

**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.

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ORDER

This matter came before the Court on the on the Motion for Sanctions (Doc. No. 12) filed by the Debtor Godfrey L. Robinson seeking the imposition of sanctions against U.S. Tire Imports, Inc. and Daniel Bell (“Mr. Bell”) for violations of the automatic stay pursuant to 11 U.S.C. Section 362(k). An evidentiary hearing was held on April 2, 2012, at which the Debtor and his counsel appeared. Neither U.S. Tire Imports nor Mr. Bell appeared at the hearing. No response to the Motion has been filed. The Motion is due to be granted in part with an evidentiary hearing to be held on the issue of sanctions.

Event Chronology

The Debtor owns a Kaufman long bed auto trailer, VIN 5E7W450246R000604 (the “Trailer”). He owned and operated a transportation company named Quality Transport Service Corporation which was closed in September 2010.

The Debtor filed the above-captioned Chapter 7 bankruptcy case on December 12, 2011 and listed the Trailer as an asset in Schedule B (Doc. No. 1) with a value of \$6,000.00 and unencumbered by any security interests.¹ He claimed exemptions totaling

¹ The Debtor subsequently filed a Motion to Avoid Lien (Doc. No. 17) setting forth the Trailer is encumbered by a lien held by Lendmark Financial Services, Inc. pursuant to a Final Judgment entered by the Florida State Court in favor of Lendmark prepetition on October 5, 2010.

\$4,800.00 in the Trailer in Schedule C (Doc. No. 1) pursuant to Fla. Stat. Sections 222.25(1) and 222.25(4).

U.S. Tire executed on December 27, 2011 a “Labor and Storage Notice of Claim of Lien and Proposed Sale of Vehicle.”² 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.” The document asserts the Debtor’s company Quality Transport Service Corporation, not the Debtor, is the owner of the Trailer. It cites to Fla. Stat Sections 713.585 and 559.917 as grounds for retention of the Trailer.

Neither U.S. Tire nor Mr. Bell was listed as creditors or parties in interest in the Debtor’s original Schedules. 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. The last known location of the Trailer is U.S. Tire’s place of business at 1000 Carter Road, Winter Garden, Florida.

11 U.S.C. Section 362(a)

The automatic stay of 11 U.S.C. Section 362(a) immediately arose upon the Debtor’s filing for bankruptcy protection. The automatic stay 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. 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.

² Doc. No. 12, Ex. A.

U.S. Tire and/or Mr. Bell took possession of the Trailer post-petition. The automatic stay was in effect when U.S. Tire and/or Mr. Bell took possession of the Trailer. U.S. Tire's and/or Mr. Bell's taking possession and continued custody of the Trailer constitute violations of the automatic stay.

Section 362(k) allows for the award of sanctions for violations of the automatic stay where the violation is "willful." 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). A evidentiary hearing is required to determine when U.S. Tire and Mr. Bell became aware of the Debtor's bankruptcy filing and whether they committed any willful violations of the automatic stay pursuant to 11 U.S.C. Section 362(k).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion for Sanctions (Doc. No. 12) is hereby **GRANTED IN PART** and the Debtor is entitled to immediate possession of the Trailer from U.S. Tire Imports, Daniel Bell, or any other person or entity in possession of the Trailer; and it is further

ORDERED, ADJUDGED and DECREED that an evidentiary hearing shall be held on June 18, 2012 at 3:00 p.m. on the Debtor's request for an award of sanctions against U.S. Tire Imports and Daniel Bell pursuant to 11 U.S.C. Section 362(k); and it is

ORDERED, ADJUDGED and DECREED that, within seven (7) days of the date of entry of this Order, the Debtor shall file with the Court a copy of the Certificate of Title for the Trailer; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor shall file with the Court a status report informing the Court whether the Debtor has obtained possession of the Trailer.

Dated this 10th day of May, 2012.

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

Copies furnished to:

U.S. Tire Imports, Inc, 1000 Carter Rd., Winter Garden, Florida 34787;
Daniel Bell, 1000 Carter Road, Winter Garden, Florida 34787;
Chapter 7 Trustee, Gene Chambers, P.O. Box 533987, Orlando, Florida 32853;
Debtor, Godfrey Robinson, 1391 Alston Bay Blvd, Apopka, Florida 32703;
Lendmark Financial Services, Inc., 2440 West Brandon Blvd., Brandon, Florida 33511;
Arlys L. Buschner, Esquire, 1320 N. Semoran Blvd., Suite 104, Orlando, Florida 32807