UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

MELISSA ANN THIGPEN, Case No.: 3:07-bk-05626-JAF

Debtor. Chapter 13
_____/

MELISSA ANN THIGPEN,

Plaintiff,

vs. Adv. Proc. No.: 3:08-ap-00045

GMAC MORTGAGE, LLC, AND
FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendants.
_____/

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This proceeding came before the Court on the Complaint filed by Melissa Ann Thigpen (the "Plaintiff"), seeking an award of damages against GMAC Mortgage, LLC ("GMAC") and Federal National Mortgage Association ("FNMA" and, collectively with GMAC, the "Defendants") for violation of the automatic stay pursuant to 11 U.S.C. Section 362 of the United States Bankruptcy Code (the "Code"). The trial of this proceeding began on September 24, 2008, was bifurcated upon agreement of both parties and concluded on December 2, 2008. In lieu of oral argument, the Court elected to take the matter under advisement and directed the parties to submit briefs in support of their respective positions. Upon the evidence presented and the arguments of the parties, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Plaintiff has filed two cases under Chapter 13 of the Code. The first case, styled In re Thigpen, Case No. 06-bk-03093-JAF, was filed by the Plaintiff on October 4, 2006 (the "Previous Case") and was dismissed on October 29, 2007. The second (and instant) case, styled In re Thigpen, Case No. 07-bk-05626-JAF, was filed on December 11, 2007 (the "Main Case").

The Plaintiff filed both the Previous Case and the Main Case in an effort to save from foreclosure her childhood home, located at 493 East Gage Avenue, Memphis, Tennessee (the "Property"). (Tr. at 11-12, Pl.'s Ex. 3). The Property originally was owned by Ethel Mae Malone, the Plaintiff's grandmother. (Tr. at 11, Pl.'s Ex. 3). On February 7, 2003, prior to her death, Ms. Malone quit-claimed the Property to the Plaintiff's mother, Hannah Moore. (Tr. at 11, Pl.'s Ex. 3). On April 7, 2004, prior to her death, Ms. Moore quit-claimed the property to herself and the Plaintiff. (Tr. at 12, Pl.'s Ex. 3). Upon Ms. Moore's death in 2005, the Plaintiff became the sole owner of the Property. (Tr. at 12).

Prior to transferring the Property to Ms. Moore, Ms. Malone took out a loan secured by the Property. (Tr. at 11). FNMA is the current owner of the mortgage instrument evidencing the loan and the security interest encumbering the Property. (Tr. at 148). FNMA designated GMAC as the mortgage servicer on the account. (Tr. at 177). After the deaths of Ms. Malone and Ms. Moore, the Plaintiff contacted GMAC to make arrangements to make payments on the loan and informed GMAC of Ms. Malone's death. (Tr. at 15). GMAC then changed the name on the loan from "Ethel Malone" to the "Estate of Ethel Malone" and, since the Plaintiff was the executor of Ms. Malone's estate, changed the mailing address on the loan to the Plaintiff's address. (Tr. at 181-184). All subsequent mortgage statements were sent to the Plaintiff's address in Neptune

Beach, Florida, but the name on the loan was never changed to the Plaintiff's name. (Tr. at 183-184).

Around September 2005, GMAC notified the Plaintiff that the mortgage was in default. (Tr. at 15). Consequently, the Plaintiff, as executor of Ms. Malone's estate, entered into a "Foreclosure Repayment Agreement" with GMAC dated September 28, 2005. (Tr. at 15, 185, Pl.'s Ex. 6). Eight months later, the Plaintiff failed to make her June, 2006 payment. (Tr. at 19). The Plaintiff eventually filed the Previous Case on October 4, 2006. (Tr. at 19, Pl.'s Ex. 8). When she filed, the Property had already been through a foreclosure sale and title had been transferred to FNMA. (Pl.'s Ex. 10). After receiving notice of the Previous Case, GMAC and FNMA agreed to vacate the foreclosure sale and an Affidavit to Void Foreclosure was recorded in the Shelby County records. (Tr. at 187-188).

The Property was listed in the Plaintiff's bankruptcy schedules filed contemporaneously with the petition for relief commencing the Previous Case. (Pl.'s Ex. 9). Schedule D listed GMAC as a secured creditor holding a mortgage on the Property, and it referenced the account number associated with the mortgage on the Property. (Pl.'s Ex. 9). Schedule D listed an address for GMAC in Louisville, Kentucky. (Pl.'s Ex. 9). Notice of the commencement of the Previous Case was sent to GMAC at the Louisville address, as well as to the attorneys and law firm representing GMAC in the Previous Case. (Pl.'s Ex. 8). GMAC filed a proof of claim in the Previous Case, alleging an indebtedness and a mortgage note secured by a mortgage encumbering the Property. (Tr. at 23-24, Pl.'s Ex. 13). On April 20, 2007, the Court confirmed the Plaintiff's Chapter 13 Plan, which ordered distributions from the estate to, among other creditors, GMAC. (Tr. at 24-25, Pl.'s Ex. 14).

In June, 2007, the Plaintiff lost her job and fell behind on her Chapter 13 Plan payments. (Tr. at 26). As a result, GMAC filed a motion to dismiss the Previous Case. (Tr. at 25, Pl.'s Ex. 15). The Court denied the motion, but eventually the Previous Case was dismissed on October 29, 2007, due to the Plaintiff's failure to make payments. (Tr. at 26). After the Previous Case was dismissed, GMAC sent a letter to the Plaintiff's Neptune Beach, Florida, address demanding payment on the mortgage. (Tr. at 26, Pl.'s Ex. 16). If the Plaintiff failed to tender payment, GMAC threatened foreclosure. (Pl.'s Ex. 16). Thereafter, the Plaintiff obtained a job and filed the Main Case on December 11, 2007. (Pl.'s Ex. 1).

The Property was again listed in the Plaintiff's bankruptcy schedules filed contemporaneously with the petition for relief commencing the Main Case. (Pl.'s Ex. 2). Schedule D again listed GMAC as a secured creditor holding a mortgage on the Property and it referenced the account number associated with the mortgage on the Property. (Pl.'s Ex. 2). Schedule D again listed an address for GMAC in Louisville, Kentucky. (Pl.'s Ex. 2). Notice of the Commencement of the Main Case (the "Notice of Bankruptcy") was sent to GMAC at the Louisville address on December 16, 2007, as well as to the attorneys and law firm that had represented GMAC in the Previous Case. (Pl.'s Ex. 1).

GMAC's Louisville address to which the Notice of Bankruptcy was mailed is merely a payment facility. (Tr. at 177). The mortgage statements the Plaintiff used to obtain the Louisville address include a note indicating general correspondence should be sent to GMAC's Waterloo, Iowa facility. (Tr. at 178-179, Defs.' Ex. 7). GMAC does employ a process for routing non-payments from Louisville to Waterloo. (Tr. at 204-206). GMAC's bankruptcy department, however, is located in a facility in Fort Washington, Pennsylvania. (Tr. at 179).

GMAC's bankruptcy department in Fort Washington was unable to locate any record of receiving the Notice of Bankruptcy in the Main Case. (Tr. at 180).

GMAC subscribes to a voluntary service system called Banko which monitors bankruptcy filings by comparing borrower's names, social security numbers and property addresses to the name, social security number and home address listed for bankruptcy filers. (Tr. at 180-181). Because the Plaintiff never assumed the loan and mortgage, the loan and mortgage remained in the name of "Estate of Ethel Malone" and reflected Ms. Malone's social security number and the address of the Property in Tennessee. (Tr. at 186-187). The Banko system did not alert GMAC of the Plaintiff's bankruptcy filing because the Plaintiff had a different name, social security number and home address than those reflected on the loan and mortgage. (Tr. at 181-182).

Despite the fact that the Notice of Bankruptcy was sent on December 16, 2007 to GMAC at its Louisville address, counsel for GMAC sent the Plaintiff correspondence dated December 21, 2008 notifying the Plaintiff that the Property was subject to a pending foreclosure action. (Tr. at 28-29, Pl.'s Ex. 18). By letter dated January 8, 2008, the Plaintiff responded to GMAC's counsel, referencing the Plaintiff's name, the Main Case number and the Court by district and division, the address of the Property, the loan number, the Ethel Malone Estate and the Notice of Bankruptcy. (Tr. at 30-31, Pl.'s Ex. 19). GMAC's counsel notified GMAC of its receipt of the Plaintiff's response on February 4, 2008, at which point GMAC placed a bankruptcy loan alert on the loan file and on the loan itself. (Tr. at 192). A foreclosure sale of the Property had already occurred on January 25, 2008, but since title had not yet transferred to FNMA, GMAC's counsel stopped transfer of title to FNMA on February 4, 2008. (Tr. at 190-193).

After the January 25, 2008 foreclosure sale, however, the Property already had been referred to FNMA's Real Estate Owned ("REO") department, where FNMA planned to conduct an appraisal of the Property and then market and sell it. (Tr. at 148-149). On January 28, 2008, FNMA and GMAC[1] hired First National Realty, Inc. ("First National") to visit the Property and determine whether it was vacant or occupied. (Tr. at 150, 193). First National visited the Property on January 30, 2008 and found it occupied. (Tr. at 150, 163). Consequently, FNMA began eviction proceedings in Shelby County, Tennessee. (Tr. at 150). A detainer warrant was issued in February, 2008 and notice thereof was served on the tenants residing at the Property as part of the eviction proceedings. (Pl.'s Ex. 20). A First National representative visited the Property on March 1, 2008 and found it vacant, so eviction proceedings were then called off. (Tr. at 151). At that time, the representative from First National implemented property preservation measures including changing the locks on the door, placing a lock box containing the key on the door, and placing a sign on the door that read:

> **Warning – Theft, Trespassing, or Vandalism Will Be Prosecuted to the Full Extent of the Law – Contact information: First National Realty, Inc., Larry Mayall, 901.255.2745**

(the "No Trespassing" sign). (Tr. at 163-164, Defs.' Ex. 2). The Plaintiff did not have access to the Property from March 1, 2008 until August 5, 2008, when GMAC provided the new keys to the Plaintiff. (Tr. at 44-45, Pl.'s Ex. 25). During that time, the Property remained locked and vacant. The Plaintiff testified at trial that the Property had been vacant for three to five months multiple times in the past. (Tr. at 63).

[1] At trial, representatives of both FNMA and GMAC testified as to hiring First National Realty, Inc. (GMAC's representative incorrectly referred to First National as "First American"). A representative of First National testified that his firm was hired by FNMA. Regardless, the evidence presented at trial and the arguments of counsel indicate both FNMA and GMAC worked in concert with First National to implement the property preservation measures.

On February 1, 2008, the Plaintiff contracted with David Phillips to make various repairs to the interior and exterior of the Property in order to bring the Property to marketability. (Pl.'s Ex. 28). At that time, Mr. Phillips estimated the necessary repairs to the Property would cost $6,650.00. (Tr. at 77, Pl.'s Ex. 28). On March 14, 2008, First National submitted a Broker Price Opinion (the "BPO") to GMAC and FNMA, based on its initial inspection of the Property on March 1, 2008. (Tr. at 166-169, Defs.' Ex. 5). In the BPO, First National also (coincidentally) estimated the necessary repairs to the Property would cost $6,650.00. (Tr. at 169, Defs.' Ex. 5).

On March 3, 2008, the Plaintiff was alerted to the property preservation measures by Mr. Phillips. (Tr. at 62). On March 4, 2008, the Plaintiff filed the instant adversary proceeding (the "Adversary Proceeding").

An employee of FNMA testified at trial that, to her knowledge, FNMA was first notified of the Plaintiff's Main Case on March 14, 2008, when it received notice of the Adversary Proceeding. (Tr. at 151-152). However, the FNMA employee worked in the REO department, not the legal or bankruptcy department. (Tr. at 148). The REO department is not involved with the details of foreclosure sales and does not deal with bankruptcies. (Tr. at 157, 159). No representative of FNMA's legal or bankruptcy departments offered testimony in the Main Case.

After the filing of the Adversary Proceeding, GMAC and FNMA discontinued all efforts to take title to or sell the Property, but neither Defendant took any steps to provide the new keys to the Plaintiff until August 5, 2008. (Tr. at 152, 155). After receiving the new keys to the Property in August, the Plaintiff waited approximately one month before instructing her agent to enter the Property and assess its condition. (Tr. at 59-60). Her agent reported the outside air conditioner condenser unit had been destroyed and its copper wire stolen, the HVAC unit in the

attic had been destroyed and its copper wire stolen, and the Property was otherwise not in livable condition. (Tr. at 79-83).

In the Adversary Proceeding, the Plaintiff seeks actual damages, attorney's fees and costs and punitive damages. As actual damages, the Plaintiff alleges the following: 1) theft and vandalism of the Property's outside air conditioner condenser unit, 2) theft and vandalism of the Property's HVAC system in the Property's attic, 3) lost rents attributable to the property preservation measures, and 4) general damage and deterioration of the Property. The Plaintiff claims that acts attributable to FNMA and/or GMAC, including placing the "No Trespassing" sign on the front door and padlocking the door without providing new keys, thereby ensuring the Property stayed vacant for several months, were the proximate causes of all actual damages to the Property.

CONCLUSIONS OF LAW

1. Automatic Stay – 11 U.S.C. § 362(a)(6).

Section 362(a)(6) of the Code stays "any act to collect, assess or recover a claim against the debtor that arose before the commencement" of a bankruptcy case. Because the Main Case was filed within one year of the dismissal of the Previous Case, the automatic stay of 11 U.S.C. § 362(a) would have terminated on the 30th day after the filing of the Main Case absent a court order extending the stay. 11 U.S.C. § 362(c). The Court, after holding a hearing in the Main Case on January 7, 2008, pursuant to 11 U.S.C. § 362(c)(3)(B), extended the stay as to all creditors. Therefore, immediately upon the filing of the Main Case on December 11, 2008 and throughout the pendency of this case, the automatic stay of 11 U.S.C. § 362(a) barred any creditor from taking action to collect, assess or recover against the Plaintiff any prepetition debt.

2. Willful Violation of Automatic Stay – 11 U.S.C. § 362(k)(1).

Section 362(k)(1) of the Code provides for the recovery of damages for any "willful violation" of 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).[2] 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).

Neither GMAC nor FNMA asserts that its actions did not violate the automatic stay. Instead they argue they never received sufficient or reasonable notice regarding the Plaintiff's ownership interest in the Property to know that the automatic stay was invoked as to the Property. Alternatively, they argue the Plaintiff's injuries were not proximately caused by their actions and the Plaintiff did not mitigate her damages.

A. Defendant GMAC.

GMAC contends 1) the Plaintiff sent the Notice of Bankruptcy to the wrong address, creating confusion and delay, 2) the Banko system did not alert GMAC of the Plaintiff's bankruptcy filing because the Plaintiff never assumed the loan and mortgage, and 3) the Plaintiff provided incorrect, contradictory and confusing information in her counsel's correspondence, the Adversary Complaint and the Plaintiff's exhibits. GMAC argues each of these problems was caused by the Plaintiff and consequently, GMAC never received sufficient or reasonable notice regarding the Plaintiff's ownership interest in the Property. In effect, GMAC maintains it did not "know" that the automatic stay was invoked as to the Property because it was unable to ascertain whether the Plaintiff actually had an ownership interest in the Property.

As to GMAC's first two contentions, regardless of where the Notice of Bankruptcy was sent and despite the Banko system's failure to alert GMAC of the Plaintiff's bankruptcy filing, GMAC acknowledged it received actual notice of the Plaintiff's bankruptcy from its counsel on February 4, 2008, at which time GMAC placed a bankruptcy loan alert on the loan file and the loan itself. (Tr. at 192). The Court finds that, at least as of February 4, 2008, GMAC had actual knowledge of the Main Case and the existence of the automatic stay.

As to GMAC's third contention, the Court notes that in several instances, the Plaintiff indicated she owned the Property as an heir to Ms. Malone's estate, when in fact the Property had been quit-claimed to her. In other instances, the Plaintiff suggested she owned the Property through a substitute trustee's sale. The official records in Shelby County, Tennessee still list Ms. Malone as the record owner. However, by the time of the filing of the Main Case, GMAC had already participated in the Previous Case, filed a proof of claim in the Previous Case regarding the Property and moved to dismiss the Previous Case when the Plaintiff fell behind on her payments with respect to the Property. (Pl.'s Ex. 13, 15). GMAC's active participation in the Previous Case with respect to the Plaintiff and her relationship to the Property undermines GMAC's argument in the Main Case regarding its inability to confirm the Plaintiff's ownership interest in the Property. The Court finds that GMAC knew or should have known the Plaintiff had an ownership interest in the Property on February 4, 2008, the time GMAC obtained actual knowledge of the Plaintiff's bankruptcy and the existence of the automatic stay.

"Once a creditor has notice of the bankruptcy case, the creditor has the 'responsibility to refrain from violating the stay.'" Caffey v. Russell (In re Caffey), 384 B.R. 297, 307 (Bankr. S.D. Ala. 2008) (quoting In re Baird, 319 B.R. 686, 689 (Bankr. M.D. Ala. 2004)) (citing Mitchell Const. Co., Inc. v. Smith (In re Smith), 180 B.R. 311, 319 (Bankr. N.D. Ga. 1995)).

[2] Subsection (2) of 11 U.S.C. 362(k) is not applicable to this matter.

"Many courts put a higher burden on a creditor than merely refraining from violating the stay, they 'have emphasized the obligation of creditors to take affirmative action to terminate or undo any action that violates the automatic stay.'" Caffey, 384 B.R. at 307 (citing Johnston v. Parker (In re Johnston), 321 B.R. 262, 283 (Bankr. D. Ariz. 2005) (citations omitted)). "This view is due to the control the creditor has in a situation where it has initiated a process." Caffey, 384 B.R. at 307. The creditor should not be allowed to then sit back and "choose to do nothing and pass the buck to the debtor" to stop the process. Johnston, 321 B.R. at 284 (quoting Elder v. City of Thomasville (In re Elder), 12 B.R. 491 (Bankr. M.D. Ga. 1981)).

At least as of February 4, 2008, when it acknowledged obtaining actual knowledge of the Main Case, GMAC had a responsibility to refrain from violating the stay and to take affirmative action to terminate or undo any action which violated the stay. Instead, GMAC allowed First National to implement property preservation measures on March 1, 2008, including changing the locks, placing a lock box on the door and placing a "No Trespassing" sign on the door. At the very least, GMAC should have returned the new keys to the Plaintiff after receiving notice of the filing of the Adversary Proceeding. However, GMAC did not provide the new keys to the Plaintiff until August 5, 2008. (Pl.'s Ex. 25).

Because GMAC had knowledge of the Main Case and the Plaintiff's ownership interest in the Property when First National re-keyed and locked the Property on March 1, 2008, and because GMAC intended the actions which violated the stay, the Court finds that GMAC willfully violated the automatic stay of 11 U.S.C. § 362(a). Jove Eng'g., Inc. v. I.R.S., 92 F.3d at 1555. Pursuant to Section 362(k)(1) of the Code, the Plaintiff may recover from GMAC actual damages, including costs and attorneys' fees, and, if appropriate, punitive damages.

B. Defendant FNMA.

FNMA contends it was first notified of the Plaintiff's Main Case on March 14, 2008, when it received notice of the Adversary Proceeding. FNMA was not listed on Schedule D of the Plaintiff's bankruptcy schedules as a secured creditor, and therefore would not have received the Notice of Bankruptcy. However, the only evidence presented at trial as to the date FNMA received notice of the Plaintiff's bankruptcy was the testimony of an FNMA employee in the REO department. The REO department is not involved with the details of foreclosure sales and does not deal with bankruptcies. (Tr. at 157, 159). The Court does not find the REO department employee's testimony credible as to when FNMA was first notified of the Plaintiff's bankruptcy.

Regardless, even if March 14, 2008 were the date FNMA was first notified of the Plaintiff's bankruptcy, at that time FNMA had a responsibility to refrain from violating the stay and to take affirmative action to terminate or undo any action which violated the stay. FNMA's REO department employee testified that upon receiving notice of the Adversary Proceeding, FNMA did nothing. (Tr. at 158-160). FNMA did not instruct First National to unlock the Property or to provide the Plaintiff with the new keys.

Because FNMA had knowledge of the Main Case and did not instruct First National to unlock the Property or provide the Plaintiff with the new keys after March 14, 2008, and because FNMA intended the actions which violated the stay, the Court finds that FNMA willfully violated the automatic stay of 11 U.S.C. § 362(a). Jove Eng'g., Inc. v. I.R.S., 92 F.3d at 1555. Pursuant to Section 362(k)(1) of the Code, the Plaintiff may recover from FNMA actual damages, including costs and attorneys' fees, and, if appropriate, punitive damages.

3. Damages for Willful Violation of Automatic Stay – 11 U.S.C. § 362(k)(1).

The Court turns to the issue of whether the damages suffered by the Plaintiff were proximately caused by GMAC's actions. "A debtor must establish actual damages caused by a violation of the automatic stay, even though the damage provisions of section [362(k)][3] of the United States Bankruptcy Code are mandatory." In re Flack, 239 B.R. 155, 163 (Bankr. S.D. Ohio 1999) (citing In re Clayton, 235 B.R. 801, 810 (Bankr. M.D.N.C. 1998)); see also In re Johnson, 2007 WL 2274715, *10 (Bankr. N.D. Ala. Aug. 7, 2007). Further, "[a]n award for damages must not be based upon 'mere speculation,' guess or conjecture." MacFarland v. City of Jacksonville, 2008 WL 4550378, *5 (Bankr. M.D. Fla. Apr. 24, 2008) (citing In re Washington, 172 BR 415, 427 (Bankr. S.D. Ga. 1994)).

A. Actual Damages.

The Plaintiff claims her actual damages include the following: 1) theft and vandalism of the Property's outside air conditioner condenser unit, 2) theft and vandalism of the Property's HVAC system in the Property's attic, 3) lost rents attributable to the property preservation measures, and 4) general damage and deterioration of the Property. The Plaintiff claims that acts attributable to FNMA and/or GMAC, including placing the "No Trespassing" sign on the front door and padlocking the door without providing new keys, thereby ensuring the Property stayed vacant for several months, were the proximate causes of all actual damages to the Property.

The Court finds that the theft and vandalism at the Property were intervening acts, not set in motion by the property preservation measures implemented when the Property was found vacant on March 1, 2008, nor specifically by the "No Trespassing" sign placed on the property. The Plaintiff provided no credible evidence at trial proving that the placement of a "No Trespassing" sign on the front door would invite intruders to vandalize and burglarize the

Property. An intervening act will absolve an original tortfeasor from liability when it is independent of the original act, and not set in motion by the original act. In re Flagship Healthcare, Inc., 269 B.R. 721, 730 (Bankr. S.D. Fla. 2001) (citing McDonald v. Fla. Dep't of Transp., 655 So. 2d 1164, 1168 (Fla. 4th Dist. Ct. App. 1995)). The Plaintiff also provided no credible evidence at trial to prove that the Property's mere vacancy was the proximate cause of the theft and vandalism; the Plaintiff testified at trial that the Property had remained vacant for three to five months multiple times in the past, and no theft or vandalism occurred. (Tr. at 63).

The Court also finds that the Plaintiff did not prove damages for lost rent beyond a speculative level. Although the tenants residing at the Property in January, 2008 vacated the Property after learning of the pending eviction action, their lease had already expired. (Tr. at 59). Again, the Plaintiff testified that the Property had remained vacant for three to five months multiple times in the past when new tenants could not be located. (Tr. at 63). The Plaintiff could not prove she would have rented the Property, when she would have rented it or the rental price she could have charged. When she finally received the new keys in August, 2008 and regained access to the Property, the Plaintiff did not instruct her agent to enter the Property and assess its condition for another month; such behavior is not indicative of a motivated landlord actively searching for tenants. (Tr. at 59-60).

The Court does find that the Plaintiff is entitled to damages in respect of the general damage and deterioration of the Property. The Plaintiff was wrongly deprived of access to the Property for approximately five months. Mr. Phillips, with whom the Plaintiff contracted to maintain the Property, was unable to perform any maintenance during that time. Both Mr. Phillips and First National, in the BPO, estimated that before the property preservation measures were implemented, the Property required $6,650.00 in repairs. (Pl.'s Ex. 28, Defs.' Ex. 5).

[3] The current version of Section 362(k) was formerly codified at 11 U.S.C. § 362(h).

Accordingly, based on the evidence presented by both parties at trial, the Court finds the Plaintiff has been injured in an amount of $3,325.00, representing continued and accelerated deterioration in the condition of the Property, measured by one-half of the cost of repairs needed before the wrongful deprivation of access.

B. Mitigation of Damages.

The Court turns to the Defendants' argument that Plaintiff failed to mitigate her damages before filing the Adversary Proceeding. "Although the Bankruptcy Code does not require a debtor to warn his creditors of existing violations prior to moving for sanctions, the debtor is under a duty to exercise due diligence in protecting and pursuing his rights and in mitigating his damages with regard to such violations." In re Oksentowicz, 324 B.R. 628, 630 (E.D. Mich. 2005) (quoting Clayton v. King, 235 B.R. 801, 811 (Bankr. M.D.N.C. 1998)). According to the Defendants, had the Plaintiff contacted FNMA, GMAC or First National before filing the Adversary Proceeding, she would have been provided the new keys and been able to access the Property. However, it is undisputed that almost all the damages central to the dispute in the Adversary Proceeding occurred after the property preservation measures where implemented and after the Plaintiff filed the Adversary Proceeding. Had FNMA, GMAC or First National provided the new keys to the Plaintiff after learning of her bankruptcy filing, most of the damages and resulting attorney's fees would have been mitigated as well. The Court finds the Defendants' argument concerning the Plaintiff's failure to mitigate her damages unpersuasive.

C. Attorney's Fees and Costs.

The Court turns to the issue of the Plaintiff's entitlement to attorney's fees and costs pursuant to 11 U.S.C. § 362(k)(1). The Court holds that it may award attorney's fees pursuant to Section 362(k)(1) of the Code even if a debtor has suffered no other compensable harm. See In

re Hedetneimi, 297 B.R. 837, 843 (Bankr. M.D. Fla. 2003); In re Robinson, 228 B.R. 75, 85 (Bankr. E.D.N.Y. 1998); In re Rijos, 260 B.R. 330, 340, rev'd on other grounds, 263 B.R. 382 (1st Cir. BAP 2001); In re Skeen, 248 B.R. 312, 322 (Bankr. E.D. Tenn. 2000); Singley v. Am. Gen. Fin. (In re Singley), 233 B.R. 170 (Bankr. S.D. Ga. 1999). However, attorney's fees awarded pursuant to Section 362(k)(1) must be reasonable and necessary. Robinson, 228 B.R. at 85. "The policy of section [362(k)], to discourage willful violations of the automatic stay, is tempered by a reasonableness standard born of courts' reluctance to foster a 'cottage industry' built around satellite fee litigation." Id. (citing Putnam v. Rymes Heating Oils, Inc. (In re Putnam), 167 B.R. 737, 741 (Bankr. D. N.H. 1994)). Additionally, the Court holds that it may award costs pursuant to Section 362(k)(1) of the Code even if a debtor has suffered no other compensable harm. Hedetneimi, 297 B.R. at 843.

The Plaintiff suffered actual damages, including attorney's fees and costs, as a result of FNMA's and GMAC's willful violation of the automatic stay. The Court finds that pursuant to 11 U.S.C. § 362(k)(1), Plaintiff is entitled to recover the reasonable attorney's fees and costs she has incurred in the litigation of this proceeding, as the Defendants failed to take affirmative action to remedy the situation upon receiving notice of Plaintiff's bankruptcy case.

D. Punitive Damages.

The Plaintiff also requests an award of punitive damages. The imposition of punitive damages for a violation of the automatic stay is appropriate when the violator acts in an "egregious intentional manner." In re Rivers, 160 B.R. 391, 394 (Bankr. M.D.Fla. 1993). Because it finds neither FNMA's nor GMAC's conduct egregious, the Court will not impose punitive damages.

CONCLUSION

Because they had knowledge of the Plaintiff's bankruptcy case and intended the actions which violated the automatic stay, FNMA and GMAC willfully violated the automatic stay. The Plaintiff is entitled to an award of $3,325.00 for the general damage and deterioration of the Property while it was under the control of FNMA and GMAC. The Plaintiff is also entitled to attorney's fees and costs, the reasonableness of which will be determined at a forthcoming hearing. Finally, because GMAC's and FNMA's conduct was not egregious, the Plaintiff is not entitled to an award of punitive damages. The Court will enter a separate Order consistent with these Findings of Fact and Conclusions of Law.

DATED this 30 day of March, 2009 at Jacksonville, Florida.

/s/ Jerry A. Funk

JERRY A. FUNK
United States Bankruptcy Judge