

APR 22 2016

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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	EC-14-1581-KuDTa
	)		
DARRYL CHADWICH CARTER,	)	Bk. No.	13-34802
	)		
Debtor.	)	Adv. No.	14-02144
	)		
_____	)		
DARRYL CHADWICH CARTER,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
RON L. BARBER,	)		
	)		
Appellee.**	)		
_____	)		

Submitted Without Oral Argument  
on March 17, 2016

Filed - April 22, 2016

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

Honorable David E. Russell, Bankruptcy Judge, Presiding

Appearances: Appellant Darryl Chadwich Carter, pro se, on  
brief.

Before: KURTZ, DUNN and TAYLOR, 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.

\*\*Appellee Ron L. Barber neither appeared nor participated  
in this appeal.

1 **INTRODUCTION**

2 Former chapter 13<sup>1</sup> debtor Darryl Chadwich Carter appeals  
3 from the bankruptcy court's judgment on his complaint seeking  
4 sanctions for an alleged violation of the automatic stay. The  
5 judgment denied Carter's requests for injunctive relief,  
6 emotional distress damages, punitive damages and attorney's fees.

7 Carter's appeal from the bankruptcy court's denial of  
8 injunctive relief is moot. The activity he sought to enjoin,  
9 the continuation of a state court unlawful detainer proceeding,  
10 has been completed. Consequently, we cannot offer Carter any  
11 meaningful or effective relief with respect to that ruling even  
12 if we were to conclude that the bankruptcy court erred in denying  
13 Carter injunctive relief.

14 On the other hand, the bankruptcy court's ruling on damages  
15 still presents a live controversy, and the bankruptcy court erred  
16 in making that ruling. In the process of making the ruling, the  
17 bankruptcy court denied Carter the opportunity to present his own  
18 testimony regarding the damages he suffered as a result of the  
19 stay violation.

20 Furthermore, the ruling was based on the incorrect premise  
21 that Barber's willful stay violation was limited to a very short  
22 period of time, during which little occurred in the unlawful  
23 detainer action. The ruling did not account for the fact that  
24 the filing of the unlawful detainer action and service of the

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25  
26 <sup>1</sup>Unless 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, Rules 1001-9037. All "Civil Rule" references are to  
the Federal Rules of Civil Procedure.

1 summons and complaint both occurred before the bankruptcy court  
2 granted the unlawful detainer plaintiff, Ron L. Barber, relief  
3 from the automatic stay. As a result, the acts of filing and  
4 serving the complaint were stay violations and were void ab  
5 initio.

6 Barber was under a continuing duty to rectify his stay  
7 violations once he learned of Carter's bankruptcy case. Barber  
8 indisputably was aware of the case by no later than June 6, 2014,  
9 when he signed and filed a declaration in support of his motion  
10 for relief from stay. But Barber never remedied his stay  
11 violations, nor did he ever seek annulment of the stay to  
12 retroactively validate the violative actions he took in the  
13 unlawful detainer action.

14 Accordingly, we DISMISS as moot the portion of this appeal  
15 challenging the bankruptcy court's denial of injunctive relief.  
16 The remainder of the bankruptcy court's judgment is VACATED, and  
17 we REMAND with the instruction that the bankruptcy court give  
18 both sides the opportunity to further develop the record on the  
19 questions of causation, actual damages and punitive damages.  
20 When the court next considers Carter's damages claims, it should  
21 keep in mind that Barber's willful stay violation began no later  
22 than June 6, 2014 (perhaps earlier) and did not end when the  
23 bankruptcy court granted Barber relief from stay, as the  
24 bankruptcy court ruled.

#### 25 **FACTS**

26 Carter commenced his chapter 13 bankruptcy case in November  
27 2013. In or around May 2014, Carter failed to make his  
28 residential rent payment, so his landlord, Barber, commenced an

1 unlawful detainer action in the Solano County Superior Court on  
2 May 13, 2014.

3       There is no evidence in the record that Barber had notice or  
4 knowledge of Carter's bankruptcy filing at the time the unlawful  
5 detainer action was commenced. Carter did not include Barber, or  
6 Barber's property management company, or any of the property  
7 management company's employees on his bankruptcy mailing list or  
8 on the schedules he filed with his bankruptcy petition.

9       The record suggests that Barber might have learned of  
10 Carter's bankruptcy filing as early as mid-May 2014, from papers  
11 Carter filed in the unlawful detainer action, in which Carter  
12 argued that the filing and service of the unlawful detainer  
13 complaint violated the Bankruptcy Code and the automatic stay.

14       In any event, Barber definitely knew about the bankruptcy  
15 filing (and the automatic stay) by no later than early June 2014,  
16 because he filed in the bankruptcy court on June 6, 2014, a  
17 motion to modify the automatic stay to permit him to pursue his  
18 rights under state law to recover possession of the leased  
19 premises from Carter. The relief from stay motion was  
20 accompanied by Barber's personal declaration, also dated June 6,  
21 2014.

22       Notably, the relief from stay motion did not seek to annul  
23 the stay in order to retroactively validate Barber's filing and  
24 service of the unlawful detainer complaint, which both took place  
25 in May 2014. In fact, none of Barber's moving papers, including  
26 his personal declaration, even mentioned the actions Barber had  
27 taken in violation of the stay in May 2014. Without any  
28 knowledge of the pending unlawful detainer action, the bankruptcy

1 court entered an order on June 30, 2014 granting Barber relief  
2 from the stay to permit him to take steps to obtain possession of  
3 the property. Pursuant to Rule 4001(a)(3), that order became  
4 effective on July 14, 2014.

5         Meanwhile, on May 28, 2014, Carter filed, in pro se, an  
6 adversary complaint against Barber for violation of the automatic  
7 stay, seeking injunctive relief, actual damages, emotional  
8 distress damages, punitive damages and attorney's fees. While  
9 not artfully pled, Carter did allege in the complaint that  
10 "Defendant Barber improperly brought his UD action in violation  
11 of the stay" and that "Barber sought continuation in the  
12 [unlawful detainer] action despite Carter's contentions for  
13 dismissal of the action." Complaint (May 28, 2014) at ¶¶ 22, 24.  
14 Immediately following this allegation, Carter cited Eskanos &  
15 Adler, P.C. v. Leetien, 309 F.3d 1210 (9th Cir. 2002), for the  
16 proposition that "'sanctions were appropriate under 11 U.S.C.  
17 § 362(h) [now § 362(k)] because Eskanos knew of the bankruptcy  
18 filing on September 6, 2000, and unjustifiably delayed in  
19 dismissing the state action until September 29, 2000.'"   
20 Complaint (May 28, 2014) at ¶ 24.

21         According to the proof of service Carter filed in the  
22 bankruptcy court, Carter served Barber and the Barber trust at  
23 two addresses, one in Alamo, California and the other in  
24 Fairfield, California.<sup>2</sup> When Barber failed to respond to the  
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26         <sup>2</sup>These are the same two addresses that Carter listed in his  
27 notice of appeal for Barber. Carter apparently obtained these  
28 two addresses for Barber from exhibits that Barber filed in  
support of his relief from stay motion.

1 adversary complaint, Carter requested and obtained entry of  
2 default and then filed a motion for entry of default judgment.  
3 Carter's default judgment motion was accompanied by a declaration  
4 and exhibits. While the evidence was thin, there were at least  
5 some statements in his declaration regarding the emotional  
6 distress he claims to have suffered and at least one of the  
7 exhibits submitted therewith suggests that Carter was treated for  
8 depression throughout the course of the unlawful detainer  
9 proceedings. At the first hearing on the default judgment  
10 motion, the bankruptcy court ruled that Carter had pled a  
11 sufficient claim for relief for violation of the automatic stay.  
12 According to the court, "[Barber's] willful violation of  
13 11 U.S.C. § 362(a) . . . occurred between May 14, 2014 and  
14 July 14, 2014." Civil Minutes (Oct. 7, 2014), at p. 1. In  
15 addition, the bankruptcy court continued the matter for an  
16 evidentiary hearing so that Carter could give evidence to "prove  
17 up" his damages.

18       However, at the final hearing, the bankruptcy court did not  
19 allow Carter (again, appearing in pro se) to present any  
20 testimony. The court apparently did permit Carter to present a  
21 package of exhibits containing at least some evidence regarding  
22 the amount of Carter's alleged damages, but the court was  
23 convinced that Carter did not incur much in the way of actual  
24 damages or emotional distress damages. Nor did the bankruptcy  
25 court see any evidence reflecting egregious conduct or any other  
26 type of conduct that might justify punitive damages.

27       Carter attempted to persuade the bankruptcy court that the  
28 entire prosecution of the unlawful detainer action was a

1 violation of the automatic stay. Among other things, Carter  
2 asserted that “[e]verything associated with this case as well as  
3 the initiation of the unlawful detainer in the state court” was  
4 predicated on a violation of the automatic stay. Hr’g Tr.  
5 (Dec. 5, 2014) at 24:18-25:7. But the bankruptcy court opined,  
6 in response, that the willful stay violation was of very limited  
7 duration and that not much occurred during that time period -  
8 other than service of the unlawful detainer complaint. According  
9 to the court, the stay violation ceased as soon as Barber  
10 obtained relief from the automatic stay. Hr’g Tr. (Dec. 5, 2014)  
11 at 25:1-13.

12 Having reviewed Carter’s exhibits, the bankruptcy court  
13 concluded that Carter was entitled to a default judgment of no  
14 more than \$500. The bankruptcy court entered judgment in  
15 Carter’s favor in the amount of \$500, and Carter timely appealed.

#### 16 **JURISDICTION**

17 The bankruptcy court had “arising under” jurisdiction  
18 pursuant to 28 U.S.C. §§ 1334 and 157(b)(1). See Aheong v.  
19 Mellon Mortg. Co (In re Aheong), 276 B.R. 233, 244 (9th Cir. BAP  
20 2002). We have jurisdiction under 28 U.S.C. § 158.

#### 21 **ISSUE**

22 Did the bankruptcy court correctly consider and assess  
23 Carter’s damages claims allegedly arising from Barber’s willful  
24 stay violation?

#### 25 **STANDARDS OF REVIEW**

26 We review for an abuse of discretion the amount of damages  
27 awarded under § 362(k) for a willful violation of the automatic  
28 stay. See Eskanos & Adler, P.C., 309 F.3d at 1213.

1 The bankruptcy court abused its discretion if it applied an  
2 incorrect legal standard or its findings of fact were illogical,  
3 implausible or without support in the record. United States v.  
4 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

#### 5 DISCUSSION

#### 6 **1. The appeal from the denial of injunctive relief is moot.**

7 A claim for relief becomes constitutionally moot when "the  
8 issues presented are no longer 'live' or the parties lack a  
9 legally cognizable interest in the outcome." Murphy v. Hunt,  
10 455 U.S. 478, 481 (1982). In the context of appellate review,  
11 "an appeal is moot if no present controversy exists as to which  
12 an appellate court can grant effective relief." Vegas Diamond  
13 Props., LLC v. F.D.I.C., 669 F.3d 933, 936 (9th Cir. 2012).

14 Carter has admitted that the unlawful detainer action no  
15 longer is pending and that he no longer is in possession of the  
16 leased premises. More to the point, the acts Carter sought to  
17 enjoin - Barber's continued prosecution of the state court  
18 unlawful detainer action - already have been completed. Given  
19 the nature and scope of Carter's adversary complaint, the scope  
20 of this appeal, and the completion of the acts Carter sought to  
21 enjoin, we cannot provide any meaningful relief to Carter. "This  
22 action is moot because the activities sought to be enjoined have  
23 already occurred and can no longer be prevented." Id.; see also  
24 Center For Biological Diversity v. Lohn, 511 F.3d 960, 963-64  
25 (9th Cir. 2007); Seven Words LLC v. Network Solutions, 260 F.3d  
26 1089, 1095 (9th Cir. 2001). In short, the portion of Carter's  
27 appeal seeking review of the bankruptcy court's denial of  
28 injunctive relief is moot.



1 **2. The bankruptcy court's damages analysis incorrectly presumed**  
2 **that Barber's willful stay violation ended when the order**  
3 **granting relief from the automatic stay became effective.**

4 Upon the commencement of Carter's bankruptcy case, a stay  
5 automatically went into effect that, in relevant part, enjoined  
6 all entities from engaging in "any act to obtain possession of  
7 property of the estate or of property from the estate or to  
8 exercise control over property of the estate . . . ." 11 U.S.C.  
9 § 362(a)(3); see also State of Cal. Emp. Dev. Dep't v. Taxel  
10 (In re Del Mission Ltd.), 98 F.3d 1147, 1151 (9th Cir. 1996). As  
11 we previously have explained:

12 The scope of the automatic stay is quite broad, and is  
13 designed to immediately maintain the status quo by  
14 precluding and nullifying postpetition actions, whether  
15 judicial or nonjudicial, in nonbankruptcy forums  
16 against the debtor and property of the estate.  
17 Exceptions to the automatic stay are read narrowly, and  
18 actions taken in violation of the stay are void rather  
19 than voidable.

20 Dunbar v. Contractors' State License Bd. of Cal. (In re Dunbar),  
21 235 B.R. 465, 470-71 (9th Cir. BAP 1999) (citations omitted),  
22 aff'd, 245 F.3d 1058 (9th Cir. 2001). The voidness of acts and  
23 judicial proceedings pursued in violation of the stay is a  
24 critical feature of one of the most important provisions of the  
25 Bankruptcy Code, because it helps to ensure that the stay is  
26 self-executing. See Gruntz v. County of Los Angeles  
27 (In re Gruntz), 202 F.3d 1074, 1081-82 (9th Cir. 2000) (en banc).

28 For voidness purposes, it makes no difference whether the  
stay violator was aware of the stay when he or she violated the  
stay. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1188  
(9th Cir. 2003). Regardless, all acts and judicial proceedings  
undertaken in violation of the stay are void. In re Gruntz,

1 202 F.3d at 1082.

2 Frequently, there is a disconnect between the violative acts  
3 on the one hand and the formal acknowledgment and effectuation of  
4 their voidness on the other hand. See, e.g., In re Dyer,  
5 322 F.3d at 1192; Eskanos & Adler, P.C., 309 F.3d at 1214-15;  
6 In re Del Mission Ltd., 98 F.3d at 1151-52. When this occurs,  
7 the stay violation is continuing, and it is incumbent on the stay  
8 violator to take affirmative steps to remedy the stay violation  
9 by attempting to unwind the violative acts or proceedings. See  
10 Sternberg v. Johnston, 595 F.3d 937, 944-45 (9th Cir. 2010) (as  
11 amended), partially overruled on other grounds by, America's  
12 Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard),  
13 803 F.3d 1095 (9th Cir. 2015) (en banc); In re Dyer, 322 F.3d at  
14 1192; In re Del Mission Ltd., 98 F.3d at 1151-52.

15 If the stay violator knows of the bankruptcy case but fails  
16 to take affirmative steps to unwind the violative acts or  
17 proceedings, he or she is willfully violating the automatic stay.  
18 Sternberg, 595 F.3d at 945; In re Dyer, 322 F.3d at 1192; Eskanos  
19 & Adler, P.C., 309 F.3d at 1215.

20 Here, Barber knew of Carter's bankruptcy case and knew about  
21 the automatic stay, at the very latest, when he prepared and  
22 filed his relief from stay motion in early June 2014. It also is  
23 quite possible that Barber knew of the bankruptcy case and the  
24 stay two or three weeks earlier - in mid-May 2014 - after Carter  
25 filed papers in the unlawful detainer action complaining that the  
26 unlawful detainer action violated the Bankruptcy Code and § 362.  
27 Sternberg, Dyer and Eskanos all stand for the proposition that,  
28 once Barber knew of the stay, his failure to take affirmative

1 steps to remedy the acts he took in violation of the stay  
2 constituted a continuing willful violation of the stay.

3 The Bankruptcy Code does provide an "out" for inadvertent  
4 stay violators facing the threat of damages for willful violation  
5 of the stay if they don't unwind the effects of their inadvertent  
6 stay violations: the stay violator may file a motion to annul  
7 the stay under § 362(d). Such motions, in effect, seek  
8 retroactive stay relief so as to validate actions that otherwise  
9 would be void as stay violations. See Schwartz v. United States  
10 (In re Schwartz), 954 F.2d 569, 573 (9th Cir. 1992).

11 We previously have examined the standards for granting  
12 annulment of the stay,<sup>3</sup> but we need not linger on those standards  
13 here. Barber filed a relief from stay motion in the bankruptcy  
14 court in June 2014, but he never requested annulment of the stay  
15 in order to retroactively validate the void acts he took in May  
16 2014 to recover possession of the leased property from Carter.  
17 These actions included the filing and service of his unlawful  
18 detainer complaint. These actions also included Barber's  
19 attempted termination of Carter's leasehold interest for non-  
20 payment of rent.

21 Additionally, Barber neglected to disclose in his relief  
22 from stay motion that he had filed and served his unlawful  
23 detainer complaint in violation of the stay. If Barber had  
24 disclosed these facts to the bankruptcy court, we are convinced  
25 the bankruptcy court either would have directed Barber to amend

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27 <sup>3</sup>See, e.g., Gasprom, Inc. v. Fateh (In re Gasprom, Inc.),  
28 500 B.R. 598, 607 (9th Cir. BAP 2013); Fjeldsted v. Lien  
(In re Fjeldsted), 293 B.R. 12, 25 (9th Cir. BAP 2003).

1 his relief from stay motion to seek annulment of the stay or  
2 would have denied the relief from stay motion to the extent  
3 Barber was seeking permission to proceed with the unlawful  
4 detainer action he commenced in violation of the stay.

5 Under § 362(k) (1), “. . . an individual injured by any  
6 willful violation of a stay provided by this section shall  
7 recover actual damages, including costs and attorneys' fees, and,  
8 in appropriate circumstances, may recover punitive damages.”  
9 Those actual damages should include costs and attorney’s fees, as  
10 well as emotional distress damages, provided that the injured  
11 individual proves, among other things, that the stay violation  
12 caused his or her damages. See Dawson v. Wash. Mutual Bank, F.A.  
13 (In re Dawson), 390 F.3d 1139, 1149 (9th Cir. 2004) (holding that  
14 injured individual has burden of proof to establish both  
15 causation and damages). And to recover punitive damages, the  
16 injured individual must prove the stay violator’s “reckless and  
17 callous disregard for the law or the rights of others” or make a  
18 showing of “malicious, wanton, or oppressive” conduct. Snowden  
19 v. Check Into Cash of Wash. Inc. (In re Snowden), 769 F.3d 651,  
20 657 (9th Cir. 2014)

21 Here, the bankruptcy court essentially ruled that Carter  
22 could not possibly prove actual damages in excess of \$500, nor  
23 any emotional distress or punitive damages, because virtually  
24 nothing of significance happened during the short span of time  
25 that Barber was in willful violation of the stay. However, the  
26 court’s damages assessment did not account for the fact that  
27 Barber’s willful stay violation (and hence his potential exposure  
28 for damages under § 362(k) (1)) did not end when the court granted

1 Barber relief from the stay. At that time, Barber had neither  
2 obtained an annulment of the stay nor otherwise remedied his stay  
3 violation.

4 We note that the documentary evidence Carter was prepared to  
5 present on the issues of causation and damages was very thin.  
6 Furthermore, we did not see much evidence in the record that  
7 might demonstrate the type of conduct from which punitive damages  
8 might arise. Nonetheless, we do not know what Carter might have  
9 said if the court had given him the chance to testify at the  
10 final evidentiary hearing. The bankruptcy court preempted his  
11 evidentiary presentation based on its incorrect view regarding  
12 the limited duration of Barber's willful stay violation. On  
13 remand, both sides should be given the opportunity to further  
14 develop the record on the issues of causation, actual damages  
15 (including emotional distress damages) and punitive damages.

16 One issue that does not need to be addressed on remand is  
17 the issue of attorney's fees. Pro se litigants cannot recover  
18 attorney's fees as an item of actual damages in an action under  
19 § 362(k). See In re Figuera, 2014 WL 4923078, at \*10 (Bankr.  
20 E.D. Cal. July 28, 2014) (citing Elwood v. Drescher, 456 F.3d  
21 943, 947-48 (9th Cir. 2006)).

## 22 CONCLUSION

23 For the reasons set forth above, we DISMISS as moot the  
24 portion of this appeal challenging the bankruptcy court's denial  
25 of injunctive relief. The remainder of the bankruptcy court's  
26 judgment is VACATED, and we REMAND with the instruction that the  
27 bankruptcy court give both sides the opportunity to present  
28 additional evidence on the questions of causation, actual damages

1 (including emotional distress damages) and punitive damages.  
2 Additionally, when the court next considers Carter's damages  
3 claims, it should keep in mind that Barber's willful stay  
4 violation began no later than June 6, 2014 (perhaps earlier) and  
5 did not end when the bankruptcy court granted Barber relief from  
6 the stay.

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