing. First, the Court denied the Reconsideration Motion because (a) Debtor had sent Landlord's agent the Notice of Chapter 11 Bankruptcy Case *before* he filed his bankruptcy case; (b) Landlord had taken no action on its October 8, 2021, 3-Day Notice; and (c) Debtor therefore had suffered no harm from the 3-Day Notice. Second, on the Automatic Stay Motion, the Court (a) directed Debtor to make rent payments to Landlord as agreed by Debtor at the hearing; and (b) set a trial to consider Landlord's allegations of Debtor's non-monetary defaults under the Lease and the Lease Extension Agreement.

On January 13, 2022, the Court entered two orders incorporating the rulings it had announced at the hearing: (a) an order scheduling a trial on the Automatic Stay Motion for March 11, 2022;<sup>15</sup> and (b) an order requiring Debtor to pay the postpetition rent owed to Landlord under the Lease (the "Interim Rent Order").<sup>16</sup> The Interim Rent Order did not immediately modify the automatic stay to permit Landlord to pursue its eviction remedies against Debtor, but provided that if Debtor failed to make the payments due on January 19 and January 26, 2022, Landlord could submit

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<sup>15</sup> Doc. No. 122.

<sup>16</sup> Doc. No. 123. The Court directed Landlord's attorney to serve Debtor with a copy of the Interim Rent Order by U.S. Mail and by email, and on January 14, 2021, Landlord's attorney complied with that directive (Doc. No. 129).

an order granting relief from the automatic stay. On January 21, 2022, Landlord's attorney submitted an order terminating the automatic stay because Debtor had failed to make the \$9,800 rent payment due on January 19, 2022.<sup>17</sup>

On January 20, 2022, the Court entered its order denying Debtor's Reconsideration Motion (the "Reconsideration Order").<sup>18</sup> Debtor timely filed a notice of appeal of the Reconsideration Order (the "Appeal").<sup>19</sup>

In the Stay Motion, Debtor seeks the "entry of an order staying all orders related to" Landlord pending his Appeal of the Reconsideration Order.<sup>20</sup> The Court interprets the Stay Motion as asking the Court to stay the matters relating to the Automatic Stay Motion, including the Interim Rent Order's requirement for Debtor to make rent payments to Landlord.

## **II. ANALYSIS**

To obtain a stay pending appeal, a moving party must clearly establish four requirements:

- (a) that the movant is likely to prevail on the merits of its appeal;
- (b) that the movant will suffer irreparable injury if a stay or other injunctive relief is not granted;
- (c) that other parties will suffer no substantial harm if a stay or other injunctive relief is granted; and

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<sup>17</sup> The Court has deferred entering this order until it ruled on Debtor's Stay Motion.

<sup>18</sup> Doc. No. 136.

<sup>19</sup> Doc. No. 139.

<sup>20</sup> Doc. No. 138.

(d) in circumstances where the public interest is implicated, that the issuance of a stay or other injunctive relief will serve, rather than disserve, such public interest.<sup>21</sup>

Generally, the most important of the four requirements is the moving party's likelihood of success on the merits of the appeal, and the court must ordinarily find that the appealed decision was clearly erroneous. However, if the balance of the equities identified in the other three requirements weighs heavily in favor of granting the stay, a stay pending appeal may be granted upon a lesser showing of the movant's likelihood of success on appeal.<sup>22</sup>

**A. Debtor is unlikely to succeed on the merits of the Appeal.**

The Sanctions Motion was based on Landlord's allegedly willful violation of the automatic stay and sought damages for the alleged violation under 11 U.S.C. § 362(k).<sup>23</sup> For an individual debtor to recover actual damages under § 362(k), he "must show that there was a willful violation of the automatic stay and that he or she was injured by the violation."<sup>24</sup>

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<sup>21</sup> *In re Synectic Asset Management, Inc.*, 2014 WL 6065770, at \*5 (M.D. Fla. Nov. 12, 2014) (quoting *In re F.G. Metals, Inc.*, 390 B.R. 467, 471-72 (Bankr. M.D. Fla. 2008)).

<sup>22</sup> *Id.* (quoting *In re F.G. Metals, Inc.*, 390 B.R. at 472, and *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

<sup>23</sup> Unless otherwise stated statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

<sup>24</sup> *In re Acklin*, 2018 WL 11206050, at \*2 (Bankr. M.D. Fla. June 12, 2018) (quoting *In re Zajni*, 403 B.R. 891, 895 (Bankr. M.D. Fla. 2008)).

In the Eleventh Circuit, courts apply the general definition of “willful violation” in determining whether a creditor should be sanctioned for violating the stay. A creditor’s conduct is a “willful violation” if the creditor (1) knew that the automatic stay was invoked, and (2) intended the action that violated the stay. But actions taken without notice of the bankruptcy are considered “technical” violations for which sanctions are not necessarily imposed, provided the creditor discontinues the conduct upon learning of the bankruptcy and the debtor was not injured by the violation.

Here, Debtor emailed Landlord a purported “Notice of Chapter 11 Bankruptcy Case” on September 23, 2021, in which Debtor represented that he had filed a bankruptcy case on that date. But he did not send his bankruptcy petition to the Court for filing *until two days later* (on September 25, 2021, a Saturday), and the bankruptcy case was not filed until the following Monday, September 27, 2021 — *four days after the date stated on the Notice*.

The Sanctions Motion alleged a single violation of the automatic stay: Landlord’s delivery to him of the 3-Day Notice on October 8, 2021. But Debtor’s September 23, 2021 “Notice of Chapter 11 Bankruptcy Case” contained incorrect and incomplete information, and the Court’s Official From 309E1 *Notice of Chapter 11 Bankruptcy Case* was served by the Bankruptcy Noticing Center on Landlord at its



Ohio address by U.S. Mail on October 1, 2021, and may not have been received by Landlord before the 3-Day Notice was delivered to Debtor on October 8, 2021.<sup>25</sup>

Other than delivering the 3-Day Notice, Landlord has taken no further steps to evict Debtor or to take possession of the Condominium. The circumstances in this case are similar to those in *In re Hartigan*.<sup>26</sup> There, the bankruptcy court denied the debtor's motion for sanctions because (1) the creditor's only stay violation was the filing of a state court complaint against the debtor before it had notice of the bankruptcy; (2) the creditor did not continue with any action against the debtor after the initial technical violation of the stay; and (3) the creditor did not take control of any property of the debtor by filing, but not serving, the state court complaint.<sup>27</sup>

Finally, Debtor has not alleged that he suffered any injury as a result of Landlord's technical violation of the automatic stay.

On the facts presented, the Court finds that its Sanctions Order and Reconsideration Order were not clearly erroneous and Debtor is unlikely to succeed on the merits of his Appeal.

**B. Debtor will not suffer any irreparable injury if a stay is not entered.**

In the Stay Motion, Debtor seeks the entry of a stay of "all orders related to" Landlord. Presumably, Debtor wishes the Court to stay the Interim Rent Order's

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<sup>25</sup> Doc. Nos. 8, 12.

<sup>26</sup> 2013 WL 3043455 (Bankr. S.D. Fla. June 18, 2013).

<sup>27</sup> *In re Hartigan*, 2013 WL 3043455, at \*3.

requirement for Debtor to make postpetition rent payments to Landlord, and also to stay its consideration of the relief provided to Landlord for Debtor's failure to make the required rent payments. Under the Interim Rent Order, upon Debtor's default, Landlord may submit an order permitting it "to proceed with any efforts necessary to retake possession of" the Condominium.<sup>28</sup> But the relief only permits Landlord to enforce its rights under the Lease and under state law to commence an eviction action. Debtor, who has now resided in the Condominium without paying rent for over five months—including four months since the filing of his bankruptcy case—may assert his defenses in the eviction action.

The Court finds that Debtor will not suffer any irreparable injury if the Interim Rent Order is not stayed.

**C. Landlord will suffer substantial harm if a stay is granted.**

As of the date of the Interim Rent Order, Debtor had not paid postpetition rent for the four months between October 2021 and January 2022 in the amount of \$19,600.<sup>29</sup> If the Interim Rent Order is stayed, Landlord would be unable to enforce Debtor's obligation to pay postpetition rent, and the unpaid—and likely, uncollectible—rent will continue to accrue while Debtor's Appeal is pending. The

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<sup>28</sup> Doc. No. 123, ¶ 2.

<sup>29</sup> Doc. No. 123, ¶ 1.

Court finds that Landlord will suffer substantial harm if the Interim Rent Order is stayed while Debtor's Appeal is pending.

**D. The public interest is not affected.**

The orders on Landlord's Automatic Stay Motion arise from Debtor's Lease of the Condominium from Landlord. This matter is essentially a two-party dispute that does not affect the public interest.

**III. CONCLUSION**

Because this Court's Sanctions Order and Reconsideration Order were not clearly erroneous, Debtor cannot establish the most important requirement for a stay pending appeal: that he is likely to prevail on the merits of his Appeal. In addition, Debtor cannot establish that the other three factors considered by courts in ruling on a motion for stay pending appeal—irreparable injury to the movant, substantial harm to other parties, and the public interest—weigh heavily in favor of granting a stay.

Accordingly, it is

**ORDERED** that Debtor's *Motion for Stay of All Orders Related to the Lewis Zipkin Trust Pending Debtor's Appeal* (Doc. No. 138) is **DENIED**.

Clerk's office to serve on interested parties.