

**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) (“Sanctions Motion”) 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 alleged violations of the automatic stay pursuant to 11 U.S.C. Section 362(k). An evidentiary hearing was held on February 25, 2008 at which the Plaintiff, the Debtor, and counsel for the Debtor appeared.

The Debtor, pursuant to the Court’s directive, filed and served on the Plaintiff a recording of voice mail messages left for the Debtor by the Plaintiff (Doc. Nos. 38, 39). The Plaintiff filed a Response (Doc. No. 43) to the Sanctions Motion denying any stay violation, requesting reconsideration of the March 11, 2008 Order (Doc. No. 41) dismissing this adversary proceeding, and requesting the imposition of sanctions against the Debtor and her counsel.

The Debtor filed Case No. 6:06-bk-02959-ABB on November 6, 2006 and listed the Plaintiff in Schedule F (Main Case Doc. No. 1) as holding a general unsecured claim of \$4,823.00 “for back rent.” The debt arises from the parties’ pre-petition landlord-tenant relationship. The Plaintiff is an attorney and has represented himself throughout these proceedings.

The automatic stay of 11 U.S.C. Section 362(a) arose upon the Debtor’s filing for bankruptcy protection. The automatic stay affords broad protection to a debtor, protecting a debtor from creditor action including, but not limited to, “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).

The Plaintiff, despite the existence of the automatic stay, made three post-petition telephone calls to the Plaintiff leaving voice mail messages for her on November 21, November 23, and November 29, 2007 (Doc. No. 38). The Plaintiff stated in his November 21, 2007 message:

Cause I want all my money back plus interest which is 600 some odd thousand dollars if you make payments or otherwise you know there is a high probability in my opinion that what I am going to get everything what I need to then I’ll be able to prove you are not entitled bankruptcy while everybody [undecipherable] it won’t work.

Id. The Plaintiff’s November 23, 2007 message contains: “So call me or [undecipherable] or you make a proposal of how to pay me back . . . .” Id. His November 29, 2007 message contains: “I don’t want to play hard ball you ripped me off you owe me much money just like you ripped everybody else off . . . .” Id.

The Plaintiff asserts he believed the Debtor was not represented by counsel in the adversary proceeding and made the calls to discuss settlement and discovery matters. His explanations are not credible, as established by the chronology of events and his own pleadings.

The following is a chronology of relevant events in the main case and the adversary proceeding:

*November 6, 2006:* The Debtor filed her petition and the automatic stay arose. Douglas Neway was identified on the docket as counsel of record for the Debtor.

*November 8, 2006:* Notice of the Debtor’s bankruptcy filing setting forth Douglas Neway’s contact information as counsel for the Debtor was sent to

the Plaintiff at his address of record of 2900 Lake Shore Drive, Orlando, Florida 32803-1121 by first-class mail (Main Case Doc. No. 9).

The Notice set forth the deadline of February 12, 2007 for filing a complaint objecting to discharge pursuant to 11 U.S.C. Section 727 and/or to the dischargeability of a debt pursuant to Section 523.

*February 12, 2007:* The deadline for Section 727 and Section 523 complaints passed. The Plaintiff did not seek an extension of the deadline.

*March 16, 2007:* Notice was sent to the Plaintiff at his address of record setting forth the deadline for filing proofs of claim was June 18, 2007 (Main Case Doc. No. 19).

*June 18, 2007:* The Plaintiff filed an unsecured nonpriority proof of claim, Claim No. 8, for \$6,600.00.

*June 18, 2007:* The Plaintiff untimely filed his Complaint instituting the above-captioned adversary proceeding.

*July 25, 2007:* Notice of Change in Representation was entered on the main case docket substituting Stephen Caplan as counsel for the Debtor.

*November 21, 2007:* Stephen Caplan filed and served on the Plaintiff a Notice of Appearance of Counsel for Representation (Doc. No. 20) entering his appearance as counsel for the Debtor in the adversary proceeding. The Notice was filed via ECF and viewable on the electronic case docket.

*November 21, 2007:* Plaintiff left first voice mail message for the Debtor.

*November 23, 2007:* Plaintiff left second voice mail message for the Debtor.

*November 29, 2007:* Plaintiff left third voice mail message for the Debtor.

The November 8, 2006 Notice advised parties of the existence of the automatic stay setting forth in large bold-face type **“CREDITORS MAY NOT TAKE CERTAIN ACTIONS”** and advising:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor’s property . . . If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

(Main Case Doc. Nos. 6, 9). The automatic stay has been in force throughout the pendency of this case. The Plaintiff at no time sought relief from the automatic stay.

The Debtor, as clearly set forth in the main case docket, has been represented by counsel throughout her bankruptcy proceedings. She was initially represented in her bankruptcy case by Douglas Neway and then by Stephen Caplan on July 25, 2007.

The Plaintiff made the first call to the Debtor the same day Stephen Caplan filed his Notice of Appearance in the adversary proceeding and the second and third calls *after* it had been filed. The Plaintiff, as an attorney, is not an unsophisticated litigant and the Debtor was represented by counsel in the main case. The November 21, 2007 Notice of Appearance advised the parties the Debtor was represented by counsel in the adversary proceeding and was in effect when the Plaintiff made the November 23 and November 29, 2007 calls.

The Plaintiff’s explanation he believed he could contact the Debtor directly regarding adversary proceeding procedural and settlement matters is contradicted by his own pleadings. The Plaintiff served on August 27, 2007 a Notice of Discovery (Doc. No. 7) on Douglas Neway.

He understood he could not communicate with the Debtor directly, but only through her counsel.

The Plaintiff's assertion he called the Debtor to discuss adversary proceeding procedural and settlement matters is not credible. The adversary proceeding was void due to the Plaintiff's untimely filing of the Complaint. The Plaintiff was on notice the deadline for filing a Section 523 and/or Section 727 complaint was February 12, 2007, yet he filed the Complaint more than four months after the deadline.

The voice mail messages go beyond adversary proceeding procedure and do not address settlement. The Plaintiff made demands upon the Debtor for payment of the pre-petition debt. He harassed and bullied the Debtor. His conduct falls far short of the professionalism expected from members of the bar.

The Plaintiff's calls to the Debtor were attempts to collect the pre-petition rent debt. The Plaintiff made the telephone calls knowing the Debtor had filed for bankruptcy and the automatic stay was in effect. His collection actions were made in violation of 11 U.S.C. 362(a)(6).

### ***Damages***

Section 362(k)(1) provides for the recovery of damages for any "willful violation" of the automatic stay:

. . . 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(k)(1).<sup>1</sup> 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."

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<sup>1</sup> Subsection (2) of 11 U.S.C. 362(k) is not applicable to this case.

Jove Eng'g, Inc. v. I.R.S., 92 F.3d 1539, 1555 (11th Cir. 1996).

The Plaintiff's actions were knowing and intentional. He knew the automatic stay was in effect when he made the telephone calls to the Debtor attempting to collect the pre-petition debt. Each telephone call constitutes a violation of the automatic stay. He intended the actions which violated the stay. The Plaintiff willfully violated the automatic stay of 11 U.S.C. Section 362(a). Id.

The Debtor suffered actual damages, including attorney's fees and costs, as a result of the Plaintiff's willful violations of the automatic stay. The Debtor is entitled to an award of actual damages of \$250.00 plus attorney's fees and costs. The Debtor shall file and serve on the Plaintiff, within seven (7) days of the date of entry of this Order, a statement setting forth her attorney's fees and costs incurred as a result of the Plaintiff's violations of the automatic stay. The Plaintiff shall have (7) days from the date of service of the statement to file and serve on the Debtor's counsel a written response thereto. The imposition of punitive damages in the amount of \$250.00 is appropriate pursuant to 11 U.S.C. Section 362(k)(1).

### ***Plaintiff's Motions for Sanctions and Reconsideration***

The Plaintiff seeks in his Response (Doc. No. 43) the imposition of sanctions against the Debtor and her counsel asserting they "misled the court" in the Sanctions Motion and during the evidentiary hearing. He has established no basis for the imposition of sanctions against the Debtor or her counsel. His sanctions request is due to be denied.

The Plaintiff requests rehearing and reconsideration of the March 11, 2008 Order (Doc. No. 41) dismissing this adversary proceeding for being untimely filed. The Plaintiff has presented no newly-discovered evidence or manifest error of law or fact warranting the reconsideration or amendment of the March 11, 2008 Order. His motion for rehearing and reconsideration is due to be denied pursuant to Federal Rule of Civil Procedure

59(e) and Kellogg v. Dzikowski (In re Kellogg),  
197 F.3d 1116, 1119 (11th Cir. 1999).

Accordingly it is,

**ORDERED, ADJUDGED and DECREED** that the Plaintiff committed willful violations of the automatic stay of 11 U.S.C. Section 362(a) on November 21, November 23, and November 29, 2007; and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor's Sanctions Motion (Doc. No. 29) is hereby **GRANTED** and an award of sanctions for actual damages of \$250.00, exclusive of the Debtor's attorney's fees and costs, and punitive damages of \$250.00 is appropriate pursuant to 11 U.S.C. Section 362(k)(1); and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor is directed to file and serve on the Plaintiff within seven (7) days of the entry of this Order 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 shall file and serve on the Debtor's counsel a written response to such statement within seven (7) days of service of the statement; and it is further

**ORDERED, ADJUDGED and DECREED** that the Plaintiff's Motion for Sanctions (Doc. No. 43) is hereby **DENIED**; and it is further

**ORDERED, ADJUDGED and DECREED** that the Plaintiff's Motion for Rehearing/Reconsideration (Doc. No. 43) of the March 11, 2008 Order (Doc. No. 41) dismissing this adversary proceeding is hereby **DENIED**.

Dated this 2nd day of April, 2008.

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