

ISLAND AVIATION, INC.
vs.
MARIANA ISLANDS AIRPORT
AUTHORITY, et al.

Civil Action No. 81-48
District Court NMI

Decided September 7, 1983

1. Bankruptcy - Automatic Stay

The stay of proceedings applicable upon the filing of a petition in bankruptcy becomes effective automatically upon filing of the petition and formal service or notice is not required; the filing of the petition operates as notice to the world. 11 U.S.C. §362(a).

2. Bankruptcy - Automatic Stay

Exception to the automatic stay provision of the bankruptcy laws applicable to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's policy or regulatory power does not apply when the object of the government action is to enforce collection of pre-petition debt. 11 U.S.C. §362(b)(4).

3. Bankruptcy - Automatic Stay

The automatic stay under the federal bankruptcy laws remains in effect until a final discharge is granted or denied, or until such time as the court otherwise determines. 11 U.S.C. §362(b)(4).

**4. Bankruptcy - Automatic Stay -
Dissolution**

The proper and necessary method to seek dissolution of the automatic stay is to commence an adversary proceeding requesting relief from the automatic stay. 11 U.S.C. §362.

**5. Bankruptcy - Automatic Stay -
Waiver**

The automatic stay provisions of the federal bankruptcy law were enacted for the benefit of debtors and, therefore, any right to a stay which the debtor may have can be waived. 11 U.S.C. §362.

**6. Bankruptcy - Automatic Stay -
Waiver**

Inaction by the debtor, or mere compliance in the continuation of judicial proceedings, does not result in waiver of the automatic stay under the federal bankruptcy law. 11 U.S.C. §362.

FILED
Clerk
District Court

SEP 07 1983

For The Northern Mariana Islands

By [Signature]
(Name, Clerk)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

ISLAND AVIATION, INC.,)	CIVIL ACTION NO. 81-48
)	
Plaintiff,)	
)	
vs.)	<u>DECISION</u>
)	
MARIANA ISLANDS AIRPORT)	
AUTHORITY, et al.,)	
)	
Defendant.)	

STATEMENT OF THE CASE

Island Aviation, Inc. (Island Air) commenced this action against Mariana Islands Airport Authority (Airport) on September 3, 1981 for declaratory and injunctive relief, and seeking judicial review of the legality of certain charges which were assessed against Island Air by the Airport Authority

The Airport Authority filed a counterclaim for unpaid departure facility service charges (DFSC) owed to it by Island Air and its predecessor in interest.

1 On December 9, 1981 Island Air filed a Motion for
2 Partial Summary Judgment on the legality of the DFSC. On January
3 7, 1982 Airport Authority filed a Cross Motion for Partial
4 Summary Judgment on the same issue.

5 On March 22, 1982 this Court heard argument on the
6 parties' cross motions for partial summary judgment, and on
7 December 30, 1982 entered an Order granting partial summary
8 judgment to defendant Airport Authority.

9 On September 8, 1982 plaintiff Island Air filed a
10 Petition for Bankruptcy under Title 11 U.S.C. Chapter 7, and an
11 order was entered thereon.

12 Defendant Airport now moves for summary judgment
13 against Island Air, seeking the sum of \$201,661.26 in unpaid
14 DFSC.

15 Plaintiff claims protection under 11 U.S.C. § 362,
16 which imposes a stay against the commencement or continuation of
17 proceedings against a debtor who has filed for bankruptcy under
18 Title 11.

19 We agree with plaintiff that 11 U.S.C. § 362 operates
20 to stay these proceedings until a final discharge in bankruptcy
21 is granted or denied by the Bankruptcy Court. We, therefore,
22 make no determination at this time on the merits of defendant's
23 instant Motion for Summary Judgment.

24 ///

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ANALYSIS

11 U.S.C. § 362(a) provides that the filing of a petition in bankruptcy operates as a stay of all the proceedings set forth therein. Subsection (a)(1) stays the "commencement or continuation. . . of a judicial. . . proceeding against the debtor. . . "

[1] The stay of proceedings becomes effective automatically upon filing of the petition, and formal service or notice is not required. The filing of the petition operates as notice to the world. See, generally 11 U.S.C. § 362(a) and Historical and Review Notes. It thus appears that all action in the instant proceedings is stayed by the provisions of section 362(a).

Defendant, however, contends that a stay of these proceedings is not authorized by section 362(a), pursuant to section 362(b), which sets forth limited exceptions to the broad application of the stay. Subsection (b)(4) makes the stay inapplicable to the:

"commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." 11 U.S.C. § 362(b)(4).

Defendant contends that this is such an action or proceeding as contemplated by subsection (b)(4).

However, the legislative statement addressing subsection (b)(4) makes it clear that:

This section is intended to be given a narrow construction in order to permit governmental units to pursue

1 actions to protect the public health
2 and safety and not to apply to actions
3 by a governmental unit to protect
4 a pecuniary interest in property
of the debtor or property of the
estate.
11 U.S.C.A. § 362 Note, at p. 419

5 [2] This interpretation is reinforced by case law, which
6 holds generally that when the object of the government action is
7 to enforce collection of pre-petition indebtedness it is not an
8 action to enforce appropriate police or regulatory interests of
9 the governmental unit, and the automatic stay will be imposed.
10 See, Notes 9a, 9d, 11 U.S.C.A. § 362.

11 Subsection (a)(1) simply provides for an automatic
12 stay, applicable to all entities, of judicial proceedings against
13 the debtor. Subsection (b)(4) provides a specific limitation on
14 the applicability of subsection (a)(1), and defendant has not
15 shown that its motion for summary judgment is contemplated by
16 this exception.

17 Thus, when plaintiff filed its petition in bankruptcy
18 on or about September 8, 1982, all legal actions against the
19 debtor were thereupon automatically stayed; no new actions could
20 be commenced, and ongoing proceedings were properly halted for
21 the duration of the stay.

22 [3] The automatic stay remains in effect until a final dis-
23 charge is granted or denied, or until such time as the court
24 otherwise determines 11 U.S.C. § 362(c); also see Note 2a, 11 U.S.C.A.
25 § 362. There is no indication that a final discharge has yet
26 been granted or denied; therefore, the stay of proceedings provided

1 by section 362(a)(1) remains in effect to preclude any further
2 action in these proceedings.

3 Section 362 does provide for modification or termi-
4 nation of the automatic stay for cause or to avoid undue harm to
5 a creditor. Subsection (d) sets forth the basic grounds for
6 relief from the stay, and subsections (e) and (f) provide the
7 procedural requirements.

8 [4] Defendant has filed a Memorandum in Opposition to
9 Application for Stay. It appears from the record and the instant
10 motion that what defendant really seeks here is relief from the
11 automatic stay. The proper and necessary method to seek dissolu-
12 tion of the stay is to commence on adversary proceeding requesting
13 relief from the automatic stay. Note 2, 11 U.S.C.A. § 362.
14 Defendant's Memorandum in Opposition to Application for Stay is
15 not in the nature of an adversary complaint, nor has defendant
16 complied with the procedural requirements necessary to commence
17 such an action. Moreover, defendant's contentions do not provide
18 cause for setting aside the stay pursuant to section 362(d).

19 [5] Defendant also argues that plaintiff has waived any
20 right to a stay of proceedings. While defendant correctly asserts
21 that the stay provisions were enacted for the benefit of debtors
22 and, therefore, any right to a stay which the debtor may have can
23 be waived, see Boynten v. Ball, 121 U.S. 457 (1887); Smith v.
24 Phlegar, 236 P.2d 749 (Ariz. 1951), we fail to find any such
25 waiver by plaintiff in the instant proceedings.

26 ///

1 6 While the protection afforded by section 362 may be
2 waived by the debtor, there is no support for the proposition, as
3 defendant asserts, that inaction by the debtor, or mere compliance
4 in the continuation of judicial proceedings will result in waiver
5 of the stay. In fact, to find an implied waiver here would seem
6 to contradict the very notion, advanced by defendant herein, that
7 the stay provisions were enacted for the benefit of debtors.

8 We, therefore dismiss, as without merit, defendant's
9 arguments herein. An appropriate order staying all action in
10 these proceedings, during the pendency of the proceedings in
11 Bankruptcy, will be entered.

12
13 DATED this 7th day of September, 1983.

14
15
16 
17 _____
18 ALFRED LAURETA
19 Judge
20
21
22
23
24
25
26