

APR 24 2017

NOT FOR PUBLICATION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.	)	<b>MEMORANDUM*</b>	
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.

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\* 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           **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.<sup>2</sup> 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.

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26           <sup>2</sup> 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,<sup>3</sup> we cannot find error in the  
24 bankruptcy court's reasonableness calculation.

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27 <sup>3</sup> 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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