

*In re* PetitUSA, LLC

16-10305-BKC-LMI

The Debtor filed its bankruptcy approximately 2 minutes after the commercial landlord (the “Landlord”) began executing a writ of possession. The Landlord and the sheriff were informed of the filing of the bankruptcy, yet they did not cease execution of the writ. At issue was whether the Landlord’s refusal to terminate the execution process was a violation of the automatic stay. The Landlord argued it did not violate the automatic stay because the writ of possession was executed before the petition was filed and therefore the lease was not property of the estate. Consequently the Landlord argued, continuing the dispossession was not a stay violation. The Court held that at least as to commercial leases, execution of the writ, and loss of the legal right of possession, does not occur until after physical dispossession is complete. Furthermore, continuing physical dispossession even if the legal right of possession was lost prepetition was still a violation of the automatic stay. Therefore, the Court ruled that the Landlord had violated the automatic stay. Moreover, because the lease had not been terminated, and the Debtor still had a possessory interest at the time the Petition was filed, the Debtor’s right to assume or reject the lease was not lost. Finally, the Court also held that under the equitable powers granted to it under 11 U.S.C. §105 and the common law of the State of Florida, the Court could restore the Debtor’s possessory interest even if it had been lost prepetition.