

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
EUGENE CARRELL,))
Debtor.))
Bankruptcy Case No. 98-60003

OPINION

This matter having come before the Court on a Motion filed by the Debtor requesting that Creditor, First Banks, be punished for its violation of the automatic stay, pursuant to 11 U.S.C. §362(h); the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The issue before the Court is whether Creditor, First Banks, of Fargo, North Dakota, should be sanctioned, pursuant to 11 U.S.C. §362(h), for a willful violation of the automatic stay as a result of its repossession of the Debtor's 1994 Dodge Ram truck after the filing of the Debtor's Chapter 7 bankruptcy petition and the entry of an Order for Relief.

The facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On January 5, 1998, the Debtor filed a voluntary petition for bankruptcy under Chapter 7, with an Order for Relief being entered on that same day.
2. Among his creditors, the Debtor scheduled First Banks, of Fargo, North Dakota, as having a secured claim in the amount of \$16,337 on a 1994 Dodge Ram pick-up truck.
3. On January 17, 1998, Creditor, First Banks, caused Debtor's 1994 Dodge Ram 1500 truck to be repossessed and removed from the Debtor's possession.
4. Debtor's counsel, John O. Cutright, made numerous attempts to contact Creditor, First Banks, between January 19, 1998, and January 23, 1998, all to no avail. The record indicates that Attorney Cutright attempted to seek return of the Debtor's pick-up truck by telephone, telefax, and mail.

5. On January 27, 1998, the instant Motion was filed seeking sanctions against Creditor, First Banks, for its willful violation of the automatic stay, pursuant to 11 U.S.C. §362(h).

6. A hearing was held on February 20, 1998, at which time Debtor and Debtor's counsel appeared; however, there was no appearance made on behalf of Creditor, First Banks, nor has Creditor, First Banks, ever responded in any way to any of the communications initiated by Attorney John O. Cutright or in response to the Motion filed before this Court.

7. At hearing on February 20, 1998, Debtor's counsel indicated that considerable amount of attorney time had been spent in his attempts to contact Creditor, First Banks, and that the Debtor had been damaged as a result of his need to purchase a replacement vehicle in a hurried fashion. Debtor requested that damages be awarded for his inconvenience and that attorney time be compensated also.

The law under 11 U.S.C. §362(h) is clear, in that the automatic stay is a basic protection afforded to debtors and its scope is intended to be broad. Checkers Drive-In Restaurants, Inc. v. Commissioner of Patents and Trademarks, 51 F.3d 1078 (D.C. Cir. 1995); and Maritime Electric Co., Inc. v. United Jersey Bank, 959 F.2d 1194 (3rd Cir. 1991). As soon as the bankruptcy petition is filed, the automatic stay provisions take effect. Matter of Vitreous Steel Products Co., 911 F.2d 1223 (7th Cir. 1990). The automatic stay gives the Bankruptcy Court the opportunity to harmonize the interests of both debtors and creditors while preserving a debtor's assets for repayment and reorganization of his or her obligations. In re MacDonald, 755 F.2d 715 (9th Cir. 1985). The automatic stay also serves to protect the debtor's estate from being eaten away by creditors, lawsuits, and seizures before the trustee has had an opportunity to marshal the estate's assets and to distribute them equitably among the creditors. In re Nelson, 994 F.2d 42 (1st Cir. 1993). Another fundamental purpose of the automatic stay is to protect the debtor from actions by his creditors. In re Martin, 162 B.R. 710 (Bankr. C.D. Ill. 1993).

The filing of a bankruptcy petition triggers the automatic stay, notwithstanding the lack of actual notice of the proceedings. In re Sumpter, 171 B.R. 835. In the instant case, the Court finds that Creditor, First Banks, willfully violated the automatic stay when it repossessed the Debtor's vehicle some twelve days after the Debtor filed for relief under Chapter 7 of the Bankruptcy Code and retained that vehicle even after

numerous phone calls, telefaxes, and letters had been sent. The law is clear that there is an affirmative duty on the part of one who violates the automatic stay to undo the violation without unreasonable delay or face sanctions as a consequence. In re Teller, 190 B.R. 459 (Bankr. S.D. Fla. 1995); In re Behm, 44 B.R. 811 (Bankr. W.D. Wisc. 1984); and In re Endres, 12 B.R. 404 (Bankr. E.D. Wisc. 1981). In the instant case, not only has the Creditor failed to undo its willful violation of the automatic stay, but the Creditor has also failed to make any response whatsoever to the communications from the Debtor's attorney and from the Court. Title 11 U.S.C. §362(h) provides as follows:

An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Based upon the information provided by Debtor's counsel and from Debtor at hearing on February 20, 1998, the Court finds that the Debtor has been damaged in an amount of \$300. Additionally, the Court finds that it is appropriate to award attorney's fees in the amount of \$300, for a total sanction against Creditor, First Banks, in the sum of \$600, as and for its violation of the automatic stay, pursuant to 11 U.S.C. §362(h).

ENTERED: February 26, 1998.

/s/ GERALD D. FINES
United States Bankruptcy Judge