



fund checks and overdraft fees. Because of UAC's continuing withdrawals postpetition, Debtors paid at least \$135 in overdraft fees. Mr. Alcock lost \$37.12 in wages to attend the hearing. Debtors paid \$155 filing fees to reopen their bankruptcy case in order to pursue remedies against UAC.

Mrs. Alcock testified that she called UAC on "a weekly basis" for several months and has been unable to get the withdrawn funds back. Mrs. Alcock stated that trying to get this matter resolved has been frustrating, intimidating and has made her very distraught. Mr. Alcock testified likewise, indicating that the process has made him "very upset."

Through their attorney, Debtors sought to have this payment reimbursed to them. Debtor's attorney attempted to communicate with UAC via telephone on at least two occasions and sent UAC two letters seeking to have this matter resolved. UAC has not reimbursed Debtors for the post-petition withdrawals, nor has it responded to Debtors' correspondence.

### CONCLUSIONS OF LAW

The first issue to be decided is whether UAC has violated the automatic stay. Section 362(a)(6) prohibits "any act to collect, assess, or recover a claim against the debtor that arose before the commencement" of the bankruptcy case. See In re O'Neal, 165 B.R. 859, 861 (Bankr. M.D. Tenn. 1994). Courts "have consistently extended the scope of the automatic stay to prohibit transactions in which a creditor received a post-petition automatic loan payment to pay a pre-petition debt." Id. at 862. The court in O'Neal stated,

Given the broad language of Section 362(a)(6), i.e. stay of any act to collect, and given the fact that Congress itemized the only exceptions to the otherwise broad language, this court concludes that the transaction by a creditor of post-petition money received pursuant to a pre-petition automatic withdrawal-loan repayment arrangement to pay a pre-petition debt owed to that creditor is a violation of the automatic stay unless there is clear evidence that, post-petition, the debtor actually demonstrated his or her willingness to voluntarily have post-petition earnings applied to a dischargeable pre-petition debt.

Id. (quoting Matter of Holland, 21 B.R. 681, 687 (Bankr. N.D. Ind. 1982)) (emphasis in original).

UAC's post-petition receipt of funds automatically withdrawn from Debtors' checking account was a violation of the automatic stay under 11 U.S.C. § 362. A creditor violates the automatic stay by continuing to electronically withdraw funds from a debtor's bank account when the debtor has expressed no desire to reaffirm the debt. O'Neal, 165 B.R. at 862. Here, not only did Debtors not take any affirmative action to reaffirm the debt, but Mr. Alcock talked to a representative of UAC by telephone at

about the time the bankruptcy petition was filed to ensure that no more payments were withdrawn from Debtors' bank account for the loan.

Since the two payments received post-petition by UAC were in violation of the automatic stay, Debtors are entitled to be refunded for the total amount withdrawn from their account.

See id. at 863 ("Actions taken by a creditor in violation of the stay are void, even when the creditor had no notice of the bankruptcy filing."). The automatic withdrawals of \$330.51 in November and December by UAC are void.

To recover damages under § 362(h), Debtors must show that they were injured by the violation of the stay and that the violation was willful. Lovett v. Honeywell, Inc., 930 F.2d 625, 628 (8th Cir. 1991). Section 362 (h) states, "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) (2003). A violation of the stay is "willful" where the violator's conduct is deliberate and with knowledge of the bankruptcy filing. In re Dencklau, 158 B.R. 796, 800 (Bankr. N.D. Iowa 1993). The O'Neal court awarded damages under this section even though the debtor did not request that the payments be stopped. O'Neal, 165 B.R. at 863. The O'Neal court stated:

Creditors should have the burden and responsibility of ensuring that no post-petition automatic loan payments are withdrawn from a debtor's checking account, absent the debtor's clear, post-petition consent to do so. The creditor should take whatever action is necessary and appropriate to achieve this goal. Failure to do so will lead to the imposition of sanctions in the form of debtor's actual damages, including attorney's fees and costs.

Id.

UAC was listed as a creditor on Debtors' bankruptcy petition and received notice of Debtors' filing. UAC was also made aware of the bankruptcy proceeding through a telephone call from Mr. Alcock in October, 2002. Debtors were injured by UAC's willful violation of the stay and are entitled to damages including attorney fees, lost wages, a reopening fee, overdraft charges, and lost wages.

The sole remaining question is whether punitive damages are an appropriate remedy given the facts of this case. Egregious, intentional misconduct on the violator's part is necessary to support a punitive damages award. Lovett, 930 F.2d at 628. The behavior of UAC was willful and uncooperative. UAC was fully aware of the bankruptcy proceeding involving Debtors. UAC received notice of the bankruptcy as a creditor and had actual notice in October 2002, when it was informed of the bankruptcy by Mr. Alcock.

UAC's status as a sophisticated creditor is a factor to be considered. Being a repeat player in the credit industry, UAC is aware of the mechanisms afforded to both creditors and debtors under state and federal laws. This is evidenced by UAC's valid security interest in the automobile which allowed for its repossession in January, 2003. UAC is aware of which actions are permissible and which are prohibited by a creditor when a debtor seeks relief in bankruptcy. Debtors attempted to resolve this matter privately with UAC, but UAC refused to take any action to remedy the violation. It did not respond to communications from Debtors and from Debtors' attorney.

Having received notice of Debtors' Motion for finding of contempt and of this hearing, UAC apparently felt it unnecessary to appear to explain its actions. Under these circumstances the Court finds UAC's actions, or rather its inaction, egregious and intentional such that punitive damages are an appropriate remedy.

**WHEREFORE**, Debtors' Motion for Finding of Civil Contempt against Union Acceptance Corporation is GRANTED.

**FURTHER**, the Court finds that Debtors have established by clear and convincing evidence that Union Acceptance Corporation willfully violated the automatic stay, § 362(a)(6) and is, therefore, subject to sanctions pursuant to § 362(h).

**FURTHER**, the Court finds that Debtors are entitled to reimbursement of the funds wrongfully withdrawn on their account in the amount of \$661.02.

**FURTHER**, the court finds that Debtors have sustained actual damages in the amount of \$327.12 consisting of lost wages, overdraft charges, and the fee to reopen their bankruptcy case.

**FURTHER**, the Court finds that Debtors have incurred attorney's fees in the amount of \$1,485.00.

**FURTHER**, the Court finds that Debtors should be awarded punitive damages in the amount of \$1,500.00.

**FURTHER**, judgment is entered in favor of Debtors Edward and Janet Alcock against Union Acceptance Corporation in the total amount of \$3,973.14.

**FURTHER**, said judgment shall collect interest at the rate of 10% per annum from the date of entry of this judgment.

**FURTHER**, any Court costs associated with Debtors' pursuit of these sanctions are assessed to Union Acceptance Corporation.

**SO ORDERED** this 11th day of September, 2003.

PAUL J.

---

KILBURG  
CHIEF BANKRUPTCY JUDGE