

Court of Appeal Delves into Bankruptcy Law; Did It Get It Right? Find Out at Your Own Peril!

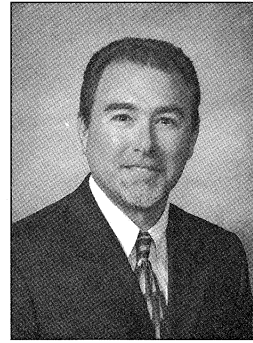
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In *Rubin v. Ross*, 65 Cal. App. 5th 153 (Cal. App. 4th 2021), the California Court of Appeal for the Fourth Appellate District held that the automatic stay protections afforded all debtors in a bankruptcy proceeding pursuant to 11 U.S.C. § 362 did not prevent a judgment creditor from renewing a judgment against the debtor while the automatic stay was still in place. The court further held that although the automatic stay did not prevent the judgment creditor from renewing its judgment, 11 U.S.C. § 108(c) nevertheless extended the judgment creditor's time to renew the judgment until thirty days after the automatic stay was terminated.

Business lawyers should know that this ruling is contrary to California bankruptcy and district court opinions, more fully discussed herein, which have explicitly held that the automatic stay protections of 11 U.S.C. § 362 do in fact prevent a judgment creditor from renewing a judgment against the debtor during the pendency of a bankruptcy proceeding. This article will cover the basics of the automatic stay, the operation of § 108(c) in extending certain deadlines when the automatic stay is implicated, and the current status of federal court opinions on this issue. The takeaway point is that business law practitioners should be wary of relying on a state court decision when dealing with potential violations of the automatic stay.¹

The Automatic Stay

Pursuant to § 362, a petition filed under the Bankruptcy Code operates as a stay of, *inter alia*, proceedings, actions, or acts against the debtor or property of the estate. The stay of § 362 is automatic, very broad, and effective worldwide.



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The automatic stay prevents litigation, lien enforcement, and other actions, judicial or otherwise, that are attempts to enforce or collect prepetition debts. Essentially, the automatic stay may safely be said to apply to virtually all types of actions by creditors against the debtor and the debtor's assets. The automatic stay terminates as to the debtor's property when the property is no longer part of the estate (*e.g.*, abandoned by the bankruptcy trustee), and as to the debtor itself when the case is closed or dismissed, or when an individual is granted a discharge. Usually, the automatic stay is replaced by the discharge injunction once the stay terminates.²

Section 108(c) extends the time period for commencing or continuing civil actions that are stayed by § 362. Section 108(c) provides that if an action on a claim against the debtor in a court other than a bankruptcy court is stayed due to the bankruptcy case, any time deadline for commencing or continuing the action is extended to thirty days after notice of termination or expiration of the automatic stay if the deadline would have occurred on an earlier date.

Although the reach of the automatic stay is broad, it is not unlimited. Certain actions that would otherwise fall within the scope of the automatic stay are excepted from the stay.³ Section 362(d) also recognizes circumstances in which a party subject to the automatic stay may be entitled

to relief from the stay. Section 362(d) provides grounds for seeking relief from the automatic stay and, in conjunction with Federal Rule of Bankruptcy Procedure Rule 4001, provides a procedure for seeking such relief from the Bankruptcy Court generally by filing a motion.

It should be noted that § 362(k) provides an explicit damage remedy for an individual injured by a violation of the automatic stay and includes the authority to award costs and attorneys' fees, and, in appropriate circumstances, punitive damages against the offending creditor. The award of punitive damages is assessed on a case-by-case basis, but it has been said that a willful violation of the stay will justify punitive damages when there is evidence that the creditor's actions were egregious, vindictive, malicious, or accompanied by bad faith. Put another way, "appropriate circumstances" for a punitive damages award entail some showing of reckless or callous disregard for the law or the rights of others.⁴ In addition, the Bankruptcy Court may award damages for a violation of the automatic stay through its contempt power.⁵ Due to the severe consequences that may follow from a violation of the automatic stay, creditors always should exercise extreme caution in contemplating conduct potentially subject to its protections.

Facts of the *Rubin* Case

In 2007, Jason Rubin and Cira Ross ("Judgment Creditors") obtained a civil judgment against debtor David Ross ("Debtor"). In early 2009, the Debtor sought bankruptcy relief by filing a voluntary petition under chapter 7 of the Bankruptcy Code. On March 19, 2019, the bankruptcy court granted the Judgment Creditors' motion for relief from the automatic stay for the purpose of seeking renewal of their judgment, but it also specified that all other efforts to seek enforcement of the judgment remained stayed. The Debtor's right to a discharge was challenged under §§ 523(a)(2) and (6) and 727(c-e) and, following a trial, the bankruptcy court denied the Debtor a discharge.⁶

On April 11, 2019, the Judgment Creditors filed an application to renew their judgment in the state court, and notice of renewal of the judgment was issued and filed that same date. The Debtor moved to vacate the renewed judgment in the state court on the ground that the Judgment Creditors failed to seek renewal within the ten-year time period prescribed in California Code of Civil Procedure ("CCP") section 683.130. The state court denied

the Debtor's motion to vacate the renewed judgment, concluding that the Judgment Creditors' renewal was timely because section 108(c) provided for an extension of time to renew the judgment until thirty days after the notice that the automatic stay terminated or expired as a matter of law. The Judgment Creditors had filed their application for renewal within thirty days of the bankruptcy court's order granting them relief from stay to do so.

The Debtor appealed the state court's decision, arguing that the Judgment Creditors were not precluded from seeking renewal of their judgment by the Debtor's bankruptcy proceeding and, therefore, § 108(c) did not apply to provide the Judgment Creditors an extension of time to renew their judgment. The California Court of Appeal for the Fourth Appellate District ("*Rubin* Court") affirmed the state court's order, ruling that: (1) the protections of the automatic stay did not bar the Judgment Creditors from seeking statutory renewal of their judgment during the pendency of the Debtor's bankruptcy proceeding; and (2) the extension of time provided for in § 108(c) applied regardless of whether the automatic stay applies to prohibit renewal.

Reasoning

Applying de novo review to the undisputed facts, the *Rubin* court was presented with two issues: (1) whether the automatic stay of § 362 precludes a party from seeking a statutory renewal of a judgment under CCP sections 683.120 and 683.130; and (2) whether § 108(c) operates to extend the time within which a party must seek renewal of a judgment.

The *Rubin* court first acknowledged a factually analogous California District Court case, *In re Lobherr*, 282 B.R. 912 (Bankr. C.D. Cal. 2002), in which a bankruptcy court concluded that § 362 preempts California law with respect to statutory renewal of judgments and, as a result, § 108(c) extends the time within which a judgment creditor must seek renewal. The *Rubin* court determined that lower federal court decisions were not binding on it, even on questions of federal law, but were merely persuasive authority. The *Rubin* court ultimately disagreed with the bankruptcy court in *Lobherr* to the extent it concluded § 362 preempted and precluded a party from seeking statutory renewal of a judgment under the CCP, but it ultimately agreed with the *Lobherr* court's conclusion that

§ 108(c) extended the time within which a party must seek renewal of a judgment.

A. Whether the Automatic Stay Precludes a Party from Seeking a Renewal of Judgment

The *Rubin* court acknowledged that the stay provisions of § 362 applied to the action generally; however, it noted that the proper question on appeal was whether the automatic stay imposed by § 362 operated to prohibit the specific act of renewing a judgment as authorized under CCP section 683.210. Contrary to the bankruptcy court in *Lobherr*, the *Rubin* court concluded that it does not.

The *Rubin* court first took up the issue of preemption and considered whether CCP section 683.210 presented an actual conflict or obstacle to the full accomplishment of the objectives of the automatic stay protection of § 362, absent which a state court had no authority to ignore an equally valid enactment by the California State Legislature. The *Rubin* court determined that § 362 contemplates a stay of further proceedings intended to obtain new judgments against the debtor while staying only acts of enforcement pertaining to judgments already in existence at the time the debtor files for bankruptcy. The *Rubin* court noted that “statutory renewal of judgment is an automatic, ministerial act accomplished by the clerk of the court; entry of the renewal of judgment does not constitute a new or separate judgment.”⁷ The *Rubin* court further noted that the renewal of a judgment merely extends the enforceability of an already existing judgment and “has no independent existence from the original judgment.”⁸ The *Rubin* court held that California’s renewal of judgment process does not create any new liability that did not already exist prior to the bankruptcy action and, even when a judgment is renewed, any stay of *enforcement* is fully preserved. The *Rubin* court determined this application of the law does not conflict with, or present any obstacle to, the purpose of § 362, and thus determined that preemption did not decide the issue.

The *Rubin* court used the same “ministerial act” line of reasoning in determining that the automatic stay imposed by § 362 did not operate to prohibit the act of renewing a judgment. Relying on a recent case, *Altizer v. Highsmith*, 52 Cal. App. 5th 331, 339 (2020), the *Rubin* court reasoned that the process of renewing a judgment is an *ex parte* procedure not even requiring notice to the judgment debtor for the renewal to be effective and does not allow the

judgment creditor to proceed with any enforcement of the judgment while the bankruptcy automatic stay remains in effect.

The *Rubin* court held that the act of renewing a judgment is expressly permitted under California law and that the automatic stay imposed pursuant to § 362 operates only to prohibit subsequent acts intended to *enforce* a renewed judgment.

B. Whether § 108(c) Extends the Time to Renew a Judgment by Thirty Days

Although the *Rubin* court agreed with the Debtor that the automatic stay of § 362 did not preclude the Judgment Creditors from seeking renewal of their judgment during the pendency of the Debtor’s bankruptcy proceeding, it found that the Judgment Creditors’ inability to enforce their judgment triggered an extension of time under § 108(c).

The *Rubin* court acknowledged a Ninth Circuit Court of Appeals case, *In re Spirtos*, 221 F.3d 1079 (9th Cir. 1999), which held that § 108(c) operates to extend the time within which a judgment creditor must seek the renewal of a judgment under CCP section 683.110 et seq. until thirty days after the expiration of a bankruptcy stay. The *Rubin* court again noted that it was not bound to follow federal circuit or district court decisions, but nevertheless found the *Spirtos* court’s reasoning sound and reached the same conclusion.

Utilizing a purported plain reading of the statute, the *Rubin* court determined that the statutory prerequisites for an extension of time provided by § 108(c) were present: (1) California CCP sections 683.120 and 683.130 are non-bankruptcy statutes that fix a period within which a judgment creditor may seek to renew a judgment in a court other than a bankruptcy court; and (2) the ten-year period within which the Judgment Creditors had to seek renewal had not yet expired at the time the Debtor filed his bankruptcy petition.

The *Rubin* court concluded that although the automatic stay did not prevent the Judgment Creditors from filing their application for renewal at an earlier time, nothing in the text of § 108(c) conditions its grant of an extension upon the fact that the Judgment Creditors were actually prohibited from acting because of a bankruptcy stay, but rather that § 362 is referenced in § 108(c) only as the date used to calculate the thirty-day extension of time granted under the statute. Therefore, the Judgment Creditors had up

to thirty days from notice of the termination or expiration of the automatic stay to renew their judgment, and their renewal was timely.

Comments

The *Rubin* court's ruling that § 108(c) extends a judgment creditor's time to renew a judgment until thirty days after notice that the automatic stay was terminated or expired is consistent with current Ninth Circuit law as detailed above with respect to *Spirtos*. However, it is critically important to note that the *Rubin* court's decision that a judgment creditor is not precluded from renewing a judgment during the pendency of the automatic stay is in direct conflict with California bankruptcy and district court opinions. As mentioned above, in *Lobherr* the U.S. Bankruptcy Court for the Central District of California expressly held that a renewal of a state court judgment without first obtaining relief from the automatic stay was a violation of the automatic stay. Additionally, although the issue was not taken up by the Ninth Circuit in *Spirtos*, the United States District Court for the Central District of California previously held in that case that the automatic stay precluded a judgment creditor from renewing its judgment (Case No. CV-97-03570-JGD).⁹ Thus, the issue of whether renewing a judgment violates § 362 is still an open question at the Ninth Circuit level, and practitioners should operate with caution around the issue.

The *Rubin* court's ruling does conflict with Ninth Circuit law in a very significant way. The Ninth Circuit held, in *In re Gruntz*, 202 F.3d 1074, 1080 (9th Cir. 2000), that "Congress has expressed its intent that bankruptcy matters be handled exclusively in a federal forum." In *Gruntz*, the court was interpreting the extent of the automatic stay, and thus held that jurisdiction to determine the extent of the automatic stay was exclusive to the bankruptcy courts. Pursuant to current Ninth Circuit law, the court in *Rubin* appears to have exceeded its authority in making a determination as to whether renewal of the judgment violated the automatic stay, as this is to be properly decided solely in a federal forum.¹⁰ The *Rubin* court did not address *Gruntz*.

Rubin calls into question the permissible actions of a judgment creditor in seeking to renew its judgment while the automatic stay of § 362 is still in effect. Although the California Court of Appeal for the Fourth Appellate District has held that renewal of judgment is permissible

while the automatic stay is still in place, the California bankruptcy and district court opinions have definitively held the opposite. Practitioners should not rely blindly on California state court law, and should exercise extreme caution when dealing with this issue lest they subject their client to potential liability for a stay violation in the eyes of a bankruptcy court utilizing the aforementioned cases for their persuasive value. Additionally, as discussed above, both the California Court of Appeal for the Fourth Appellate District and the Ninth Circuit agree that § 108(c) operates to extend a judgment creditor's time to renew a judgment until thirty days after the automatic stay is terminated. Thus, judgment creditors need not be in a rush to seek renewal of their judgment. In this context, it always is best practice to advise a client to move for relief from the automatic stay before renewing any judgment, even if there is uncertainty as to whether the automatic stay is applicable, as bankruptcy courts commonly grant relief from stay to the extent the stay applies to the requested action.,

Endnotes

- 1 Except as otherwise indicated, all references are to the Bankruptcy Code at 11 U.S.C. §§ 101 *et seq.*
- 2 See 11 U.S.C. § 524 (Section 524 provides the effects of the bankruptcy discharge and includes that a discharge voids any judgment obtained at any time with respect to any debt discharged in the bankruptcy case and operates as an injunction against the commencement or continuation of an action based on the judgment).
- 3 See *id.* § 362(b).
- 4 See *Sundquist v. Bank of Am., N.A.*, 566 B.R. 563 (Bankr. E.D. Cal. 2017) in which the bankruptcy court awarded debtors punitive damages against Bank of America in the amount of \$45,000,000.00 related to Bank of America's willful violation of the automatic stay through its foreclosure on the debtors' residence and related actions.
- 5 See *State Bd. of Equalization v. Taxel*, 98 F.3d 1147, 1152 (9th Cir. 1996).
- 6 Section 523(a) expressly excepts various categories of debts from discharge, meaning that the discharge will not discharge an individual debtor from the specific types of debts listed in § 523(a). Most provisions of § 523(a) require a creditor to initiate an adversary proceeding (*i.e.*, a lawsuit in the Bankruptcy Court) by a deadline. Section 727 provides the statutory grounds for objections to discharge, which if sustained, will result in the debtor being denied a discharge of any of its debts.
- 7 *Rubin v. Ross*, 65 Cal. App. 5th 153 (Cal. App. 4th 2021) (citing *Goldman v. Simpson*, 160 Cal. App. 4th 255 (Cal. App. 2d 2008)).
- 8 *Rubin*, 65 Cal. App. 5th at 165.
- 9 See *In re Spirtos*, 221 F.3d 1079 (2000).
- 10 For a fuller discussion of *Gruntz* and its implications, see the October 2000 issue of the American Bankruptcy Institute Journal.