

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
IOWA

IN RE:)

) Chapter 7

DANIEL L. ADAMS,)
HEATHER J. ADAMS,)

)

Debtors.) Bankruptcy No. 01-02576

----- DANIEL L. ADAMS,)
HEATHER J. ADAMS,)

) Adversary No. 01-9226

Plaintiffs,)

)

vs.)

)

DARREL PETERSON,)

)

Defendant.)

ORDER RE APPLICATION FOR CONTEMPT OF COURT

This matter came on for trial on January 31, 2002.

Plaintiffs/Debtors Daniel L. and Heather J. Adams appeared personally with their attorney, Michael Mollman. Defendant/Creditor Darrell Peterson appeared personally with his attorney, Hugo Burdt. After the presentation of evidence and arguments, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A).

STATEMENT OF THE CASE

On October 21, 2000, Debtors bought a mobile home from Defendant. Debtors and Defendant executed a personal property sales contract and Debtors granted Defendant a security interest in the mobile home. On July 23, 2001, Debtors filed a Chapter 7 Bankruptcy petition. Defendant is listed in Schedule D as a secured creditor. At the time of filing, Debtors were residing in the mobile home. Around the last week of July or the first week in August 2001, Debtors vacated the mobile home. They allege they left a note for Defendant on the door of the mobile home stating that they were vacating and would return later to clean. Debtors apparently returned twice to the mobile home to pick up items they had left inside the home, and in an automobile parked on the lot. During the second visit, Debtors allegedly found their waterbed, clothing, and other miscellaneous items missing.

Debtors contend that Defendant is responsible for the items being removed and assert he is in contempt of the court for violating the automatic stay. They claim the market value of the property is \$300. Debtors surrendered their interests in the mobile home, and, therefore, the only issue in dispute is the disposition of the missing items. Debtors also initially alleged violation of the automatic stay relating to the automobile. However, this claim was withdrawn.

Defendant admits to having notice of Debtors' bankruptcy. He testified he did not file a motion for relief from the automatic stay. He admits to taking possession of the waterbed but denies any knowledge as to the whereabouts of any valuable items of clothing. He asserts Debtors abandoned the mobile home, and at no time did they contact him concerning their plans. He testified that he called Trustee, as well as Debtors' attorney, for information on Debtors' case, but received no response. He asserts that when he went to inspect the mobile home in "the middle of August" 2001, it was in disarray and it was necessary to clean it up before attempting to sell or rent it. He argues that he was justified in removing the waterbed from the mobile home and placing it in

storage.

ISSUES

To determine whether Defendant has violated the automatic stay through taking possession or control of Debtors' property and whether damages are warranted, the Court must first determine whether the miscellaneous items were property of the estate. Second, the Court will determine whether Defendant violated the stay. Finally, the Court will consider what remedy should be granted.

Property of the Estate

The automatic stay under § 362 of the Bankruptcy Code only applies to property of the estate. 11 U.S.C. § 362. To violate the automatic stay, a creditor must take possession or control over property of a debtor's bankruptcy estate. 11 U.S.C.

§ 362(a)(3); In re National Cattle Congress, Inc., 179 B.R. 588, 592 (Bankr. N.D. Iowa 1995). Under § 541(a)(1), property of the estate includes all legal or equitable interests of the debtor in property, regardless of whether the property is claimed exempt. In re Nuttleman, 117 B.R. 975, 977 (Bankr. D.Neb. 1990), aff'd in part, rev'd in part on other grounds, 128 B.R. 254 (D.Neb. 1991).

It is uncontested that Debtors were in possession of the mobile home and its contents at the time of filing their Chapter 7 petition. It is, likewise, uncontested that they had legal and equitable interests in whatever property remained after they removed themselves from the mobile home and abandoned it. Therefore, while the nature and extent of the property is in dispute, there is no issue that it constitutes property of the estate.

Violation of the Automatic Stay

The automatic stay, under § 362 of the Code, is violated by an act "to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Under § 362(c), the automatic stay commences when the bankruptcy petition is filed and remains in effect until property is no longer property of the estate, the stay is lifted, or until the case is either closed or dismissed. 1 Collier Bankruptcy Manual ¶ 362.06 (Lawrence P. King ed., 3d ed. 2001).

Damages

Section 362(h) of the Code 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.

11 U.S.C. § 362(h). The burden is on the debtor to show there was: (1) an injury; (2) from a willful; (3) violation of the stay. In re Fernandez, 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998), aff'd, 208 F.3d 220 (9th Cir. 2000). 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).

Punitive damages may be appropriate under §362(h) if the underlying conduct is an "egregious, intentional misconduct." Dencklau, 158 B.R. at 801 (citing In re Ketelsen, 880 F.2d 990, 993 (8th Cir. 1989)). Costs and attorney's fees may also be awarded under §362(h). The Eighth Circuit has ruled, however, that costs and attorney's fees are "allowable only to embellish actual damages" and if there is insufficient evidence in the

record to support an award of actual damages, there can be no award of costs or attorney's fees. Lovett v. Honeywell, Inc., 930 F.2d 625, 629 (8th Cir. 1991).

When a violation of the stay is considered "harmless" courts have declined to impose sanctions. Fernandez, 227 B.R. at 180-81; In re Rush-Hampton Indus., Inc., 98 F.3d 614, 617 (11th Cir. 1996) (where the IRS's otherwise harmless violation of the automatic stay did not warrant depriving the IRS of the post-petition interest from setoff that "by law undoubtedly it would have been entitled had it first sought a lifting of the stay"). The court in Fernandez declined to allow for damages to the debtor and granted summary judgment for the creditor, where debtor had failed to prove that he had suffered actual damages from the creditor's harmless violation of the stay. In addition, where actual damages are not proven a debtor cannot receive punitive damages. Fernandez, 227 B.R. at 180.

§ 542 Turnover of Property to the Estate

Because of the facts in this case, the Court feels it appropriate to briefly discuss § 542. Section 542(a) of the Bankruptcy Code states:

An entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver [such property] to the trustee. . .

11 U.S.C. § 542(a). An entity, under § 101 of the Code, is defined as including: a "person, estate, trust, governmental unit, and United States trustee." 11 U.S.C. § 101(15). This obligation to turn property over to the trustee is not contingent on the trustee obtaining an order requesting the creditor's compliance, rather it is self-operative and mandatory. In re U.S.A. Diversified Prods., Inc., 193 B.R. 868, 872 (Bankr. N.D. Ind. 1995), aff'd, 100 F.3d 53 (7th Cir. 1996).

ANALYSIS

Before applying the foregoing legal principles, the Court must factually determine the nature and extent of the property involved in this proceeding. Debtors claim clothing and other items of personal property, as well as a waterbed are missing. Debtors allege they have a total value of \$300. The evidence supports Debtors' position that a waterbed remained in the mobile home after it was vacated by Debtors. Evidence also establishes that in cleaning and preparing the mobile home for rental or resale, Mr. Peterson moved the waterbed into storage. As of the time of hearing, the waterbed remained in storage and was available to Debtors. Debtors claim the value of the waterbed is \$100. There is no other evidence in the record to confirm or rebut this valuation.

Debtors also allege that clothing worth \$105 is missing. Debtors allege that this was left behind and was intended to be picked up by them at a later date. Defendant denies that there was any clothing of any value remaining in the mobile home. Defendant's witness, Helen Spears, testified that she observed the waterbed, but other than the bed, there were only items which she labeled as "throw away stuff" in the mobile home during her visit in the middle of August 2001. It is the factual conclusion of this Court that of the items listed in Plaintiff's Exhibit 1, the waterbed is the only property of the estate that Debtors have established to be of consequential value and which remained in the mobile home when Defendant took possession after it was vacated by Debtors.

In applying the foregoing legal principles, it may appear appropriate to conclude that Defendant Peterson violated the automatic stay by taking possession of the waterbed and removing it to storage. It is undisputed that he knew of the

bankruptcy proceeding and that the automatic stay was in place. Thus, strictly applying the well established legal principles to the facts, the conclusion may be drawn that Mr. Peterson committed a technical violation of the automatic stay. However, it is the conclusion of this Court that a mechanical application of these rules is inappropriate. The rules must be considered in the context of this case. Strict application would create the impression that the avenues open to Defendant were clear to him at the time of their occurrence. A more critical look at the entire record, however, reveals a situation which would have, at best, been murky to Defendant.

Debtors abandoned their mobile home after filing their Chapter 7 petition while in arrears on their payments to Defendant. They abandoned the property without notification to Defendant other than a note allegedly left on the door of the mobile home. They left the mobile home in disarray. Their abandonment of the mobile home made Defendant an involuntary custodian of whatever property remained behind under § 542. It is within this context that the Court must view Defendant's conduct.

Defendant is not an attorney. A technical reading of § 362 and § 542 required him to turn over the property in his possession to the Trustee without any formal request by anyone. The only options open to Defendant, if he was to obey the technical requirements of the Code, were to leave the property where it was and avoid cleaning up the mobile home for a substantial period of time or, alternatively, to physically deliver the waterbed to either Debtors or to the Trustee.

Defendant attempted to seek guidance. He called the Trustee and counsel for Debtors. He received no response. At no time did Debtors or their counsel contact Defendant to discuss the waterbed. The first action that was taken by Debtors to enforce their "rights" was to file this rule to show cause seeking to hold Defendant in contempt.

Asking the Court to hold someone in contempt is a serious matter. In so doing, a party is asking the Court to conclude that a party is intentionally holding the law and the court in disdain by ignoring a known duty. It is impossible for this Court to draw such a conclusion on these facts. This is particularly so when it is clear that this issue would have been quickly resolved if Debtors' counsel had returned Defendant's phone call or if Debtors had themselves elected to call Defendant.

Ultimately, this Court must conclude that Debtors have sustained no damage by any of the acts of Defendant. The only item of consequential value is the waterbed. This bed has always remained and continues to remain in the possession of the individual whom Debtors entrusted with its care when they abandoned the mobile home in August 2001. There is nothing in this record to convince this Court that they could not obtain possession of this bed by simply asking for it. They, however, concluded that requesting the return of the bed was more onerous than seeking a finding of contempt. They ask the Court to enforce a remedy which has been available by simply picking up a telephone. Based on these facts, the Court finds no conduct by Defendant warranting a finding of contempt.

WHEREFORE, the Court finds that Debtors have failed to establish that Defendant willfully violated a Court order.

FURTHER, the Court finds that Debtors have failed to establish that they incurred any damages as a result of any conduct by Defendant.

FURTHER, Debtors' application to hold Defendant in contempt of Court is DENIED.

FURTHER, if Debtors so elect, they may reclaim possession of the waterbed at a time and place to be negotiated between counsel for Debtors and Mr. Peterson.

FURTHER, if this property is not claimed by the Trustee or Debtors within 30 days of the date of this order, the same will be conclusively assumed to be of no value and may be discarded by Mr. Peterson.

FURTHER, any costs associated with this adversary proceeding are assessed to Debtors.

SO ORDERED this 19th day of April, 2002.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE