

Is Excluding the Graduation Date From a Transcript a Violation of the Automatic Stay?

The Answer is “Yes” According to the U.S. District Court of Pennsylvania

Summary by David R. Chenelle, Esq.

This case begins in September of 2009, when Jamie Sue Aleckna (“Ms. Aleckna”), as a student at the California Coast University (“CCU”), completed her course work but failed to pay her remaining \$6,300.00 in overdue tuition. As a result of the non-payment, and as most readers would expect, CCU then placed Ms. Aleckna’s file on financial hold. Unfortunately for CCU, its problems began in 2012, when Ms. Aleckna and her husband filed for bankruptcy protection listing CCU as a creditor with the tuition debt listed as unsecured and disputed.



After providing copies of her bankruptcy documents to CCU, she requested an official copy of her transcript. While complying with the well settled bankruptcy law, CCU provided a transcript as requested, but failed to list her graduation date on the transcript. When questioned as to why her graduation date was omitted, CCU informed her that because of the outstanding debt she had not officially graduated! Thereafter CCU filed an action in the bankruptcy case seeking a finding that the tuition debt was non-dischargeable to which Ms. Aleckna counterclaimed that CCU’s refusal to provide her a complete transcript violated the automatic stay.

After a full hearing the Bankruptcy Court found in favor of Ms. Aleckna and awarded damages for lost wages in the amount of \$230.16 as well as \$100,000.00 in attorney’s fees and costs. In so doing, the Court found that CCU not only violated the automatic stay but did so willfully pursuant to the Bankruptcy Code which provides for actual damages upon injury from a "willful violation" of an automatic stay. See 11 U.S.C. §362(k)(1). Courts have well settled on the view that this statute provides for damages upon a finding that the creditor knew of the automatic stay and that the creditor’s actions which violated the auto stay were intentional, regardless of whether the creditor believed in good faith that it had a right to proceed! CCU then appealed the Bankruptcy Court’s decision to the U.S. District Court.

On appeal, CCU argued that it did not willfully violate the stay because the law as to whether withholding a transcript constitutes a stay violation was unsettled. It further argued that even if it did violate the stay, Ms. Aleckna suffered no damages other than costs of the trial and those do not suffice to fulfill the injury element of a stay violation. The Court responded by holding that it is “well settled law that the automatic stay is violated where a creditor withholds a debtor's transcript because of an outstanding debt during the pendency of a Chapter 13 bankruptcy proceeding”. CCU contends that it did provide the transcript as requested to which the court stated that a transcript without a graduation date is "akin to a letter of reference with no signature...and is essentially worthless”!

For a stay violation to be deemed willful the creditor must be aware of the stay, and the actions taken that triggered the claimed violation must be intentional. Specific intent to violate the stay is not a requirement. Relying on *In re University Medical Center*, 973 F.2d 1065 (3rd Cir. 1992), (“UMC”) CCU argued that when the law is unsettled as to whether certain conduct violates the stay a creditor cannot be found to have willfully violated the stay by that conduct.

In UMC, that court found that the creditor did not willfully violate the stay because the law underpinning the violation was unsettled and the creditor had relied on law supporting its conduct. However, the court distinguished that case on the basis that it is well-settled law that withholding a transcript as a means of forcing a debtor to pay the debt violates the stay. The court added that even if that were not the case, CCU presented no evidence that it relied on an interpretation of any law, settled or unsettled, when it withheld the debtor’s complete transcript. The court further noted that the recent case of *Taggart v. Lorenzen*, 139 S.Ct. 1795 (2019) which involved a violation of the discharge injunction was inapplicable to this case.

Based on CCU’s awareness of the bankruptcy and its intentional conduct, as well as the inapplicability of the defense that it advanced from the University Medical Center case, the court found that CCU violated the automatic stay when it failed to include the debtor’s graduation date on the official transcript.

The court then turned to the issue of appropriate damages under section 362(k)(1). Specifically, CCU argued that the bankruptcy court erred in finding that Ms. Aleckna suffered any damages by reason of the stay violation because her only damages were those incurred in the course of the litigation. The court disagreed finding that protection from the conduct committed by CCU in withholding her transcript was exactly the type of harm the automatic stay was designed to address.

The court further found that even if that harm were not enough, Ms. Aleckna's costs associated with litigating and vindicating her rights were properly considered damages for purposes of establishing a stay violation under section 362(k)'s broad language.

The court affirmed the Bankruptcy Court's decision and remanded for the bankruptcy court to calculate the proper award of attorney's fees and costs.

In conclusion, if a school withholds a complete transcript of a student that is in bankruptcy due to unpaid tuition, it does so at its own risk. The exclusion of the graduation date from Ms. Aleckna's transcript was the equivalent of withholding the transcript altogether and constituted a violation of the automatic stay. And as a result Ms. Aleckna was entitled to damages, even though those damages consisted only of the costs associated with efforts in forcing the release of her transcript! *Cal. Coast Univ. v. Aleckna*, 2019 U.S. Dist. LEXIS 146875, 2019 WL 4072405 (Aug. 28, 2019)