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NOT FOR PUBLICATION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

5	In re:)	BAP No.	EC-16-1258-TaBJu
6	GOLD STRIKE HEIGHTS)	Bk. No.	15-90811
7	HOMEOWNERS ASSOCIATION,)		
	Debtor.)		
8	_____)		
9	DON H. LEE,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	GARY FARRAR, Chapter 7)		
13	Trustee,)		
14	Appellee.)		
	_____)		

Argued and Submitted on March 23, 2017
at Sacramento, California

Filed - April 24, 2017

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

Honorable Ronald H. Sargis, Chief Bankruptcy Judge, Presiding

20	Appearances:	Appellant Don H. Lee argued pro se; Joshua
21		P. Hunsucker of Neumiller & Beardslee argued
22		for appellee

Before: TAYLOR, BRAND, and JURY, 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(c)(2).

1 **INTRODUCTION**

2 The bankruptcy court held Indian Village Estates, LLC and
3 appellant Don Lee in civil contempt under 11 U.S.C. § 105(a)¹
4 for violating the automatic stay. It awarded Appellee, the
5 chapter 7 trustee for debtor Gold Strike Heights Homeowners
6 Association, \$7,244 in compensatory damages. In the main,
7 Appellant does not dispute that some sanction was warranted;
8 instead, he argues that the amount was excessive because
9 Appellee unnecessarily multiplied the proceedings. The
10 bankruptcy court, however, considered the reasonableness of the
11 fee award; it partially agreed with Appellant, and cut
12 Appellee’s requested fees by about a third.

13 We AFFIRM the bankruptcy court.

14 **FACTS**

15 The facts are not in dispute.

16 **Initial proceedings.** Debtor Gold Strike Heights Homeowners
17 Association filed a voluntary chapter 7 petition on August 20,
18 2015. Appellee was appointed as the chapter 7 trustee. Four
19 days later, Appellant and Indian Village Estates sued Debtor in
20 the Calaveras County Superior Court. About one day after that,
21 Appellant received actual notice of the bankruptcy filing.

22 Appellee eventually removed the lawsuit to the bankruptcy
23 court and then moved to dismiss the adversary proceeding;
24 Appellant did not oppose; and the bankruptcy court granted the
25 requested dismissal.

27 ¹ Unless otherwise indicated, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 **The contempt proceedings.** Thereafter in the main
2 bankruptcy case, Appellee filed a motion for civil contempt
3 sanctions. He argued that Appellant and Indian Villages
4 Estates, although they knew they had violated the automatic stay
5 shortly after case initiation, failed to take steps to remedy
6 the violation and terminate the litigation. He sought about
7 \$13,000 in costs and expenses allegedly necessary to obtain a
8 dismissal.

9 Appellant and Indian Village Estates opposed, arguing that
10 the stay violation was inadvertent and harmless. They claimed
11 that, other than filing the action, they did not prosecute the
12 state court action. Appellee, they urged, never asked that the
13 case be dismissed until March 2016; and they asserted that they
14 were ready to dismiss the case in March 2016, when Appellee's
15 counsel offered to prepare a stipulation to dismiss the case.
16 Finally, they argued that, because a simple stipulation to
17 dismiss would have ended the matter, all of Appellee's expenses
18 and costs were unnecessary.

19 The court apparently issued a tentative ruling before
20 hearing.² After hearing, it entered a civil minute order
21 granting Appellee's motion for sanctions, finding Appellant and
22 Indian Villages Estates in contempt, and awarding Appellee
23 \$7,244.00 in civil sanctions. It incorporated the findings of
24 fact and conclusions of law as stated in the civil minutes.

25
26 ² Appellant did not provide it in his excerpts of record;
27 nor did he provide a transcript of the hearing. The Clerk of
28 Court directed appellant to provide all necessary transcripts by
February 10, 2017. BAP Dkt. 12. Appellant indicated that
hearing's transcript was unnecessary. BAP Dkt. 16.

1 Appellant timely appealed.

2 **JURISDICTION**

3 The bankruptcy court had jurisdiction under 28 U.S.C.
4 §§ 1334 and 157(b)(2). We have jurisdiction under 28 U.S.C.
5 § 158.

6 **ISSUE**

7 Whether the bankruptcy court abused its discretion in
8 awarding Appellee \$7,244, rather than a lesser amount, in
9 compensatory sanctions under § 105(a).

10 **STANDARD OF REVIEW**

11 We review for an abuse of discretion the decision to hold a
12 party in civil contempt and the determination of the proper
13 amount of sanctions. Knupfer v. Lindblade (In re Dyer),
14 322 F.3d 1178, 1191 (9th Cir. 2003); Rediger Inv. Servs. v.
15 H. Granados Commc'ns, Inc. (In re H Granados Commc'ns, Inc.),
16 503 B.R. 726, 731 (9th Cir. BAP 2013). A bankruptcy court
17 abuses its discretion if it applies the wrong legal standard,
18 misapplies the correct legal standard, or if it makes factual
19 findings that are illogical, implausible, or without support in
20 inferences that may be drawn from the facts in the record. See
21 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th
22 Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247, 1262
23 (9th Cir. 2009) (en banc)).

24 **DISCUSSION**

25 Section 362(k) allows individuals to recover damages for
26 willful violations of the automatic stay. 11 U.S.C. § 362(k).
27 Chapter 7 trustees, as representatives of bankruptcy estates,
28 however, are excluded from § 362(k). Havelock v. Taxel

1 (In re Pace), 67 F.3d 187, 193 (9th Cir. 1995), amended
2 (Oct. 11, 1995). Instead, they must rely on "the civil contempt
3 remedy provided by § 105(a)." In re Dyer, 322 F.3d at 1190.
4 When determining whether a party is subject to civil contempt
5 for violating the automatic stay, the threshold inquiry focuses
6 on a finding of "willfulness." Id. at 1191. The bankruptcy
7 court, thus, must find: (1) the party knew the automatic stay
8 existed; and (2) the party intended the act that violated the
9 stay. Id.

10 At oral argument, Appellant candidly acknowledged that he
11 had a duty to do something in the face of a stay violation, but
12 did not; this comports with similar admissions in his briefs.
13 Cf. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1214 (9th
14 Cir. 2002) ("A party violating the automatic stay, through
15 continuing a collection action in a non-bankruptcy forum, must
16 automatically dismiss or stay such proceeding or risk possible
17 sanctions for willful violations pursuant to § 362([k])."). He
18 thus waived any argument that he did not willfully violate the
19 automatic stay. As a result, we turn our attention to his
20 concern over the amount of the sanctions.

21 **The bankruptcy court did not abuse its discretion by**
22 **awarding Appellee \$7,244 based on Appellant's civil contempt.**

23 Civil contempt sanctions must either be compensatory or designed
24 to coerce compliance. In re H Granados Commc'ns, Inc., 503 B.R.
25 at 736; see In re Dyer, 322 F.3d at 1192. "Attorneys' fees are
26 an appropriate component of civil contempt sanctions."
27 In re H Granados Commc'ns, Inc., 503 B.R. at 736 (citing
28 In re Dyer, 322 F.3d at 1195). "This includes reasonable

1 attorneys' fees incurred in the process of voiding the stay
2 violation." Id. (citing In re Dyer, 322 F.3d at 1195). But if
3 the incurred fees do not flow from the stay violation, then
4 their award is improper. Id. (citing In re Dyer, 322 F.3d at
5 1195 & n.19).

6 Here, Appellee requested \$11,435 in fees, plus additional
7 amounts if the motion was opposed, broken into four categories
8 (removal; status conference and miscellaneous case issues; the
9 motion to dismiss; and the motion for sanctions). This
10 represented 40.9 hours of work. Appellee attached detailed time
11 sheets. But the bankruptcy court did not award Appellee all of
12 the requested fees; it awarded Appellee \$7,244.00.

13 On appeal, Appellant focuses his argument on the
14 reasonableness of the awarded fees. His theme is that the
15 Trustee saw the stay violation as a lucrative opportunity and
16 unnecessarily multiplied proceedings to drum up fees. The
17 bankruptcy court's decision below shows that it partially agreed
18 with Appellant. It was concerned that the Trustee "appears to
19 have taken additional, possibly unnecessary steps, in dealing
20 with the violation." Civil Minutes, August 4, 2016, 6.

21 The bankruptcy court, however, placed this concern in
22 context. First, it determined: "It is clear from the totality
23 of the circumstances that the Plaintiffs are locked in a death
24 spiral battle with the Trustee and Debtor." Id. at 7. Second,
25 it noted Appellant's inaction: "If Plaintiffs had taken
26 5 minutes, they could have unilaterally filed a dismissal of the
27 state court action." Id. Given this inaction, the bankruptcy
28 court concluded that "Plaintiffs cannot be reasonably heard to

1 complain that the Bankruptcy Trustee" removed the action and
2 filed a motion to dismiss, despite Appellant's "intent" to
3 dismiss the adversary proceeding and stated non-opposition to
4 dismissal, because they "were unwilling to lift a finger to
5 rectify their continuing violation of the automatic stay." Id.;
6 see also id. ("The 'Opposition' filed by Plaintiffs demonstrates
7 that they intentionally continued in violation of the automatic
8 stay, placing the burden on the Trustee to address this
9 continuing violation."). The bankruptcy court then concluded:

10 Trustee's counsel has spent more time, which may well
11 relate to necessary work concerning the underlying
12 dispute, possible rights and interests asserted by
13 Plaintiffs, and rights of the estate. The court
14 computes that \$7,244.00 in attorneys' fees relates
15 directly to, and were caused by, Plaintiffs, and each
16 of their failure to correct their continuing violation
17 of the automatic stay.

18 Id. at 10. The bankruptcy court reduced Appellee's fee request
19 by \$4,191. Appellant may believe that the fees awarded are
20 unreasonable, but he does not address how the bankruptcy court's
21 reduction in the amount of fees was insufficient.

22 Last, Appellant argues that the bankruptcy court erred by
23 ignoring evidence that he and Appellee agreed in March 2016 that
24 Appellee would prepare a stipulation dismissing the adversary
25 proceeding. We disagree. The bankruptcy court canvassed the
26 evidence and discussed the issue over the course of at least a
27 page and a half of single-spaced text. It concluded:

28 However, nothing other than Don Lee's statement,
facing this sanctions motion, that the Trustee stated
that the Trustee would prepare a dismissal nor a
stipulation to end the case has been presented to the
court. The court does not find this statement
credible. There is no indication that there was ever
the expectation or inclination that the Trustee would

1 prepare the dismissal.

2 Id. at 9. In reaching this conclusion, the bankruptcy court
3 considered: oral argument at the hearing; declarations from
4 Appellant and Appellant's then-attorney; and the emails
5 Appellant offered as proof. This conclusion, based on the
6 court's credibility determination, was not illogical,
7 implausible, or without support in the record. The Trustee's
8 failure to provide declaratory evidence denying any agreement to
9 prepare the stipulation does not make reversal necessary. The
10 bankruptcy court did not believe Appellant; he did not need more
11 than argument from the Trustee on this point. We are not left
12 "with the definite and firm conviction that a mistake has been
13 committed." Anderson v. City of Bessemer City, NC, 470 U.S.
14 564, 573 (1985) (internal citation omitted).

15 From Appellant's perspective, all it would have taken to
16 dismiss his admittedly void state court lawsuit was a simple
17 filing and he believes \$7,244 in attorney's fees to accomplish
18 that task seems excessive and disproportionate. The problem
19 with this view is that for the Trustee, the representative of
20 the defendant in the suit, much more was required to dismiss the
21 case. Nor did the Trustee have the reasonable option of doing
22 nothing - unattended lawsuits have a life of their own.

23 In sum and on this record,³ we cannot find error in the
24 bankruptcy court's reasonableness calculation.

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27 ³ As we note above, Appellant did not provide us with the
28 hearing transcript, nor did he include the tentative ruling
issued before the matter, which does not appear on the docket.

CONCLUSION

Based on the foregoing, we AFFIRM.

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