UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:
JTS/SIMMS, LLC
a New Mexico Limited Liability Company,
            Debtor.   No 7-07-12153 SA

JTS/SIMMS, LLC,
            Plaintiff,

v.   Adv. No. 07-1132 S

SIMMS BUILDING, INC.,
a New Mexico Corporation,
            Defendant.

MEMORANDUM OPINION AFTER TRIAL

This matter came before the Court for trial on the merits of Plaintiff's complaint for damages and injunctive relief. After trial Plaintiff's secured creditor obtained relief from the automatic stay and substantially all of Debtor's assets were abandoned. The case then converted to Chapter 7 and a Chapter 7 Trustee is now completing administration of what remains. For the reasons set forth below, the Court finds that this adversary proceeding should be dismissed.

FACTS

1.   Defendant and Plaintiff executed a Purchase and Sale Agreement that transferred a building in downtown Albuquerque to Plaintiff. Defendant was the seller.

2.   Plaintiff failed to prove damages resulting from any violations of the automatic stay.

3.   Plaintiff failed to prove that Defendant converted any property belonging to the estate or from the estate. At

most, Plaintiff proved that certain unknown third parties took some personal property "from the estate." The property taken had not been purchased from Defendants as part of the Purchase and Sale Agreement.

4.   Plaintiff failed to prove any damages flowed from Defendant's actions relating to tenant leases. In fact, Defendant collected approximately $11,000 from tenants and turned that money over to Plaintiff.

5.   The related bankruptcy case converted from Chapter 11 to Chapter 7 and ceased business operations. The injunctive relief sought is therefore moot.

6.   The Chapter 7 Trustee has not intervened in or substituted in as a party in this adversary proceeding.

7.   Defendant alleged no counterclaim.

CONCLUSIONS OF LAW

1.   This adversary proceeding, when it was commenced, was a core proceeding. 28 U.S.C. § 157(b)(2).

2.   The primary focus of Plaintiff's complaint is for sanctions for Defendant's alleged automatic stay violations. See 11 U.S.C. § 362.

3.   Section 362(k)(1) provides, in part, "an individual[1] injured

by any willful violation of a stay provided by this section

shall recover actual damages, including costs and attorneys'

fees, and, in appropriate circumstances, may recover

punitive damages."

4.   The function of the automatic stay is to stop
            collection efforts against a debtor, outside of
            the bankruptcy proceeding: It gives the debtor a
            "breathing spell" in order to reorganize her
            financial affairs. And, it prohibits harassment
            of the debtor. See, Budget Service Co. v. Better
            Homes of Virginia, Inc., 804 F.2d 289, 292 (4th
            Cir.1986). But, the stay does not shield the
            debtor from all the vicissitudes, aggravations and
            anxiety of everyday life. (When it rains, debtors
            protected by the automatic stay get wet). Thus,
            the Code prescribes a sanction only in two
            conjunctive circumstances: (1) injury to the
            debtor; (2) caused by a "willful" violation of the
            stay. In re Hamrick, 175 B.R. 890, 893 (W.D. N.C.
            1994).

In re Peterson, 297 B.R. 467, 470 (W.D. N.C. 2003).

Therefore, it is appropriate to determine if there are any

injuries before delving into the willfulness of an alleged

stay violation.

5.   Proving no damages, Plaintiff is entitled to no relief. See

In re Dunn, 202 B.R. 530, 531 (Bankr. D. N.H. 1996)("The

movants, the debtors herein, have the burden of proof with

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[1]There is a split in the Courts whether a corporation or
partnership is an "individual" that can seek relief under §
362(k)(1). See, e.g., Maritime Asbestosis Legal Clinic v. LTV
Steel Co., Inc. (In re Chateaugay Corp.), 920 F.2d 183, 185 (2nd
Cir. 1990). The Court does not need to decide the issue in this
case because it finds no damages.

regard to showing that there was a violation of the

automatic stay, that the violation was willful, that the

willful violation caused the movants to suffer harm and

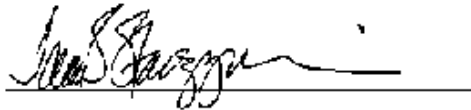incur damages, and then to show what relief is

appropriate.")

6.   A stay violation damage award cannot be based on "mere

speculation, guess, or conjecture." <u>Archer v. Macomb County</u>

<u>Bank (In re Archer)</u>, 853 F.2d 497, 499 (6th Cir. 1988)

(quoting <u>John E. Green Plumbing & Hearing Co v. Turner</u>

<u>Construction Co.</u>, 742 F.2d 965, 968 (6th Cir. 1984), <u>cert.</u>

<u>denied,</u> 471 U.S. 1102 (1985)). In this case, Plaintiff

proved no damages and any damage calculation would be

speculative.

7.   A bankruptcy court has jurisdiction over disputes
          regarding alleged property of the bankruptcy estate at
          the outset of the case. <u>In re Xonics, Inc.</u>, 813 F.2d
          127, 131 (7th Cir. 1987). When property leaves the
          bankruptcy estate, however, the bankruptcy court's
          jurisdiction typically lapses, <u>In re Hall's Motor</u>
          <u>Transit Co.</u>, 889 F.2d 520, 523 (3d Cir. 1989); <u>In re</u>
          <u>Xonics, Inc.</u>, 813 F.2d at 131; <u>In re Muller</u>, 72 B.R.
          280, 284 (C.D. Ill. 1987), <u>aff'd</u>, 851 F.2d 916 (7th
          Cir. 1988), <u>cert. denied</u>, 490 U.S. 1007, 109 S.Ct.
          1645, 104 L.Ed.2d 160 (1989), and the property's
          relationship to the bankruptcy proceeding comes to an
          end. <u>See In re Hall's Motor Transit Co.</u>, 889 F.2d at
          523. Thus, the bankruptcy court lacks related
          jurisdiction to resolve controversies between third
          party creditors which do not involve the debtor or his
          property unless the court cannot complete
          administrative duties without resolving the
          controversy. <u>In re Shirley Duke Assocs.</u>, 611 F.2d 15,
          18 (2d Cir.1979).

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<u>Gardner v. United States (In re Gardner)</u>, 913 F.2d 1515,1518

(10th Cir. 1990). Any issues from this adversary proceeding

that are still alive are between Defendant and Debtor's

secured creditor. The bankruptcy court lacks jurisdiction

to determine third party disputes. This adversary

proceeding should be dismissed.

<u>CONCLUSION</u>

The Court will enter an Order dismissing this adversary

proceeding.

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Honorable James S. Starzynski
United States Bankruptcy Judge

Date Entered on Docket: October 14, 2009

copies to:

David T Thuma
500 Marquette Ave NW Ste 650
Albuquerque, NM 87102-5309

Jennie D Behles
PO Box 7070
Albuquerque, NM 87194-7070

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