

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:07-bk-00188-ABB
Chapter 13

ALFRED LEON NOSLER,

Debtor.

ORDER

This matter came before the Court on the Motion for Sanctions Against Dr. Robert D. Forbes & Assoc. P.C./Town Center Vision (Doc. No. 39) ("Motion for Sanctions") and the Motion to Strike (Doc. No. 47) filed by Alfred Leon Nosler, the Debtor herein (the "Debtor"). An evidentiary hearing was conducted on July 10, 2007 at which counsel for the Debtor and the Chapter 13 Trustee appeared. The Court makes the following findings and rulings after reviewing the pleadings, hearing live argument, and being otherwise fully advised in the premises.

The Debtor filed the above-captioned Chapter 13 bankruptcy case on January 19, 2007 ("Petition Date"). Dr. Robert D. Forbes ("Dr. Forbes") of Dr. Robert D. Forbes & Assoc. P.C./Town Center Vision ("Forbes") treated the Debtor prepetition for cataract issues in both eyes on May 10, 2006 and June 7, 2006. Forbes apparently charged the Debtor \$270.00 for each treatment, but did not issue invoices for the treatments prepetition.¹

The Debtor did not list Forbes in his original Schedule F. It appears the Debtor believed he did not owe a debt to Forbes. Forbes sent an invoice to the Debtor via mail postpetition on February 5, 2007 seeking payment of \$270.00 for services performed on June 7, 2006 with the notation: "Medicare has failed to pay your claim(s). Balance is now patient

¹ The service statement presented by Forbes as Exhibit A (see Doc. No. 43) reflects a charge of \$270.00 for services performed on May 10, 2006, but states "Patient Amount Owning (This Bill) 0.00." The service statement dated June 7, 2006 (Exhibit C) states "Patient Amount Owning (This Bill) 270.00." The patient signature blocks in the service statements were not signed by the Debtor and there is no evidence the statements were presented to the Debtor.

resp."² The Debtor amended Schedule F listing Forbes as holding an unsecured claim for \$270.00 and gave notice of the bankruptcy case and Amended Schedule F to Forbes via mail on March 9, 2007 (Doc. Nos. 28, 31).

Forbes sent a second invoice to the Debtor on April 2, 2007 seeking payment of \$270.00. Forbes sent a third invoice to the Debtor on May 4, 2007 seeking payment of \$270.00 from the Debtor and stating: "You do still owe us for the balance. Pay ASAP."³ The May 4, 2007 invoice was accompanied by a demand letter issued by Forbes.⁴

Counsel for the Debtor telephoned Dr. Forbes on June 4, 2007 and she advised him of the bankruptcy filing and the existence of the automatic stay. Dr. Forbes is the principal of Forbes and was responsible for the payment demands made on the Debtor. Dr. Forbes admitted he was aware of the bankruptcy, stated the Debtor owes him \$540.00, and the matter had been turned over to the collection agency Advantage Credit & Collections. Dr. Forbes telephoned counsel's office and verbally harassed counsel's paralegal Katie Cross.

The automatic stay of 11 U.S.C. Section 362(a) arose on the Petition Date preventing "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(6) (2007). Section 362(k) provides a debtor who suffers injuries by "any willful violation" of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1). The Eleventh Circuit has held that a "willful violation" of the automatic stay occurs when the creditor "(1) knew the automatic stay was invoked and (2) intended the actions which violated the stay." *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1555 (11th Cir. 1996).

The Debtor seeks an award of sanctions for violations of the automatic stay by Forbes. Forbes, in response to the Debtor's Motion for Sanctions, filed a motion (Doc. No. 43) seeking sanctions against the Debtor's counsel in the amount of more than \$20,000.00 including "first class air travel from Oregon to Florida." The Debtor, through the Motion to Strike (Doc. No. 47), requests Forbes' motion be

² Doc. No. 39, Exhibit A.

³ Doc. No. 39, Exhibit D.

⁴ Id.

stricken.⁵ Forbes admits in its motion it intentionally made payment demands upon the Debtor for a prepetition debt knowing the Debtor was in bankruptcy. The Motion to Strike is due to be denied.

Forbes admits it knew of the bankruptcy case on March 12, 2007 and subsequently sent payment demands to the Debtor.⁶ Forbes knew the Debtor was protected by the automatic stay when it sent payment demands to the Debtor on May 4 and June 4, 2007. The demands were sent in an attempt to collect a claim against the Debtor that arose prepetition. Forbes' actions were intentional. Forbes willfully violated the automatic stay.

The Debtor suffered actual damages, including attorney's fees and costs, as a result of Forbes' willful violation of the automatic stay. An award of punitive damages is appropriate due to the egregious, willful, and persistent nature of Forbes' conduct. The Debtor, his counsel and counsel's paralegal are entitled to the following awards pursuant to 11 U.S.C. Section 362(k): (i) \$250.00 to the Debtor; (ii) \$250.00 to Katie Cross; and (iii) \$1,000.00 to the Law Office of Lori Patton, P.A., counsel for the Debtor.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion to Strike (Doc. No. 47) is hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that Forbes committed willful violations of the automatic stay of 11 U.S.C. Section 362(a) and an award of sanctions for actual and punitive damages is appropriate pursuant to 11 U.S.C. Section 362(k); and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Motion for Sanctions (Doc. No. 39) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that the following individuals and law firm are hereby awarded damages pursuant to 11 U.S.C. Section 362(k) against Dr. Robert D. Forbes and Dr. Robert D. Forbes & Assoc. P.C./Town Center Vision, jointly and severally: (i) the Debtor Alfred Leon Nosler in the amount of \$250.00; (ii)

Katie Cross in the amount of \$250.00; and (iii) the Law Office of Lori Patton, PA in the amount of \$1,000.00. Said sums are to be paid within fourteen (14) days of the date of entry of this Order.

A separate Judgment consistent with these findings and rulings shall be entered contemporaneously.

Dated this 2nd day of August, 2007.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

⁵ Forbes' motion for sanctions was denied by Order entered July 13, 2007 (Doc. No. 54).

⁶ Doc. No. 43 at ¶¶ 3, 6, 7.