

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

In re:

GODFREY L. ROBINSON,

Case No. 6:11-bk-18517-ABB

Chapter 7

Debtor.

ORDER

This matter came before the Court on the Motion for Sanctions (DE 12) filed by the Debtor Godfrey Robinson against U.S. Tire Imports, Inc. (“U.S. Tire”) and Daniel Bell, U.S. Tire’s owner, seeking the imposition of sanctions for violations of the automatic stay pursuant to 11 U.S.C. Section 362(k). An evidentiary hearing was held on June 18, 2012, at which the Debtor, his counsel, and Sandi Bell, the representative for U.S. Tire and wife of Daniel Bell, appeared. The Debtor’s Motion for Sanctions is due to be granted for the reasons set forth herein.

Event Chronology

The Debtor filed the above-captioned bankruptcy case on December 12, 2011, and the automatic stay of 11 U.S.C. Section 362(a) arose by operation of law. Debtor listed as personal property a Kraftman Trailer VIN 5E7W450246R000604 (“trailer”) with a value of \$6,000.00 along with a business known as G. Mann Transport as a creditor for storage charges in connection with this trailer.

Debtor received a Notice of Claim of Lien on or around December 27, 2011, prepared by a company called State Filing Service, Inc. (“State Filing”) on behalf of U.S.

Tire. The document appears to be an attempt by U.S. Tire to perfect or enforce a lien claim against the Trailer in the amount of \$2,400.00 for “repair and storage charges” and \$425.00 for “fees to State Filing Service, Inc.” Debtor asserts he was not aware G. Mann Transport had moved the trailer from the original storage location to U.S. Tire, 1000 Carter Rd., Winter Garden, Florida, 34787, until he received this notice.

Notice of the Debtor’s bankruptcy case was issued by Debtor’s counsel to both State Filing and U.S. Tire on or about January 5, 2012. The Notice advised both parties of the existence of the automatic stay which prevents the Debtor’s creditors from taking any action to enforce a prepetition lien against property of the Debtor or to collect, assess, or recover a prepetition claim against the Debtor. 11 U.S.C. Section 362(a). The automatic stay remains in effect, pursuant to 11 U.S.C. Section 362(c), until the earliest of: (i) the time the case is closed; (ii) the time the case is dismissed; or (iii) the Debtor is granted a discharge.

Section 362(k) of the Bankruptcy Code provides for the imposition of sanctions, including actual damages and punitive damages, where an individual debtor suffers injury from a creditor’s willful violation of the stay. U.S. Tire did not file a motion pursuant to 11 U.S.C. Section 362(d) seeking relief from the automatic stay. The automatic stay remains in full force and effect in this case.

David Wheat of State Filing contacted Debtor’s counsel after receiving the notice of the bankruptcy indicating State Filing would cancel or otherwise waive the lien and requested the trailer be removed from U.S. Tire. Debtor attempted to retrieve the trailer but Daniel Bell told the Debtor the trailer had been removed. Debtor’s counsel spoke

with Daniel Bell during the week of January 3, 2012, about the location of the trailer and was told that “a tow truck just showed up and took it.” (DE 12).

Debtor reported to his counsel he saw his trailer at U.S. Tire’s place of business on February 6, 2012. Debtor and Daniel Bell had a verbal confrontation on this date while the Debtor took pictures of his trailer on the property. The Winter Garden police were called by the Debtor. Debtor’s counsel telephoned Daniel Bell the same day. Mr. Bell refused to acknowledge the trailer was on the premises but made a demand for \$4,000.00 in order to get the trailer back. The end result on this date was the trailer remained on U.S. Tire’s property.

The Debtor filed an Amended Schedule F on February 9, 2012 listing U.S. Tire as a general unsecured creditor with a disputed claim of \$2,825.00.

Motion for Sanctions and Hearings

The Debtor filed his Motion for Sanctions on February 22, 2012, asserting U.S. Title and Daniel Bell’s actions constitute violations of the automatic stay. He seeks the imposition of sanctions, including reasonable attorney’s fees, pursuant to 11 U.S.C. Section 362(k).

The Court issued a Notice of Evidentiary Hearing on February 29, 2012, setting the hearing for April 2, 2012. (DE 13). Notice of this hearing was sent via first class mail to U.S. Tire. (DE 14). Debtor and his counsel appeared at the hearing. Neither Daniel Bell nor any other representative from U.S. Tire appeared. The Court entered an Order on May 10, 2012, directing the turnover of the trailer to the Debtor, finding another evidentiary hearing was needed to determine if U.S. Tire and Mr. Bell willfully violated the automatic stay. (DE 19).

The Court issued a Notice of Evidentiary Hearing on May 10, 2012, setting the hearing for June 18, 2012. (DE 21). Notice of this hearing was sent via first class mail to U.S. Tire. (DE 22). The Court conducted an evidentiary hearing on June 18, 2012, at which the Debtor, his counsel, and Sandi Bell, the representative for U.S. Tire and wife of Daniel Bell, appeared. Mrs. Bell stated U.S. Tire did not receive notice of the first hearing. Mrs. Bell acknowledged U.S. Tire had knowledge of the bankruptcy and the stay and the trailer was in their control and possession at the time of the bankruptcy.

Mrs. Bell acknowledged receiving notice from Debtor's counsel. Mrs. Bell acknowledged the Debtor had attempted to retrieve the trailer from U.S. Tire on February 6, 2012, and the Winter Garden police had been called. Mrs. Bell asserted the trailer had disappeared from U.S. Tire's storage lot sometime after February 6, 2012, and its disappearance was not noted because the lot is shared with another company and vehicles in the lot are constantly changing.

The Debtor testified the trailer was purchased in 2008 for \$11,000.00 and comparable used trailers are being sold for \$6,000.00. The Court provided U.S. Tire with the opportunity to respond in writing with further arguments, including valuation of the trailer, within seven (7) days of the hearing. U.S. Tire has not done so.

Sanctions

Section 362(k) of the Bankruptcy Code provides for the impositions of sanctions where a creditor willfully violates the automatic stay:

[A]n 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(k)(1). 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. (In re Jove Eng’g, Inc.), 92 F.3d 1539, 1545 (11th Cir. 1996). The Debtor has the burden to establish a violation of the automatic stay occurred and such violation was willful, as defined by the Eleventh Circuit. Hardy v. I.R.S. (In re Hardy), 97 F.3d 1384, 1390 (11th Cir. 1996).

U.S. Tire and Daniel Bell received Notice of the Debtor’s bankruptcy filing on or about January 5, 2012, and as a result knew the automatic stay of Section 362(a) was in effect. U.S. Tire and Daniel Bell knew the Debtor was in bankruptcy and the automatic stay was in effect when they prevented the Debtor from reclaiming the trailer from U.S. Tire’s storage lot on February 6, 2012, and continued to retain the trailer, making no attempt to return it to the Debtor after the Court issued Notices of the February 29, 2012, and May 10, 2012, hearings. U.S. Tire and Daniel Bell knew the Debtor was in bankruptcy and the automatic stay was in effect when the trailer was removed from U.S. Tire’s storage lot.

U.S. Tire is a prepetition creditor of the Debtor and retention and removal of the trailer was an attempt to collect its prepetition debt and enforce its lien rights. U.S. Tire and Daniel Bell took these willful and intentional actions violating the automatic stay of 11 U.S.C. Section 362(a) with actual knowledge the Debtor had filed for bankruptcy protection and of the automatic stay. Jove Eng’g, Inc. v. I.R.S., 92 F.3d at 1555.

The Debtor has suffered actual damages as a result of U.S. Tire’s willful, intentional and continuing violations of the automatic stay. The Debtor is entitled to an award of actual damages of \$8,475.00, consisting of attorney’s fees in the amount of

\$2,475.00 and \$6,000.00 representing the value of the trailer. These damages were directly caused by U.S. Tire and Daniel Bell's willful, intentional and continuing violations of the automatic stay.

Attorney's fees of \$2,475.00 are reasonable pursuant to the First Colonial and Johnson factors.¹ Debtor's counsel's fee award is limited to \$2,475.00 and counsel is not entitled to receive a portion of any of the other damages awarded.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that U.S. Tire and Daniel Bell committed intentional, willful and ongoing violations of the automatic stay of 11 U.S.C. Section 362(a) and an award of actual is appropriate pursuant to 11 U.S.C. Section 362(k); and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Motion (DE 12) is hereby **GRANTED** and the Debtor is awarded damages of \$8,475.00 against U.S. Tire and Daniel Bell pursuant to 11 U.S.C. Section 362(k) and U.S. Tire and Daniel Bell shall immediately pay \$8,475.00 to Debtor's counsel Aryls Buschner whose address is 1320 N. Semoran Blvd., Suite 104, Orlando, Florida, 32807; and it is further

¹ The reasonableness of attorney's fees and costs is determined through an examination of the criteria enunciated by the Fifth Circuit Court of Appeals in In the Matter of First Colonial Corp. of Am., 544 F.2d 1291 (5th Cir. 1977) and Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The twelve factors are: (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. Johnson, 488 F.2d at 714.

ORDERED, ADJUDGED and DECREED that U.S. Tire is hereby enjoined pursuant to 11 U.S.C. Sections 362(a) and 105(a) from taking any further collection or lien enforcement actions against the Debtor; and it is further

ORDERED, ADJUDGED and DECREED that the Court hereby retains jurisdiction over this matter to enforce the provisions of this Order and to assess whether the imposition of additional sanctions may be appropriate.

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

Dated this 11th day of July, 2012.

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