

**The Court held that an attorney who represented the debtor's ex-spouse in a divorce action (and consequently held a judgment against the debtor for attorneys' fees) violated the stay by garnishing certain deposit accounts of the debtor which were property of the estate. The Court also held that the attorney did not violate the stay by garnishing certain bank accounts that had been exempted or by executing on cash held by an LLC owned by the debtor. The Court awarded the Debtor compensatory damages consisting of bank fees incurred, as well as all attorneys' fees "proximately caused" by the stay violations. The Court refused to award punitive or emotional damages**

***Ojiegbe v. Walter (In re Ojiegbe)*, 2015 Bankr. Lexis 3294 (Bankr. D. Md. September 29, 2015) (Catliota, J.)**

Summary by Justin P. Fasano, McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A.

The Chapter 13 Debtor (the "Debtor") was a physician and the sole member of Sunrise Medical Clinic, LLC ("Sunrise"). After the Debtor filed bankruptcy, the Debtor and his former wife obtained a limited divorce. In connection therewith, the Debtor's former wife obtained an attorneys' fee award of \$13,000 against the Debtor, which was reduced to judgment in favor of the Debtor's former wife's attorney (the "Divorce Attorney").

The Divorce Attorney was not a bankruptcy lawyer. After doing her own research, she erroneously determined that collection on the judgment did not violate the automatic stay. Soon thereafter, the Divorce Attorney obtained writs of garnishment in order to garnish the Debtor's bank accounts at Bank of America, Capital One Bank, and State Employees Credit Union. All three institutions filed confessions of assets. Debtor's counsel then wrote a letter to the Divorce Attorney demanding that the garnishments be released. The Divorce Attorney released the garnishments. However, the Debtor accrued \$255 in bank fees while his accounts were frozen.

The Divorce Attorney then served a writ of execution on Sunrise seeking to collect all of its cash on hand. At this point, the Debtor filed a motion for sanctions for violation of the stay.

In an earlier memorandum decision, the Court had determined that: (1) the writ to Sunrise did not violate the stay because Sunrise's cash was not property of the estate; (2) the judgment for fees was a domestic support obligation under the Bankruptcy Code pursuant to which the Divorce Attorney was authorized under 11 U.S.C. § 362(b)(2)(B) to collect from property that was not part of the estate; (3) the writ of garnishment to Capital One violated the automatic stay because the Capital One bank account was property of the estate that had not been exempted; and (4) further evidence was needed to determine whether or not the writs of garnishment to Bank of America and State Employees Credit Union violated the automatic stay because those bank accounts may have been exempted.

After a bench trial, the Court determined that the State Employees Credit Union bank account was not property of the estate because it had been exempted, and therefore the Divorce Attorney did not violate the stay by garnishing it. However, the Court found that the Bank of America account was property of the estate and therefore protected by the stay.

The question then arose how to award damages. The Debtor sought (1) compensatory damages; (2) emotional damages; (3) punitive damages; and (4) attorneys' fees. The Court awarded the \$255 in bank fees as compensatory damages. The Court held that it could award emotional

damages under 11 U.S.C. § 363(k) but refused to do so. The Court held that unless a creditor's actions were egregious, emotional damages had to be proven by corroborating evidence, such as expert, medical or third party testimony. The Court determined that much of the emotional damages which the Debtor claimed arose from the writ to Sunrise, which did not violate the stay.

The Court also refused to award punitive damages. The Court found that the Divorce Attorney conduct did not warrant punitive damages, citing the Divorce Attorney's lack of experience in bankruptcy law.

The Court awarded the Debtor attorneys' fees. In so awarding, the Court declined to follow *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir. 2009), *cert. denied*, 562 U.S. 831, 131 S. Ct. 102, 78 L. Ed. 2d 29 (2010), which held that Section 362(k) of the Bankruptcy Code authorized awards for attorneys' fees incurred in remedying a violation of the automatic stay, but not those fees incurred in prosecuting a stay violation. The Court agreed with a concurrence in a later Ninth Circuit decision that stated that the *Sternberg* decision had made calculating attorneys' fees awards unnecessarily complicated. The Court determined that *Sternberg* was an outlier which had received substantial criticism. The Court further justified its decision by stating that many stay violations were small in nature but still required the services of an attorney to rectify. The Court therefore ruled that it would award attorneys' fees that had been proximately caused by the stay violations. The Court instructed the Debtor to submit a fee statement for the fees he incurred in prosecuting the two stay violation counts on which he was successful.