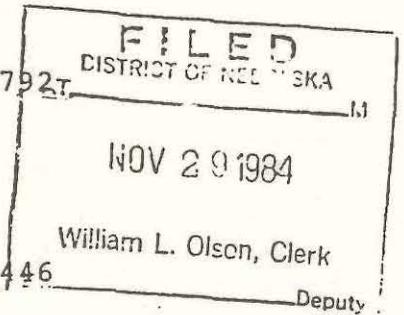


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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IN RE:)
)
MARGUERITE M. GRIFFIN,)
)
Debtor.)
)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MARGUERITE M. GRIFFIN,)
)
Defendant.)

BK 84-00792T



CV 84-0-446

ORDER

This matter is before the Court upon the government's appeal from an order of the Bankruptcy Court sustaining the debtor's motion for contempt and awarding a sanction of \$250.00 "against I.R.S." The debtor has filed a motion to dismiss the government's appeal as untimely (filing 8). On appeal, the Bankruptcy Judge's findings of fact are "entitled to stand unless clearly erroneous." Darman v. Metropolitan Alarm Corp., 528 F.2d 908, 910 (1st Cir. 1976). However, the Court is not bound by the Bankruptcy Judge's conclusions of law. In re Urquhart, 303 F. Supp. 39, 41 (D. Neb. 1969), aff'd, 427 F.2d 492 (8th Cir. 1970); see also In the Matter of American Beef Packers, Inc., 457 F. Supp. 313, 314 (D. Neb. 1978).

On April 24, 1984, Marguerite M. Griffin (debtor) filed a petition in bankruptcy seeking relief under Chapter 11 of the United States Bankruptcy Code. On or about April 30, 1984, the Internal Revenue Service (IRS) sent a copy of its form letter 1715(DO) (11-82) to the debtor. The letter informed the debtor of her

obligation to reserve funds for taxes in her reorganization plan and informed her that the IRS would oppose any plan which did not comply with the letter.

On May 7, 1984, the debtor filed a motion for contempt, arguing that letter 1715 violated section 362 of the Bankruptcy Code. 11 U.S.C. § 362(a) "operates as a stay . . . of":

(3) any act to obtain possession of property of the estate or of property from the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

. . .

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

. . .

The government argues that its suggestions on tax law contained in the letter would assist the debtor in formulating a reorganization program and that the automatic stay provision was not intended to apply to action taken within the confines of the bankruptcy proceeding.

The purpose of the automatic stay provision is to promote the orderly administration of the bankrupt's estate. Maguire v. Puente, 466 N.Y.S.2d 934 (E.D. N.Y. 1983); In re LaPorta, 26 Bankr. 687 (N.D. Ill. 1982). The automatic stay provision is primarily aimed at forestalling legal action instigated by creditors and is not intended to shield the debtor from every sling and arrow arising from the petition in bankruptcy. See In re Johns-Manville Corp., 31 Bankr. 627 (S.D. N.Y. 1983) (legal action taken against debtor); Depoy v. Kipp, 29 Bankr.

... and. 1983) (same). The letter (question merely informs the debtor of her obligation to provide for the payment of taxes within the reorganization plan and does not, as such, disturb the orderly administration of the bankrupt's assets. See Utica Floor Maintenance, Inc. v. Utica Floor Maintenance, Inc., 41 Bankr. 941 (N.D. N.Y. 1984) (threat to debtor's reorganization efforts must be immediate and serious). While the IRS will not be permitted unfettered access to a debtor through written or oral communications, this particular letter does not, under the circumstances of this matter, constitute contemptuous conduct.

The Court finds that the Bankruptcy Court erred in sustaining the motion for contempt.

IT IS HEREBY ORDERED that the Bankruptcy Court's entry of an order of contempt be vacated.

IT IS FURTHER ORDERED that the debtor's motion to dismiss (filing 8) be denied. The debtor points out that counsel for the government filed its appeal and appellate brief out of time. These actions were accomplished with the permission of the Court, and while the Court in no way wishes to encourage or condone dilatory practices, the Court does not find that counsel for the government acted in bad faith.

DATED this 29th day of November, 1984.

BY THE COURT:



C. ARLEN BEAM
UNITED STATES DISTRICT JUDGE