

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DADE DIVISION

CASE NO. 05-10988-BKC-RAM

Chapter 7



6514

In re:

CLEMENTE LASTRA

Debtor.

**ORDER DENYING DEBTOR'S MOTION FOR
ENFORCEMENT OF THE AUTOMATIC STAY, TO COMPEL DISSOLUTION
OF WRIT OF GARNISHMENT AND FOR ATTORNEY FEES AND SANCTIONS**

THIS CAUSE having come before this Court for hearing on March 29, 2005, on the motion filed by the debtor, Clemente Lastra ("Debtor"), requesting enforcement of the automatic stay, to compel dissolution of writ of garnishment and for attorney fees and sanctions, requesting that this court sanction Hoboken Wood Flooring Corporation ("Creditor") for an alleged willful violation of the automatic stay. For the reasons set forth below, the motion will be denied.

FINDINGS OF FACT

The Debtor filed his petition under Chapter 7 on February 10, 2005 ("Petition Date"). Prior to the Petition Date, Creditor had obtained a judgment against the Debtor in the amount of \$7,743.51 ("Judgment"). Seeking to collect on its judgment, on January 24, 2005, Hoboken served a writ of garnishment on the bank at which the Debtor maintained a bank account. The balance of the account amounted to \$1,443.74. Upon the filing of the petition, the Debtor made demand upon Hoboken that

it release the garnishment in light of the automatic stay. Hoboken refused and this motion for sanctions followed.

ISSUE

Where a writ of garnishment is served on the bank prior to the Debtor filing a bankruptcy petition, is the refusal of the Creditor to voluntarily and affirmatively release the garnishment against the bank account a violation of the automatic stay?

CONCLUSIONS OF LAW

This court having reviewed the holding in the case of In re: John E. Giles, 271 B.R. 903 (Bankr. M.D. Fla. 2002), and determining the same facts exist in this action finds that the service of the writ of garnishment on the bank, prior to the bankruptcy petition, created a statutory lien in favor of the Creditor. Based upon the foregoing, the Creditor did not violate the automatic stay for its refusal to release the garnishment.

CONCLUSION

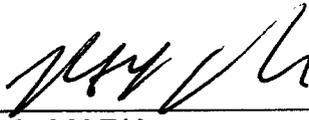
In this case, the court finds that the service of the writ of garnishment, prior to the bankruptcy petition, created a statutory lien right in the Creditor and, therefore, the court concludes that the Creditor's refusal to dissolve the writ of garnishment and release its lien did not violate the automatic stay. Therefore, the Debtor is not entitled to sanctions against the Creditor.

Accordingly, for these reasons, it is

ORDERED that the motion is denied. The court makes no determination as to whether the Creditor's lien rights are avoidable by the Trustee under Bankruptcy

Code §§ 544, 545, 547, 548, 549 or by the Debtor under §§ 522 (g) and 522 (h). Any actions under those provisions, to the extent appropriate, will need to be brought by separate proceedings.

DONE AND ORDERED at Miami, Florida on this 12th day of April, 2005.



ROBERT A. MARK
UNITED STATES BANKRUPTCY JUDGE

Copies to:

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