On a Circuit Split, District Judge Follows the Majority on Repeat Filer Stay Termination

Quick Take

Only two circuits have opined on Section 362(c)(3)(A), and they have disagreed.

Analysis

Anticipating an appeal to the Seventh Circuit where there's already a circuit split, District Judge Steven C. Seeger of Chicago wrote a treatise critiquing the four competing interpretations of Section 362(c)(3)(A). For someone who has filed bankruptcy once before within one year, that's the subsection that vacates the automatic stay in 30 days to a lesser or greater degree, depending on the particular judge's understanding of the statutory language.

"[O]n the 30th day after the filing of the [second case within one year]," the subsection provides that "the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor . . . ."

What does it mean? Does the stay evaporate entirely, only as to the debtor, only as to the debtor and the debtor's property, or as to the debtor and property of the debtor's estate?

In his September 11 opinion, Judge Seeger said that "section 362(c)(3)(A) is a textual dumpster fire."

The Filings 11 Years Ago

A couple filed a chapter 13 case but voluntarily dismissed the petition. They filed a second chapter 13 petition two months later.

With the Section 362 automatic stay dissolving to a lesser or greater degree 30 days after filing, the couple filed a motion to extend the automatic stay, but scheduling problems prevented the motion from being heard.

After 30 days elapsed, a lawyer acted on behalf of a creditor and obtained a default judgment that became a lien on the debtors' home when the judgment was recorded. Judge Seeger assured the reader that the home was estate property.

The debtors filed a motion for sanctions against the attorney. Judge Seeger said that the bankruptcy judge "capably analyzed the splintered case law about the meaning of section 362(c)(3)(A)" in deciding that the automatic stay had expired, thus precluding imposition of sanctions. [Note: The bankruptcy judge was later appointed as a district judge in Chicago.]

Judge Seeger reported how the bankruptcy judge adopted the "minority view" in concluding that the automatic stay "'terminates as to all of the debtor's property, whether or not it is part of the bankruptcy estate.'" He described the bankruptcy judge as adopting "the so-called 'spousal-exclusion' interpretation of the phrase 'with respect to the debtor.'"

Judge Seeger explained the "majority view" as interpreting "the phrase 'with respect to the debtor to mean that the automatic stay comes to an end for actions against the debtor and the debtor's property, but not the property of the estate." Under the majority view, "the property of the estate continues to receive protection from creditors under the automatic stay."

The Prior Trip to the Seventh Circuit

The debtors appealed. There being no precedent in the Seventh Circuit, the bankruptcy judge certified a direct appeal to the circuit. However, the circuit dismissed the appeal because the debtor had not asked the circuit to accept the appeal under Bankruptcy Rule 8006(g).

The appeal dropped back into Judge Seeger's lap.

The Circuit Split

Judge Seeger said that the bankruptcy judge "reached the same conclusion as a few other bankruptcy courts in this district" in concluding "that the automatic stay terminated in its entirety." He described how the First and Fifth Circuits reached differing conclusions.

Judge Seeger characterized the First Circuit as taking the minority view by concluding "that the automatic stay expires altogether." *In re Smith*, 910 F.3d 576, 591 (1st Cir. 2018). He described the Fifth Circuit as "holding that the automatic stay remains in place for the property of the estate. *See Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 230 (5th Cir. 2019) (*per curiam*)."

To read ABI's reports of the two circuit decisions, click here and here.

The Addition of Section 362(c)(3)(A)

To deal with abusive filings, Judge Seeger explained how Congress adopted the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005 to give "less protection to debtors who file for bankruptcy twice in one year." He described Section 362(c)(3)(A) as a "statutory clunker" that uses the phrase "with respect to" four times and has "confounded courts ever since the ink was wet on the statute."

"Sometimes there is a fine line between finding the best interpretation, and finding the interpretation that is the least bad," Judge Seeger said. Courts, he said, "have batted around four possible interpretations of that provision." He proceeded to offer the upsides and the downsides of all four.

The Stay Ends Only as to the Debtor

Judge Seeger began by analyzing the point of view of courts believing that the "automatic stay ends for any action against the *debtor* himself, not the debtor's property or the property of the estate." [Emphasis in original.] He described the conclusion as being "simple" and based on "plain language." The "interpretation runs into trouble" because it's "hard to see what good could come from lifting the stay as to the debtor only, and not the debtor's property."

If the stay is lifted only as to the debtor and not the debtor's or the estate's property, Judge Seeger said the interpretation "might lead to a victory for a creditor, but only on paper."

"[N]o court has gone that route," Judge Seeger said.

The Stay Ends as to the Debtor and the Debtor's Property

Judge Seeger described the second interpretation, or the "majority view," as erasing the stay as to "the debtor *and* the debtor's property," while the stay remains in place "for the property of the estate." [Emphasis in original.] He noted that the *Collier* treatise "supports that approach."

The second approach, Judge Seeger said, makes it "conceivable that a creditor could recover *something* in a collection action." [Emphasis in original.] He nonetheless recognized that "almost all of the debtor's property becomes the property of the estate as soon as the bankruptcy petition gets filed . . . . A creditor could go after the debtor's post-bankruptcy earnings and acquisitions in a chapter 7 case, but not much else."

Judge Seeger went on to "wonder[] why Congress would enact a provision that is only an inch away from being a nothing-burger."

Regarding the majority view, Judge Seeger identified a "bigger issue," the "bad aftertaste for anyone drawn to textualism" resulting from the interpretation of "'the debtor' to mean 'the debtor and the debtor's property,'" because the "debtor and the debtor's property are two different things."

The Stay Ends for the Debtor, the Debtor's Property and Estate Property

The minority or third understanding — that the stay ends entirely— "does have something going for it," Judge Seeger said, because it "does promote the overarching purpose of the 2005 amendments . . . to crack down on abusive bankruptcy petitions by repeat filers."

"But," Judge Seeger said, "the overarching statutory purpose needs to take a back seat to the statutory text." If "any distinction is fundamental to bankruptcy law, it is the distinction between the debtor and the estate," he said.

Judge Seeger found it "hard to read the phrase 'with respect to the debtor' to mean 'with respect to the debtor, and the property of the debtor, and the property of the estate.' That's the whole enchilada." He said that "the minority view either expands the text to oblivion, or makes it disappear," because "Section 362(a) went to great lengths to differentiate between the debtor, the debtor's property, and the property of the estate."

The Spousal Exception

In the case on appeal, the bankruptcy court had adopted the so-called spousal exception, which Judge Seeger described as "an offshoot of the minority view."

Citing a decision by another bankruptcy judge in Chicago, Judge Seeger explained how "[s]ome courts read the phrase 'with respect to the debtor' to address the possibility of a joint bankruptcy filing by two spouses." Although the theory "has a spark of creativity, . . . it hasn't caught fire."

Judge Seeger found it "hard to believe that Congress used the phrase 'with respect to the debtor' to create a spousal exclusion for two-time filers in section 362(c)(3)(A), but then included no spousal exclusion for three-time filers in section 362(c)(4)(A)(i)." He pointed to the Fifth Circuit for having "rejected the 'spousal exclusion' theory."

In sum, Judge Seeger decided that the spousal exception theory "takes things too far, and adopts an implausible reading."

The Least Worst Reading

Judge Seeger found no theory to be "fully satisfying" and could not "swallow any interpretation where 'the debtor' means 'the debtor and the estate.'" He laid out his bottom line:

> Reading the provision to cover the debtor's property, but not the property of the estate, may leave the automatic stay mostly in place. So, it doesn't do much to achieve the objective of curbing abusive bankruptcy filings by repeat filers.
>
> Even so, the automatic stay is one of the fundamental parts of the Bankruptcy Code. The automatic stay serves important objectives, too. It gives a debtor breathing room, and makes sure that creditors receive equal treatment. Given the importance of the automatic stay, courts

> should tread lightly before concluding that the automatic stay no longer exists.

"The ultimate goal when interpreting a statute," Judge Seeger said, "is not to promote policy objectives or achieve a given statutory purpose. The goal is to give effect to the words actually adopted by Congress." Overall, he said "that the phrase 'with respect to the debtor' covers the debtor and the debtor's property, but not the property of the estate."

Deciding that the stay remained for property of the debtor, Judge Seeger "respectfully reversed" and remanded.

To Impose Sanctions or Not

Judge Seeger included a footnote at the conclusion of his opinion with guidance for the bankruptcy court on remand.

The reversal, Judge Seeger said,

> does not necessarily mean that the bankruptcy court should have granted the motion for sanctions. After all, the prevailing case law in bankruptcy courts in this district held that the automatic stay ended in its entirety. So [the attorney] had reason to believe that it could act accordingly. [Citations omitted.]

Observation

A declination to impose sanctions would also be in accord with *Taggart*, because the attorney had an objectively reasonable basis to believe that the automatic stay ended entirely since that was the prevailing view among bankruptcy judges in Chicago.

Case Name

Wade v. Kreisler

Case Citation

Wade v. Kreisler, 18-4065 (N.D. Ill. Sept. 11, 2026)

Automatic Stay