

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE:

Case No.: 6:06-bk-02959-ABB
Chapter 7

HEATHER ANN DUEEASE,

Debtor.

JACK F. DURIE, JR.,

Plaintiff,

v.

Adv. Pro. No.: 6:07-ap-00076-ABB

HEATHER ANN DUEEASE,

Defendant.

ORDER

This matter came before the Court on the Motion for Sanctions (Doc. No. 29) filed by Heather Ann Dueease, the Debtor and Defendant herein (“Debtor”), against Jack F. Durie, Jr., the Plaintiff herein (“Plaintiff”), seeking an award of sanctions for the Plaintiff’s violations of the automatic stay pursuant to 11 U.S.C. Section 362(k). An evidentiary hearing was held on February 25, 2008. An Order was entered on April 2, 2008 (Doc. No. 44) finding the Plaintiff willfully violated the automatic stay of 11 U.S.C. Section 362(a) and the Debtor is entitled to an award of actual damages of \$250.00, plus attorney’s fees and costs, and punitive damages of \$250.00.

The Debtor was directed to file and serve on the Plaintiff, within seven days of April 2, 2008, “a statement setting forth the attorney’s fees and costs incurred by the Debtor as a result of the Plaintiff’s violations of the automatic stay,” and the Plaintiff was granted seven days from the date of service of the statement to file and serve on the Debtor’s counsel a written response thereto.¹ The Debtor’s counsel, Stephen R. Caplan with Schlegel Caplan, LC (collectively, “Counsel”), timely filed and served

on the Plaintiff on April 8, 2008 an Affidavit of Attorney’s Fees and Costs (Doc. No. 45) (“Affidavit”). The response deadline has passed and the Plaintiff has filed no response to the Affidavit.

The Debtor seeks an award of \$6,051.25, comprised of attorney and paralegal fees of \$6,000.00 and costs of \$51.25, for services performed and costs incurred by Counsel for the period November 21, 2007 through March 18, 2008. The Affidavit details total hours of 33.6 consisting of: (i) attorney time of 10.2 hours (with .5 written off) billed at the hourly rates of \$300.00 and \$325.00; (ii) associate attorney time of 13.9 hours billed at the hourly rate of \$150.00; and (iii) paralegal time of 9.5 hours billed at the hourly rate of \$100.00. The Affidavit sets forth the Debtor made total payments of \$2,500.00 to Counsel for such services.

The April 2, 2008 Order limits an award of attorney’s fees and costs to those fees and costs resulting from the Plaintiff’s violations of the stay. The Affidavit contains the fees and costs incurred in the adversary proceeding and is not narrowly tailored to the stay violation matter. It appears from the Affidavit 9.6 hours relate to the stay violation matter. The 9.6 hours include communications with the Debtor, legal research, the filing of the Motion for Sanctions, reviewing the Plaintiff’s pleadings, hearing preparation, appearance at the February 25, 2008 evidentiary hearing, transcript review, and preparation of exhibits.

The reasonableness of attorney fees and costs is determined through an examination of the criteria enunciated in In the Matter of First Colonial Corp. of America² and Johnson v.

² The Court in In the Matter of First Colonial Corp. of America, 544 F.2d 1291, 1299 (5th Cir.1977) stated:

In order to establish an objective basis for determining the amount of compensation that is reasonable for an attorney’s services, and to make meaningful review of that determination possible on appeal, we held in Johnson v. Georgia Highway Express, Inc., 488 F.2d at 717-19, that a district court must consider the following twelve factors in awarding attorneys’ fees

¹ April 2, 2008 Order at p. 8.

Georgia Highway Express, Inc.³ After consideration of the First Colonial and Johnson factors, the reasonable number of hours for the services performed by Counsel is 10.0 consisting of 3.5 hours at a rate of \$250.00 per hour and 6.5 hours at a rate of \$65.00 for a total fee award of \$1,297.50. The costs of \$51.25 incurred by Counsel are reasonable. Attorney's fees and costs of \$1,348.75 are due to be awarded to the Debtor as damages pursuant to 11 U.S.C. Section 362(k).

Dated this 24th day of April, 2008.

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

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that sanctions are hereby imposed pursuant to 11 U.S.C. Section 362(k) against the Plaintiff Jack F. Durie, Jr. and in favor of the Debtor/Defendant Heather Ann Dueease in the amounts of \$250.00 for actual damages, \$1,348.75 for attorney's fees and costs, and \$250.00 for punitive damages, for a total award of \$1,848.75.

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

³ The Court in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974) set forth twelve factors:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions involved;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the "undesirability" of the case;
- (11) the nature and the length of the professional relationship with the client;
- (12) awards in similar cases.