

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

SHARON WINNER	:	
	Plaintiff	NO: 10-02407
	:	
vs.	:	
	:	
	:	
TERRY AND DELORIS MANTLE	:	CIVIL ACTION
	Defendants	:

**OPINION**

**Background**

On November 3, 2010 the Plaintiff filed a Writ of Summons. A Complaint was filed on January 24, 2011. On February 23, 2011 the Plaintiff served the Defendants with a ten (10) day notice via certified mail. A default judgment was entered against the Defendants on March 22, 2011. Following entry of the default judgment, on April 8, 2011, the Defendants filed Preliminary Objections to Plaintiff's Complaint. On May 4, 2011, forty-three days after the default judgment was entered, the Defendants filed a Motion to Strike and/or Open Judgment.

The Defendants assert essentially two grounds in their Motion to Strike and/or Open Judgment. The Defendants first contend that Plaintiff's counsel told him that "no judgment was entered or would be entered." The second was that the Defendants were involved in bankruptcy proceedings. Plaintiff's counsel specifically denies any statements were made regarding the entry of judgment. Plaintiff's counsel contends that the only conversation that he had with Defendants' counsel was a telephone conversation on March 23, 2011 in which Attorney Zeigler advised that he was

counsel for the Defendants in a bankruptcy proceeding. A request was made for documentation confirming the existence of bankruptcy proceedings which was never provided. Plaintiff's counsel subsequently discovered that on February 23, 2011 the Honorable John J. Thomas issued an Order Dismissing the Defendants' bankruptcy proceedings due to "debtor(s) failure to comply with Order dated July 22, 2010."<sup>1</sup>

On May 20, 2011, oral argument was held on the Defendants' Motion to Strike and/or Open Judgment. During argument, the Defendants contended that they were proceeding on the Petition to Strike as opposed to their Motion to Open Judgment, and asserted that Plaintiff's Complaint was void *ab initio* based upon Raymark Industries, Inc. v. Lai, 973 F.2d 1125 (3<sup>rd</sup> Cir. 1992).

### **Discussion**

A petition to strike a default judgment can only be granted if a fatal defect appears on the face of the record. Cintas Corp. v. Lee's Cleaning Services, Inc., 700 A.2d 915 (Pa. 1997). Defendants assert that the default judgment should be stricken because the complaint was filed subsequent to the filing of Defendants bankruptcy petition.

The Bankruptcy Code states that a bankruptcy petition operates as a stay of all enforcement proceedings against a debtor. 11 U.S.C. § 362(a). The automatic stay specifically applies to "the commencement or continuation...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..." 11 U.S.C. § 362(a)(1).

---

<sup>1</sup> It appears that counsel for the Defendants failed to enter his appearance at any time prior to the filing of Preliminary Objections on April 8, 2011.

In Raymark, *supra*, the Third Circuit held that “actions taken in violation of the automatic stay are void *ab initio*. Id. at 1132. Although in the present action, the Bankruptcy proceeding was dismissed prior to entry of the default, the Third Circuit has interpreted the Bankruptcy Code to void any actions taken in violation of the stay. As the Plaintiff’s action was commenced subsequent to the Defendants’ bankruptcy filing, commencement of the action was clearly in violation of the stay, and accordingly, the Defendants’ Petition to Strike is hereby GRANTED.

**ORDER**

AND NOW, this 22<sup>nd</sup> day of June, 2011, the Defendants’ Petition to Strike is hereby GRANTED and the Plaintiff’s Complaint is hereby STRICKEN, without prejudice. The Defendants’ Motion to Open Judgment and Preliminary Objections are hereby DISMISSED.

BY THE COURT,

\_\_\_\_\_  
Richard A. Gray, J.

cc: Matthew J. Zeigler, Esquire

Edward R. Kennett, Esquire  
8 North Queen Street  
P.O. Box 449  
Lancaster, PA 17608-0449

Gary Weber, Esquire