

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

---

**IN RE**

**Terrilyn L. Brown,**

**Case No. 00-12414**

**Debtor.**

**Chapter 13**

**Terrilyn L. Brown,**

**Plaintiff,**

**v.**

**Adv. Pro. No. 01-5220**

**Park Ridge Apartments,**

**Defendant.**

---

**MEMORANDUM OPINION AND ORDER RE  
COMPLAINT FOR CONTEMPT AGAINST DEFENDANTS**

---

The Court conducted a trial in this matter on August 30, 2001. FED. R. BANKR. P. 7001. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

**I. FINDINGS OF FACT**

Debtor filed for relief under Chapter 13 of the Bankruptcy Code on July 11, 2000. The Debtor's case was confirmed on November 30, 2000. Prior to confirmation of her plan, the Debtor assumed a lease on residential real property known as Park Ridge Apartments. The Debtor had defaulted on this lease pre-petition, but provided for the cure of that arrearage in the amount of \$2,235.00 through her Chapter 13 plan. According to the terms of the assumption, the

Debtor was to make the ongoing monthly rental payment to Park Ridge outside her plan.

Sometime during the spring of 2001, the Debtor defaulted on her monthly rental payment. On June 18, 2001, the Debtor's Chapter 13 plan was modified to include post petition rental arrears in the amount of \$578.00.

On July 1, 2001, the Debtor received a letter from Park Ridge demanding payment of \$845.00. On July 12, 2001, the Debtor was served with a Detainer Warrant issuing from the General Sessions Court of Madison County, Tennessee, whereby Park Ridge was attempting to evict her from her apartment and obtain a judgment against her for her rental arrearage.

The Debtor filed a Complaint for Contempt against Park Ridge on July 16, 2001. The Debtor alleges that Park Ridge violated the Automatic Stay when it contacted her regarding the rent and when it obtained the General Sessions Warrant.

## **II. CONCLUSIONS OF LAW**

Section 362 of the Bankruptcy Code provides that

(a) . . . a petition filed under section 301, 302, or 303 of this title, . . . operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

. . . .

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

11 U.S.C. § 362(a). Once an unexpired lease is assumed by a debtor, the lease becomes property

of the estate. *City of Covington v. Covington Landing Ltd. P'ship.*, 71 F.3d 1221, 1227 (6<sup>th</sup> Cir. 1995). In order to proceed with a cause of action against the debtor and/or property of the estate in a non-bankruptcy forum, a practitioner must first seek relief from the automatic stay in bankruptcy court. 11 U.S.C. § 362(d). Any person or entity who persists in an action against the debtor and/or property of the estate without first seeking relief from the automatic stay faces potentially severe repercussions.

Subsection (h) of 11 U.S.C. § 362 provides,

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(h). Because Congress chose to use the word "shall" in drafting § 362(h), the imposition of sanctions under this statute is mandatory. A bankruptcy court does not have the discretion to decide if sanctions are the appropriate remedy for a violation of the stay. So long as there is a "willful violation," the court must impose them. The majority of courts has defined "willful violation" as follows:

"A 'willful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional.

Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

*Cuffee v. Atlantic Bus. & Community Dev. Corp. (In re Atlantic Bus. & Community Dev. Corp.)*,

901 F.2d 325, 329 (3d Cir. 1990) (quoting *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 227

(9th Cir. 1989)); *see also*, *Jove Eng'g, Inc. v. IRS*, 92 F.3d 1539, 1555-56 (11th Cir. 1996); *Price v. United States (In re Price)*, 42 F.3d 1068, 1071 (7th Cir. 1994); *Budget Serv. Co. v. Better Homes, Inc.*, 804 F.2d 289, 292- 93 (4th Cir. 1986); *In re Daniels*, 206 B.R. 444, 445 (Bankr. E.D. Mich. 1997); *In re Timbs*, 178 B.R. 989, 997 (Bankr. E.D. Tenn. 1994); *Atkins v. Martinez (In re Atkins)*, 176 B.R. 998, 1008 (Bankr. D. Minn. 1994); *In re Clarkson*, 168 B.R. 93, 94-95 (Bankr. D.S.C. 1994); *Taborski v. IRS*, 141 B.R. 959, 965-67 (N.D. Ill. 1992).

It is irrelevant to a court faced with imposing § 362(h) sanctions whether a defendant actually intended to violate the automatic stay. So long as the defendant had knowledge of the stay and took a deliberate act in violation of that stay, a bankruptcy court must award the plaintiff actual damages.

In the case at bar, it is undisputed that Park Ridge Apartments had notice of the Debtor's bankruptcy case. They were served with all appropriate notices during the pendency of the case. The Debtor's attorney had written to them on more than one occasion advising them of the Chapter 13 case and the existence and applicability of the automatic stay. When Park Ridge obtained the Detainer Warrant in Madison County General Sessions Court, they willfully violated the automatic stay. As a result, the warrant is hereby declared void. Should Park Ridge wish to obtain another warrant, they must first seek relief from the automatic stay with this Court.

Because Park Ridge violated the automatic stay by obtaining the detainer warrant, the Debtor is entitled to recover her actual damages from Park Ridge pursuant to § 362(h).

According to the testimony at the trial, the only damages the Debtor incurred were the attorney fees for bringing this adversary proceeding. The Debtor's attorney shall file a motion to collect these fees with the Court.

### **III. ORDER**

It is therefore **ORDERED** that the Complaint for Contempt is **GRANTED**. The Detainer Warrant obtained by Park Ridge Apartments is hereby declared **VOID**. The Debtor's attorney shall have thirty days to file a motion for his attorney fees.

**IT IS SO ORDERED.**

**By the Court,**

**G. Harvey Boswell  
United States Bankruptcy Judge**

**Date: October 3, 2001**