

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP COLASUONNO,

Defendant.

21 Civ. 10877 (PMH)

**MEMORANDUM OF LAW IN FURTHER SUPPORT OF
DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

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The Internal Revenue Service's ("IRS") filing of a Notice of Federal Tax Lien ("NFTL") during the Defendant's bankruptcy proceeding must affect the tolling of the statute of limitations since it was a violation of the bankruptcy stay. The IRS clearly did not believe they were stayed, which is evidenced by the filing of the NFTL. Therefore, they cannot now, when they've exceeded the statute of limitations, claim that they believed they were stayed to gain extra time.

It is undisputed that the filing of a petition for bankruptcy operates as a stay of "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(6). The automatic stay provision is "one of the fundamental debtor protections provided by the bankruptcy laws." (*Church Mut. Ins. Co. v Am. Home Assur. Co. (In re Heating Oil Partners, LP)*, 422 F App'x 15, 17 [2d Cir 2011]) and is effective immediately upon the filing of the petition (*Rexnord Holdings v Bidermann*, 21 F3d 522, 527 [2d Cir 1994]).

While the IRS is specifically allowed to make an assessment during the bankruptcy stay pursuant to 11 U.S.C. § 362(b)(9)(D), there is no such exception for filing of a tax lien which is an act to collect, assess and recover a claim.

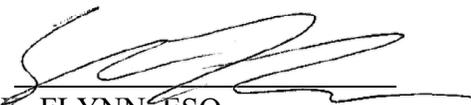
Since Plaintiff ignored the bankruptcy stay by issuing the Notice of Federal Tax Lien, they cannot now claim tolling of the statute of limitations and six-month extension of the statute of limitations they would have been entitled to.

Since Plaintiff ignored the automatic stay on collection under 11 U.S.C. § 362(a)(6), Plaintiff is not entitled to the relief afforded by 26 U.S.C. § 6503 (h)(2).

For the foregoing reasons, Defendant respectfully requests that this Court grant its Motion for Judgment on the Pleadings.

Dated: White Plains, NY
July 29, 2022

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