

**FILED**

**APR 11 2005**

**U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF ARIZONA**

In re: )  
 ) Chapter 7  
GABRIEL I. ALVARADO, )  
 ) Case No. 0-04-01459-JMM  
 )  
Debtor. ) **MEMORANDUM DECISION**

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**INTRODUCTION**

The court held a hearing on April 8, 2005, on the Debtor's Motion for Sanctions for Stay Violations. Both the Debtor and the creditor appeared without counsel and argued their position to the court.

**FACTS**

The Debtor filed this Chapter 7 bankruptcy case on October 27, 2004. However, he failed to pay his filing fee, and his case was dismissed on January 14, 2005<sup>1</sup>, (Dkt. 26) for failure to pay the filing fee.

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<sup>1</sup> An order authorizing the payment of the fee in installments was entered October 28, 2004, and warned of dismissal in the absence of payment. (Dkt. 6).



1 Ten days later, on January 24, 2005, the Debtor paid his fee, and filed a motion to  
2 reinstate the case. (Dkt, 28). An order granting reinstatement was entered the same day.  
3 (Dkt. 29).  
4

5 The creditor, George Le May, in his response filed with the court, noted that he held  
6 an uncashed garnishment check pending further proceedings or orders by the court, until he  
7 received notice of the dismissal on January 19, 2005, and then cashed the check on January 21,  
8 2005. The creditor's wage garnishment orders had been served on the Debtor's employer pre-  
9 petition, in July 2004. (Dkt. 40). The garnishment check was sent to the creditor on  
10 December 9, 2004. The check was in the sum of \$147.97. No further checks have been  
11 received or cashed. Mr. Le May holds a pre-petition claim against the Debtor for \$2,656.81.  
12 (See, Response and Motion, Dkts. 36, 40).  
13  
14

15 The Debtor received a discharge of his debts on February 24, 2005. (Dkt. 41).  
16  
17

### 18 THE LAW

19 The automatic stay of 11 U.S.C. § 362(a) freezes all creditor action against debtors who  
20 have filed for bankruptcy protection. Here, the creditor took no further action after being  
21 notified of the bankruptcy. The Debtor's employer, post-petition, sent a check, post-petition,  
22 but the creditor did not cash it.  
23

24 When the Debtor's case was dismissed, the stay dissolved by operation of law.  
25 11 U.S.C. § 362(c)(2)(B). Also, as a matter of law, the disputed check was "revested" in the  
26 Debtor, subject to the outstanding garnishment. 11 U.S.C. § 349(b)(3).  
27  
28



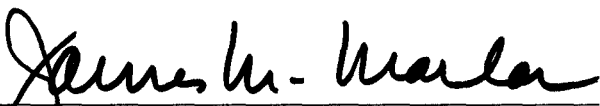
1 When Mr. Le May cashed the check, there was no pending bankruptcy, and no stay in  
2 place. Thus, there was no violation of the automatic stay.

3  
4 Since Mr. Le May's actions in cashing the check occurred at a time when the case was  
5 dismissed, and before reinstatement, Mr. Le May's actions in cashing the check did not run  
6 afoul of applicable law.

7  
8  
9 **RULING**

10 Based on the foregoing analysis, the Debtor's Motion for Sanctions must be DENIED.  
11 A separate Order will issue. Fed. R. Bankr. P. 9021.

12 Dated this 11th day of April, 2005.

13  
14  
15   
16 \_\_\_\_\_  
17 James M. Marlar  
U.S. Bankruptcy Judge

18 Copy of the foregoing mailed  
19 this 11<sup>th</sup> day of April, 2005, to:

20 Gabriel Alvarado  
21 P.O. Box 3038  
Yuma, AZ 85365

22 George Le May  
23 1350 E. Flamingo Rd., Suite 686  
24 Las Vegas, NV 89119-5294

25 By   
26 Judicial Assistant