

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In re:	:	
	:	
FERNANDO RUIZ ALVARADO &	:	
CARMEN M. VELEZ RAMOS,	:	Case No. 02-00743(GAC)
	:	
	:	
Debtors	:	Chapter 13
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	:	
FERNANDO RUIZ ALVARADO &	:	
CARMEN M. VELEZ RAMOS,	:	
	:	
Plaintiffs	:	
	:	
v.	:	Adv. No. 03-00097
	:	
JUAN A. PICO VIDAL &	:	
ARTURO PICO VIDAL,	:	
	:	
Defendants	:	
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DECISION AND ORDER

I. Background

Pending before this Court is a Motion for Summary Judgment filed by co-defendant Arturo Pico ("Arturo")(Docket #94) and a Request for Partial Summary Judgment against co-defendant Juan Pico ("Juan") filed by Fernando Ruiz Alvarado and Carmen M. Velez Ramos (collectively "debtors")(Docket #101). On July 7, 2003, the debtors filed the instant adversary proceeding to determine whether Juan and his brother Arturo have willfully violated the automatic stay by: terminating the lease agreement with the debtors, which they have held for more that thirty years; by evicting the debtors without compensation from the structure built by the debtors on the leased property; by interfering with the contractual relationship

between debtors and their tenants and finally; by collecting the rent from the properties subleased by the debtors. The debtors allege that pursuant to 11 U.S.C. § 362(a)(3), they are entitled to damages in the amount of \$500,000.00.

On January, 25, 2002, the debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code. On July 7, 2003, they filed the present adversary proceeding. In the complaint (Docket #1), the debtors contend that in the early 1970's they signed a lease for a property on the Ponce By-Pass ("the property") with Mr. Arturo Pico, Jr. ("Mr. Pico"), the father of Arturo and Juan. At that time the property was barren. After leasing the property, the debtors assert that they built three structures, which they subleased with Mr. Pico's permission.

At the time of the filing of the present bankruptcy case, the debtors aver that their main source of income was the rent payments from the subleases. They assert that on March 11, 2003, they were informed that Mr. Pico's property was adjudicated to his widow, Mrs. Teresa C. Vidal ("Mrs. Vidal"), the mother of Arturo and Juan, and that it was her intention to have the debtors vacate the leased premises immediately. In addition, the debtors assert that Mrs. Vidal informed the debtors' tenants that the debtors were not the owners of the property and that from then on, they had to pay the rent directly to Mrs. Vidal. The debtors assert that due to this situation they are in arrears in their Chapter 13 plan and that this constitutes a violation of the automatic stay, since Mrs.

Vidal did not file any action in the local court to officially request that the debtors vacate the property. Furthermore, they aver that Mrs. Vidal did not give them reasonable time to vacate the premises, which they have been occupying for more than thirty years. The debtors assert that, as per the laws of Puerto Rico, they are entitled to receive credit for the structures built by them, which cannot be removed without permanent damage to the property. The debtors request that the Court a) hold a hearing to determine that Mrs. Vidal's actions constitute a violation of the automatic stay, b) issue an order determining that the actions of Mrs. Vidal constitute a willful violation of the automatic stay, c) enter judgment against Mrs. Vidal in such amounts as the evidence shows, d) award debtors costs, fees, disbursements and such other relief as may be deemed just and proper, and e) enter a protective order of injunction against Mrs. Vidal prohibiting her from continuing to deter debtors from collecting the rents due from the structures on the property and evicting the debtors from the leased premises without the corresponding order from the local court.

The Court held a hearing on July 18, 2003, regarding the protective order requested by the debtors. On July 24, 2003, the Court entered a protective order requiring Mrs. Vidal to cease and desist from all acts to collect rent from debtors' tenants, Jorge Fournier, Jaime Sureda Plaza, Carlos Pacheco and Jose Luis Mercado, and prohibiting Mrs. Vidal from commencing a judicial eviction action against debtors or their tenants. Also, the tenants were specifically ordered to continue paying monthly rent to the

debtors, commencing in the month of July 2003 until the Court ordered otherwise. Furthermore, the Court ordered that any rent payed to Mrs. Vidal for the month of July 2003 was to be paid to the debtors and the rent collected by Mrs. Vidal, for the months of March 2003 until June 2003, were to be deposited with the Clerk of the Court.

On August 22, 2003, Juan filed an Informative Motion (Docket #12), stating that he had complied with the protective order and that he consigned with the Clerk of the Court the rent payments received for the months of March 2003 to June 2003. On September 11, 2003, Juan filed another motion in compliance with order (Docket #9), informing that he collected the rent from Jorge Fournier and from Jose Luis Mercado, and that he was consigning the amounts with the Court and that he has not commenced a judicial or extra-judicial eviction against the debtors or their tenants.

On December 29, 2003, after Mrs. Vidal's death, the debtors filed an amended complaint (Docket #27) to substitute Mrs. Vidal with her heirs, Arturo and Juan, and to include as co-defendants debtors' tenants. In the amended complaint, the debtors aver that they personally notified Arturo and Juan of the filing of the petition for bankruptcy. They assert that on March 11, 2003, they received notification from defendants in the name of their mother Mrs. Vidal, claiming ownership and title over the property of the estate and requesting that debtors immediately vacate the property, without compensation for the structures and business established on the property. The debtors assert that despite the fact that

defendants knew of debtors' bankruptcy and of the fact that the lease contract and sublease contracts were assumed by the defendants, since March 31, 2003, Jorge Fournier, Jaime Sureda Plaza, Carlos Pacheco and Jose Luis Mercado ceased to pay rent to the debtors due to Arturo's and Juan's interference with the tenants. The debtors claim that Juan and Arturo are liable in the amount of \$100,000.00 in compensation for the structures built by the debtors and \$200,000.00 due to interference with debtors' contractual relationship with their tenants. The debtors also claim \$100,000.00 in emotional damages for depression, severe stress and loss of sleep resulting from the extrajudicial eviction. Debtor, Mr. Ruiz, specifically alleges that he had to undergo heart surgery due to stress related to defendants' action. Finally, they seek \$100,000.00 in punitive damages for the wilful violation of the automatic stay.

The debtors also claim against their tenants and included them as co-defendants, for not paying the rent owed after they became aware that the debtors were not the owners of the property. As for these claims, default was entered against all four tenants and judgment by default was entered in favor of the debtors.

II. Pending matters:

A. Arturo's Motion for Summary Judgment

On February 9, 2006, Arturo filed a motion for summary judgment (Docket #94), alleging that the amended complaint fails to include as defendants Mrs. Vidal and her estate, which he avers are the real owners of the property. Arturo denies violating the

automatic stay because he claims that at no time did he have knowledge or in any way participate in the preparation and subsequent notification of the letters signed by Mrs. Vidal and addressed to the debtors. As to the debtors' claim for monetary compensation for the structures built, Arturo contends that the right of accession pertains only to the owner of the land. He asserts that the property was first adjudicated to his mother, and then she donated the property to his brother Juan. Thus, he concludes that he has never been the owner of the property. Arturo also asserts that even though he is currently challenging the donation made by his mother to his brother Juan, even if he prevails, the property will revert to Mrs Vidal's estate. Finally, Arturo avers that the debtors lack evidence to establish a causal nexus between the alleged emotional damages and the acts committed. Arturo requests that the Court grant summary judgment and that a judgment be entered dismissing the amended complaint against him.

On March 20, 2006, the debtors filed a reply to Arturo's motion for summary judgment (Docket #100). Debtors contend that equitable estoppel forbids going against one's own acts, representations, or commitments to the injury of one to whom they were directed and who reasonably relied upon them. They assert that they are entitled to compensation for the structures they built on the property pursuant to P.R. Law. Ann. § 297. They also assert that according to article 1802 of the Civil Code, they are entitled to damages for Arturo's interference with their contracts. The debtor's contend that Arturo had actual knowledge that the debtors

had filed for bankruptcy and that he violated the automatic stay. The debtors present as evidence excerpts of the transcript of Arturo's deposition.

In his deposition taken on May 4, 2006, Arturo mentions a letter dated June 6, 2002, wrote by him to Attorney Soto Ledesma attaching a copy of all the lease contracts and the documents of all the properties and stating: "I tell him in this letter that mister [sic] Fernando Ruiz was on [sic] bankruptcy court, there was no lease contract with him, but he has continued to pay the rent." (Docket #100, Exhibit A).

The debtors aver that Arturo stated that he was not the owner of the property, but they assert that in a letter dated June 8, 2002 and signed by Arturo, he states that he is the owner of the property and that he leases it to the debtor, Mr. Ruiz. (Docket #121, Exhibit A). On the other hand, the debtors assert that Arturo always acted as the owner of the property, he collected the rent payments, he dealt directly with debtors and was the person the debtors addressed when there was a problem with the property, such as a need for repairs. The debtors aver that all of this was admitted by Arturo in the deposition taken. (Docket #100, Exhibit C). Moreover, in Juan's deposition, taken the same day, Juan states that Arturo is the one in charge of collecting the rent payments. (Docket #100, Exhibit D). Furthermore, the debtors contend that although the property belongs to Juan by a donation made by Mrs. Vidal, there is a local action pending in which Arturo challenges the validity of the deed of donation in favor of Juan and that such

complaint was filed after the death of Mrs. Vidal, when Arturo acquired actual knowledge of the donation. (Docket #122, Exhibit E). Debtors assert that after being evicted by Arturo they appealed to him, because in his deposition he allegedly stated that he thought of himself as eventual co-owner of the property. (Docket #100, Exhibit H). The debtors also assert that Arturo totally ignored them and did nothing to avoid the actions committed in violation of the automatic stay.

On May 3, 2006, Arturo filed a reply to debtors' opposition to the motion for summary judgment (Docket #102), claiming that the opposition does not even mention which act is prohibited by section 362(a) of the Bankruptcy Code. Second, Arturo contends that debtors cannot claim that at the time of the alleged violation on March 31, 2003, Arturo was the owner of the leased premises or that he represented to be the owner. Arturo avers that since the letter dated July 5, 2002, he notified the debtor, Mr. Ruiz, that the leased premises had been adjudicated to Mrs. Vidal and that all the payments should be made in her name. On the other hand, Arturo also avers that in the letter dated June 8, 2002, he did not sign as owner, but as Administrator of Mr. Pico's estate (Docket #12, Exhibit A). Moreover, he avers that the letter does not state that he is the owner of the property. Finally, he contends that the debtors' new allegations far from evidencing Arturo's alleged violation of the automatic stay, exonerate him of any wrong doing. As such, Arturo states: a) that as admitted by debtors, he did not commence or continue any judicial or administrative process against

them, b) he did not enforce a judgment against debtors or against the property of the estate, c) he did not obtain possession of the property of the estate or property from the estate, and d) he did not collect a claim against the debtors. Thus, he concludes that the allegations in the amended complaint against him, are frivolous and without any merit. Therefore, he requests that the Court enter summary judgment in his favor.

On May 5, 2006, the debtors filed a motion supplementing their reply to Arturo's motion for summary judgment (Docket #103). In such motion, the debtors attached a declaration under penalty of perjury, in which they state that on January 25, 2002 they filed for bankruptcy and that the debtor, Mr. Ruiz, personally gave notice to Arturo that he had filed the petition. Such fact was acknowledged by Arturo in a letter dated June 6, 2002, addressed to Attorney Soto Ledesma. They also assert that on March 11, 2003, Mr. Ruiz received a letter from Mrs. Vidal which stated that the lease agreement was cancelled and that he should leave the property. They aver that prior to receipt of the letter from Mrs. Vidal, the debtor, Mr. Ruiz had conducted business with Arturo, who at all times represented to be the owner and administrator of the lot of land. The debtors also aver that all payments made for the rent were made to and received by Arturo and that throughout all the dealings with Arturo, he represented to be the owner of the land and disposed of it as such. They state that Arturo had knowledge of all the illegal actions committed by defendants and had the

opportunity to correct or aid in the correction of them, neglected to do so and aided in the actions committed in violation of the automatic stay. Finally, the debtors allege that Arturo's actions and all the hardship brought upon them, have caused a negative effect on Mr. Ruiz's health, which includes but is not limited to heart problems including a heart attack, distress anxiety and mental suffering. Thus, the debtors request that the Court enter judgment in their favor granting their opposition to Arturo's motion requesting summary judgment (Docket #100).

B. Debtors' Request for Partial Summary Judgment against Juan

On March 27, 2006, the debtors filed a request for partial summary judgment against Juan (Docket #101), contending that Juan violated the automatic stay with full knowledge and intention of doing so, that he wrongfully interfered with debtors' tenants contractual relationship and that he is liable for compensation for the structures built in good faith by the debtors. The debtors aver that Juan and Arturo jointly administered the property leased to debtors, that Arturo was in charge of collecting the rent and that Juan was in charge of depositing the rent payments in the bank. They also aver that Arturo was notified of debtors' bankruptcy and that Arturo notified Juan's attorney, Soto Ledesma. The debtors assert that in Juan's deposition he stated, that on December 3, 2001, a general power of attorney was granted to him by Mrs. Vidal, which authorizes him to represent and contract on her behalf. (Docket #101, Exhibit H). In 2002, Juan indicates that he became

aware of the leasing of the property when a check issued by the debtors to pay the rent was returned by the bank for lack of funds (Docket #101, Exhibit I). As per his deposition, Juan sent the check to Attorney Soto Ledesma who allegedly said that "he [sic] take charge of that." (Docket #101, Exhibit J). Also the debtors assert that Juan admits in the deposition, that he went to the leased premises and intervened with debtors' tenants, that he inquired about the rent paid by each of the tenants and understood that the amount was unfair, because Mrs. Vidal was receiving much less compared to what the debtors were receiving. Juan understood, according to his testimony, that Mrs. Vidal could receive more economic benefit from the leases. (Docket #101, Exhibit K). He continued stating that on June 6, 2002, Attorney Soto Ledesma requested that Arturo send all the lease contracts over the structures built and leased by the debtors, stating that from then on Juan and Attorney Soto Ledesma were going to make all the rental contracts. (Docket #101, Exhibit M). Juan also stated that Mrs. Vidal became aware of debtors' filing for bankruptcy when he informed her of the fact at the end of 2002. (Docket #101, Exhibit N). On March 20, 2003, debtors aver that their tenants received a letter signed by Mrs. Vidal, in which they were informed of the termination of the lease and were instructed that starting on April 1, 2003, she would take control of the properties and that they were to meet to agree upon proceedings regarding the structures occupied. The letter also urged them to schedule a meeting with

Attorney Soto Ledesma. (Docket #121, Exhibit P). The debtors also aver that sometime after Juan talked to the debtors' tenants, the tenants started making payment directly to Juan. Finally, the debtors assert that the property that was leased to them was sold in September of 2005 by Juan for the sum of \$3,000,000.00 and they did not receive any compensation.

On May 5, 2006, the debtors filed a motion supplementing their request for summary judgment against Juan (Docket #104), in which the debtors submit the same declaration under penalty of perjury filed in their motion supplementing their reply to Arturo's request for summary judgment (Docket #103). The debtors also supplement evidence of their ownership of the three structures built on the property. The debtors include as attachments: a copy of the utility bill of the Aqueduct and Sewer Company, the Electric Energy Authority bill and a CRIM bill, all three still in the name of the debtors. The debtors assert that such bills for utilities and municipal taxes on real estate are sent to them even though they are not in possession of the structures and are not receiving rent payments from their tenants due to Juan's action. Thus, the debtors request that the Court enter judgment in their favor granting their request for partial summary judgment against Juan (Docket #101).

On May 5, 2006, Juan filed an opposition to the debtors' request for partial summary judgment (Docket #105), contending that according to the terms and schedule set by this Honorable Court,

dispositive motions should have to be filed on or before February 28, 2006. Juan contends that although this Court granted the debtors' request for an extension of time to reply to Arturo's motion for summary judgment, the debtors made no such request for filing other dispositive motions. Juan avers that the debtors' request for summary judgment at this point delays the proceedings further. He also avers that the final pre-trial was scheduled for May 12, 2006 and trial for May 26, 2006. Thus, the debtors' request for summary judgment at this point is in contravention of the terms and schedule set by the Court and an attempt to delay the proceedings. Juan maintains that he is ready for the pre-trial and the trial. He also maintains that the above captioned case was filed three years ago and the debtors constant failure to abide by the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure and the terms given by this Court, has caused an unreasonable delay in this proceeding and has been very prejudicial to all co-defendants. In the alternative, Juan asked for an extension of time to file a response to the debtors' motion requesting partial summary judgment, but failed to file the response.

On May 10, 2006, the debtors filed a reply to Juan's opposition to debtors' request for partial summary judgment (Docket #106). The debtors assert that their request for summary judgment is in accordance with the Court's intention to set terms and schedules. Additionally, debtors aver that their request for

partial judgment in no way causes prejudice to Juan, as it is based on available evidence and is in large part based on the declarations made by the co-defendants in their depositions. Finally, they aver that they have complied with both the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure, and that far from delaying the proceedings before the Court, the request will limit the controversies and issues to be addressed at trial. Thus, the debtors assert that it facilitates and expedites the proceedings before the Court.

III. Summary of Letters Exchanged:

On December 3, 2001, Mrs. Vidal gave a general power of attorney to Juan. (Docket #101, Exhibit H). On June 6, 2002, Arturo sent a letter to Attorney Soto Ledesma, informing him that the debtors were in bankruptcy. (Docket #121, Exhibit F). Then on June 7, 2002, Mrs. Vidal donated the property to Juan. On June 8, 2002, Arturo wrote another letter addressed to whom it may concern, certifying that he was leasing a property to the debtors since 1973, and that the debtor built some buildings on the property for his business (Docket #121, Exhibit A). On July 5, 2002, Arturo sent a letter to the debtors informing them that Mr. Vidal had died and that they should make all the rent payments in the name of Mrs. Vidal. On March 11, 2003, Mrs. Vidal sent a letter to the debtors informing them of the termination of the lease and to vacate the property by March 31, 2003. On March 20, 2003, Mrs. Vidal sent letters to the subleases, informing them that she was the owner of

the property, that the lease she had with the debtor would end on March 31, 2003, and that starting on April 1, 2003, she would take control of the properties (Docket #121, Exhibit P and Q).

IV. Discussion

A. Summary Judgment standard:

Under Federal Rule of Civil Procedure 56(c), made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 7056, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corporation v. Catrett, 477 U.S. 317 (1986) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)). As to issues on which the movant at trial, would be compelled to carry the burden of proof, it must identify those portions of the pleadings which it believes demonstrates that there is no genuine issue of material fact. Rijos v. Banco Bilbao Vizcaya (In re Rijos), 263 B.R. 382, 388 (B.A.P. 1st Cir. 2001). A fact is deemed "material" if it potentially could affect the outcome of the suit. Cortes-Irizarry v. Corporación Insular, 111 F.3d 184, 187 (1st Cir. 1997). The Court must view the evidence in a light most favorable to the nonmoving party. In re Rijos, 263 B.R. at 388. Therefore, "summary judgment is inappropriate if inferences are necessary for the judgment and those inferences are not mandate by the record." Id.

B. The Automatic Stay

The automatic stay provision is one of the fundamental debtor protections in the Bankruptcy Code. It gives the debtor a "breathing spell" from creditors and it stops all collection efforts, all harassment and all foreclosure actions. H.R.Rep. No. 95-595, 95th Cong. 1st Sess. 340-342 (1977); S. Rep. No.989, 95th Cong., 2d Sess. 54-55 (1978), *reprinted* in 1978 U.S.C.C.A.N. 5787, 5840, 6296-97. "It allows the debtor to attempt a repayment or reorganization plan or simply to be relieved of the financial pressures that drove him into bankruptcy." *Id.*

The automatic stay provision specifically outlines those acts which are prohibited, including "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3).

When a creditor willfully acts after the filing of a petition under 11 U.S.C. § 301, and without authorization from the Court, to obtain possession of the property of the estate, the debtor may recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages. 11 U.S.C. § 362(k).

Although the Bankruptcy Code does not define the term "willful," the United States Court of Appeals for the First Circuit has held that a creditor willfully violates the automatic stay if it: (1) has notice of the automatic stay, and (2) the act or acts of the defendant were intentional. Fleet Mortgage Group, Inc. v.

Kaneb (In re Kaneb), 196 F.3d 265, 269 (1st Cir. 1999). There can be no violation of the automatic stay if the creditor was not given actual notice of the filing of the petition. Id. Debtor has the burden of providing the creditor with actual notice. The burden then shifts to the creditor to prevent violations of the automatic stay. Id. at 270. See also In re Ocasio, 272 B.R. 815, 824 (B.A.P. 1st Cir. 2002).

C. Aiding and Abetting Claims

Although in In re McMullen, the First Circuit Court of Appeals did not determine whether an "aiding and abetting" claim is cognizable under subsection 362(h). 386 F.3d at 332. The Court discusses the aiding and abetting claims, stating that:

A plaintiff normally establishes a defendant's liability as an aider and abettor by demonstrating three elements: (1) the primary actor committed a wrongful act that causes injury; (2) the aider and abettor was aware of his role in the overall wrongful activity when he provided the assistance; and (3) the aider and abettor knowingly and substantially assisted the primary actor's wrongful act. See Temporomandibular Joint Implants Recipients v. Dow Chem. Co. (In re Temporomandibular Joint Implants Prods. Liab. Litig.), 113 F.3d 1484, 1495 (8th Cir. 1997); Colonia Ins. Co. v. City Nat'l Bank, 13 F.Supp.2d 891, 897 (W.D.Ark. 1998); In re Northgate Computer Sys., Inc., 240 B.R. 328, 359 (Bankr. D.Minn. 1999); See generally Restatement (Second) of Torts § 876(b).

As "aiding and abetting" liability is derivative in nature, *cf.* United States v. Loe, 248 F.3d 449, 458 (5th Cir. 2001) ("An aider-abettor is guilty in a derivative sense; his guilt is contingent on the acts of another."), and the factfinder already had found that the primary actors (*viz.*, the

Sevignys) had committed no violation either cognizable or compensable under subsection 362(h), the bankruptcy court correctly found in favor of Perry and Williams as well.

In re McMullen, 386 F.3d at 332.

D. Property of the Estate

Section 541 of the Bankruptcy Code enumerates the types of property interests which are included in the bankruptcy estate. The estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "[D]ebtor's interest in property also includes 'title' to property, which is an interest, just as are a possessory interest, or leasehold interest." H.R.Rep. No. 595, 95th Cong., 2d Sess. 367, *reprinted in* 1978 U.S.Code Cong. & Admin.News 5963, 6323; S.Rep. No. 989, 95th Cong., 2d Sess. 82, *reprinted in* 1978 U.S.Code Cong. & Admin.News 5787, 5868. Furthermore, as construed in 11 U.S.C. § 514(a)(6), rents are property of the estate: "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such earnings from services performed by an individual debtor after the commencement of the case." 11 U.S.C. § 541(a)(6).

Courts have recognized that a tenant's possessory interest in a property is included in the bankruptcy estate when the bankruptcy petition is filed and thus, a landlord must seek relief from the automatic stay prior to terminating the lease or instituting eviction proceedings. In re Atlantic Bus. and Cmty. Corp., 901 F.2d 325, 328 (3d Cir. 1990); In re 48th Street Steakhouse, Inc., 835

F.2d 427, 430 (2nd Cir. 1987). See also In re American International Airways, Inc., 44 B.R. 143, 145 (Bankr. E.D.Pa. 1984); In re KDT Industries, Inc., 32 B.R. 852, 856 (Bankr. S.D.N.Y. 1983); In re Allan Steaks Corp., 22 B.R. 881, 882 (Bankr. D.Mass. 1982); and In re Andorra Meat Market, Inc., 7 B.R. 744, 745-46 (Bankr. E.D.Pa. 1980).

In In re Atlantic Bus. and Cmty. Corp., 901 F.2d 325, the Third Circuit Court of Appeals held that a landlord's attempts to evict a Chapter 11 debtor from a radio station, even after the bankruptcy court had entered an order restraining landlord from further interference with operations of the station, constituted a willful violation of the automatic stay warranting imposition of punitive damages, attorney fees and costs pursuant to § 362(h). The court stated that "[w]hether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded." Id. at 329.

Because a lease is considered part of the bankruptcy estate, any action against the lease violates the automatic stay. In In re 48th Street Steakhouse, Inc., 835 F.2d 427, the Second Circuit Court of Appeals held that a landlord's attempt to terminate a prime lease, if successful, would have resulted in destruction of debtor's subtenancy. Thus, landlord's termination notice to prime tenant violated the automatic stay and was void. Id. at 430.

E. Application to the Present Case

In the present case, the debtors filed a petition under

Chapter 13 of the Bankruptcy Code on January, 25, 2002. They filed the present adversary case on July 7, 2003, alleging a violation of the automatic stay. Thus, the first question before the Court is whether Juan and Arturo had notice or actual knowledge of the automatic stay at the time of the filing of the petition.

Arturo admits in his deposition that he knew that the debtors had filed a petition for bankruptcy. (Docket #100, Exhibit A). Arturo avers that in a letter dated June 6, 2002, he notified Juan's attorney,¹ Attorney Soto Ledesma, that Mr. Fernando Ruiz was in bankruptcy. (Docket #141, Exhibit F). Thus, this Court concludes that Arturo had notice from the time of the filing of the petition that the debtors had filed for bankruptcy and that sometime around June 6, 2002, Juan had actual knowledge of the debtor's bankruptcy. If Juan or Arturo interfered with the debtor's lease or subleases or evicted the debtors and as a result terminated the debtors' lease after the petition for bankruptcy was filed, the Court concludes that there has been a willful violation of the automatic stay.

In a letter dated March 20, 2003, Mrs. Vidal² terminated the debtors' lease and instructed the debtors' tenants that she would

¹ Attorney Soto Ledesma was also Mrs. Vidal's attorney.

²Although there is no claim pending against Mrs. Vidal, for continuity reasons and for the reasons discussed below, her actions will be taken into account.

take control of the properties and that they were to meet to agree upon proceedings regarding the structures occupied. (Docket #121, Exhibit P). This letter clearly constituted a violation of the automatic stay because Mrs. Vidal had actual knowledge of the debtors' bankruptcy petition, obtained through Juan's legal counsel, and because she was terminating the lease agreement, which was property of the estate, after the petition for bankruptcy was filed. Secondly, it was also a violation of the automatic stay, because it was terminating the sublease agreements and attempting to collect the rent payments, which were also property of the estate. Thus, because the lease, the subleases and the rent payments are part of the bankruptcy estate, as of the date the petition was filed, Mrs. Vidal had to seek relief from the automatic stay in the bankruptcy court before performing such actions.

Moreover, the debtors aver that Juan had actual knowledge of the debtors' bankruptcy. He admitted, in his deposition, that he went to visit the debtors' tenants to ask them questions about their rent payments and concluded that Mrs. Vidal could receive more monetary benefit from termination of the lease. (Docket #101, Exhibit K). After Juan's visit, Mrs. Vidal sent the letter to the debtors and their tenants, evicting debtors and at the same time terminating the subleases, held for more than thirty-three years.

Juan was given power of attorney on December 3, 2001, and was the only one authorized by Mrs. Vidal to do business in her name. (Docket #101, Exhibit H). Juan acquired knowledge of the debtors'

bankruptcy petition sometime around June 6, 2002. (Docket #100, Exhibit A). Through a donation by Mrs. Vidal, Juan became the owner of the property on June 7, 2002. Debtors aver that despite the fact that Juan knew of their bankruptcy, he collected the rent payments from the debtors' tenants. Juan does not specifically rebut any of the aforementioned actions alleged by the debtors and he was the one who filed the motions in compliance with order consigning the rent payments made to him by the debtors' subleases (Dockets #9 and #12). In his reply to the debtors' motion requesting partial summary judgment, he asked for an extension of time to file an opposition, but failed to file one.

The Court concludes that Juan wilfully violated the automatic stay by collecting rent payments from the debtors' subleases after he had knowledge of the bankruptcy petition. Further, after Juan's intervention with the tenants and with his advice Mrs. Vidal sent the letters dated March 11 and March 20, 2003 to the debtors and their tenants and evicted the debtors. Juan received the power of attorney and became the sole owner of the property prior to the filing of the debtor's petition for bankruptcy. After Mrs. Vidal's death on July 27, 2003, or after Juan became aware of the debtors' bankruptcy, he had the obligation to prevent the continuation of the violation of the automatic stay allegedly committed by Mrs. Vidal, by reinstating debtors' lease, the subleases and ordering the tenants to pay the rent to the debtors, as ordered by this Court in the protective order dated July 24, 2003. The protective order was

clearly not only directed to Mrs. Vidal because she died three days later, but to whom ever had taken an adverse action against debtors' lease, subleases and rent payments.

On the other hand, Arturo contends that he did not violate the automatic stay since he is not the owner of the property, and did not incur in any adverse action toward the debtors, their lease or their subleases. Furthermore, Arturo asserts that he did not prepare nor aid in the preparation of the letters sent by Mrs. Vidal to the debtors or their tenants. Debtors contend that Arturo was aware of the actions taken against the debtors, in violation of the automatic stay, and that having the opportunity to amend the situation he decided to do nothing and instead aided and abetted the co-defendants' actions. Debtors also contend that Arturo represented himself as owner of the property and thus, he cannot now go against his own acts and state that he has never been the owner of such property, after receiving the rent payments and administering the property.

The Court finds that Arturo had neither the power of attorney possessed by Juan to act on Mrs. Vidal's behalf, nor the power to protect debtors' interest in the property as an administrator or as future owner of the property. Arturo could not reinstate the lease nor the subleases and he did not collect the tenants' rent payments. Thus, the Court concludes that Arturo did not aid or abet in the actions taken by Mrs. Vidal or Juan and that it was not within his power to prevent the violation of the automatic stay. This Court

also finds that Arturo did not act jointly with his mother, Mrs. Vidal, to evict the debtors, to terminate the lease or to terminate the subleases.

V. Conclusion

A party seeking summary judgment bears the initial burden and must identify those portions of the pleadings which it believes demonstrates that there is no genuine issue of material fact, *infra*. Once the movant meets its burden, the burden of proof shifts to the party opposing the motion for summary judgment to establish that there are questions of material fact. 10 Collier on Bankruptcy, § 7056.05, p. 7056-7 (15th ed. revised, Lawrence P. King ed., 2006).

In the present case, Arturo filed a motion for summary judgment and the debtors opposed the request. The letters, the deposition and the legal documents introduced by both parties in their respective motions do not raise substantial issues of fact regarding whether Arturo willfully violated the automatic stay. This Court concludes that Arturo has met his burden of showing that there are no genuine issues of material fact. Likewise, the Court concludes that the debtors have not met their burden of proving that Arturo willfully violated the automatic stay or that they are entitled to a remedy regarding Arturo. Accordingly, this adversary proceeding will be dismissed as to Arturo.

On the other hand, the debtors filed a motion requesting partial summary judgment against Juan and Juan failed to reply to the motion. The Court concludes that the debtors have met their

burden of showing that there are no genuine issues of material fact regarding the willful violation of the automatic stay by Juan. The un rebutted evidence clearly shows that Juan had notice of the automatic stay and that he intentionally interfered with the debtors' lease, subleases and the rent payments. His actions occurred while Mrs. Vidal controlled the property, later after the power of attorney was granted to him by his mother and finally as owner of the property. Accordingly, the debtors' motion for partial summary judgment against Juan will be granted.

ORDER

IT IS ORDERED that the Motion for Summary Judgment filed by Arturo Pico (Docket #94) is GRANTED. This adversary proceeding shall be, and it hereby is, dismissed as to Arturo Pico.

IT IS FURTHER ORDERED that the debtors' Motion requesting Partial Summary Judgment against Juan Pico (Docket #101) shall be, and it hereby is, GRANTED.

An evidentiary hearing will be scheduled for the Court to consider the debtors entitlement to damages.

SO ORDERED.

San Juan, Puerto Rico, this 18th day of December 2006.

/s Gerardo A. Carlo-Altieri

GERARDO A. CARLO-ALTIERI
Chief, U.S. Bankruptcy Judge