

11 U.S.C. § 362(a)(4)  
Judgment Liens  
Ministerial Acts

Stewart v. Pacific Coast Recovery Service, Inc., Adversary No.  
06-3135-rld  
Robert Eugene Stewart and Terri Lenette Stewart, Case No. 06-  
30053-rld13

05/18/2006 RLD

Unpub.

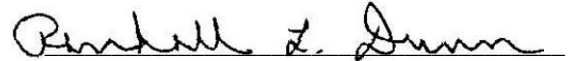
In 2003, debtors were parties to two state court proceedings initiated by Pacific Coast Recovery Service, Inc. Pacific filed default papers against debtors in both proceedings on October 9, 2003. A judgment was signed and filed by the judge in each state court proceeding on October 10, 2003. Debtors then filed a no asset chapter 7 case on October 14, 2003, at 9:53 a.m., and received a discharge in that case. On that same morning, minutes after the chapter 7 case had been filed, the state court Clerk docketed the judgments in the court's register, one at 10:15 a.m., the other at 10:35 a.m.

Debtors filed an adversary proceeding in their current chapter 13 case, which was filed January 11, 2006, seeking a declaration that Pacific's claims against them had been discharged in the chapter 7 case, and that the related judgment liens against their residence are void as having been obtained in violation of the automatic stay of the chapter 7 case.

The court held that the chapter 7 discharge was effective to discharge the debtors' individual liability for Pacific's claims, but the judgment liens were not rendered void by operation of the automatic stay in the chapter 7 case. While the automatic stay prohibits "any act to create, perfect, or enforce any lien against property of the estate," the Ninth Circuit has recognized an exception for purely ministerial acts. The court held that under Oregon law, where the judgments had been signed and "filed" by the state court judge prior to the filing of the chapter 7 case, § 362(a)(4) did not enjoin the state court clerk from performing the ministerial act of docketing the judgments.

The court expressly noted that it was determining only the rights between the debtors and Pacific. Because the chapter 7 trustee had abandoned any interest in the residence property when the chapter 7 case was closed, the court had no need to address any causes of action by which the trustee might have challenged the judgment liens, e.g. as a possible preference pursuant to § 547.

Below is an Order of the Court.



RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case  
          ) No. 06-30053-rld13  
ROBERT EUGENE STEWART and TERRI )  
LENETTE STEWART, )  
  ) Debtors. )  
\_\_\_\_\_) )  
ROBERT EUGENE STEWART and TERRI )  
LENETTE STEWART, )  
  ) Plaintiffs, )  
  ) Adv. Proc. No. 06-3135-rld  
  ) MEMORANDUM OPINION  
  ) v. )  
PACIFIC COAST RECOVERY SERVICE, )  
INC., an Oregon corporation, )  
  ) Defendant. )  
\_\_\_\_\_) )

In this adversary proceeding ("Adversary Proceeding"), the debtor plaintiffs, Robert and Terri Stewart (the "Stewarts"), seek a declaratory judgment that the defendant Pacific Coast Recovery Service, Inc.'s ("Pacific") claims against the Stewarts were discharged in the Stewarts' prior chapter 7 case and that Pacific's judgment liens against

1 the Stewarts' residence property are void as having been obtained in  
2 violation of the automatic stay of 11 U.S.C. § 362(a)(4).<sup>1</sup> The Stewarts  
3 have filed a Motion for Judgment on the Pleadings, to which Pacific has  
4 responded and has made its own Motion for Judgment on the Pleadings.

5 I heard argument on the competing motions at a hearing (the  
6 "Hearing") on May 2, 2006. Following the Hearing, I have reviewed the  
7 pleadings and memoranda filed by the parties in the Adversary Proceeding  
8 and relevant records of this court, as well as applicable legal  
9 authorities. I have considered carefully the parties' arguments in light  
10 of the record. I find in favor of the Stewarts that Pacific's claims  
11 against them individually were discharged in the Stewarts' prior chapter  
12 7 bankruptcy, but I find that Pacific is entitled to a declaratory  
13 judgment that its judgment liens against the Stewarts' residence property  
14 were not voided by operation of the automatic stay in the Stewarts' prior  
15 chapter 7 bankruptcy. I state the reasons for my decisions as follows:

16 Factual Background

17 The facts in this matter are not in dispute. Pacific filed  
18 default papers against the Stewarts in two Washington County Circuit  
19 Court actions, case number C031228CV and case number C032134CV, on or  
20 about October 9, 2003. On October 10, 2003, a judgment was signed and  
21 filed by Judge Nachtigal in case number C031228CV awarding Pacific  
22 \$79,556.20, including principal of \$73,150, prejudgment interest of  
23

---

24 <sup>1</sup> Unless otherwise noted, all statute section references are to the  
25 Bankruptcy Code, 11 U.S.C. §§ 101-1532. The provisions of Section 362  
26 considered in this Memorandum Opinion were not altered by the Bankruptcy  
Abuse Prevention and Consumer Protection Act of 2005.



1 Proceeding under 28 U.S.C. §§ 1334, 157(b)(1) and 157(b)(2)(I), (K) and  
2 (O), and pursuant to United States District Court for the District of  
3 Oregon Local Rule 2100.

4 Legal Discussion

5 There appears to be no dispute between the parties, as  
6 reflected in the Adversary Proceeding pleadings, that Pacific's claims  
7 against the Stewarts personally, based on the Judgments, were discharged  
8 in the 2003 Bankruptcy Case. The contested issue is whether the liens of  
9 the Judgments on the Stewarts' residence property are valid or void.

10 The creation of judgment liens is governed by Oregon state law.  
11 See Hansen v. Jones, 57 Or. 416 (1910). Under the Oregon statutes and  
12 Rules of Civil Procedure in effect in October, 2003,<sup>2</sup> Pacific's Judgments  
13 did not attach as liens on the Stewarts' residence property until they  
14 were docketed by the Clerk in the court register.

15 [F]rom the time of docketing an original or renewed  
16 circuit court judgment..., such judgment shall be a  
17 lien upon all the real property of the judgment debtor  
18 within the county where the same is docketed, or which  
19 the judgment debtor may afterwards acquire therein,  
20 during the time prescribed in ORS 18.360. Such  
21 judgment shall not be a lien upon any real property of  
22 the judgment debtor acquired after the effective date  
23 of the discharge of the judgment under federal  
24 bankruptcy laws. All docketed judgments shall be  
25 presumed to have not been discharged until the  
26 judgment debtor establishes that the judgment has been  
discharged. ORS § 18.350(1).

---

23 <sup>2</sup> The Oregon statutes and Rules of Civil Procedure dealing with the  
24 creation of judgment liens were amended by the Oregon state legislature  
25 during the 2003 legislative session, but the revised statutory framework  
26 did not become effective until January 1, 2004.

1 See also ORCP 70B(2): "Notwithstanding ORS 3.070 or any other rule or  
2 statute, for purposes of these rules, a judgment is effective only when  
3 entered in the register as provided in this rule."

4 "Docketing the judgment" is an act delegated to the court clerk  
5 to perform after "filing," which occurs when the judgment is delivered to  
6 the clerk by the judge with the intention that it be entered on the  
7 docket. Blackledge v. Harrington, 289 Or. 139, 143, 242 Or. 566, 570-71  
8 (1966). However, ORCP 70B(3) provided that, "[t]he clerk shall enter the  
9 judgment in the register within 24 hours, excluding Saturdays and legal  
10 holidays, of the time the judgment is filed. When the clerk is unable to  
11 or omits to enter judgment within the time prescribed in this subsection,  
12 it may be entered any time thereafter." [Emphasis added.]

13 The Stewarts' position is that even if the Judgments were  
14 "filed" on October 10, 2003, they were not entered in the Washington  
15 County Circuit Court register, and thus were not effective as judgment  
16 liens, until after the Stewarts filed the 2003 Bankruptcy Case.  
17 Consequently, the Stewarts argue that the liens of the Judgments are void  
18 as violating the automatic stay of § 362(a)(4).

19 Section 362(a)(4) provides that the filing of a bankruptcy  
20 petition "operates as a stay, applicable to all entities, of...any act to  
21 create, perfect, or enforce any lien against property of the estate."  
22 Interpreting the scope of the automatic stay is a matter of federal law.  
23 See In re Gruntz, 202 F.3d 1074, 1087 (9th Cir. 2000) ("[B]ankruptcy  
24 courts have the ultimate authority to determine the scope of the  
25 automatic stay imposed by 11 U.S.C. § 362(a), subject to federal  
26 appellate review.").

1           The automatic stay is designed to provide a "breathing space"  
2 for the debtor and in chapter 7 cases, the trustee to evaluate and  
3 preserve assets for the benefit of the debtor and the bankruptcy estate.  
4 Accordingly, the automatic stay "sweeps broadly, enjoining the  
5 commencement or continuation of any judicial, administrative, or other  
6 proceedings against the debtor, enforcement of prior judgments,  
7 perfection of liens, and 'any act to collect, assess or recover a claim  
8 against the debtor that arose before the commencement of the case.'" In  
9 re Pettit, 217 F.3d 1072, 1077 (9th Cir. 2000).

10           However, there are exceptions to application of the automatic  
11 stay, and one of the exceptions recognized by the Ninth Circuit is the  
12 exception for purely ministerial acts.

13           This exception stems from the common-sense principle  
14 that a judicial "proceeding" within the meaning of  
15 section 362(a) ends once a decision on the merits has  
16 been rendered. Ministerial acts or automatic  
17 occurrences that entail no deliberation, discretion,  
18 or judicial involvement do not constitute  
19 continuations of such a proceeding. In re Pettit, 217  
20 F.3d at 1080.

21           As described by the First Circuit in In re Soares, 107 F.3d 969, 974 (1st  
22 Cir. 1997), a ministerial act

23           is one that is essentially clerical in nature....Thus  
24 when an official's duty is delineated by, say, a law  
25 or judicial decree with such crystalline clarity that  
26 nothing is left to the exercise of the official's  
27 discretion or judgment, the resultant act is  
28 ministerial....Such acts can usefully be visualized as  
29 the antithesis of judicial acts, inasmuch as the  
30 essence of a judicial act is the exercise of  
31 discretion or judgment....

32           Virtually, by definition, a judicial proceeding  
33 does not conclude until the judicial function is  
34 completed, that is until the judicial decision is  
35 made. See, e.g., Biderman, 21 F.3d at 528 (holding

1 that the judicial function is completed "at the moment  
2 the judge direct[s] entry of judgment"). Frequently,  
3 routine scrivenering, such as recordation or entry on  
4 the docket, follows on the heels of a judicial  
5 decision. Such action--taken in obedience to the  
6 judge's peremptory instructions or otherwise defined  
7 and nondiscretionary--are ministerial and,  
8 consequently, do not themselves violate the automatic  
9 stay even if undertaken after an affected party files  
10 for bankruptcy.

11 See, e.g., Knightsbridge Dev., 884 F.2d at 148  
12 (suggesting that merely recording a previously decided  
13 award would be a "clerical act" and therefore would  
14 not infract the automatic stay); In re Capgro Leasing  
15 Assocs., 169 B.R. 305, 315-16 (Bankr. E.D.N.Y.  
16 1994)(stating that "entry of a judgment will  
17 constitute a 'ministerial act' where the judicial  
18 function has been completed and the clerk has merely  
19 to perform the rote function of entering the judgment  
20 upon the court's docket")....

21 Pacific argues that once Judge Nachtigal signed and filed the  
22 Judgments, judicial decisionmaking was complete, and what remained was  
23 the nondiscretionary, civil rule mandated acts of the Clerk in docketing  
24 the Judgments in the court register. Such acts were purely ministerial  
25 and consequently did not violate the automatic stay imposed in the 2003  
26 Bankruptcy Case.

While conceding that no discretion was involved when the Clerk  
docketed the Judgments, the Stewarts argue that the absolute language of  
Section 362(a)(4) creates an "exception to the exception" for ministerial  
acts that in effect create a judgment lien. As authority for their  
position, the Stewarts cite 3 Collier on Bankruptcy, ¶ 362.03[3][e] at  
p. 362-18 (15th ed. rev. 2005), which states the following:

Given the importance of the automatic stay, the  
concept of purely ministerial acts should be narrowly  
construed to protect only those acts that are clerical  
in nature and do not involve the exercise of any  
discretion or judgment. Thus, entry by the clerk of a



1 judgment previously ordered by the court may be a  
2 purely ministerial act which may be taken without  
3 violating the stay, while the court's ordering entry  
4 of a judgment involves a judicial function that goes  
5 beyond a merely ministerial act and, thus, would be  
subject to the stay. Even the entry of a judgment on  
the judgment docket may be stayed to the extent that  
such entry creates a judgment lien on property of the  
estate.

6 Case authorities are cited for all of the statements in the foregoing  
7 passage from Collier's, except the last statement, which relies solely on  
8 the language of Section 362(a)(4). Accordingly, it is a statement by the  
9 editors of Collier's as to how they believe a provision of the Bankruptcy  
10 Code should be interpreted rather than how it actually is being  
11 interpreted by courts.

12 There are few decisions regarding the extent of the  
13 "ministerial acts" exception to the automatic stay, but every decision  
14 that I have reviewed that considers the effect of the automatic stay with  
15 respect to the nondiscretionary entry or docketing of a judgment after  
16 the judgment has been ordered or signed by the court has excepted the act  
17 of entering or docketing the judgment from the automatic stay. See,  
18 e.g., In re Papatones, 143 F.3d 623, 624-25 (1st Cir. 1998) (Debtor held  
19 ineligible for relief under chapter 13 even though the oral judgment that  
20 pushed him over the unsecured debt limit was not reduced to writing and  
21 entered on the docket until the day after his chapter 13 petition was  
22 filed); Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 528 (2d Cir.  
23 1994) ("The judicial proceedings were concluded at the moment the judge  
24 directed entry of judgment, a decision on the merits having then been  
25 rendered....The clerk's subsequent entry of the judgment, after the  
26 automatic stay became effective, therefore did not violate section

1 362(a)(1)."); Teachers Ins. & Annuity Ass'n v. Butler, 803 F.2d 61, 66  
2 (2d Cir. 1986); In re Capgro Leasing Associates, 169 B.R. 305, 314-16  
3 (Bankr. E.D.N.Y. 1994)("In the instant case, the state Court Clerk's  
4 signing and entering of the Judgment upon the State Court's docket were  
5 ministerial acts (or rote functions) under Bidermann, since they took  
6 place after the judicial function had been completed."); and Teachers  
7 Ins. & Annuity Ass'n v. Butler, 58 B.R. 1019, 1022 (S.D.N.Y.), aff'd, 803  
8 F.2d 61 (2d Cir. 1986).

9           The Stewarts emphasize that most of these decisions consider  
10 the impact of Section 362(a)(1) rather than Section 362(a)(4). Section  
11 362(a)(1) provides that the filing of a bankruptcy petition

12           operates as a stay, applicable to all entities, of--  
13           the commencement or continuation, including the  
14           issuance or employment of process, of a judicial,  
15           administrative, or other action or proceeding against  
16           the debtor that was or could have been commenced  
17           before the commencement of the case under this title,  
18           or to recover a claim against the debtor that arose  
19           before the commencement of the case under [Title 11].

20 I do not find that the scope of Section 362(a)(1) is any less  
21 comprehensive than Section 362(a)(4), in spite of the lack of the words  
22 "any act...."

23           I note that the district court in the Butler case did not  
24 differentiate among any of the provisions of Section 362 in applying the  
25 ministerial acts exception to the automatic stay. See Teachers Ins. &  
26 Annuity Ass'n v. Butler, 58 B.R. at 1022. In In re Pettit, the decision  
in which the Ninth Circuit adopted the ministerial acts exception for  
this Circuit, the court discusses the automatic stay of Section 362  
generally, but affirms the district court's reversal of the

1 bankruptcy court's application of Sections 362(a)(2) and 362(a)(3),  
2 agreeing that the debtors' interest in contested funds was extinguished  
3 when the trial court entered judgment against the debtors and ordered the  
4 funds released, even though a check was not delivered to the prevailing  
5 party until after the debtors' bankruptcy petition was filed.<sup>3</sup> See 217  
6 F.3d at 1077-80.

7 I find that the Stewarts' attempt to create an exception to  
8 application of the ministerial acts exception to the automatic stay of  
9 Section 362, by highlighting differences in the language of Section  
10 362(a)(4) from the language of other subsections of Section 362(a)  
11 recognizes a distinction without any real difference.

12 In the Adversary Proceeding, I am dealing only with issues  
13 between the debtors, the Stewarts, and Pacific with regard to the 2003  
14 Bankruptcy Case. The case and the estate were closed on January 30,  
15 2004, without the chapter 7 trustee ever attempting to assert an estate  
16 interest in the Stewarts' residence property. Any interest that the  
17 estate might have had was abandoned to the Stewarts when the case closed.  
18 See § 554(c). Accordingly, there is no estate stake in the Adversary  
19 Proceeding.

20 There are provisions of the Bankruptcy Code that were available  
21

---

22 <sup>3</sup> Section 362(a)(2) provides that the filing of a bankruptcy  
23 petition operates as a stay of the "enforcement, against the debtor or  
24 against property of the estate, of a judgment obtained before the  
25 commencement of the case under [Title 11]." Section 362(a)(3) provides  
26 that the filing of a bankruptcy petition operates as a stay of "any act  
to obtain possession of property of the estate or property from the  
estate or to exercise control over property of the estate." [Emphasis  
added.]



1 Mr. Kavanaugh should submit an appropriate form of judgment within ten  
2 (10) days following entry of this Memorandum Opinion, after submitting  
3 the judgment for approval as to form to Mr. Hoarfrost.

4 ###

5 cc: Daniel Hoarfrost  
6 Michael J. Kavanaugh  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26