

In the United States Bankruptcy Court

for the Northern District of Iowa

MARK ALAN FRENCH
Debtor.

Bankruptcy No. 95-20770KD
Chapter 7

ORDER RE DEBTOR'S PETITION FOR VIOLATION OF AUTOMATIC STAY

On June 7, 1995, the above-captioned matter came on for hearing pursuant to assignment in Dubuque, Iowa. Debtor Mark Alan French appeared pro se. Also appearing was Lois Nelson, co-owner of a business establishment known as The Store in Elkader, Iowa. The matter before the Court is Debtor's Petition for Violation of Automatic Stay.

STATEMENT OF THE CASE

Debtor filed his Chapter 7 Petition on May 15, 1995. The Store is listed as an unsecured creditor with a claim in the amount of \$1,443.21. On May 26, 1995, Debtor filed a document requesting relief from the Court because of The Store's alleged violation of the automatic stay. He states that this creditor posted the notice of commencement of this bankruptcy case in the store window. He asserts that this violated the automatic stay and was intended to embarrass and discriminate against him based upon his Chapter 7 filing.

At the time of hearing, the Court placed both Debtor and Lois Nelson under oath. Debtor testified that he became aware of the location of this document in the store window through a friend. The friend asked Mrs. Nelson's daughter, who was working at the store at the time, why the sign was in the store window. Creditor's daughter replied that it was because of the debt owed by Debtor to The Store based on bad checks. Debtor took a series of pictures which reflect where the copy of the petition was located in the store window.

Mrs. Nelson testified that she is one of the co-owners of this business establishment with her husband. It is a convenience store which sells gas and some grocery items. According to Mrs. Nelson, Debtor did business there and had a substantial account for gas and other items. The claim of \$1,400 is approximately accurate. Mrs. Nelson indicated that Debtor had written a series of bad checks in conjunction with his obligations. She testified that apparently the copy of Debtor's bankruptcy petition was posted in the store window but she indicated, under oath, that she had no personal knowledge of it. She stated that she does go to the store every day and works there. However, she denied knowledge of the document's presence in the window. Mrs. Nelson disclaimed any knowledge of whether her husband put it up. She stated that he was not present at the hearing because he was busy with other things on this date and was unable to attend. The notice sent out did not specifically require that he be here as it was addressed only to Mrs. Nelson.

The Store has only one window which is of picture window proportions. It is located next to the entrance door. The copy of the petition was displayed prominently in the window.

Mrs. Nelson testified, confirmed by Debtor, that shortly after this matter was set for hearing, the sign was taken down. Mrs. Nelson indicated that she took the sign down after she was made aware of its existence by the notice setting hearing. The Court indicated to Mrs. Nelson that the copy of the petition was not to be put back up in the window. The Court then took the matter under advisement to resolve these issues as to any possible sanctions.

CONCLUSIONS OF LAW

The automatic stay prohibits any entity from taking any action "to collect, assess, or recover a claim against the debtor

that arose before the commencement of a case." 11 U.S.C. 362(a)(6). The scope of the automatic stay is very broad. In re Knaus, 889 F.2d 773, 774 (8th Cir. 1989). Congress intended the automatic stay to stop "all collection efforts, all harassment, and all foreclosure actions" and "prevent creditors from attempting in any way to collect a prepetition debt." H.R. 595, 95th Cong., 1st Sess. 340-42 (1977); In re Grau, 172 B.R. 686, 690 (Bankr. S.D. Fla. 1994).

Section 362(h) addresses sanctions for violations of the automatic stay. It 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.

A violation of the stay is "willful" where the violator's conduct is deliberate and done with knowledge of the bankruptcy filing. In re Dencklau, 158 B.R. 796, 800 (Bankr. N.D. Iowa 1993). "Appropriate circumstances" which would support an award of punitive damages include instances of egregious, intentional misconduct by the entity violating the stay. Knaus, 889 F.3d at 776.

One court has created a workable test to determine whether a creditor's actions constitute a violation of 362(a)(6). In re Briggs, 143 B.R. 438, 453 (Bankr. E.D. Mich. 1992) (considering the issue in the context of the reaffirmation process). It states that creditor conduct violates 362(a)(6)

only if the action (1) could reasonably be expected to have a significant impact on the debtor's determination as to whether to repay, and (2) is contrary to what a reasonable person would consider to be fair under the circumstances.

Id. The court noted that although it may have to contend with a slippery slope in applying the test, it is consoled in knowing it is at least on the right mountain. Id. n.23.

Based on the present facts, this Court has reviewed cases which consider whether conduct which harasses, embarrasses or shames a debtor violates the automatic stay. The Eighth Circuit noted in Knaus that a creditor's attempts to get a debtor excommunicated from his church might violate the stay of themselves but did not decide the issue because the parties had not addressed it. 889 F.2d at 776 n.2. In In re Sechuan City, Inc., 96 B.R. 37, 39 (Bankr. E.D. Pa. 1989), a hotel landlord posted the debtor's petition and other signs protesting the debtor's failure to pay rent in the hotel lobby which provided access to the debtor's restaurant business. Hotel employees testified that the postings were intended to shame and embarrass the debtor into paying prepetition rent. Id. The court concluded that posting such signs placed the debtor in the position of either paying the prepetition debt or losing business and violated 362(a)(6) as an effort to coerce payment. Id. at 41. This Court in In re Olson, 38 B.R. 515, 518 (Bankr. N.D. Iowa 1984), held that a creditor's letter refusing to provide future medical services unless the debtor first paid prepetition debt likewise had no purpose other than collection of prepetition debt in violation of 362(a)(6).

The court in Briggs demonstrated application of its test for finding a violation of 362(a)(6) by stating that

any reasonable person would be offended by the notion that a creditor could, for example, make repeated late night phone calls to the debtor or threaten to place ads in the local newspaper calling the debtor a deadbeat as means of collecting a prepetition debt.

143 B.R. at 454. It stated that these examples constitute harassment or other forms of coercion that are unfair and violative of the automatic stay. Id. In In re Neal, 106 B.R. 90, 92 (Bankr. E.D.N.C. 1989), a creditor's husband crashed a lawn party by driving a truck between the band and the guests for the purpose of humiliating the debtor in front of friends because of unpaid prepetition debts. The court held that even if the man did not voice a demand for payment, his conduct constituted harassment and intimidation to coerce payment in violation of the stay. Id.

Mrs. Nelson testified that she did not place the copy of the petition in her store window and had no knowledge of it being there until she got the notice of hearing. The Court can assess credibility based on the demeanor of the witness, the content of the testimony and the Court's own experience with the way people act. In re Carrigan, 109 B.R. 167, 170 (Bankr. W.D.N.C. 1989). This Court cannot accept Mrs. Nelson's version that she could work in The Store every day without noticing the sign in the window. Debtor's testimony that a friend, essentially a passerby, noticed the sign and elicited Mrs. Nelson's daughter's representation that the sign was placed in the window because of Debtor's bad checks

is more credible. The Court concludes that Mrs. Nelson either place the notice in the window or had knowledge that it was posted in The Store's window and is, therefore, responsible for its presence. This constitutes deliberate conduct with knowledge of the petition as defined in 362(h).

Applying the Briggs test, the Court concludes that placing a copy of Debtor's petition in the store window would have a significant impact on Debtor's decision to repay the debt to The Store. Repaying the debt may well be the only action Debtor could take to avoid further humiliation and embarrassment caused by continuing the display of his status as a debtor. Any reasonable person would view this conduct as unfair under the circumstances. In this small town, displaying the petition in the window of The Store would necessarily shame and humiliate Debtor in front of his friends and neighbors.

There is no evidence that Mrs. Nelson directly demanded payment of Debtor's prepetition debt. However, like the debtor in Sechuan City, Debtor here was placed in the position of either paying the prepetition debt or continuing to suffer the humiliation and shame of having his status as a debtor flaunted to every customer of The Store in his small-town community. This constitutes the type of harassment and coercive conduct which Congress intended to prevent through the automatic stay.

While a mere communication of the fact of a debtor's bankruptcy petition or of a creditor's lending policies can be deemed informative and not coercive in violation of the automatic stay, the conduct in this case goes well beyond such a

benign purpose. See Brown v. Penn. State Employees Credit Union, 851 F.2d 81, 84 (3d Cir. 1988). This Court concludes that this conduct, under these facts, constitutes a violation of the automatic stay.

The types of damages which arise from an entity's violation of the automatic stay include actual damages, attorney fees, and punitive damages. 11 U.S.C. 362(h). Debtor, having represented himself without an attorney, has incurred no attorney fees for which Mrs. Nelson may be liable. Actual damages may not be based on mere speculation, guess or conjecture. In re Flynn, 169 B.R. 1007, 1021 (Bankr. S.D. Ga. 1994). Courts have awarded damages for emotional distress or mental anguish for violations of the stay, even in the absence of expert medical testimony. Id. (awarding \$5,000 for actual damages due to emotional distress); Carrigan, 109 B.R. at 1070 (awarding \$1,000 to compensate for debtors' great fear, stress, anxiety, and humiliation). Punitive damages are appropriate where the violator's actions constitute egregious, intentional misconduct. Knaus, 889 F.2d at 776.

In light of the foregoing law and the surrounding circumstances, the Court concludes that Mrs. Nelson's conduct was a flagrant violation of the automatic stay which caused Debtor embarrassment, humiliation and shame. The Court concludes that this conduct constitutes an obvious attempt to punish Debtor for pursuing his rights under the Bankruptcy Code. See Knaus, 889 B.R. at 776. The natural consequence of this conduct was to oppress, harass and abuse Debtor, which requires imposition of some sanction. See Carrigan, 109 B.R. at 172. On the record presented, the Court concludes that Mrs. Nelson is liable for actual damages to compensate for causing Debtor humiliation and embarrassment in the amount of \$100. Furthermore, the Court awards punitive damages in the amount of \$100.

WHEREFORE, Debtor's Petition for Violation of Automatic Stay is GRANTED.

FURTHER, the Court finds that Lois Nelson and The Store violated the automatic stay, 362(a)(6), and are subject to sanctions pursuant to 362(h).

FURTHER, judgment shall enter in favor of Debtor Mark Alan French and against Lois Nelson and The Store in the amount of \$100 of actual damages and \$100 of punitive damages for a total judgment of \$200.

FURTHER, the judgment shall be enforceable by the Chapter 7 trustee and payment shall be made to the Chapter 7 trustee. See Sechuan City, 96 B.R. at 45.

SO ORDERED this 25th day of July, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge

