

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

File No. 12-CV-2811 (RHK/SER)

---

Julius Chad Zimmermann,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>PLAINTIFF’S MEMORANDUM OF</b>
	)	<b>LAW IN OPPOSITION TO</b>
Dave Bellows, in his individual and	)	<b>DEFENDANTS’ MOTION FOR</b>
official capacities, and John Doe 1-5	)	<b>SUMMARY JUDGMENT</b>
and Jane Roe 1-5 in their individual	)	
and official capacities,	)	
	)	
Defendants.	)	
	)	

---

**I. Factual Background**

The Defendants have moved for Summary Judgment on all counts the Plaintiff has brought in his Complaint. The Defendants did not specifically address the Plaintiff’s prayer for injunctive relief. On October 27, 2011, Mr. Zimmermann filed a Chapter 7 bankruptcy in the District of Minnesota, invoking the automatic stay pursuant to 11 USC § 362 *et seq.* It is not disputed between the parties that the automatic stay was in effect at the time Mr. Zimmermann was arrested on a civil arrest warrant obtained by a debt collector. The Plaintiff was arrested and booked in the Dakota County Jail on November 10, 2011, pursuant to a civil warrant obtained by a debt collector for failure to appear at an Order to Show Cause hearing related to collection of the debt. Mr. Zimmermann was

booked in the Dakota County Jail under Minnesota Statute § 588.01.3(9)<sup>1</sup>. At the time of his booking at the Defendants' Jail, Plaintiff repeatedly told his captors about his bankruptcy filing and its effect on the warrant on which he was being detained. (Affidavit of Julius Chad Zimmermann).

Mr. Zimmermann spent five days in jail on a civil warrant obtained by a debt collector despite the fact that he filed for bankruptcy prior to his arrest. He was released from the Dakota County Jail on November 15, 2011. Mr. Zimmermann had no criminal charges or convictions for which he was required to serve jail time. This is also not disputed between the parties. At the time he was arrested and continuously throughout his incarceration, the Plaintiff told Defendants repeatedly that he had filed bankruptcy and that he could not be held on this warrant because of the order arising out of this bankruptcy filing (Affidavit of Julius Chad Zimmermann). The Plaintiff has settled with the Creditor and now sues the instant Defendants for their liability in this ordeal and to help prevent others similarly situated from being victimized by the Defendants in the future.

From the Plaintiff's perspective, this entire case turns on whether the automatic stay applies to the Defendants and if so, whether the stay was violated on the facts put forth by the Plaintiff.

## **II. Violation of the Automatic Stay**

---

<sup>1</sup> which states in relevant part as follows: "(9) when summoned as a juror in a court, neglecting to attend or serve, improperly conversing with a party to an action to be tried at the court or with any person relative to the merits of the action, or receiving a communication from a party or other person in reference to it, and failing to immediately disclose the same to the court."

### **A. The Automatic Stay**

The automatic stay is a cornerstone of bankruptcy law. It provides the foundation upon which debtors can build a new life “with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.” *Grogan v. Garner*, 498 U.S. 279, 286 (1991), citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). It permits the debtor to attempt a repayment or reorganization, or simply to be relieved of the financial pressures that drove him into bankruptcy.” H.R. Rep. No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., at 340 (1977).

The automatic stay arises immediately upon filing a petition for relief under the Bankruptcy Code. The stay acts as a temporary injunction that prohibits, among other things, efforts by all entities to enforce against the debtor or against property of the estate of a judgment obtained before the commencement of the case. 11 U.S.C. § 362(a)(2). Similarly, the stay prohibits any entity from commencing or continuing any judicial process to recover a debt. 11 U.S.C. § 362(a)(1).

In this case, the automatic stay was created by the order of relief issued by the bankruptcy court when Mr. Zimmermann filed bankruptcy on October 27, 2011. The parties do not dispute that the order was in effect on November 10, 2011, when Defendants detained Mr. Zimmermann.

### **B. The Automatic Stay Applies to All Entities, including Defendants, Not Just Creditors.**

The language of the Bankruptcy Code is plain and clear: the automatic stay applies to “all entities.” 11 U.S.C. § 362(a); see *Lamie v. United States Trustee*, 540 U.S.

526, 534 (2004) (“It is well established that ‘when the statute’s language is plain, the sole function of the courts, at least where the disposition required by the text is not absurd—is to enforce it according to its terms.’”). “Entity” includes a “governmental unit.” 11 U.S.C. § 101(15). There is no exception for the sheriff. *See In re Westman*, 300 B.R. 338, 344 (Bankr. D. Minn. 2003) (“Without a doubt, the automatic stay applies to the Sheriff and Anoka County.”) For example, in *In re Dencklau*, 158 B.R. 796 (Bankr. N.D. Iowa 1993), the court held that the sheriff violated the automatic stay by taking possession of garnished wages and deducting his fees before forwarding the funds to the county clerk.

The Defendants’ assertion that they are not independently subject to the automatic stay is without merit. The Defendants appear to disclaim responsibility for Mr. Zimmermann’s improper incarceration by blaming the creditor, who failed to quash the warrant. Defendants’ Memo at 9 (“However, the burden is on the creditor, not the sheriff, to prevent violations of the stay.”). Defendants cite *Westman* to support this proposition. As noted above, the Bankruptcy Code applies the automatic stay to all entities, including the sheriff, not just the creditor. Contrary to Defendants claims, *Westman* makes clear that the automatic stay applies to the sheriff in this case. *See* 300 B.R. at 344. The question in *Westman* was not whether the sheriff and county were subject to the stay, but whether they violated the stay by exercising control over property of the estate by failing to turnover property to the debtor. *Id.* at 343; 11 U.S.C. § 362(a)(3). As explained below, when a similar question is asked in this case—did the Defendants violate the stay by

continuing to enforce the civil bench warrant and keeping the Debtor incarcerated?—the answer is that the Defendants clearly violated the stay.

The case of *In re Atkins*, 176 B.R. 998 (Bankr.D.Minn. 1994), also does not support the Defendants' position. It is true that the *Atkins* court, along with many other courts, hold creditors and their attorneys liable for violating the discharge injunction when they fail to quash bench warrants after the debtor files for bankruptcy. It does not follow, however, that the sheriff is absolved from any liability for its own violations of the stay. Because the sheriff was not named as a defendant in the *Atkins* case the issue of the sheriff's liability or lack of liability was never addressed.

### **C. The Enforcement of Civil Bench Warrants Is Stayed**

The Bankruptcy Code exempts from the automatic stay “the commencement or continuation of a criminal action or proceeding against the debtor.” 11 U.S.C. 362(b)(1). This is true even if the primary purpose of a prosecution is collection of an otherwise dischargeable debt. However, bench warrants based on civil contempt do not fall within the criminal exception. *See In re Iskric*, 496 B.R. 355, 362 (Bankr. M.D. Pa. 2013) (explaining different underlying purposes of civil and criminal contempt and relationship to Bankruptcy Code). Bankruptcy courts have repeatedly held that the enforcement of civil bench warrants, such as the one in this case, which allows the debtor to purge himself of contempt by paying the amount due to the creditor, is stayed. *See id.*; *see also In re Galmore*, 390 B.R. 901 (Bankr. N.D. Ind. 2008); *In re Daniels*, 316 B.R. 342 (Bankr. D. Idaho 2004); *In re Atkins*, 176 B.R. 998, 1006 (Bankr. D. Minn. 1994).

**C. The Defendants Violated the Stay by Continuing to Enforce the Bench Warrant for Civil Contempt After Debtor Notified Them that He Had Filed For Bankruptcy.**

To bring a successful action for a violation of the automatic stay the debtor must show that: (1) a bankruptcy petition was filed and order for relief entered; (2) that he is an “individual” for purposes of the the automatic stay provision; (3) the the entity had notice of the petition; and (4) that the entity’s actions were in willful violation of the stay. In this case, there is no dispute as to elements one, two and three.

By its plain language the Bankruptcy Code prohibits the commencement or continuation of a judicial action or proceeding against the debtor that was commenced before the debtor filed for bankruptcy. 11 U.S.C. § 362(a)(1). Willfulness under section 362 requires an intentional act with knowledge of the bankruptcy. A willful violation does not, however, required specific intent to violate the automatic stay. *In re Price*, 42 F.3d 1068, 1071 (7th Cir. 1994).

Here Mr. Zimmermann advised the Defendants that he had filed for bankruptcy. Defendants do not dispute that they were on notice of the bankruptcy. Indeed, verifying that claim would have taken less than five minutes by checking the PACER CM/ECF system. Instead Defendants chose to ignore Mr. Zimmermann and held him in jail for five days on a “debt warrant.” The Defendants’ action of incarcerating Mr. Zimmermann after notice of his bankruptcy filing constitutes the continuation of a judicial action or proceeding against the debtor that violates the automatic stay.

**D. Defendants Asserted “Defenses” Do Not Excuse Their Violation of the Stay.**

Defendants make several sweeping assertions to justify their conduct in this case. Those assertions are (1) “Defendants at all times acted in accordance with state and federal law...” (Defendants’ Memo at 8); (2) “It is undisputed that Plaintiff was arrested pursuant to a valid warrant” (*Id.* at 2); and (3) “Defendants were following the Rules of Criminal Procedure [sic]” (*Id.* at 14).

Mr. Zimmermann contests the assertion that at all times the Defendants acted in accordance with federal law. As demonstrated above, the Defendants actions were prohibited by the Bankruptcy Code and the order of relief issued in Mr. Zimmermann’s case. The fact that the Defendants may have acted in accordance with state law is not relevant to the inquiry of whether they violated the automatic stay. As the court in *Dencklau* explained, “[w]here a state law is in conflict with federal bankruptcy law, the state law must give way.” 158 B.R. 796, 800 (“The sheriff’s actions were correct under Iowa law. However, the state statute and rule as applied in this situation are in direct conflict with bankruptcy law”).

Similarly, the argument that Mr. Zimmermann was arrested pursuant to a valid arrest warrant misses the mark. It is irrelevant whether the warrant was “valid” because the warrant was superseded by a federal court order imposing the automatic stay. Once the Defendants were made aware of Mr. Zimmermann’s bankruptcy filing, they were required to cease enforcement of the bench warrant for civil contempt. In other words, the Defendants were not entitled to keep Mr. Zimmermann incarcerated for five days after they became aware that he had filed for bankruptcy and that a federal order prohibited the continuation of enforcement proceedings.

Adherence to the Rules of Criminal Procedure, with respect to a bench warrant for civil contempt, is also insufficient to absolve the Defendants of liability. While criminal proceedings are specifically exempt from the reach of the automatic stay, as discussed above, the bench warrant for civil contempt is not. Whether Defendants complied with the Minnesota Rules of Criminal Procedure is also not relevant to the question of whether they violated a federal court order.

### **III. 42 U.S.C. 1983 Claims**

A cause of action under section 1983 requires that a plaintiff plead and prove (1) that the defendants, acting under color of state law and (2) deprived the plaintiff of federal constitutional or statutory rights. See 42 USC § 1983. Deprivation of rights flowing from Federal Statutes are also actionable under § 1983. *Maine v. Thiboutot*, 448 U.S. 1. (1980). The Defendants were and are running a County Jail, so the question of whether or not they were acting under the color of state law can unquestionably be answered in the affirmative. The statutory right of which the Plaintiff was deprived of was the right he acquired the moment he filed bankruptcy: the automatic stay pursuant to 11 U.S.C. § 362.

#### **A. Monell**

The Defendants broadly assert that the Plaintiff does not have a valid *Monell* claim because he has “failed to identify any unconstitutional custom, practice or policy on the part of the County that has resulted in deprivation of his constitutional rights.” (Defendants’ Brief, page 5). As mentioned above, statutory rights are also enforceable under 42 U.S.C. § 1983.

Here is Plaintiff's argument regarding his *Monell* claim in the plainest terms possible: Bankruptcy is specifically mentioned in the Constitution and Congress is given exclusive authority over bankruptcy laws. The Constitution is the Supreme law of the land. Plaintiff exercised his right to bankruptcy and obtained the Federal protection of the Automatic Stay, a valid order of a Federal Court in the District of Minnesota. A Minnesota County Sheriff's jail staff enforcing a debt warrant was made aware of this order by the Plaintiff, but for unknown reasons chose to ignore it. Defendant County Sheriff has no policy whatsoever to even begin to make an attempt to verify the existence of this Court order, and appears to have no intention to ever do so. This is violation of the Plaintiff's right under the Bankruptcy Code and his constitutional right to not be detained illegally. Defendants instead make the argument that they are immune from the Federal Court Order. As discussed above, this argument is without merit.

As a result of this policy or custom of not checking to verify the existence of a Federal Court Order that bears directly on the question of whether or not the Plaintiff should continue to be detained, the Plaintiff spent five days of his life in jail that he should have never had to spend in jail. But for this policy, the Plaintiff would not have spent five days in jail. It is a violation of the automatic stay and a debtor's civil rights to hold someone in jail when there is a Federal Court Order that supersedes the State Court Order that is holding them. If a creditor is told by a debtor that the debtor filed bankruptcy, it is not uncommon for the creditor to check PACER to verify if that assertion is true. The Defendants' position is that this simply cannot be done and does

not need to be done because they are immune, herein lies the policy or custom giving rise to a valid *Monell* claim.

#### **B. Immunity**

The Defendants assert that the Plaintiff's claims should be dismissed because they are all entitled to qualified immunity. The constitutional right that the Defendants violated is the right not to be illegally detained, and his statutory right under 11 USC § 362 was also violated. The Defendants make the argument that this is not a "clearly established" right. The right is clearly established, it is specifically spelled out in the Bankruptcy Code.

#### **IV. False Imprisonment**

The Defendants' contend that the Plaintiff's incarceration was legally justifiable. For the reasons discussed above, it was not.

#### **V. Negligence**

The Defendants booked the Plaintiff as a juror. (Affidavit of Nathan M. Hansen). It is unknown at this time if this had any effect on his ordeal. The Defendants make the argument in the negligence portion of their Brief that because they did not have a policy to ascertain the existence of a Federal Court order bearing directly on the legality of their custody of the Plaintiff, they were therefore not negligent and in fact immune. This argument does not even make any sense. The argument appears to be that because they were negligent then they therefore were not negligent. The Defendants 1) had a duty to follow Federal Statutes; 2) Breached that duty; 3) This breach was the direct proximate cause of Plaintiff's illegal incarceration and 4) The Plaintiff suffered damage because he

was deprived of his personal freedom and could have been working or playing the lottery or doing anything else free people do when they are not in jail.

#### **VI. “Doe” and “Roe” Defendants.**

The Plaintiff has learned the identities of the Doe and Roe Defendants through discovery. The list is attached to the Affidavit of Nathan M. Hansen filed contemporaneously with this brief. Therefore, this argument is moot.

#### **VII. Minnesota State Constitution Claims**

The Defendants contend that there is are no private causes of action under the Minnesota Constitution and cite what initially appears to be some pretty decent looking authority for this proposition. Specifically, they cite *Guite v. Wright*, 976, F.Supp. 866, 871 (D. Minn. 1997). It is unfortunate that the Plaintiff’s attorney in that case made a concession<sup>2</sup> that there is not any private cause of action under the Minnesota State Constitution, because it appears to have created a little ripple through the courts in Minnesota perpetuating a mistaken belief that this is actually true. No matter what the *Guite* case says, it is simply not accurate to say that there are not any private causes of action under the Minnesota Constitution. Article 1 § 12 of the Minnesota Restructured Constitution of 1974, the exact same section of this Constitution pled in the instant case, states as follows:

*“No person shall be imprisoned for debt in this state, but this shall not prevent the legislature from providing for imprisonment, or holding to bail, persons charged with fraud in contracting said debt. A reasonable amount of property shall be*

---

<sup>2</sup> This concession was apparently made during oral argument.

*exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law. Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the same, and provided further, that such liability to seizure and sale shall also extend to all real property for any debt to any laborer or servant for labor or service performed.”*

A private claim under this section of the Minnesota State Constitution is explicitly recognized by the Minnesota Supreme Court. *See Servicemaster of St. Cloud v. GAB Business Services, Inc.* 544 N.W.2d 302 (Minn. 1996). (holding that a home repair contractor should have pursued a constitutional lien claim under the Article I, § 12 of the Minnesota State Constitution). The Minnesota Court of Appeals was mistaken or misinformed in the unpublished case cited by the Defendants given the explicit recognition of a private cause of action under the Minnesota State Constitution by the Minnesota Supreme Court in the case cited above. Private claims under the precise section of the Minnesota State Constitution pled by the Plaintiff herein are explicitly recognized by the Minnesota Supreme Court. Therefore the assertion that such claims do not exist is without merit.

#### **VIII. Plaintiff Has Not Failed to Join any Indispensible Party.**

The Sheriff is subject to the automatic stay, therefore the Sheriff can be held liable for violations of the stay. The Defendants’ argument hinges on their position that they are immune from the automatic stay. If the automatic stay applies to the Sheriff, which it

does, this argument fails, as the Sheriff in this case can and should be independently liable for violation of the automatic stay.

**Conclusion**

In their Memorandum of Law the Defendants contend over and over again that the Plaintiff is laboring under a “mistaken belief” about the automatic stay’s effect on his incarceration on a debt warrant. It is the Defendants that labor under a mistaken belief about their asserted immunity from the automatic stay. For the reasons set forth above, the Defendants’ motion should be denied in its entirety.

Respectfully submitted,

Dated: November 4, 2013

/e/ Nathan M. Hansen  
Nathan M. Hansen  
Attorney for Plaintiff  
2440 North Charles Street, Ste 242  
North St. Paul, MN 55109  
651-704-9600  
651-704-9604 (fax)  
MN Attorney Reg. No. 0328017