

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

SALOMON MARTINEZ and
BLANCA EDITH SANCHEZ,

Case No. 6:10-bk-08380-ABB
Chapter 7

Debtors.

ORDER

This matter came before the Court on the Amended Motion for Sanctions and Attorney's Fees (Doc. No. 20) filed by the Debtors Salomon Martinez ("Mr. Martinez") and Blanca Edith Sanchez against Railroad & Industrial Federal Credit Union ("RIFCU") and Arthur Corrales ("Mr. Corrales") (collectively, "Respondents") for alleged violations of the automatic stay. An evidentiary hearing was held on July 12, 2010 at which Mr. Corrales, his counsel, and counsel for the Debtors appeared. The Debtors did not appear.

The Debtors' Amended Motion is due to be denied for the reasons set forth herein. The Court makes the following findings and conclusions after reviewing the pleadings and exhibits, hearing live testimony and argument, and being otherwise fully advised in the premises.

Background

RIFCU filed a collection action against Mr. Martinez in the Florida State Court which was pending when the Debtors filed a joint Chapter 7 bankruptcy case on May 17, 2010 ("Petition Date"). Mr. Corrales represented RIFCU in the State Court litigation.

The Debtors listed RIFCU in their creditor matrix and the Court issued a Notice of Chapter 7 Bankruptcy Case to RIFCU on May 20, 2010 by first-class mail (Doc. No. 6). The Debtors filed their Schedules on May 28, 2010 and listed RIFCU as a general unsecured creditor in Schedule F relating to two credit card accounts held by Mr. Martinez with one account having an unknown balance and the second having a balance of \$2,500.00. The Debtors did not list Mr. Corrales in their matrix or Schedules.

Debtors' counsel faxed a Suggestion of Bankruptcy to the Florida State Court and to Mr. Corrales' office on May 17, 2010. The State Court's records notate the Debtors filed for bankruptcy on May 17, 2010, but the Suggestion of Bankruptcy was not filed with the State Court until May 19, 2010.¹ It is not clear from the State Court's records when the bankruptcy information was first entered into the State Court's records.

Mr. Martinez and RIFCU were scheduled to appear in the Florida State Court for a mediation session on Wednesday, May 19, 2010--two days after the Petition Date. Mr. Martinez did not appear at the May 19th hearing. Mr. Corrales appeared at the hearing, but did not notify the State Court of the bankruptcy filing or attempt to discontinue the proceedings. The State Court entered a default against Mr. Martinez.

Mr. Corrales testified there was no bankruptcy filing notice in the State Court's file at the time of the May 19th hearing and he did not know about the bankruptcy. He testified he did not review the fax from Debtors' counsel until June 1, 2010. His testimony was credible. Mr. Corrales' office was closed from Thursday, May 20, 2010 (the day after the State Court hearing) through Tuesday, June 1, 2010 following the Memorial Day weekend.

¹ Rs' Ex. 2.

Debtors' counsel faxed a letter to Mr. Corrales on Thursday, May 28, 2010 advising him the entry of the default constituted a violation of the automatic stay and demanding he respond by Wednesday, June 2, 2010. Mr. Corrales returned to his office on Tuesday, June 1, 2010.

The parties presented conflicting testimony as to what occurred following Mr. Corrales' return to his office. Mr. Corrales reviewed the Debtors' correspondence and he and Debtors' counsel had a telephone conversation either on June 1 or June 2, 2010. Mr. Corrales prepared a Motion to Set Aside the Default and filed it with the State Court.

The State Court records reflect the Motion to Set Aside the Default was filed on June 7, 2010.² The presiding State Court Judge signed an Order setting aside the default on June 10, 2010 and the Order was entered on June 11, 2010.³

Motion for Sanctions

The Debtors seek an award of sanctions against Respondents pursuant to 11 U.S.C. Section 362(k) asserting Respondents obtained the default against Mr. Martinez in violation of the automatic stay. The Debtors assert they incurred attorney's fees and suffered emotional harm as a result of Respondents' stay violation. Debtors' counsel filed an Affidavit asserting he incurred fees of \$1,275.00 for 8.5 hours relating to this matter (Doc. No. 27). The Debtors presented no evidence relating to emotional harm.

The automatic stay of 11 U.S.C. Section 362(a) arose by operation of law on the Petition Date staying the State Court litigation. Section 362(k) of the Bankruptcy Code provides for the impositions of sanctions where a creditor willfully violates the automatic

² Rs' Ex. 3.

³ Rs' Ex. 4, 2. The State Court's docket indicates Mr. Martinez, and not Mr. Corrales, filed the Motion to Set Aside the Default. Mr. Corrales offered credible and undisputed testimony he prepared and filed the Motion.

stay. A “willful violation” of the automatic stay occurs when the creditor “(1) knew the automatic stay was invoked and (2) intended the actions which violated the stay.” Jove Eng’g, Inc. v. I.R.S. (In re Jove Eng’g, Inc.), 92 F.3d 1539, 1545 (11th Cir. 1996).

The Debtors have the burden to establish a violation of the automatic stay occurred and such violation was willful, as defined by the Eleventh Circuit. Hardy v. I.R.S. (In re Hardy), 97 F.3d 1384, 1390 (11th Cir. 1996).

Analysis

The May 19, 2010 mediation hearing was held and a default was entered while the automatic stay was in effect. These events constitute technical violations of the automatic stay, but the violations occurred without RIFCU or Mr. Corrales knowing the automatic stay was in effect.

The bankruptcy case docket reflects RIFCU did not have notice of the Debtor’s bankruptcy case until sometime after May 20, 2010, when the Court issued the Notice of Chapter 7 Bankruptcy Filing. Debtors’ counsel faxed a Suggestion of Bankruptcy to Mr. Corrales on May 17, 2010, but Mr. Corrales did not learn of the bankruptcy filing until he returned to his office on June 1, 2010. The presiding State Court Judge was not aware of the bankruptcy case when the mediation hearing was held and the default was entered. Mr. Corrales caused the default to be vacated shortly after he learned of the bankruptcy filing.

The Debtors have not established RIFCU or Mr. Corrales knew the automatic stay was invoked when the mediation hearing was held or the default was entered. Neither RIFCU nor Mr. Corrales have committed a willful violation of the automatic stay pursuant to 11 U.S.C. Section 362(k). The Debtors' Amended Motion is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtors' Amended Motion (Doc. No. 20) is hereby **DENIED**.

Dated this 12th day of August, 2010.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge