

In the United States Bankruptcy Court

for the Northern District of Iowa

LISA M. HOFTENDER

Debtor(s).

Bankruptcy No. 01-02370-D

Chapter 7

ORDER RE MOTION FOR SANCTIONS

On October 30, 2001, the above-captioned matter came on for hearing on Debtor's Motion for Sanctions for violation of the automatic stay. Debtor appeared in person with Attorney Paul Fitzsimmons. She seeks sanctions against Younkens and S & S Recovery, Inc. Both entities were served notice of the Motion as well as the order setting hearing. Neither entity filed an appearance and neither entity appeared at the time set for hearing. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

FINDINGS OF FACT

Debtor filed her Chapter 7 petition on July 2, 2001. She was granted a discharge on October 25, 2001. At the time of filing her petition, Debtor listed Younkens and S & S Recovery, Inc. in her Schedule F as creditors holding an unsecured nonpriority claim. The total amount of the claim listed was \$1,019. The claim is based upon miscellaneous purchases made by Debtor prior to filing her Chapter 7 petition. The purchases were made from Younkens. S & S Recovery, Inc. is a collection agency acting on behalf of Younkens.

On August 16, 2001, Younkens filed a small claims action against Debtor in the Iowa District Court for Dubuque County in Small Claim No. SCSC 046001. This action seeks judgment in the amount of \$1,029.12 based upon the obligation described in Debtor's Chapter 7 schedules. S & S Recovery, Inc. is not named as a plaintiff in this small claims action. The evidence does not reflect that, at any time during the imposition of the automatic stay, S & S Recovery, Inc. personally contacted Debtor. The evidence and the file reflect that, at no time, did Younkens or S & S Recovery, Inc. seek relief from the automatic stay. As a result of the filing of the small claims action, Debtor was required to take time off from work and consult with her attorney. Thereafter, her attorney, Mr. Fitzsimmons, was required to defend the action in small claims court. Eventually, a stay of the small claims proceedings was entered in the Iowa District Court. Since then, Debtor has brought this Motion for Sanctions alleging a violation of §362(h). She has again been required to incur additional attorney's fees and was required to take time off from work to attend this hearing.

Mr. Fitzsimmons has submitted for the Court an affidavit asserting attorney's fees expended in defense of this matter of \$387.50.

VIOLATION OF THE AUTOMATIC STAY

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 that:

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); In re Knaus, 889 F.2d 773, 775 (8th Cir. 1989). "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.2d at 776.

A violation of the automatic stays occurs only when the conduct in question is done with knowledge of a bankruptcy filing. Knowledge can be obtained through a formal notice produced and mailed by the Bankruptcy Court or by alternative means including oral notification by a debtor.

CONCLUSIONS

Younkers filed a small claims action in Dubuque County Small Claims Court during the time that Debtor was protected from such efforts by the provisions of the automatic stay (11 U.S.C. §362). It is established that Younkers and S & S Recovery were listed as creditors in Debtor's Chapter 7 petition. Both entities were served notice of the pendency of Debtor's bankruptcy filing. However, while one may infer that S & S Recovery was the agency which precipitated the filing of the small claims action, there is nothing in the record, directly or indirectly, to indicate that S & S Recovery actually violated the automatic stay. They are not a named party to the small claims action and there is no testimony that S & S Recovery in any other way contacted Debtor during the imposition of the automatic stay. The record is clear that Younkers had notice of this bankruptcy and the automatic stay. Nevertheless, Younkers determined to proceed and violate the automatic stay by filing a small claims action in Dubuque County Small Claims Court. Such conduct clearly violates the provisions of §362 and authorizes sanctions under §362(h).

By way of damages, Debtor was required to take time off work and seek an attorney's services. In addition, Debtor incurred additional attorney's fees seeking to terminate the small claims action and seeking redress under the Bankruptcy Code. Debtor is entitled to damages accordingly. The evidentiary record establishes that Debtor was served personally with the pendency of the small claims action. She suffered embarrassment through this conduct. Younkers was advised of the pendency of this Chapter 7 case and its conduct in filing a small claims action in violation of the stay constitutes egregious conduct.

WHEREFORE, the Court finds that Debtor has established a violation of §362 against Younkers thereby entitling Debtor to actual damages, punitive damages and attorney's fees, as well as costs.

FURTHER, the Court finds that the evidentiary record does not support a finding of violation of §362 against S & S Recovery, Inc. and the Motion for Sanctions against S & S Recovery is DENIED.

FURTHER, by way of damages, the Court enters a finding of actual damages in the amount of \$500, punitive damages in the amount of \$1,000 and attorney's fees in the amount of \$387.50 in favor of Plaintiff and against Younkers. Judgment shall enter accordingly.

FURTHER, the costs of this Motion are assessed against Younkers.

SO ORDERED this 6 day of November, 2001.

Paul J. Kilburg
Chief Bankruptcy Judge