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NOT FOR PUBLICATION

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. AZ-10-1443-DKiMy
)
 ARTHUR LAWIDA and) Bk. No. 10-10491-GBN
 MEREDITH LAWIDA,)
) Adv. No. 10-01279-GBN
 Debtors.)
 _____)
)
 ARTHUR LAWIDA,)
)
 Appellant,)
)
 v.) **M E M O R A N D U M**¹
)
 RICHARD SEYFFER; JANE DOE)
 SEYFFER; DEROON & SEYFFER, PC;)
 DEBORAH LEWIS; PAUL RUBIN,)
)
 Appellees.)
 _____)

Argued and Submitted on July 22, 2011
at Phoenix, Arizona

Filed - August 1, 2011

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable George B. Nielsen, Jr., Bankruptcy Judge, Presiding

Appearances: Lawrence D. Hirsch of DeConcini McDonald Yetwin & Lacey, P.C. for Appellant; Victoria Orze of Hinshaw & Culbertson LLP for Appellees

Before: DUNN, KIRSCHER and MYERS,² 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 The Hon. Terry L. Myers, Chief Bankruptcy Judge for the District of Idaho, sitting by designation.

1 The debtor, Arthur Lawida, appeals the bankruptcy court's
2 decision dismissing his complaint against Richard Seyffer and
3 Deborah Lewis for an alleged willful violation of the automatic
4 stay.³ We VACATE and REMAND.

5 **FACTS**

6 Eleven years before the debtor's bankruptcy filing, the
7 debtor and Lewis divorced. The divorce decree incorporated a
8 separation and property settlement agreement, which included
9 provisions for child support.

10 The debtor and Lewis later entered into a stipulation that
11 created a judgment in Lewis's favor for \$175,000 in child support
12 arrears. The debtor sought to modify the child support payments
13 in state court ("child support modification petition"). The
14 state court denied the debtor's request to modify the child
15 support payments and awarded Lewis attorney's fees and costs.
16 Seyffer represented Lewis in the state court proceeding on the
17 debtor's child support modification petition.

18 The debtor filed his chapter 7 petition on April 12, 2010.⁴
19 He scheduled Lewis as a creditor with two priority claims: a
20 \$175,000 claim based on the domestic support obligation ("child
21 support claim") and a \$4,869.50 claim based on attorney's fees
22

23 ³ Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
25 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.
26 The Federal Rules of Civil Procedure are referred to as "Civil
Rules."

27 ⁴ The debtor and his wife, Meredith Lawida, jointly filed
28 the chapter 7 petition. Only the debtor filed the complaint
against Seyffer and Lewis.

1 ("attorney's fee claim").⁵ The debtor included Seyffer as a
2 creditor on the attorney's fee claim.

3 Twenty-five days later, Seyffer filed on Lewis's behalf a
4 petition for an order to show cause ("OSC petition") in state
5 court, requesting that the debtor be held in contempt for
6 refusing to pay child support pursuant to state court orders and
7 that "all sanctions, including incarceration," be imposed against
8 him. Lewis also sought judgment against the debtor for all child
9 support arrears. She further sought attorney's fees and costs
10 connected with the OSC petition. The OSC petition did not
11 mention the debtor's bankruptcy filing or whether it sought
12 recovery from non-estate assets. The state court set a hearing
13 for August 12, 2010, on the contempt portion of the OSC petition
14 ("state court hearing").

15 Lewis served the OSC petition on the debtor at the § 341(a)
16 meeting on May 17, 2010. The debtor subsequently sent Seyffer
17 and Lewis a letter, dated June 15, 2010, advising them of the
18 debtor's bankruptcy filing. He further advised Seyffer and Lewis
19 that they had willfully violated the automatic stay by (1) filing
20 the OSC petition, (2) serving the OSC petition on the debtor at
21 the § 341(a) meeting, and (3) failing to cancel the state court
22 hearing. The debtor informed Seyffer and Lewis that he intended
23 to seek damages for their violation of the automatic stay.

25
26 ⁵ We obtained a copy of the debtor's schedules from the
27 bankruptcy court's electronic docket. See O'Rourke v. Seaboard
28 Surety Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th
Cir. 1988); Atwood v. Chase Manhattan Mortg. Co. (In re Atwood),
293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 Seyffer and Lewis withdrew the OSC petition on June 16, 2010.
2 Appellee's Response Brief at 2.

3 On July 12, 2010, the debtor filed a complaint against
4 Seyffer and Lewis for willful violation of the automatic stay,
5 seeking actual and punitive damages.⁶ The debtor acknowledged
6 that § 362(b)(2)(A) and (B) excepted from the automatic stay the
7 commencement or continuation of civil actions or proceedings to
8 establish or modify an order for a domestic support obligation
9 and the collection of a domestic support obligation from non-
10 estate property. He contended, however, that the OSC petition
11 did not fall within either of these exceptions because it only
12 sought to incarcerate the debtor for non-payment of child
13 support. The debtor pointed out that the OSC petition did not
14 indicate whether it sought recovery from non-estate assets. He
15 argued that the OSC petition violated the automatic stay by
16 seeking his incarceration, instead of only seeking recovery from
17 non-estate assets.

18 The debtor received his chapter 7 discharge in the main
19 bankruptcy case on July 26, 2010. The chapter 7 trustee filed a
20 no asset report approximately a month later.

21 Seyffer and Lewis meanwhile moved to dismiss the complaint
22
23
24

25 ⁶ The debtor filed the complaint against Seyffer, his wife,
26 his law firm, Deroon & Seyffer, PC, Lewis, and her husband.
27 Victoria Orze represented both Seyffer and Lewis in the adversary
28 proceeding. She also represents them in the instant appeal. We
hereafter refer to Ms. Orze as counsel for Seyffer for the sake
of convenience.

1 under Civil Rule 12(b)(6) ("motion to dismiss"),⁷ contending that
2 they did not violate the automatic stay in filing and serving the
3 OSC petition, as the OSC petition fell within the exceptions of
4 § 362(b)(2)(A) and (B). They argued that the OSC petition
5 constituted a civil proceeding to establish an unpaid child
6 support obligation under § 362(b)(2)(A). Seyffer and Lewis also
7 claimed that the OSC petition was excepted from the automatic
8 stay under § 362(a)(2)(B) because it did not seek collection from
9 estate assets, as the debtor had no nonexempt assets. They
10 further contended that the OSC petition did not violate the
11 automatic stay because it simply used the state's civil contempt
12 power, in the form of the threat of incarceration, to enforce the
13 debtor's child support obligations.

14 The debtor opposed the motion to dismiss, arguing that
15 Seyffer and Lewis were not seeking to collect from non-estate
16 assets but were commencing "a new civil action designed to seek a
17 new order of civil contempt." He claimed that the commencement
18 of such a civil action required Seyffer and Lewis to obtain
19 relief from the automatic stay. The debtor contended that
20 Seyffer and Lewis failed to do so, thereby violating the
21 automatic stay. He further argued that Seyffer and Lewis could
22 not seek collection of child support at the time they filed the
23 OSC petition because all of the debtor's assets still were
24 property of the estate, as no assets had been fully exempted yet.

25 The bankruptcy court held a hearing on the motion to dismiss
26 on November 1, 2010. At the hearing, counsel for the debtor

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28 ⁷ Civil Rule 12(b)(6) is applicable through Rule 7012(b).

1 acknowledged that, had the OSC petition simply sought to collect
2 on the child support obligation through a wage garnishment, it
3 would have been excepted from the automatic stay under
4 § 362(b)(2)(C). He stressed that the OSC petition instead sought
5 to enforce payment of child support and to incarcerate the
6 debtor. Even under the 2005 amendments to § 362(b), he argued,
7 Seyffer and Lewis could not commence a state court action seeking
8 sanctions against the debtor and enforcement of his child support
9 obligation without first obtaining relief from the automatic
10 stay.

11 Counsel for Seyffer contended that the debtor mis-
12 characterized the OSC petition. She argued that the OSC petition
13 "was not a petition for incarceration," but a request for "a
14 judgment for the [child support] arrearages and for our
15 attorney's fees, and for all other sanctions that the [state
16 court] can give us, including incarceration." Tr. of November 1,
17 2010 hr'g, 16:18, 16:22-25. The request for incarceration in the
18 OSC petition, she continued, was "a remedy . . . it's designed to
19 get the payor to comply with the order in the first place." Tr.
20 of November 1, 2010 hr'g, 26:16-18.

21 Counsel for Seyffer claimed that the intent of the OSC
22 petition "was not to target, and the [OSC] petition does not
23 target in any way bankruptcy estate assets." Tr. of November 1,
24 2010 hr'g, 19:14-15. She conceded, however, that the OSC
25 petition did not specifically exclude estate assets from its
26 request for judgment on child support arrears. Tr. of
27 November 1, 2010 hr'g, 19:17-19. Counsel for Seyffer contended,
28 however, that nothing in the Bankruptcy Code or in the relevant

1 case law required the OSC petition to state that the debtor was
2 in bankruptcy and that it only sought to collect from non-estate
3 assets.

4 Counsel for Seyffer further argued that, even under the 2005
5 amendments to § 362(b), Lewis could seek to collect from
6 bankruptcy estate assets to satisfy domestic support obligations.

7 After hearing argument from counsel, the bankruptcy court
8 orally issued its ruling, granting the motion to dismiss with
9 prejudice. The bankruptcy court determined that the debtor
10 failed to state a claim on which relief could be granted because
11 the OSC petition did not violate the automatic stay as it fell
12 within the exceptions under § 362(b)(2)(B) and (C).

13 The bankruptcy court emphasized that one of the goals of the
14 2005 amendments to the Bankruptcy Code was "to give better
15 support for . . . the collection of domestic support
16 obligations." Tr. of November 1, 2010 hr'g, 29:9-11. It noted
17 that neither the debtor nor Seyffer and Lewis disputed that "the
18 debt being collected [from the debtor] is a [domestic support
19 obligation] itself." Tr. of November 1, 2010 hr'g, 30:1-2.

20 The bankruptcy court construed the OSC petition to be "an
21 action collecting on a domestic support obligation" within the
22 meaning of § 362(b)(2)(B). Tr. of November 1, 2010 hr'g, 33:13-
23 14. It found that the "mere filing of a petition to collect a
24 [domestic support obligation did] not violate the automatic
25 stay." Tr. of November 1, 2010 hr'g, 32:14-15. The bankruptcy
26 court further determined that § 362(b)(2)(B) did not require that
27 the OSC petition indicate that it sought to collect on child
28 support obligations from non-estate assets.

1 §§ 1334 and 157(b)(2)(O). We have jurisdiction under 28 U.S.C.
2 § 158.

3 **ISSUES**

4 (1) Did the bankruptcy court err in granting the motion to
5 dismiss?

6 (2) Did the bankruptcy court err in finding that Seyffer and
7 Lewis did not violate the automatic stay?

8 **STANDARDS OF REVIEW**

9 We review de novo the bankruptcy court's grant of a Civil
10 Rule 12(b)(6) motion to dismiss. Movsesian v. Victoria
11 Versicherung AG, 629 F.3d 901, 905 (9th Cir. 2010). De novo
12 means we look at the matter anew, as if it had not been heard
13 before, and as if no decision had been rendered previously,
14 giving no deference to the bankruptcy court's determinations.
15 Freeman v. DirecTV, Inc., 457 F.3d 1001, 1004 (9th Cir. 2006).

16 "When ruling on a motion to dismiss, we accept all factual
17 allegations in the complaint as true and construe the pleadings
18 in the light most favorable to the nonmoving party." Movsesian,
19 629 F.3d at 905 (quoting Knievel v. ESPN, 393 F.3d 1068, 1072
20 (9th Cir. 2005)(quotation marks omitted)). To survive a motion
21 to dismiss, the complaint must state sufficient facts to state a
22 claim for relief that is plausible on its face. Ashcroft v.
23 Iqbal, 129 S.Ct. 1937, 1949 (2009)(quoting Bell Atlantic Corp. v.
24 Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial
25 plausibility when the pleaded factual content allows the court to
26 draw the reasonable inference that the defendant is liable for
27 the misconduct alleged." Iqbal, 129 S.Ct. at 1949 (citation
28 omitted). The "plausibility standard . . . asks for more than

1 the sheer possibility that a defendant acted unlawfully." Id.

2 We review de novo issues involving whether the automatic
3 stay has been violated. Sternberg v. Johnston, 595 F.3d 937, 943
4 (9th Cir. 2010). "Whether a party has willfully violated the
5 automatic stay is a question of fact reviewed for clear error."
6 Id.

7 We may affirm on any ground supported by the record. Shanks
8 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

9 DISCUSSION

10 When a debtor files a bankruptcy petition, all collection
11 and enforcement activities against the debtor, her property and
12 property of the estate are stayed immediately. See § 362(a).
13 The automatic stay "freezes" the status quo by barring and
14 nullifying postpetition actions in nonbankruptcy fora against the
15 debtor or property of the estate. Hillis Motors, Inc. v. Hawaii
16 Auto. Dealers' Ass'n, 997 F.2d 581, 585 (9th Cir. 1993).

17 The automatic stay provides broad protection. Id. It
18 generally ensures that all claims against the debtor will be
19 considered in a single forum (i.e., the bankruptcy court). Id.
20 The automatic stay protects the debtor by giving her a breathing
21 spell from her creditors so she can put her finances back in
22 order. Id. It "also protects creditors as a class from the
23 possibility that one creditor will obtain payment on its claim to
24 the detriment of all others." Id.

25 However, certain types of actions are excepted from the
26 automatic stay. See § 362(b). See also Sherman v. SEC (In re
27 Sherman), 491 F.3d 948, 971 (9th Cir. 2007). Section 362(b)
28 lists these exceptions. The Bankruptcy Abuse Prevention and

1 Consumer Protection Act of 2005 ("BAPCPA") modified certain
2 exceptions and added new exceptions permitting the continuation
3 or commencement of certain proceedings related to the enforcement
4 of a domestic support obligation. 3 Collier on Bankruptcy
5 ¶ 362.05[2] (Alan N. Resnick and Henry J. Sommer, eds., 16th ed.
6 2011)("Collier on Bankruptcy"). See also In re Gellington,
7 363 B.R. 497, 501 (Bankr. N.D. Texas 2007); In re Lasley, 2010 WL
8 817232 at *3 (Bankr. D. Mont. 2010).

9 The bankruptcy court considered § 362(b)(2)(B), which was
10 modified slightly,⁸ and (b)(2)(C), which was added under BAPCPA.⁹

11
12 ⁸ Prior to BAPCPA, § 362(b)(2)(B) read:

13 The filing of a petition under section 301, 302, or
14 303 of this title, or of an application under section
15 5(a)(3) of the Securities Investor Protection Act of
16 1970, does not operate as a stay . . . of the
17 collection of alimony, maintenance, or support from
18 property that is not property of the estate.

19 (Emphasis added.)

20 Section 362(b)(2)(B) now reads:

21 The filing of a petition under section 301, 302, or 303
22 of this title, or of an application under section
23 5(a)(3) of the Securities Investor Protection Act of
24 1970, does not operate as a stay . . . of the
25 collection of a domestic support obligation from
26 property that is not property of the estate.

27 (Emphasis added.)

28 BAPCPA also added the definition of "domestic support
obligation" to § 101. Section 101(14A) defines, in relevant
part, a "domestic support obligation" as

(continued...)

1 It dismissed the debtor's complaint on the grounds that the
2 complaint failed to state a claim that Seyffer and Lewis violated
3 the automatic stay because the OSC petition fell within these two
4 exceptions. Based on our reading of the OSC petition and the two

5 _____
6 ⁸(...continued)

7 a debt that accrues before, on, or after the date of
8 the order for relief in a case under this title,
9 including interest that accrues on that debt as
10 provided under applicable nonbankruptcy law
11 notwithstanding any other provision of this title, that
12 is -

13 (A) owed to or recoverable by -

- 14 (I) a spouse, former spouse, or child of the
15 debtor or such child's parent, legal
16 guardian, or responsible relative; or
17 (ii) a governmental unit;

18 (B) in the nature of alimony, maintenance, or
19 support (including assistance provided by a
20 governmental unit) of such spouse, former spouse,
21 or child of the debtor or such child's parent,
22 without regard to whether such debt is expressly
23 so designated;

24 (C) established or subject to establishment
25 before, on, or after the date of the order for
26 relief in a case under this title, by reason of
27 applicable provisions of -

- 28 (I) a separation agreement, divorce decree,
or property settlement agreement;
(ii) an order of a court of record

⁹ Section 362(b)(2)(C) did not exist prior to BAPCPA.
Section 362(b)(2)(C) provides:

The filing of a petition under section 301, 302, or 303
of this title, or of an application under section
5(a)(3) of the Securities Investor Protection Act of
1970, does not operate as a stay . . . with respect to
the withholding of income that is property of the
estate or property of the debtor for payment of a
domestic support obligation under a judicial or
administrative order or a statute

1 exceptions, we determine that the bankruptcy court erred in
2 dismissing the complaint under Civil Rule 12(b)(6), as the OSC
3 petition by the breadth of its terms did not fall clearly or
4 completely within either exception.

5 (A) Section 362(b)(2)(B)

6 The bankruptcy court mainly focused its analysis on
7 § 362(b)(2)(C). With respect to § 362(b)(2)(B), it simply
8 concluded that the OSC petition was "an action collecting on a
9 domestic support obligation" from non-estate assets. It found
10 that the "mere filing of a petition to collect a [domestic
11 support obligation]" did not violate the automatic stay. The
12 bankruptcy court further determined that § 362(b)(2)(B) did not
13 require the OSC petition to state that it sought to collect from
14 non-estate property.

15 The automatic stay is broad, and the exceptions to it should
16 be interpreted narrowly. Hillis Motors, Inc., 997 F.2d at 590.
17 The "precise wording of the [automatic] stay and its exceptions
18 should be emphasized." Id. (quoting Stringer v. Huet (In re
19 Stringer), 847 F.2d 549, 552 n.5 (9th Cir. 1988)). See also
20 Hartford Underwriters Ins. Co. v. Union Planters Bank, 530 U.S.
21 1, 6 (2000)(stating that "Congress says in a statute what it
22 means and means in a statute what it says there," so when a
23 statute's language is plain, courts must enforce it according to
24 its terms, as long as such reading does not render it absurd).

25 Section 362(b)(2)(B) expressly states that only actions
26 seeking collection of a domestic support obligation from non-
27 estate assets are excepted from the automatic stay. The
28 bankruptcy court here assumed that the OSC petition was a

1 collection action for child support from non-estate assets. We
2 do not make this same assumption, however, based on our plain
3 reading of the OSC petition.

4 The OSC petition sought sanctions against the debtor, a
5 judgment for child support arrears, and attorney's fees and costs
6 connected with the OSC petition. Plainly reading the OSC
7 petition, it was not calling for or seeking to receive payment of
8 child support only; rather, it sought a determination of child
9 support arrears and an award of attorney's fees and costs. In
10 fact, at the hearing, counsel for Seyffer stated that "there were
11 [child support] arrearages that had not been addressed by a
12 judgment" and that the OSC petition sought to "reduce[] those to
13 a judgment."¹⁰ Tr. of November 1, 2010 hr'g, 25:23-25, 26:1.

14 The OSC petition also sought sanctions (in the form of
15 contempt and incarceration), which are measures to discipline
16 recalcitrant parties or to compel them to comply with court
17 orders. See Black's Law Dictionary 1458 (9th ed. 2009)(defining
18 sanction as a "penalty or coercive measure that results from
19 failure to comply with law, rule or order"). See, e.g., Lasar v.
20 Ford Motor Co., 399 F.3d 1101, 1110 (9th Cir. 2005)(explaining
21 that civil contempt is punishment that is "intended to be
22 remedial by coercing [the party] to do what he had refused to
23 do.").

24 The bankruptcy court relied on its conclusion that
25

26 ¹⁰ At the hearing, counsel for Seyffer explained that the
27 OSC petition also sought an order from the state court requiring
28 the debtor to "pay [his] child support current obligation
. . . ." Tr. of November 1, 2010 hr'g, 26:11-12.

1 § 362(b)(2)(B) did not expressly require actions or proceedings
2 to indicate that they sought collection from non-estate assets.
3 However, there is no way of knowing, from a plain reading of the
4 OSC petition, whether it sought collection from non-estate assets
5 only. Although counsel for Seyffer at the hearing asserted that
6 the OSC petition neither intended to nor did target estate
7 assets, we cannot divine this intent from its language.

8 Based on our plain reading of the OSC petition, we conclude
9 that the OSC petition did not fall completely within the
10 exception under § 362(b)(2)(B).

11 (B) Section 362(b)(2)(C)

12 The bankruptcy court also found that the OSC petition was
13 excepted from the automatic stay under § 362(b)(2)(C). It
14 construed the request for sanctions in the OSC petition as an
15 attempt to enforce the child support obligation through a
16 withholding of income from the debtor or the bankruptcy estate.
17 The OSC petition by its terms is not so limited.

18 Section 362(b)(2)(C) excepts from the automatic stay
19 judicial or administrative orders withholding domestic support
20 obligation payments from income of the debtor or bankruptcy
21 estate property. Gellington, 363 B.R. at 501. The OSC petition
22 was not an income withholding order; rather, it was an action
23 requesting: (1) a judgment on child support arrears;
24 (2) sanctions against the debtor for non-payment of child
25 support; and (3) an award of attorney's fees and costs arising
26 from the OSC petition. According to counsel for Seyffer, the OSC
27 petition sought a judgment "for any [child support] arrearages
28 that hadn't been reduced to a judgment, plus interest thereon, to

1 reduce the interest to a judgment as required, and attorney's
2 fees for proceeding to have to get that judgment, and then an
3 order from the [state court] that said, [the debtor] must pay
4 toward this." Tr. of November 1, 2010 hr'g, 26:7-11.

5 The OSC petition moreover did not seek a wage garnishment.
6 Counsel for Seyffer acknowledged at the hearing that Lewis "could
7 have gotten, through the [OSC petition] process, a continuing
8 lien on wages." Tr. of November 1, 2010 hr'g, 26:24-25, 27:1.
9 She explained, however, that such a request was unnecessary, as a
10 wage assignment was "automatic if the [debtor] is employed."¹¹
11 Tr. of November 1, 2010 hr'g, 27:9-10. She further elaborated,
12 "So the fact that the [OSC] petition doesn't specifically say, we
13 want a wage assignment against [the debtor's] wages doesn't mean
14 that that's not something they would have gotten anyway because
15 you don't have to file a petition for OSC to get a wage
16 assignment." Tr. of November 1, 2010 hr'g, 27:10-14.

17 Based on our reading of the OSC petition, as well as
18 statements made by counsel for Seyffer at the hearing, we
19 conclude that the OSC petition did not constitute only a request
20 for an income withholding order within the meaning of
21 § 362(b)(2)(C).

22 (C) Willful violation of the automatic stay

23 A debtor may request and obtain sanctions against a creditor
24

25 ¹¹ Counsel for Seyffer later clarified her understanding of
26 the wage garnishment process. She explained that an ex-spouse
27 must make a formal request for a wage assignment, though the ex-
28 spouse does not need a hearing on her request. The ex-spouse
simply submits a form request to the state court, which
automatically sends it to the debtor's employer.

1 if it willfully violated the automatic stay. See § 362(k). A
2 creditor willfully violates the automatic stay if it knew of the
3 automatic stay and intentionally acted in violation of the
4 automatic stay. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210,
5 1215 (9th Cir. 2002)(analyzing automatic stay violation under
6 former § 362(h)).

7 The debtor here urges us to determine whether Seyffer and
8 Lewis willfully violated the automatic stay in filing and serving
9 the OSC petition. The bankruptcy court did not make any such
10 determination. It instead determined that the OSC petition was
11 excepted from the automatic stay under § 362(b)(2)(B) and (C).
12 We thus remand this issue to the bankruptcy court so that it can
13 determine whether the filing and serving of the OSC petition
14 constituted a willful violation of the automatic stay, and if so,
15 whether the debtor suffered any compensable damages.¹²

16 CONCLUSION

17 The bankruptcy court erred in dismissing the debtor's
18 complaint under Civil Rule 12(b)(6). The OSC petition was not
19 clearly excepted from the automatic stay, based on its language
20 read in light of § 362(b)(2)(B) and (C). The debtor's complaint
21 stated sufficient facts plausibly to claim that Seyffer and Lewis
22 willfully violated the automatic stay. We thus VACATE the
23 bankruptcy court's dismissal of the debtor's complaint. We

24
25 ¹² Based on the record before us, it is possible to conclude
26 that Seyffer and Lewis may have violated the automatic stay in
27 filing and serving the OSC. The debtor may not be able to show
28 he suffered any damages, however, as Seyffer and Lewis
immediately withdrew the OSC petition upon the debtor's request,
prior to his filing his adversary complaint.

1 REMAND the matter to the bankruptcy court for a determination as
2 to whether Seyffer and Lewis willfully violated the automatic
3 stay, and if so, whether the debtor suffered any compensable
4 damages.

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