

DEC 07 2015

SUSAN M. SPRAUL, CLERK
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NOT FOR PUBLICATION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-15-1008-KuFKi
)
 LAVESTA M. LOCKLIN,) Bk. No. 13-24951
)
 Debtor.)
)
)
 RELIANCE STEEL & ALUMINUM CO.;)
 STEPHEN G. OPPERWALL,)
)
 Appellants,)
)
 v.) **MEMORANDUM***
)
 LAVESTA M. LOCKLIN,)
)
 Appellee.)
)

Argued and Submitted on October 22, 2015
at Los Angeles, California

Filed - December 7, 2015

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

Honorable Mark D. Houle, Bankruptcy Judge, Presiding

Appearances: Robert P. Goe of Goe & Forsythe, LLP argued for
appellee LaVesta M. Locklin.**

Before: KURTZ, FARIS and KIRSCHER, Bankruptcy Judges.

*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 8024-1.

**Counsel for appellants Reliance Steel & Aluminum Co. and
Stephen G. Opperwall did not appear for oral argument, so
appellants' position was deemed submitted on their appeal briefs
and on the appellate record.

1 **INTRODUCTION**

2 Reliance Steel & Aluminum Co. and its counsel Stephen
3 Opperwall appeal from the bankruptcy court's order pursuant to
4 11 U.S.C. § 362(k)¹ determining that they willfully violated the
5 automatic stay and awarding against them actual damages of \$7,033
6 and punitive damages of \$2,500.

7 Reliance and Opperwall assert that, when they sent letters
8 to the debtor's real estate broker referencing the pending court-
9 approved sale of the debtor's residence and notifying the broker
10 that Reliance held certain judgment liens, they were not trying
11 to interfere with the sale or to control property of Locklin's
12 bankruptcy estate. The bankruptcy found Reliance's and
13 Opperwall's assertions disingenuous, and the record supports that
14 finding.

15 Reliance and Opperwall further assert that the bankruptcy
16 court should not have awarded the debtor any of her attorney's
17 fees as actual damages given that there was no evidence of any
18 injury (other than the fees) resulting from their conduct.
19 Reliance's and Opperwall's assertion regarding the fee award is
20 inconsistent with the plain language of § 362(k) and with binding
21 Ninth Circuit authority.

22 Accordingly, we AFFIRM the bankruptcy court's stay violation
23 order.

24
25
26

¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure.

1 **FACTS**

2 For many years, LaVesta Locklin's husband Bill operated
3 Nightscaping, Inc. and Loran, Inc., which were in the business of
4 designing, manufacturing and selling landscape lighting products.
5 Bill was the sole owner of Nightscaping and Loran until his death
6 in December 2007, at which point Locklin became the sole owner.
7 Thereafter, the businesses took a serious turn for the worse.
8 Notwithstanding Locklin's attempts to right the businesses by
9 investing significant amounts of capital and by hiring a
10 professional senior management team, her efforts did not save the
11 businesses, which ceased operations in September 2013.

12 Reliance's relationship with Nightscaping and Loran dates
13 back to at least 2006. At that time, Reliance agreed to sell to
14 Nightscaping and Loran, on credit, materials the businesses
15 needed for their manufacturing processes. Nightscaping's and
16 Loran's business records reflect that, between 2006 and 2012,
17 they fully paid 94 of 95 Reliance invoices. According to those
18 records, Reliance's last invoice in the approximate amount of
19 \$9,500 was only partially paid. The unpaid balance of roughly
20 \$8,000 has spawned a great deal of expensive litigation between
21 the parties.

22 In September 2013, one week after Locklin commenced her
23 personal chapter 11 case, Reliance sued Nightscaping, Loran and
24 Locklin in the Los Angeles County Superior Court. Locklin
25 presumably did not list Reliance as one of her creditors because,
26 in her view, Reliance was a trade creditor of the businesses and
27 was not one of her personal creditors. Reliance saw it
28 differently. Reliance's state court complaint alleged that

1 Locklin was liable to Reliance as Nightscaping's and Loran's
2 alter ego. Reliance learned of Locklin's bankruptcy case by no
3 later than the beginning of February 2014, when it filed a proof
4 of claim in Locklin's bankruptcy case. Eventually, in March
5 2014, Reliance dismissed Locklin from the state court lawsuit,
6 without prejudice. But Reliance obtained a default judgment
7 against Nightscaping and Loran on July 30, 2014.

8 After hotly contested claim litigation spanning several
9 months, the bankruptcy court disallowed Reliance's claim against
10 Locklin because Reliance never substantiated its alter ego
11 allegations against Locklin.²

12 In July 2014, shortly before the bankruptcy court's claim
13 disallowance ruling, the bankruptcy court granted Locklin's
14 motion to sell her personal residence on Walnut Street in
15 Redlands, California. Copies of both the notice of the sale
16 motion and the sale order were served on Opperwall. In relevant
17 part, these documents identified Blesch & Associates Real Estate
18 as Locklin's real estate broker and provided for Locklin's
19 bankruptcy counsel, after sale closing, to hold the net sale
20 proceeds pending further order of court.

21 On August 29, 2014, the same day the bankruptcy court
22 entered its claim disallowance order, Opperwall served by mail on
23

24 ²The bankruptcy court's claim disallowance order is the
25 subject of a separate appeal (BAP No.CC-14-1446). In that
26 appeal, we are vacating the claim disallowance order and
27 remanding for further proceedings. Even so, in and around
28 September 2014, at the time Reliance and Opperwall engaged in the
conduct that led to the stay violation proceedings, the
bankruptcy court had just disallowed Reliance's proof of claim
against Locklin.

1 Jane Blesch of Blesch & Associates a two-page Notice of Judgment
2 lien. The first page of the Notice of Judgment Lien identified
3 Nightscaping as the judgment debtor, and the second page
4 identified Loran as an additional judgment debtor. The Notice of
5 Judgment lien did not identify Locklin as a judgment debtor, but
6 the proof of service attached to the Notice of Judgment lien
7 contained the following information at the very top of the page:

8 PROOF OF SERVICE BY MAIL
9 **(Reliance Steel & Aluminum Co. dba MetalCenter v.**
10 **Nightscaping, Inc.; Loran, Inc.; LaVesta Locklin)**
11 (Los Angeles County Superior Court Case Number 13K12928)

12 Notice of Judgment Lien (Aug. 29, 2014) (emphasis in original).

13 When Opperwall served the Notice of Judgment Lien on Blesch,
14 he did not explain why he had served it on her or what
15 information, right or demand he was attempting to communicate to
16 Blesch. Apparently not satisfied that he had fully conveyed
17 whatever he was attempting to convey to Blesch, on September 9,
18 2014, Opperwall emailed to Jerritt Watts of Blesch & Associates a
19 cover letter and several enclosures related to Reliance's state
20 court litigation against Nightscaping, Loran and Locklin.³ In
21 the cover letter, the first thing Opperwall told Watts was: "I
22 represent Reliance Steel & Aluminum Co. in the above referenced
23 case against Defendants Nightscaping, Inc.; Loran, Inc.; LaVesta
24 Locklin; and DOES 1-50." Letter (Sept. 9, 2014). Notably, by
25 using the present tense and by including Locklin in his list of
26 defendants, Opperwall effectively advised Watts that his

27 ³In addition to emailing the letter and enclosures to Watts,
28 Opperwall also mailed the letter and enclosures.

1 representation of Reliance against Locklin in the state court
2 litigation was ongoing.

3 Opperwall did not advise Watts that Reliance had dismissed
4 Locklin from the state court litigation in March 2014. Nor did
5 Opperwall identify the specific purpose or relevance of his cover
6 letter and the enclosures; however, immediately after identifying
7 himself as counsel for Reliance, Opperwall stated in the cover
8 letter: "I am informed that you have an escrow open for the sale
9 of real property regarding the bankruptcy of Lavesta Locklin."
10 The four documents Opperwall enclosed with the cover letter were
11 copies of the following: (1) Reliance's complaint against
12 Nightscaping, Loran and Locklin; (2) Reliance's Abstract of
13 Judgment against Nightscaping and Loran; (3) Reliance's Default
14 Judgment against Nightscaping and Loran; and (4) Reliance's
15 Notice of Judgment lien against Nightscaping and Loran.

16 Roughly two weeks after Opperwall corresponded with Watts,
17 Locklin filed her motion seeking a determination that Reliance
18 and Opperwall had willfully violated the automatic stay. In the
19 motion, Locklin requested an injunction prohibiting Opperwall
20 from all further attempts to collect upon Reliance's disallowed
21 claim against Locklin and her property. Locklin further reserved
22 the right to prove up her entitlement to recover actual damages
23 and punitive damages under § 362(k). At the time Locklin filed
24 her stay violation motion, the sale of Locklin's residence was
25 still pending. At some point thereafter, the sale fell through,
26 and the escrow was cancelled.

27 In opposition to the motion, Reliance and Opperwall denied
28 that they had violated the automatic stay (willfully or

1 otherwise) by sending the letters. They contended that they had
2 not been attempting to assert a claim or interest against
3 property of the estate or to interfere with the sale of estate
4 property. According to Opperwall's supporting declaration, he
5 had sent the letters to Blesch and Watts just in case it turned
6 out that Nightscaping or Loran held some right to a portion of
7 the proceeds from the sale of Locklin's residence. But Reliance
8 and Opperwall never identified what that interest might be, nor
9 did they ever come forward with any evidence (or even factual
10 allegations) to support their theory that Nightscaping or Loran
11 might have held an interest in the residence or its proceeds.

12 In fact, Locklin's bankruptcy schedules and her motion to
13 sell the residence both identified the residence as property of
14 Locklin's bankruptcy estate. Tellingly, while the sale motion
15 proceedings were taking place in the bankruptcy court, neither
16 Reliance nor Opperwall made any attempt to assert that either
17 Nightscaping or Loran had a legally cognizable interest in the
18 residence or its proceeds.

19 On October 21, 2014, the bankruptcy court held its initial
20 hearing on Locklin's stay violation motion. The court was not
21 persuaded by the stated purpose offered by Reliance and Opperwall
22 for their conduct. The court instead found that their actions in
23 sending the letters to Blesch and Watts were attempts to exercise
24 control over property of the estate, to enforce a lien against
25 property of the estate, and to collect on a (disallowed) pre-
26 petition claim. The court further found that Reliance's and
27 Opperwall's actions constituted willful stay violations within
28 the meaning of § 362(k) and that the matter should be continued

1 to enable the parties to fully address the damages issue.

2 After the submission of evidence regarding damages, further
3 briefing and two additional hearings, the bankruptcy court
4 awarded Locklin as actual damages only a fraction of the fees she
5 requested. Locklin requested over \$16,000 in fees, but the
6 bankruptcy court limited the actual damages award to \$7,033 based
7 on the following reasoning and findings:

8 [G]iven the multiple violations of the stay and the
9 circumstances of the case, the Court is inclined to
10 find that Debtor's actual damages here include fees
11 incurred by counsel in filing the Motion for Violation
12 of the Stay, but which the Court will reduce taking
13 into account (1) somewhat excessive amounts billed for
14 drafting the Motion, (2) the fact that Debtor did not
15 attempt to communicate with Reliance prior to filing
16 the Motion, and (3) the fact that the arguable effected
17 sale of the Walnut Property fell through by no fault of
the Correspondence. Here, the Court will allow amounts
of \$2,033 for fees incurred for correspondence with the
broker, analyzing the Correspondence from Reliance and
research regarding a possible stay violation. The
Court will allow a further \$5,000 for fees incurred in
connection with the Motion, reduced as discussed above
from the total balance requested on reasonableness
grounds given the circumstances of the case, for a
total fee award of \$7,033.

18 Tent. Ruling attached to and incorporated into bankruptcy court's
19 stay violation order (Dec. 30, 2014).

20 In support of its punitive damages award, the bankruptcy
21 court in essence found that, given the timing and nature of
22 Opperwall's letters, Reliance and Opperwall intentionally sought
23 to interfere with Locklin's court-authorized sale of her
24 residence and to exercise control over her residence and the
25 anticipated sale proceeds in reckless disregard of Locklin's
26 rights as a debtor in possession and notwithstanding the
27 bankruptcy court's prior determination that Reliance did not have
28 an allowable claim against Locklin. Based on these findings, the

1 bankruptcy court awarded Locklin \$2,500 in punitive damages.

2 The bankruptcy court entered its stay violation order on
3 December 30, 2014, and Reliance and Opperwall timely appealed.

4 **JURISDICTION**

5 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
6 §§ 1334 and 157(b) (2) (A), and we have jurisdiction under
7 28 U.S.C. § 158.

8 **ISSUES**

9 1. Did the bankruptcy court err when it determined that Reliance
10 and Opperwall violated the automatic stay?

11 2. Did the bankruptcy court err when it determined that
12 Locklin's reasonably-incurred attorney's fees were recoverable as
13 actual damages within the meaning of § 362(k)?

14 **STANDARDS OF REVIEW**

15 The scope of the automatic stay, and the actions enjoined by
16 it, are questions of law we review de novo. Eskanos & Adler,
17 P.C. v. Leetien, 309 F.3d 1210, 1213 (9th Cir. 2002). But the
18 determination of what actions Reliance and Opperwall took, the
19 underlying purpose of those actions, and whether their stay
20 violations were willful are questions of fact reviewed under the
21 clearly erroneous standard. Id.

22 The amount of damages awarded is reviewed for an abuse of
23 discretion. Id. The bankruptcy court abused its discretion if
24 it incorrectly construed or applied a legal rule or its factual
25 findings were illogical, implausible or without support in the
26 record. United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir.
27 2009) (en banc).

DISCUSSION

1
2 The automatic stay is an essential component of the
3 Bankruptcy Code. See America's Servicing Co. v. Schwartz-Tallard
4 (In re Schwartz-Tallard), 803 F.3d 1095, 1100 (9th Cir. 2015) (en
5 banc). It gives the debtor respite from creditor activity and
6 maintains the status quo among the creditors in order to
7 forestall a creditor race to the courthouse and to facilitate an
8 orderly and equitable distribution of the estate's assets. See
9 id.; Hillis Motors, Inc. v. Haw. Auto. Dealers' Ass'n, 997 F.2d
10 581, 585-86 (9th Cir. 1993).

11 In order to preserve and promote the efficacy of the
12 automatic stay, it is liberally construed and strenuously
13 enforced. See, e.g., In re Schwartz-Tallard, 803 F.3d at 1100;
14 Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571
15 (9th Cir. 1992). Apparently dissatisfied with the debtor
16 remedies formerly available against stay violators, Congress
17 amended the Bankruptcy Code in 1984 to add § 362(h), which was
18 re-designated as § 362(k) in 2005. See In re Schwartz-Tallard,
19 803 F.3d at 1098; see also In re Kutumian, 2014 WL 2024789, at
20 *10 (Bankr. E.D. Cal. 2014) (discussing legislative history).
21 Section 362(k)(1) provides in relevant part: "[A]n individual
22 injured by any willful violation of a stay provided by this
23 section shall recover actual damages, including costs and
24 attorneys' fees, and, in appropriate circumstances, may recover
25 punitive damages."

26 A stay violation is willful if the alleged violator knew of
27 the automatic stay and if his or her actions were intentional.
28 Leetien, 309 F.3d at 1215. In turn, the alleged violator is

1 charged with knowledge of the automatic stay if he or she knew of
2 the debtor's bankruptcy case. Knupfer v. Lindblade (In re Dyer),
3 322 F.3d 1178, 1191 (9th Cir. 2003); see also Ozenne v. Bendon
4 (In re Ozenne), 337 B.R. 214, 220 (9th Cir. BAP 2006) ("Knowledge
5 of the bankruptcy filing is the legal equivalent of knowledge of
6 the automatic stay."). There is no dispute here that Reliance
7 and Opperwall knew about Locklin's bankruptcy case and acted
8 intentionally when they sent the letters to Blesch and Watts.

9 Until recently, in order to recover attorney's fees, Locklin
10 would have needed to prove that Reliance's and Opperwall's
11 conduct qualified as **ongoing** stay violations - that the
12 attorney's fees were incurred to end the stay violations or to
13 nullify their effect. See Sternberg v. Johnston, 595 F.3d 937,
14 947 (9th Cir. 2010). However, an en banc panel of the Ninth
15 Circuit Court of Appeals has overruled Sternberg.

16 In re Schwartz-Tallard, 803 F.3d at 1097. In re Schwartz-Tallard
17 held that all reasonable attorney's fees that an individual
18 debtor incurs in enforcing the stay - including the fees incurred
19 in prosecuting a damages action for violation of the stay - are
20 recoverable as actual damages under § 362(k)(1). Id. at 1101.
21 Thus, in light of In re Schwartz-Tallard, bankruptcy courts no
22 longer need to distinguish between those fees incurred to end the
23 stay violation and those fees incurred to recover damages. Id.
24 Simply put, under In re Schwartz-Tallard, all of these fees
25 qualify as actual damages for purposes of § 362(k)(1). Id.

26 Reliance and Opperwall only make two arguments on appeal,
27 and neither argument has any merit. First, they argue that the
28 bankruptcy court erred when it found that their letters amounted

1 to acts taken to interfere with Locklin's sale of her residence
2 and to exercise control over estate property and, hence,
3 constituted stay violations. The bankruptcy court's finding
4 regarding the underlying purpose of the letters qualifies as a
5 reasonable inference drawn from the evidence in the record.
6 While the bankruptcy court alternately could have arrived at a
7 different inference, we cannot say that this inference was
8 clearly erroneous. See Anderson v. City of Bessemer City, N.C.,
9 470 U.S. 564, 574 (1985) ("Where there are two permissible views
10 of the evidence, the fact finder's choice between them cannot be
11 clearly erroneous."); see also Retz v. Samson (In re Retz),
12 606 F.3d 1189, 1196 (9th Cir. 2010) (holding that bankruptcy
13 court's findings of fact are clearly erroneous only if they are
14 "illogical, implausible, or without support in the record").

15 Second, Reliance and Oppewall argue that the bankruptcy
16 court should not have awarded any attorney's fees to Locklin
17 because Locklin did not suffer any actual damages as a result of
18 their stay violations. This argument incorrectly assumes that
19 Locklin's attorney's fees do not qualify as actual damages and
20 that attorney's fees are recoverable under § 362(k) only if the
21 debtor suffered another form of injury as a result of the stay
22 violations. Neither of these assumptions can be reconciled with
23 the plain language of § 362(k) or with In re Schwartz-Tallard.

24 At another level, Reliance's and Oppewall's second argument
25 challenges the notion that their willful stay violations (sending
26 the letters) were significant enough to justify the need for any
27 action on the part of Locklin. They contend that their stay
28 violations were not subject to "re-occurrence" and that their

1 conduct was "discrete and complete" once they finished sending
2 the letters. In essence, they are arguing that none of the fees
3 Locklin incurred were reasonable because their own conduct was so
4 minimal and legally ineffectual in relation to Locklin and her
5 estate property that no response was reasonably necessary.

6 The bankruptcy court disagreed, and so do we. The record
7 indicates that at least some of the attorney's fees arose from
8 Locklin's counsel's need to communicate with the real estate
9 broker regarding the significance of the letters.

10 In re Schwartz-Tallard explicitly held that attorney's fees
11 incurred outside of a court proceeding to address a willful stay
12 violation are recoverable as actual damages under § 362(k)(1).

13 In re Schwartz-Tallard, 803 F.3d at 1099.

14 More importantly, the bankruptcy court in effect found that,
15 if Locklin had not requested relief from the court in response to
16 the letters, the potential chilling effect of the letters on the
17 sale closing and on the distribution of the sale proceeds would
18 have remained unremediated - at least until the escrow was later
19 cancelled. We cannot say that the bankruptcy court's findings in
20 this regard were clearly erroneous. Moreover, as the bankruptcy
21 court's additional findings indicate, absent Locklin's stay
22 violation motion, Reliance and Opperwall would have continued to
23 have incentive to further interfere with other aspects of the
24 administration of Locklin's bankruptcy estate in the hopes of
25 leveraging a nuisance payoff from Locklin.

26 The bankruptcy court correctly found that, before filing the
27 stay violation motion, Locklin's counsel should have attempted to
28 rectify the stay violations by contacting Opperwall and demanding

1 that he and Reliance take action to terminate their stay
2 violations and nullify their effect. The bankruptcy court
3 correctly took this finding into account in calculating what
4 portion of Locklin's fees should be awarded as reasonable. But
5 this finding did not vitiate the stay violations or change the
6 fact that Reliance and Opperwall disputed that the stay
7 violations had occurred and thereby rendered it necessary for the
8 bankruptcy court to render a stay violation ruling. Furthermore,
9 given the parties' litigation history and their respective
10 positions on the stay violation issue, we agree with the
11 bankruptcy court that any advance discussions between the parties
12 on the stay violation issue likely would not have resolved the
13 issue without court intervention.

14 It also is worth noting that Reliance and Opperwall never
15 took any action in an attempt to remediate or limit the potential
16 negative impact of their letters on Locklin's then-pending sale
17 of her residence. See In re Dyer, 322 F.3d at 1192 (holding that
18 stay violators have an affirmative duty to remedy their stay
19 violations). Among other things, Reliance and Opperwall could
20 have sent clarifying letters to Blesch and Watts disclaiming any
21 interest in Locklin's property or the proceeds of Locklin's
22 property. Instead, Reliance and Opperwall disputed that the
23 letters they sent violated the stay. And, as the bankruptcy
24 court put it, they disingenuously protested their innocent
25 intent. They claimed that they had not intended (1) to interfere
26 with the court-approved sale, (2) to interfere with the court-
27 approved distribution of the sale proceeds, or (3) to insinuate
28 that Reliance had some sort of claim against Locklin or her

1 residence. The record supports the bankruptcy court's finding
2 that this is precisely what Reliance and Opperwall intended.

3 In short, the bankruptcy court did not abuse its discretion
4 when it awarded Locklin \$7,033 in fees as actual damages arising
5 from Reliance's and Opperwall's willful stay violations.

6 Reliance's and Opperwall's opening brief did not address the
7 issue of whether the bankruptcy court erred in awarding punitive
8 damages. Consequently, Reliance and Opperwall have forfeited
9 this issue. See Christian Legal Soc'y v. Wu, 626 F.3d 483,
10 487-88 (9th Cir. 2010); Brownfield v. City of Yakima, 612 F.3d
11 1140, 1149 n.4 (9th Cir. 2010).

12 On appeal, after this Panel set this matter for oral
13 argument, Reliance and Opperwall filed a motion to continue oral
14 argument. We denied that motion because Reliance's and
15 Opperwall's motion did not explain why they had not followed the
16 Panel's procedures for notifying the court of their
17 unavailability for oral argument. Those procedures were set
18 forth in the Panel's briefing order served on all of the parties.
19 After we denied the continuance motion, Reliance and Opperwall
20 filed additional papers attempting to persuade the Panel that
21 oral argument should be taken off calendar. In support, Reliance
22 and Opperwall also submitted a request for judicial notice
23 seeking to have us consider documents beyond the scope of the
24 record in this appeal and irrelevant to the issues on appeal and
25 to our basis for denying their continuance motion. Nothing
26 presented by Reliance and Opperwall persuades us that holding
27 oral argument without their counsel being present was unfair,
28 given their failure to follow the Panel's procedures. Therefore,

1 we reaffirm our denial of their requests for relief relating to
2 oral argument, and we also hereby ORDER DENIED their request for
3 judicial notice.

4 **CONCLUSION**

5 For the reasons set forth above, we AFFIRM the bankruptcy
6 court's stay violation order.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28