

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT

**ORDER ENTERED ON:**  
6-27-01  
  
DEPUTY CLERK

In re : Chapter 11  
: :  
FELIX BURGOS, : Case No. 00-51245  
: :  
Debtor : :

Appearances:

Felix Burgos : Debtor, *pro se*  
610 Colorado Ave. :  
Bridgeport, CT 06605 :  
Russell D. Liskov : Attorney for the City of Bridgeport  
999 Broad Street :  
Bridgeport, CT 06604 :

**ORDER ON APPLICABILITY OF AUTOMATIC STAY**

Alan H. W. Shiff, Chief Bankruptcy Judge:

**BACKGROUND**

On September 27, 2000, a judgment entered in the Superior Court of Connecticut, granting a Summary Process Execution for Possession of 1312 State Street, Bridgeport, Connecticut (the "property"), in favor of the West End Community Development Corporation, an agency of the City of Bridgeport, and against "Iglesia Christiana" [sic] and "John Doe a/k/a Felix Burgos" (the "debtor"). See *unmarked exhibit attached to the debtor's November 1, 2000 memorandum of law*. Since there was no appeal, the state court judgment is final and entitled to preclusive effect. *State of New York v. Sokol, (In re Sokol)* 113 F.3d 303, 306 (2nd Cir. 1997).

The debtor has acknowledged on the record that no valid lease authorized his occupancy of the premises, which he used as a church. See *Tape of June 11 hearing at 3:22:03*. Accordingly, his status was that of a squatter. *Morocco v. Toretto*, 2000 WL

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739641, \*4 (1996 Conn. Super.); *Adams v. Philadelphia Housing Authority, (In re Bowens)* 94 B.R. 838, 845 (Bankr. E.D. PA 1989).

The eviction corresponding to the judgment was executed on October 10, 2000 at 8:30 a.m. The debtor, *pro se*, filed this chapter 11 petition at 9:33 a.m. the same day. At a June 11, 2001 hearing to show cause why this court should not abstain, the City claimed that the eviction ordered by the state court had been completed. Thus, the issue here is whether the automatic stay, see 11 U.S.C. § 362, nullified the eviction.

## DISCUSSION

The debtor appears to argue that the automatic stay is effective on the date rather than at the time on the day a petition is filed. Neither the statute nor case law support that contention. The automatic stay provides in relevant part:

(a) . . . a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of –

(1) 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 a claim against the debtor that arose *before* the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained *before* the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; . . .

(6) any act to collect, assess, or recover a claim against the debtor that arose *before* the commencement of a case under this title;

. . . .

11 U.S.C. § 362 (West 2001) (emphasis added).

At the outset, it is observed that § 362 (a)(1), (2) and (6) relate to prepetition causes of action. Subsection (3) relates to property of the estate. But there is no property of the estate until the case is commenced. See § 541. See, e.g., *International Heritage, Inc. v. Gilbert et al.*, (*In re International Heritage, Inc.*), 239 B.R. 306, 309 (Bankr. E.D. NC 1999) (the automatic stay is prospective, and “goes into effect immediately upon the filing of a bankruptcy petition.”)(emphasis added). See also *Clayton v. King, et al.*, (*In re Clayton*), 235 B.R. 801, 806 (Bankr. M.D. NC 1998). The automatic stay was therefore not in effect at the time the debtor was evicted because the eviction preceded the filing of his bankruptcy petition.

The question remains whether the debtor is entitled to some other equitable relief. See, e.g., § 105(a). See also, *Katahdin Federal Credit Union v. Jamo (In re Jamo)*, \_\_\_ B.R. \_\_\_, 2001 WL 608675, 2001 Bankr. LEXIS 574, \*5 (1st Cir. BAP May 29, 2001) (“a bankruptcy court may invoke section 105(a) only if the equitable remedy utilized is demonstrably necessary to preserve a right elsewhere provided in the Code”). In order to be entitled to equitable relief under § 105(a), the debtor would have to show that the equities lie in his favor. The record demonstrates that they do not.

The summary process which issued in the state court on October 4, 2000, was served on the debtor by the Fairfield County Sheriff’s Department on Friday, October 6, 2000 at 8:45 a.m. At that time, the sheriff notified the debtor that he would return on Tuesday, October 10, 2000 at 8:30 a.m., to execute the eviction. See § 47a-42, Connecticut General Statutes (West 2001). The debtor informed the sheriff that he intended to file a bankruptcy petition, and he then returned to the housing court, which advised him that he could file a writ of *audita querela*.<sup>1</sup> When the sheriff returned on October 10, notices had been posted on the property asserting that it was “under protection of bankruptcy,” although no bankruptcy petition had been filed at that time. *Tape of June 11 hearing at 3:15:22*. As noted, the debtor filed his chapter 11 petition at 9:33 a.m. on October 10, 2000.

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<sup>1</sup>The writ permits a judgment debtor to “[seek] a rehearing of a matter on [equitable] grounds of newly discovered evidence or newly existing legal defenses.” BLACK’S LAW DICTIONARY, 7TH ED. (West, 1999).

The debtor had the opportunity to file a bankruptcy petition on October 6, when this courthouse was open.<sup>2</sup> Even assuming the City had an obligation to inquire whether the debtor had in fact filed a bankruptcy petition prior to executing the eviction, the City would have learned that no such petition had been filed. Since he could have filed a timely bankruptcy petition after the state of Connecticut had ruled against him, there is no reason the automatic stay should be modified under § 105(a).

Accordingly, his motion to enforce the automatic stay is DENIED, and it is SO ORDERED.

Dated at Bridgeport, this 27th day of June, 2001.

  
Alan H.W. Shiff  
Chief United States Bankruptcy Judge

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<sup>2</sup>The debtor correctly identifies October 9, 2000 as a federal holiday.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT**

In Re: Felix Burgos

Case No.: 00 - 51245  
Chapter: 11

**CERTIFICATE OF MAILING**

**The undersigned Clerk in the Office of the United States Bankruptcy Court, hereby certifies that a copy of the document attached hereto was mailed this date to:**

Felix Burgos P.O. Box 803  
Bridgeport, CT 06601, Debtor's Attorney

Felix Burgos P.O. Box 803  
Bridgeport, CT 06601, Debtor

Russell Liskov, Esq., Office of the City Attorney  
999 Broad Street, Bridgeport, CT 06604

Office of the United States Trustee  
Copy of order placed in court mailbox

**Dated: 06/27/01**

**By: pbb**