

How Not to Violate the Automatic Stay

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The automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws" of this country."^[1] It is viewed as a very broad protection that "stops all collection efforts, all harassment, and all foreclosure actions . . . meant to provide "complete, immediate, albeit temporary relief to the debtor from creditors, and also to prevent dissipation of the debtor's assets before orderly distribution to creditors can be effected."^[2] Certain actions (like bringing or continuing a breach of contract action against the debtor) fit neatly in the prohibitions of the Bankruptcy Code while some more nuanced circumstances prove trickier to label as violations, yet they can put a creditor or a counterparty on the naughty list.

Here are five examples:

1. The automatic stay applies outside of U.S. geographical borders. A declaration of a setoff and a foreign creditor's refusal to return the receivables to the debtors upon request was an improper exercise of control over the property of the Debtor's estate, and thus a violation of Section 362(a)(3) of the Bankruptcy Code. ^[3]
2. The enforcement of provisions in a condominium's bylaws that prohibit a chapter 11 debtor with a pre-petition delinquency in the payment of condominium fees from voting at an annual meeting or holding office as a director of the condominium association violates the automatic stay.^[4]
3. A lender proceeding with a foreclosure sale against a limited liability company in which the debtor held 99% of the equity willfully violates the automatic stay under Section 362(a)(1), and to the enforcement of an earlier judgment in that proceeding or action, under Section 362(a)(2) when the foreclosure action named both the company and the debtor as parties in the proceeding.^[5]
4. A mortgage company's attempt to perfect lien against estate property by registering a deed of trust on the debtor's property, when the stay had not been lifted by the bankruptcy court and when the mortgage company and its counsel had actual knowledge of the bankruptcy filing is a willful violation of the automatic stay.^[6]
5. Threatening a debtor with criminal prosecution is a willful violation of the automatic stay. In a case involving a landlord in Tennessee, the Sixth Circuit affirmed the bankruptcy court and the district court in finding that the landlord cannot hide behind the criminal prosecution exception to the automatic stay in Section 362(b)(1).^[7] Before the commencement of the bankruptcy case, the debtor had written to the landlord a check that bounced. After the debtor filed for bankruptcy, the landlord wrote letters to the debtor and her mother, claiming he was not attempting to collect back rent but threatened that he would initiate criminal proceedings for the bounced check.

[1] *Melanotic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 503 106 S.Ct. 755, 88 L.Ed.2d 859 (1986) (quoting S. Rep. No. 95-989, at 54-55 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5840, 5963, 6296)

[2][2] *SEC v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000).

[3] *In re Arcapita Bank B.S.C.(c)*, 628 B.R. 414, 480 (Bankr. S.D.N.Y. 2021), *aff'd sub nom. In re Arcapita Bank B.S.C.(C)*, 640 B.R. 604 (S.D.N.Y. 2022); Section 362(a)(3) of the Bankruptcy Code provides that a filed bankruptcy petition filed operates as a stay, applicable to all entities, of 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).

[4] *In re Gordon Properties, LLC*, 460 B.R. 681, 685 (Bankr. E.D. Va. 2011).

[5] *Bayview Loan Servicing LLC v. Fogarty (In re Fogarty)*, 39 F.4th 62 (2d Cir. 2022). Section 362(a)(1) bars the commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor ... to recover a claim against the debtor that arose before the commencement of the case.

[6] *In re Medlin*, 201 B.R. 188 (Bankr. E.D. Tenn. 1996).

[7] *Weary v. Poteat*, No. 15-5159, 2015 WL 5712191 (6th Cir. Sept. 30, 2015).