

APR 17 2009

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-08-1274-DLPa
)		
SERGIO CASTRO and TERESA)	Bk. No.	ND 08-10045-RR
CASTRO,)		
)	Adv. No.	ND 08-01007-RR
Debtors.)		
<hr/>			
TRAVIS FARNSWORTH dba)		
Judicial Revenue Service,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
SERGIO CASTRO; TERESA CASTRO,)		
)		
Appellees.)		
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Argued and Submitted on March 18, 2009
at Pasadena, California

Filed - April 17, 2009

Appeal from the United States Bankruptcy Court
for the Central District of California

Hon. Robin Riblet, Bankruptcy Judge, Presiding.

Before: DUNN, LEE² and PAPPAS, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² Hon. W. Richard Lee, U.S. Bankruptcy Judge for the Eastern District of California, sitting by designation.

1 The bankruptcy court entered judgment in favor of chapter 7
2 debtors, holding that a judgment creditor willfully violated the
3 automatic stay when he failed to return to the debtors two
4 vehicles on which he had levied prepetition. On appeal, the
5 judgment creditor asserts (1) that the debtors were not entitled
6 to the protection of the automatic stay where they had commenced
7 their case without complying with the credit counseling
8 requirements of 11 U.S.C. § 109(h),³ and where the bankruptcy
9 court had dismissed the underlying bankruptcy case on that basis;
10 and (2) that chapter 7 debtors have no standing to pursue damages
11 for an alleged violation of the automatic stay because the
12 judgment creditor had no obligation under § 542 to turn the
13 vehicles over to chapter 7 debtors. We AFFIRM the bankruptcy
14 court's finding that the judgment creditor willfully violated the
15 automatic stay, but we REVERSE the bankruptcy court's damages
16 award to the debtors as a matter of law.

17
18 **I. FACTS**

19 Appellant, Travis Farnsworth dba Judicial Revenue Service
20 ("Mr. Farnsworth"), is the assignee of a judgment in the amount
21 of \$197,103.92 entered August 17, 2006, against Appellees, Sergio
22 and Teresa Castro ("the Castros"), in the Superior Court of
23 California, County of Ventura ("State Court Judgment"). On
24 December 10, 2007, pursuant to a writ of execution, the Ventura
25

26 ³ Unless otherwise indicated, all chapter, section and
27 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-
28 1532, and to the Federal Rules of Bankruptcy Procedure, Rules
1001-9037.

1 County Sheriff's Department ("Sheriff") levied on and impounded
2 two vehicles owned by the Castros. The vehicles were scheduled
3 to be sold at a Sheriff's auction on January 11, 2008.

4 To prevent the auction sale of their vehicles, the Castros
5 filed a voluntary chapter 7 petition on January 10, 2008
6 ("Petition Date"). Prior to filing this bankruptcy case ("First
7 Case"), the Castros did not receive the credit counseling
8 briefing mandated by § 109(h).

9 On the Petition Date, the Castros' bankruptcy counsel faxed
10 a notice of the bankruptcy filing ("Bankruptcy Notice") both to
11 the Sheriff and to Mr. Farnsworth. The Bankruptcy Notice proved
12 sufficient to stop the January 11, 2008 auction sale.

13 Mr. Farnsworth admits having received the Bankruptcy Notice.

14 On January 16, 2008, the Castros' bankruptcy counsel left
15 Mr. Farnsworth a voice mail message demanding that the vehicles
16 be returned to the Castros. On January 18, 2008, the Castros
17 filed their Schedules B and C in the bankruptcy case, through
18 which they asserted a claim of exemption in the full value of the
19 vehicles. Mr. Farnsworth did not return the vehicles to the
20 Castros as requested. Instead, on January 22, 2008, he sent a
21 letter to the chapter 7 trustee ("First Case Trustee") asking for
22 direction on how to proceed with the custody of the vehicles. On
23 February 5, 2008, having had no response to this letter,
24 Mr. Farnsworth called the First Case Trustee, who advised
25 Mr. Farnsworth that he did not intend to make a decision
26 regarding the vehicles until after the § 341(a) Meeting of
27 Creditors set for February 18, 2008. Based upon this response,
28 Mr. Farnsworth did not turn over the vehicles to the First Case

1 Trustee, nor did he return the vehicles to the Castros.

2 On January 17, 2008, the Castros initiated an adversary
3 proceeding against Mr. Farnsworth, seeking damages, punitive
4 damages, and attorneys fees and costs, based upon
5 Mr. Farnsworth's refusal to release the vehicles to them, which
6 they alleged constituted a willful violation of the automatic
7 stay provided by § 362(a). Upon his receipt of the summons and
8 complaint in the adversary proceeding, Mr. Farnsworth wrote to
9 the Castros' bankruptcy counsel demanding that the complaint be
10 dismissed no later than February 6, 2008. He argued that the
11 adversary proceeding should be dismissed because (1) the Castros'
12 bankruptcy petition was "void" where it had been filed without
13 compliance with § 109(h), and (2) his obligation was to turn the
14 vehicles over not to the Castros, but to the chapter 7 trustee,
15 and the trustee, in effect, had excused such turnover pending the
16 conclusion of the § 341(a) Meeting of Creditors scheduled for
17 February 18, 2008.

18 The Castros' First Case was dismissed February 7, 2008,
19 following a hearing on the bankruptcy court's order to show
20 cause, on the basis that the Castros were not eligible to be
21 debtors pursuant to § 109(h) because they did not obtain credit
22 counseling prior to filing their bankruptcy petition. On
23 February 7, 2008, Mr. Farnsworth again wrote to the Castros'
24 bankruptcy counsel, expressing his assumption that, in light of
25 the dismissal of the underlying bankruptcy case, the adversary
26 proceeding would be dismissed, and he would not need to file an
27 answer to the complaint.

28 / / /

1 The next day, February 8, 2008, the Castros filed a new
2 chapter 7 petition ("Second Case"). Mr. Farnsworth immediately
3 wrote to the chapter 7 trustee in the Second Case ("Second Case
4 Trustee"), seeking direction with respect to the vehicles. This
5 time he phrased his request somewhat differently:

6 Pursuant to 11 USC 542(a), I am required to turn over
7 the property of the estate to you as the Trustee.
8 Please advise as to what you would like me to do with
9 this property. With your written permission, I would
prefer to release the vehicles from levy into either
your custody or into custody of the debtors as the cost
of storage is increasing.

10 In her response dated February 11, 2008, the Second Case Trustee
11 advised Mr. Farnsworth that she claimed no interest in possession
12 of the vehicles, and that she had no objection to releasing the
13 vehicles to the Castros. The vehicles were released to the
14 Castros on February 11, 2008. Ultimately, the Second Case was
15 dismissed May 21, 2008, based upon the Castros' failure to attend
16 the § 341(a) Meeting of Creditors in the Second Case.⁴

17 On February 18, 2008, Mr. Farnsworth filed a motion to
18 dismiss the complaint ("Dismissal Motion") on the grounds (1)
19 that the Castros lacked standing and capacity to prosecute the
20 action because they were ineligible to be debtors both on the
21 Petition Date and on the date the complaint was filed, (2) that
22 the petition filed January 10, 2008 did not invoke the automatic
23 stay, and (3) that any obligation he had to turn over the
24 vehicles was to the First Case Trustee, not to the Castros,
25 / / /

26
27 ⁴ The Castros failed to appear both at the initial
28 § 341(a) Meeting on March 17, 2008, and at the continued § 341(a)
Meeting on April 7, 2008.

1 pursuant to § 542(a). The Dismissal Motion was denied, and the
2 complaint proceeded to trial on September 30, 2008.

3 After receiving the evidence and hearing the parties'
4 arguments, the bankruptcy court ruled that Mr. Farnworth's
5 failure to return the vehicles to the Castros within a reasonable
6 time after the Petition Date constituted a willful violation of
7 the automatic stay. The bankruptcy court established the outside
8 date for a "reasonable time" to return the vehicles as the date
9 the Castros claimed an exemption in the full value of the
10 vehicles. As damages, the bankruptcy court awarded the Castros
11 \$750.00, which represented the approximate amount Mr. Castro paid
12 to rent a vehicle between the date the exemption claim was filed
13 with the bankruptcy court and the date the vehicles were returned
14 to the Castros, and their attorneys' fees, which the parties
15 agreed were \$5,000.00. Mr. Farnsworth timely appealed the
16 judgment entered October 15, 2008.

17 18 **II. JURISDICTION**

19 The bankruptcy court had jurisdiction under 28 U.S.C.
20 §§ 1334 and 157(b)(2)(A) and (O). We have jurisdiction under
21 28 U.S.C. § 158.

22 23 **III. ISSUES**

24 1) Whether the bankruptcy court erred when it determined
25 that Mr. Farnsworth's failure to return the vehicles to the
26 Castros in the First Case constituted a willful violation of the
27 automatic stay.

28 / / /

1 2) If we conclude the bankruptcy court did not err in that
2 determination, whether the Castros were entitled to an award of
3 damages, including attorneys' fees, for Mr. Farnsworth's willful
4 violation of the automatic stay.

5
6 **IV. STANDARDS OF REVIEW**

7 "We review de novo whether the automatic stay provision of
8 § 362(a) has been violated." Cal. Employment Dev. Dep't v. Taxel
9 (In re Del Mission Ltd.), 98 F.3d 1147, 1150 (9th Cir. 1996)
10 (citation omitted); Benz v. Dtric Ins. Co. (In re Benz), 368 B.R.
11 861, 864-65 (9th Cir. BAP 2007). De novo means review is
12 independent, with no deference given to the trial court's
13 conclusion. See First Ave. West Bldg., LLC v. James (In re
14 Onecast Media, Inc.), 439 F.3d 558, 561 (9th Cir. 2006).

15 Determining the application of § 362(k) in this appeal
16 presents a mixed question of law and fact. We review mixed
17 questions of law and fact de novo. Murray v. Bammer (In re
18 Bammer), 131 F.3d 788, 792 (9th Cir. 1997). "A mixed question of
19 law and fact occurs when the historical facts are established;
20 the rule of law is undisputed ... and the issue is whether the
21 facts satisfy the legal rule." Id.

22
23 **V. DISCUSSION**

24 A. The Filing of the First Case Invoked the Automatic Stay

25 A bankruptcy case is "commenced" "by the filing with the
26 bankruptcy court of a petition under such chapter by an entity
27 that may be a debtor under such chapter." § 301(a) (Emphasis
28 added). "Who may be a debtor" is set forth in § 109.

1 Mr. Farnsworth asserts that because the Castros did not
2 comply with the credit counseling requirements of § 109(h),
3 neither was "an entity that may be a debtor under" chapter 7,
4 i.e., neither was "eligible" to obtain an order for relief.
5 Significantly, Mr. Farnsworth does not argue that no case was
6 "commenced" by the Castros where they had not satisfied the
7 credit counseling requirements of § 109(h). This is consistent
8 with our prior determination that eligibility requirements with
9 respect to credit counseling are not jurisdictional. See Mendez
10 v. Salven (In re Mendez), 367 B.R. 109, 116-18 (9th Cir. BAP
11 2007). "The better view is that because the bankruptcy court
12 retains the authority to determine the debtor's eligibility, the
13 court must have jurisdiction over a case commenced by an
14 ineligible debtor." Id. at 116, quoting In re Parker, 351 B.R.
15 790, 796 (Bankr. N.D. Ga. 2006).

16 It is the commencement of the case, not the Castros'
17 eligibility to be debtors, that invokes the protection afforded
18 by the automatic stay. Section 541 provides that "the
19 commencement of a case under section 301 . . . creates an
20 estate." (Emphasis added). The automatic stay precludes "any
21 action to . . . exercise control over property of the estate."
22 § 362(a)(3) (Emphasis added). Our interpretation that the
23 automatic stay applies in cases commenced by ineligible debtors
24 is reinforced by the language of § 362(b)(21), through which
25 Congress excepted enforcement of liens and security interests
26 against real property from the automatic stay if the debtor is
27 ineligible under § 109(g). Congress created no such exception
28 / / /

1 with respect to debtors who are or might be ineligible under
2 § 109(h).

3
4 B. Mr. Farnsworth Violated the Automatic Stay

5 Mr. Farnsworth concedes that the vehicles were property of
6 the Castros' bankruptcy estate. As such, he asserts that the
7 First Case Trustee, not the Castros, was entitled to possession
8 of the vehicles. He further asserts that under § 542, his
9 obligation was to turn the vehicles over to the First Case
10 Trustee. The First Case Trustee advised Mr. Farnsworth he would
11 not decide whether he would administer the vehicles until after
12 the § 341(a) Meeting of Creditors. Mr. Farnsworth incorrectly
13 construed that communication as permission to retain the
14 vehicles.⁵

15 Section 362(a)(3) expressly prohibits "any act . . . to
16 exercise control over property of the estate." As early as 1991,
17 we interpreted § 362(a)(3) to proscribe the mere knowing
18 retention of estate property. See Abrams v. Sw. Leasing & Rental
19 Inc. (In re Abrams), 127 B.R. 239, 241-43 (9th Cir. BAP 1991).
20 We held in Abrams that a creditor's failure to return a
21 repossessed car to the chapter 7 debtor after receiving notice of
22

23 ⁵ Mr. Farnsworth argues on appeal that the bankruptcy
24 court erred when it refused to take judicial notice of the
25 declaration ("Declaration") of the First Case Trustee filed in
26 support of the Dismissal Motion. Mr. Farnsworth contends that
27 the Declaration demonstrates that he was cooperating with the
28 First Case Trustee with respect to the turnover of the vehicles
under § 542. We need not reach this issue because, as our
discussion below indicates, this appeal concerns a violation of
the automatic stay rather than turnover.

1 a chapter 7 petition constituted a violation of the automatic
2 stay.

3 The Ninth Circuit also has held that the knowing retention
4 of estate property violates § 362(a)(3). See Cal. Employment
5 Develop. Dept. v. Taxel (In re Del Mission Ltd.), 98 F.3d 1147,
6 1151 (9th Cir. 1996). While we acknowledge that the creditor in
7 Del Mission Ltd. violated § 362(a)(3) by refusing to turn
8 property of the estate over to the chapter 7 trustee, we view the
9 Del Mission Ltd. analysis as having broader application. The
10 fundamental underlying issue addressed in Del Mission Ltd. was
11 whether the creditor exercised control over property of the
12 estate by retaining possession of estate property. In Del
13 Mission Ltd., the Ninth Circuit clarified that to effectuate the
14 purpose of the automatic stay, "the onus to return estate
15 property is placed upon the possessor; it does not fall on the
16 debtor to pursue the possessor." Id., citing In re Abrams, 127
17 B.R. at 243. The Ninth Circuit also rejected the argument made
18 here by Mr. Farnsworth that he had no obligation to relinquish
19 possession of the vehicles until he was requested by the First
20 Case Trustee to turn them over. Del Mission Ltd., 98 F.3d at
21 1152. If Mr. Farnsworth wanted to retain possession of the
22 vehicles after receiving notice of the Castros' bankruptcy
23 filing, the burden was on him to file a motion for relief from
24 the stay.

25 Mr. Farnsworth's view that § 362(a)(3) applies in chapter 7
26 cases only where a creditor fails to turn over estate property to
27 a chapter 7 trustee as required by § 542 fails to take into
28 account either the Castros' claim of exemption in the vehicles or

1 the possibility of abandonment of the estate's interest in the
2 vehicles.

3 Mr. Farnsworth at all times had the ability to seek relief
4 from the automatic stay. Instead, he refused to acknowledge
5 either the existence of the automatic stay or the Castros' claim
6 of exemption in the vehicles. In the face of the Castros' demand
7 for return of the vehicles, he "exercised control over property
8 of the estate." The bankruptcy court correctly found that
9 Mr. Farnsworth violated the automatic stay.

10 We disagree with Mr. Farnsworth's position that the Castros
11 were required to seek "abandonment" of the vehicles pursuant to
12 § 554(b). A motion to abandon would be necessary only if the
13 Castros were not successful in asserting their claim of exemption
14 in the vehicles.

15 In contravention of both Abrams and Del Mission Ltd., the
16 effect of Mr. Farnsworth's actions in this case was to place the
17 burden on the Castros to obtain the return of property of the
18 estate in which they claimed an exemption.

19
20 C. Mr. Farnsworth's Violation of the Automatic Stay was
21 "Willful"

22 Whether Mr. Farnsworth violated the automatic stay is simply
23 a threshold question for purposes of this appeal. A further
24 material issue is whether that violation was "willful" within the
25 meaning of § 362(k)(1),⁶ which provides in relevant part:

26
27 ⁶ The protections provided by § 362(k) previously were
28 (continued...)

1 [A]n individual injured by any willful violation of a
2 stay provided by this section shall recover actual
3 damages, including costs and attorneys' fees, and, in
4 appropriate circumstances, may recover punitive
5 damages.

6 As we stated in Abrams:

7 The term "willful" for purposes of § 362[(k)] is
8 defined in this circuit as follows:

9 A "willful violation" does not require a
10 specific intent to violate the automatic
11 stay. Rather, the statute provides for
12 damages upon a finding that the defendant
13 knew of the automatic stay and that the
14 defendant's actions which violated the stay
15 were intentional. Whether the party believes
16 in good faith that it had a right to the
17 property is not relevant to whether the act
18 was "willful" or whether compensation must be
19 awarded.

20 A violation of the stay is thus willful when a creditor
21 acts intentionally with knowledge of the bankruptcy.

22 127 B.R. at 243 (internal citations omitted). "The 'willfulness
23 test' for automatic stay violations merely requires that: (1) the
24 creditor know of the automatic stay; and (2) the actions that
25 violate the stay be intentional." Ozenne v. Bendon (In re
26 Ozenne), 337 B.R. 214, 220 (9th Cir. BAP 2006), quoting In re
27 Peralta, 317 B.R. 381, 389 (9th Cir. BAP 2004). See also In re
28 Pinkstaff, 974 F.2d 113, 115 (9th Cir. 1992). We have held that
the duty to relinquish property of the estate also has a
reasonableness element. In re Abrams, 127 B.R. at 243 (creditor
must relinquish property of the estate within a reasonable time
period after notice of the bankruptcy case).

26 ⁶(...continued)
27 found at § 362(h). The section was renumbered under the
28 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, 119 Stat. 23.

1 Mr. Farnsworth knew of the bankruptcy filing, by his own
2 admission, not later than January 18, 2008. "Knowledge of the
3 bankruptcy filing is the legal equivalent of knowledge of the
4 automatic stay." In re Ozenne, 337 B.R. at 220 (citation
5 omitted). Despite his knowledge of the automatic stay,
6 Mr. Farnsworth did not relinquish his possession of the vehicles.
7 Neither did he seek relief from the stay under § 362 in an effort
8 to obtain an order authorizing his continued possession.
9 Further, Mr. Farnsworth intended to retain possession of the
10 vehicles rather than return them to the Castros, as evidenced by
11 his correspondence both to the First Case Trustee and to the
12 Castros' bankruptcy counsel. The bankruptcy court specifically
13 found that a reasonable time for Mr. Farnsworth to have returned
14 the vehicles to the Castros is measured from the date the Castros
15 filed their Schedules B and C, asserting a claim of exemption in
16 the full value of the vehicles. This finding is not disputed on
17 appeal.

18 The bankruptcy court did not err when it determined that
19 Mr. Farnsworth's violation of § 362(a) was "willful."
20

21 D. Dismissal of the First Case Did Not Mandate Dismissal of the
22 Adversary Proceeding

23 Mr. Farnsworth asserts on appeal that the Castros had no
24 standing to pursue a violation of the automatic stay, because
25 they could not, as ineligible debtors, benefit from the automatic
26 stay. We previously made clear that the mere commencement of the
27 First Case was sufficient to invoke the protections of § 362(a).

28 / / /

1 Once the stay existed, Mr. Farnsworth determined at his own risk
2 whether to observe it.

3 Mr. Farnsworth further asserts that any action to assert
4 rights involving estate property belonged to the First Case
5 Trustee pursuant to § 323, not to the Castros. As the Castros
6 point out in their brief on appeal, Mr. Farnsworth confuses
7 issues of turnover with issues as to the application of the
8 automatic stay. As we pointed out in Abrams, "the failure to
9 return property of the estate with knowledge of the bankruptcy is
10 a violation of both the automatic stay and of the turnover
11 requirements of the Bankruptcy Code." 127 B.R. at 242-43
12 (emphasis added), citing In re Carlsen, 63 B.R. 706, 711 (Bankr.
13 C.D. Cal. 1986). The appeal before us concerns the interplay
14 between the definition of property of the estate and the impact
15 of the Castros' claim of exemption in the vehicles, and
16 §§ 362(a)(3) and (k), relating to the automatic stay and
17 Mr. Farnsworth's willful violation of the stay.

18 In order to force Mr. Farnsworth to relinquish property
19 levied upon prepetition, the Castros were not required to seek a
20 determination from the bankruptcy court that they were eligible
21 for the protection of the automatic stay, that the trustee had
22 abandoned the vehicles to them, or that their claim of exemption
23 in the full value of the vehicles was valid. The Castros
24 asserted an exemption in the total value of the vehicles. Their
25 demand for return of the vehicles was sufficient pursuant to
26 § 362.

27 Dismissal of the First Case did not change the fact that
28 Mr. Farnsworth's actions took place while the automatic stay was

1 in existence. It does not render the stay violation a nullity.
2 Menk v. Lapaglia (In re Menk), 241 B.R. 896, 906 (9th Cir. BAP
3 1999). Congress provided a remedy for stay violations as a
4 method of ensuring that the automatic stay, central to the
5 operation of the Bankruptcy Code, was respected.

6
7 E. The Castros Are Not Entitled to Damages as a Matter of Law

8 The bankruptcy court correctly found that Mr. Farnsworth
9 willfully violated the automatic stay in the First Case. As
10 parties with a claimed interest in estate property, the Castros
11 had standing to pursue that violation in the adversary
12 proceeding. However, the ultimate question in this appeal is
13 whether the Castros were entitled to damages under § 362(k),
14 i.e., whether they were injured by Mr. Farnsworth's willful
15 violation of the stay. We conclude that they were not, as a
16 matter of law, for the following reasons.

17 When a chapter 7 bankruptcy petition is filed, an estate is
18 automatically created that comprises essentially all property
19 owned by the debtor. § 541. Section 522(b) allows an individual
20 debtor to exempt specific property from liquidation as part of
21 the estate. Section 522(l) provides that the method for
22 exempting property from the bankruptcy estate is filing a list of
23 property which the debtor claims is exempt. The Bankruptcy Rules
24 set forth the documents a debtor must file in connection with the
25 bankruptcy case.

26 At the time of the First Case, Interim Bankruptcy Rule 4003
27 required the Castros to "list the property claimed as exempt
28 under § 522 of the Code on the schedule of assets required to be

1 filed by Rule 1007." Interim Rule 1007(b)(1)(A) required the
2 Castros to file their schedules of assets and liabilities
3 "prepared as prescribed by the appropriate Official Form"
4 The Castros filed their Official Form 6C (Schedule C - Property
5 Claimed as Exempt) on January 18, 2008, claiming an exemption
6 under California law for the full value of the vehicles.

7 Once a claim of exemption has been asserted, "[u]nless a
8 party in interest objects, the property claimed as exempt on
9 [Official Form 6C] is exempt." § 522(l). Objections are timely
10 if filed within 30 days after the § 341(a) Meeting of Creditors
11 is concluded. See Interim Bankruptcy Rule 4003(b). If the 30-
12 day objection period mandated by Bankruptcy Rule 4003(b) runs
13 without objection, "[p]roperty claimed as exempt leaves the
14 estate and reverts in the debtor" Kretzer v. DFW Fed.
15 Credit Union (In re Kretzer), 48 B.R. 585, 588 (Bankr. D. Nev.
16 1985), even if the debtor did not have "a colorable statutory
17 basis for claiming" the exemption. Taylor v. Freeland & Kronz,
18 503 U.S. 638, 643 (1992).

19 However, when that revesting occurs is open to question. As
20 stated by this Panel in Hyman v. Plotkin (In re Hyman), 123 B.R.
21 342, 347 (9th Cir. BAP 1991):

22 [T]he 30-day period fixes the right to an exemption and
23 the statute as a whole requires that the property
24 somehow revert. The timing of the reversion, however,
25 is not apparent by the interplay of these two rules; it
is not necessarily prior to abandonment by the trustee
or immediately following the 30-day period.

26 (Emphasis in original). Because exemption rights are determined
27 as of the petition date, see Klein v. Chappell (In re Chappell),
28 373 B.R. 73, 77 (9th Cir. BAP 2007), until the property claimed

1 exempt reverts in the debtor, it is an inchoate interest of the
2 debtor in the property.

3 In the typical consumer chapter 7 case, few, if any,
4 objections are filed to claimed exemptions, and it is virtually
5 unheard of for trustees to object to debtors' statutory exemption
6 claims in automobiles. As the bankruptcy court noted, "I've been
7 doing this for over 20 years, and I can count on one hand the
8 number of times a trustee in bankruptcy has administered a
9 vehicle." Transcript of the Trial of the Adversary Proceeding,
10 at 227.

11 The First Case is not typical. It was dismissed because the
12 Castros did not obtain the prepetition credit counseling required
13 by § 109(h). Mr. Farnsworth argues that the Castros' bankruptcy
14 filings were strategic in the sense that their chapter 7
15 petitions were filed solely to invoke the automatic stay and
16 regain possession of their vehicles, and that the Castros never
17 had any intention of performing the obligations required of
18 chapter 7 debtors to obtain a discharge in bankruptcy. Some
19 support for that argument is provided by the fact that once the
20 vehicles were returned to the Castros during the Second Case, the
21 Castros allowed the Second Case to be dismissed for failure to
22 appear either at the initial § 341(a) Meeting or at the continued
23 § 341(a) Meeting.

24 Whatever the motivations behind the Castros' successive
25 bankruptcy filings, they bear the following consequences of their
26 failure to fulfill the eligibility requirements under § 109(h),
27 and thus their obligations as debtors, in the First Case:
28 Although the Castros filed their schedule of claimed exemptions

1 on January 18, 2008, the First Case was dismissed following the
2 bankruptcy court's hearing on its order to show cause regarding
3 the Castros' eligibility on February 7, 2008, prior to the time
4 the 30-day period for objections to the Castros' claimed
5 exemptions would run. Accordingly, the Castros' inchoate claim
6 of ownership of the vehicles did not ripen, i.e., the possessory
7 interest in the vehicles did not revert in the Castros, while the
8 First Case was open. In re Hyman, 123 B.R. at 347.

9 The record reflects that the Castros' assets were not
10 abandoned to them until the First Case was dismissed and closed.⁷
11 Accordingly, the estate held the only ownership interest in the
12 vehicles during the relatively short period that the First Case
13 was pending, and the trustee as the estate's representative had
14 the only possessory interest in the vehicles. In re Knaus, 889
15 F.2d at 775. Abrams does not require a different conclusion
16 because this Panel determined in Abrams that the record supported
17 a finding that a willful violation of the stay occurred but
18 remanded for a determination of damages under § 362(h), the
19 version of current § 362(k) prior to the 2005 amendments to the
20 Bankruptcy Code.⁸ 127 B.R. at 243-44.

21 _____
22 ⁷ We do not suggest that the Castros were required to
23 seek abandonment from the trustee in order for the vehicles to be
24 removed from estate property. We note only that they were not
25 foreclosed from seeking abandonment if the exemption process was
26 not sufficient for their purposes.

27 ⁸ While it remanded for a determination of damages under
28 former § 362(h), the Panel in Abrams was not called upon to, nor
did it, decide the issue raised here: whether individual debtors
were injured, and thus entitled to damages under § 362(k), for a
(continued...)

1 Section 362(k) (1) provides that "an individual injured by
2 any willful violation of the stay . . . shall recover any actual
3 damages, including costs and attorneys' fees," The
4 Castros are individuals, but they had no ownership interest
5 independent of the estate that entitled them to possession of the
6 vehicles, and thus would support an award of damages under
7 § 362(k), while the First Case was pending. Accordingly, the
8 bankruptcy court erred as a matter of law in awarding damages,
9 including attorneys' fees, to the Castros for Mr. Farnsworth's
10 violation of the stay. Had the ownership interest in the
11 vehicles revested in the Castros during the pendency of the First
12 Case, we would have reviewed the bankruptcy court's award of
13 damages for an abuse of discretion, mindful that because
14 exemptions are determined as of the petition date, so would be
15 the rights relating to property interests vested in the debtors
16 as the result of a valid claim of exemption.

17 18 **VI. CONCLUSION**

19 The bankruptcy court did not err when it determined that
20 Mr. Farnsworth's exercise of control over the vehicles after the
21 Castros filed their First Case constituted a willful violation of
22 the automatic stay. However, the bankruptcy court erred as a
23 matter of law when it awarded the Castros damages, including
24 attorneys' fees, for Mr. Farnsworth's stay violation, when the
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26 ⁸(...continued)
27 willful violation of the stay in a chapter 7 case dismissed prior
28 to the end of the objection period with respect to their claimed
exemptions in the subject property.

1 estate had the only ownership interest entitling the trustee to
2 possession of the vehicles during the limited period that the
3 First Case was pending. Accordingly, we AFFIRM the bankruptcy
4 court's finding that Mr. Farnsworth willfully violated the
5 automatic stay in the First Case, but REVERSE the bankruptcy
6 court's judgment for damages, including attorneys' fees, to the
7 Castros.

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