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USDC Weighs in on Tortious Interference

By James Irving



True love had unintended consequences, resulting in the case of *Stradtman v. Republic Services*, which remains pending in the United States District Court for the Eastern District of Virginia.

Shortly after Stephen Stradtman was named CEO of Otto Industries North America (“Otto”) the company’s business began to expand. This boom in Otto’s business seemed directly attributable to Otto’s relationship with Republic Services, Inc., a waste management business and major purchaser of the plastic containers manufactured by Otto.

All of that changed beginning in June of 2011, when Stradtman became engaged to Jennifer Taylor, Republic’s Director of Municipal Sales in the East Region. In September of 2011, Taylor filed an EEOC claim against Republic, alleging sexual harassment, gender discrimination and retaliation. Almost immediately, the business relationship between Otto and Republic began to sour. According to the allegations contained in the lawsuit, Stradtman found himself disinvited from Republic marketing events and business that would have gone to Otto was instead redirected to its competitors. Stradtman pegged the value of the redirected business at about \$5,000,000. The pattern persisted and believing himself to be in an “untenable position” as a result of his impending marriage to a litigation adversary of Republic, Stradtman resigned as CEO in May of 2012. Sixty days later, Republic resumed regular business with Otto.

In December of 2013, Stradtman filed suit against Republic and Ronald Krall, its senior vice president for the East Region, seeking damages for tortious interference with contractual relationships and business expectancies, common law conspiracy and negligent retention of employees. Republic and Krall moved to dismiss.

On November 25, 2014, Judge James C. Cacheris issued his ruling on the motion to dismiss, dismissing the conspiracy and negligent retention counts and allowing the case to go forward on the tortious interference count alone.



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To survive a motion to dismiss, a plaintiff in federal court must only show that the complaint contains sufficient factual allegations which, if accepted as true, state a claim for relief that is plausible on its face. In combination with the court's "preference for resolving cases on their merits", this is a low bar in theory.

In order to sustain a claim for tortious interference with a business expectancy, the plaintiff must allege a valid contractual relationship or expectancy; knowledge of the relationship by the interfering party; intentional interference inducing or causing the breach; and resulting damages. Additionally, if the relationship can be terminated by either party at any time, the proponent must also allege and show "improper methods."

Republic argued (among other things) that Stradtman's voluntary resignation constituted a bar to his claim for tortious interference. How could he claim that interfered with the relationship if he quit? However the court agreed with Stradtman's contention that he had pled "constructive discharged" by alleging that Republic's actions left him with "no practical choice other than quitting." The court also agreed that he had sufficiently alleged improper methods when he claimed Krall and Republic engaged in acts of retaliation because of his romantic relationship with Taylor.

The court relied on the well-established doctrine of intracorporate immunity in deciding to dismiss the conspiracy claim: a civil conspiracy requires two or more co-conspirators and a party cannot conspire with itself. For the purpose of this analysis, the agents of a corporation are identical to the corporation, so that Krall, the agent of Republic, cannot be said to have conspired with his employer.

Negligent retention of an employee requires proof of an "unreasonable risk of significant physical harm." Since the allegation was only that defendants injured Stradtman in his "business profession and reputation," the allegation did not fit within the tort.

While the Stradtman case remains active in the trial court, Ms. Taylor's claim against Republic ended with a judgment in her favor and a substantial nest egg for the newlyweds.

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To Stay Clear of Stay Violations, Action May be Required

By Andrea Davison



The automatic stay, imposed (automatically, of course) by the filing of a voluntary bankruptcy petition, is the most fundamental of protections offered by the Bankruptcy Code. The stay, governed by 11 U.S.C. § 362, is designed to provide debtors with a "breathing spell" from creditors and the opportunity to liquidate or reorganize under the supervision of the bankruptcy court. It bars not only the commencement of any action against the bankruptcy debtor to collect debts, but also the continuation of any action instituted prior to the bankruptcy petition date.

By statute, any debtor injured by a creditor's willful violation of the automatic stay may recover damages, including costs and attorneys' fees from the violating creditor. See 11 U.S.C. §362(k). Case law makes clear that the willfulness requirement does not require a specific intent by the creditor to violate the automatic stay. Instead, it is sufficient to show that the creditor knew that the automatic stay was in effect and then intentionally acted (or failed to act) in a manner that violated the stay.

With that statutory background, creditors proceeding to collect are often faced with the question of what exactly to do – or not to do – upon a debtor's bankruptcy filing to avoid committing a stay violation. May the creditor simply sit back and not take action? Or must the creditor, in certain circumstances, take affirmative action to avoid violating any of the debtor's rights *vis a vis* the automatic stay? Last year, the District Court for the Eastern District of Virginia answered the latter question in the affirmative.

In *Skillforce Inc. v. Hafer*, 509 B.R. 523 (E.D. Va. 2014) (Ellis, J.), the District Court was presented the following question: whether a status hearing on debtor's interrogatories served by the creditor constituted a "continuation" of an action against the debtor and therefore a violation of the automatic stay that the creditor had a duty to prevent. Confirming the Bankruptcy Court, the District Court held that Skillforce's failure to either withdraw the interrogatories or formally request that the state court cancel the status hearing constituted a continuation of an action against a debtor in violation of the stay. A status hearing, the Court found, does not fall under the settled exception for the performance of "ministerial acts" during the stay; that is, the court retained some discretion or judgment in the hearing and therefore it could not be held without violating the stay.

Reviewing the decisions of other courts faced with a similar question, the Court summarized the guiding principle as follows: "[a] creditor or the creditor's legal representative has an affirmative duty, post-petition, to discontinue any proceeding it has initiated or continued, or to take appropriate steps to halt that proceeding if the proceeding: (i) jeopardizes or threatens in any way the integrity of the bankruptcy estate, or (ii) exposes the debtor to harassment or coercion or otherwise inhibits the debtor's "breathing spell from [her] creditors." *Id.* At 531, quoting *Grady v. A.H. Robins Co.*, 839 F. 2d 198, 200 (4th Cir. 1988). Given the high stakes of a stay violation, and this ruling imposing an affirmative duty to prevent any such harassment, creditors are advised to proceed carefully and deliberately when they learn of a debtor's bankruptcy.

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