

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LIOR BLAS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 1031-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER

On November 18, 2019, the Court issued its Memorandum Findings of Fact And Opinion, T.C. Memo. 2019-152 (Memorandum Opinion) and entered a Decision for respondent. Respondent filed a motion for leave to file motion to vacate decision (motion for leave) and lodged with the Court a motion to vacate decision (motion to vacate) on January 29, 2020. By Order dated February 5, 2020, we granted respondent’s motion for leave and directed petitioner to file a response to respondent’s motion to vacate. That same day petitioner filed a response. On February 10, 2020, respondent filed a response to petitioner’s response.

In support of respondent’s motion to vacate, respondent states that petitioner filed a petition with the United States Bankruptcy Court for the District of Alaska on November 30, 2017.¹ According to respondent, the automatic stay under 11 U.S.C. sec. 362(a)(8) commenced on November 30, 2017, and was in effect during the June 19, 2018, trial of this case. Respondent asserts that the automatic stay ended when petitioner received a discharge on May 31, 2019. Respondent also

¹ Petitioner filed his bankruptcy petition under 11 U.S.C. Chapter 13, but his case was converted to chapter 7 on February 13, 2019.

asserts that the Memorandum Opinion and Decision are void because they were based on evidence from a trial that occurred in violation of the automatic stay.²

Petitioner agrees with respondent that the Decision is void. However, petitioner maintains that his bankruptcy proceeding remains active and that the automatic stay remains in effect.

The U.S. Court of Appeals for the Ninth Circuit, to which this case is appealable absent a stipulation to the contrary, has held that actions in violation of the automatic stay are void and not merely voidable. See Schwartz v. United States, 954 F.2d 569, 571 (9th Cir. 1992); Stringer v. Huet, 847 F.2d 549, 551 (9th Cir. 1988). One of those actions is the “continuation of a proceeding before the United States Tax Court concerning * * * the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief”. 11 U.S.C. sec. 362(a)(8); see Allison v. Commissioner, 97 T.C. 544, 545 (1991). In a chapter 7 bankruptcy, such as that of petitioner, the automatic stay generally remains in effect until the earliest of the closing of the case, the dismissal of the case, or the grant or denial of a discharge. See 11 U.S.C. sec. 362(c)(2); Allison v. Commissioner, 97 T.C. at 545; Smith v. Commissioner, 96 T.C. 10, 15 (1991); Neilson v. Commissioner, 94 T.C. 1, 8 (1990). If the automatic stay is terminated by one of those events, the bankruptcy court can reimpose the stay by order. See Allison v. Commissioner, 97 T.C. at 547-548 (citing 11 U.S.C. sec. 105); see also Guerra v. Commissioner, 110 T.C. 271, 278 (1998).

Petitioner timely filed a petition to commence this case on January 13, 2017. On November 30, 2017, petitioner filed a petition with the bankruptcy court, which temporarily barred the continuation of petitioner’s pending Tax Court case. See 11 U.S.C. sec. 362(a)(8). A trial was held in Anchorage, Alaska, on June 19, 2018. Petitioner received a discharge in his bankruptcy proceeding on May 31, 2019, and we issued our Memorandum Opinion and entered a Decision on November 18, 2019.

Regardless of whether the automatic stay remained in effect after the discharge, our Memorandum Opinion and Decision are void. Assuming the

² In the motion for leave respondent’s counsel explains that she did not learn about petitioner’s bankruptcy proceeding until January 21, 2020. Accordingly, the parties did not inform the Court that the automatic stay was in effect during the pendency of this case.

automatic stay terminated when petitioner received a discharge on May 31, 2019 (as respondent contends), the Memorandum Opinion and Decision are based on factual findings from a trial held in violation of the stay and are therefore void. See Trustees of the United Health and Welfare Fund v. N. Kofsky & Son, Inc., No. 8 Civ. 11219, 2015 WL 59173, at *2 (S.D.N.Y. Jan. 5, 2015) (stating that bench trial “was void and without vitality because it occurred while the * * * stay was in effect.”); Cramer v. Grover, 7 B.R. 133, 135 (Bankr. D. Col. 1980) (holding that a State court judgment was void because it was based on evidence from the continuation of a trial in violation of the automatic stay). Conversely, assuming the automatic stay was in effect when we issued the Memorandum Opinion and entered the Decision (as petitioner contends), these actions violated the stay and are void. See Shutts v. Commissioner, T.C. Memo. 2010-160 (voiding a Tax Court decision because it was entered while the automatic stay was in effect).

Accordingly, we will vacate the Decision. The Court will also withdraw the opinion in a separate Order.

The foregoing considered, it is

ORDERED that the Court’s Decision, entered on November 18, 2019, is hereby vacated. It is further

ORDERED that the parties shall, on or before May 1, 2020, file with the Court a joint report or separate reports as to the then present status of the related bankruptcy proceeding. The report(s) should address whether the bankruptcy court has entered any orders staying the proceedings in this Court.

(Signed) Juan F. Vasquez
Judge

Dated: Washington, D.C.
March 19, 2020