

*Police power  
exception to  
stay violation*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
Brunswick Division

In the matter of: )  
MARK J. CUYLER )  
Debtor )  
MARK J. CUYLER )  
Movant )  
v. )  
CITY OF ST. MARYS POLICE )  
DEPARTMENT )  
Respondent )

Chapter 7 Case  
Number 287-00412

**FILED**  
at 10 O'clock & 30 min. A.M  
Date 7/18/88  
MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER ON MOTION FOR CONTEMPT

Movant, a Chapter 7 pro se Debtor, alleges that the St. Marys Police Department is in contempt of this Court for its alleged violation of the automatic stay. After consideration of the evidence heard at the hearing on May 17, 1988, I must deny the Debtor's Motion.

FINDINGS OF FACT

- 1) On August 20, 1987, the Debtor was given a

citation from the St. Marys Police Department for doing 76 miles per hour in a 55 mile per hour zone in violation of O.C.G.A. Section 40-6-181. The summons which appears on the face of the traffic citation ordered the Debtor to appear in Court to answer the speeding charge on September 10, 1987, at 5:00 o'clock p.m.

2) The Debtor filed his Chapter 7 petition on September 4, 1987. The Debtor indicated on the cover sheet of his petition that no assets would be available for distribution to creditors.

3) The Debtor failed to appear in Court on September 10, 1987, and otherwise failed to respond to the traffic citation and summons issued on August 20, 1987. On January 18, 1988, the Clerk of the Municipal Court, Frances V. Andrews, served the Debtor with notice of his failure to comply with the terms of the August 20, 1987, citation. By the terms of the notice to the Debtor he was given twenty (20) days from January 18, 1988 to remit the fine and costs totalling \$103.50 or else risk notification of the licensing authority to suspend his driver's license until the fine and costs were paid.

4) On March 1, 1988 a summons was issued by the St. Marys Police Department for the offense of "failure to appear" based on the original charge of speeding. By the terms

of the summons, the Debtor was ordered to appear in Court on March 10, 1988. At the March 10, 1988, hearing the Debtor pled guilty and paid the \$46.00 fine under protest. At the hearing, the Debtor argued that the automatic stay imposed under 11 U.S.C. Section 362 insulated him from any collection efforts by the City.

#### CONCLUSIONS OF LAW

The Debtor was correct in his position only insofar as he alleges that the automatic stay becomes effective upon the filing of a petition. See 11 U.S.C. Section 362(a). Although the reach of the stay is broad, it is not all encompassing. The exceptions to the operation of the automatic stay are set forth in 11 U.S.C. Section 362(b). In particular, 11 U.S.C. Section 362(b)(4) provides that the filing of a petition does not operate as a stay, "Under subsection (a)(1) of this section, of a commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." In reading subsection (a)(1) in conjunction with subsection (a)(4) it is clear that a governmental unit may proceed to enforce its police or regulatory powers in cases where "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor

that was or could have been commenced before the commencement of the case under this title, or to recover claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. Section 362(a)(1). In applying these Code Sections to the case sub judicio, it is clear that the Debtor was cited for speeding prior to the filing of his Chapter 7 petition, and therefore, the City of St. Marys could have commenced an action against the Debtor before the case was filed. Under subsection (a)(4) the City of St. Marys could have commenced or continued such an action if there was an action to enforce its police or regulatory power. As stated by the United States Supreme Court in Berman v. Parker, 348 U.S. 26, 32 (1954), the reach of the police power is broad and includes among its more conspicuous examples: "Public safety, public health, morality, peace and quiet, law and order." Clearly, the enforcement of the City's speedlimits falls within traditional notions of a governmental unit's police power.

The Debtor argues that subsection (b)(5) is controlling, and that it precludes the City from collecting a "money judgment". By its terms, (b)(5) excepts from operation of the automatic stay acts which would otherwise be stayed under subsection (a)(2). These include: "The enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title." (Emphasis

added). Under the facts in this case, no judgment was obtained before the commencement of the case. Contrary to the Debtor's assertions, the (b)(5) exception does, therefore, not control the instant case.

Accordingly, the Debtor's Motion for Contempt against the City of St. Marys Police Department is denied.<sup>1</sup>

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that the Motion

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<sup>1</sup> I remain uncertain what purpose the Debtor hoped to serve by bringing this action against the City of St. Marys. 11 U.S.C. Section 523(a)(7) excepts from discharge any debt "to the extent such debt is for fine, penalty, or forfeiture payable to and for the benefit of a governmental unit . . ." The caselaw is clear that a speeding ticket falls within the reach of 11 U.S.C. Section 523(a)(7). See In re Gallagher, 71 B.R. 138 (Bankr. N.D. Ill. 1987); In re Smith, 58 B.R. 78 (Bankr. E.D. Pa. 1986), rev'd on other grounds, 66 B.R. 244 (E.D. Pa. 1986); In re Caggiano, 34 B.R. 449 (Bankr. D.Mass. 1983); In re Wilson, 31 B.R. 191 (Bankr. W.D. Tenn. 1983); In re Young, 10 B.R. 17 (Bankr. S.D. Cal. 1980).

for Contempt Sanctions against the City of St. Marys Police Department is denied and dismissed.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 13<sup>th</sup> day of July, 1988.