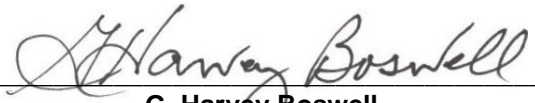




**Dated: March 10, 2004**  
**The following is SO ORDERED.**

  
**G. Harvey Boswell**  
**UNITED STATES BANKRUPTCY JUDGE**

---

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

---

**IN RE**

**Bradley Alexander Haynes**  
**AKA Brad Haynes,**

**Case No. 02-15528**

**Debtor.**

**Chapter 7**

**Bradley Alexander Haynes,**

**Plaintiff,**

**v.**

**Adv .Pro. No. 03-5100**

**Chris Powell,**

**Defendant.**

---

**MEMORANDUM OPINION AND ORDER RE COMPLAINT FOR**  
**SANCTIONS UNDER 11 U.S.C. SECTION 362(h)**

---

The Court conducted a hearing on the Plaintiff's Complaint for Section 362(h) sanctions on January 12, 2003. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. section 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing 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**

Prior to filing for bankruptcy relief, the debtor in this case, Bradley Alexander Haynes (“Haynes”) had been involved in a business enterprise known as Frontline Security, LLC., (“Frontline”). The defendant Chris Powell (“Powell”) was involved with the debtor in this business. After Frontline ceased operating, Powell sued Haynes in Haywood County Circuit Court for damages resulting from Frontline’s failure.

Haynes filed a chapter 7 petition on November 26, 2002. He listed Powell on his petition as an unsecured creditor with a claim under the circuit court lawsuit. Once the bankruptcy case was filed, Haynes filed a plea of bankruptcy in the circuit court lawsuit. Powell also received notice of the bankruptcy filing because he was listed as a creditor on the debtor’s petition.

After being informed of the bankruptcy filing, Powell telephoned the debtor on several occasions. On one such occasion, Powell left the following message on the debtor’s answering machine:

Hey, it’s Chris. You have to return the call. Now, I know you’re in bankruptcy and all that, but I’m with a company now where I will effectively cut you off from ever writing another check whether at Wal-Mart, Target, Kroger, whatever. And I don’t care if you’re in bankruptcy or not. You will be stopped from writing any checks.

Now, you want to deal with me, fine. If you don’t, that’s fine. But I tell you what, you will not go anywhere to a public place that does Telecheck and write a check. So you want to deal with me, fine. If not - - - I mean, and your bankruptcy people cannot touch this. Try me. I’ll tell you what, I will stop you from writing checks anywhere. Hell, your damn checks are not any good anyway. But, no, I will stop it.

Now, you want to talk to me, you want to give me a call, fine. If not, you will not be able to write checks in a public place. Try me. Give me a call. If you don’t, fine. I’ll do what I do on my end. Bye.

Trial Exhibit 2, Transcript of Voice Mail Message. According to the testimony at the hearing, Powell’s phone messages caused the debtor a great deal of anxiety. Haynes knew Powell was involved in politics and was afraid that his threats were real. Haynes also believed that Powell would be able to stop him from writing checks. At the time of making this threat, Powell was operating check cashing establishments. Powell admitted at the trial in this matter, however, that he did not have the ability to affect Haynes’ ability to write checks.

Powell pointed out at both the trial and in his deposition (Trial Exhibit 3) that he never made these phone calls in an attempt to collect any money from Haynes. Powell simply wanted Haynes to talk to him and deal with him. Powell testified that he had dealt with bankruptcy a lot and knew he could not attempt to collect any money while someone had a pending bankruptcy case. In addition to phoning the

debtor, Powell also contacted Haynes' current employer to inform him of Haynes' business dealings with Powell.

## **II. CONCLUSIONS OF LAW**

Filing a bankruptcy petition triggers the automatic stay provisions under 11 U.S.C. § 362(a)(1) through (8), which prohibit creditors from attempting to collect most debts from the debtor or the debtor's property. The automatic stay provisions under 11 U.S.C. §362(a) arise by operation of law upon the mere commencement of a case filed under any operative chapter of the Bankruptcy Code (i.e., chapter 7, 9, 11, or 13); and as such, a court hearing or specific order is not required. Once the stay becomes effective, it is applicable to all entities.<sup>1</sup> For the purposes of the Bankruptcy Code, the term "entity" is broadly defined to include persons, estates, trusts, and governmental units.<sup>2</sup> The term "person" includes individuals, partnerships, and corporations.<sup>3</sup> All property of the section 541(a) bankruptcy estate is subject to and protected by the automatic stay. The term "property of the estate" is defined broadly under the Bankruptcy Code to include all legal or equitable interests of the debtor in real, personal, or intangible property as of the commencement of the case, wherever located.<sup>4</sup>

Subsection (h) of 11 U.S.C. § 362 provides that "[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."<sup>5</sup> As a practical matter, the section 362(a) automatic stay, if innocently violated, will not halt collection activity of creditors, if such creditors are not actually aware that the debtor has in fact filed a bankruptcy case. If, however, a creditor knowingly and willfully ignores the statutory prohibitions provided by the automatic stay, the creditor may be subject to sanctions for violations of the stay. 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 term "willful" is not defined by the Bankruptcy Code; however, courts have been rather thorough in interpreting the term. Judge Stair of the Eastern District of Tennessee aptly summed up the interpretation as follows:

A violation [of the automatic stay] is willful if "the creditor deliberately carried out the prohibited act with knowledge of the debtor's bankruptcy case." *Walker v. Midland Mortgage Co. (In re Medlin)*, 201 B.R. 188, 194 (Bankr.E.D.Tenn.1996). The level of culpability necessary for a "willful" violation of the stay has been summarized as follows:

A specific intent to violate the stay is not required, or even an awareness by the creditor that her conduct violates the stay. It is sufficient that the creditor knows of the bankruptcy and engages in deliberate conduct that, it so happens, is a violation of the stay. Moreover, where there is actual

notice of the bankruptcy it must be presumed that the violation was deliberate or intentional. Satisfying these requirements itself creates strict liability. There is nothing more to prove except damages. *In re Daniels*, 206 B.R. 444, 445 (Bankr.E.D.Mich.1997) (internal citations and quotations omitted). "[G]ood faith is not a defense and is irrelevant to liability." *Id.* at 446.

*In re Printup*, 264 B.R. 169, 173 (Bankr. E.D. Tenn. 2001). 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 bankruptcy case and took a deliberate act in violation of the automatic stay, a bankruptcy court must award the plaintiff actual damages. *In re Hill*, 222 B.R. 119, 123 (Bankr.N.D.Ohio 1998). Should the court make an additional finding that the defendant acted in bad faith or with malice, the court may also award punitive damages to the debtor.<sup>6</sup>

In the case at bar, Powell asserted that he did not violate the automatic stay because he never attempted to collect any debts from Haynes when he made the phone calls. The Court finds these assertions without merit. While it is true that Powell never mentioned money in the phone calls, it is clear that Powell was attempting to intimidate the debtor. Powell called Haynes' employer to inform him of his business dealings with Haynes. Powell called Haynes' house numerous times. Powell left an extremely threatening message which he hoped would coerce the debtor into "dealing with him." Given the state court lawsuit for damages, the Court can reach no other conclusion but that Powell wanted Haynes to "deal with him" by paying him back some of the money he allegedly owed Powell.

As for the willfulness of Powell's contacts, there is no question that Powell was aware of Haynes bankruptcy filing when he made the phone calls. He stated in the phone message "I know you're in bankruptcy and all that," "I don't care if you're in bankruptcy or not" and "your bankruptcy people cannot touch this." Powell also stated at the trial that he was aware of Haynes bankruptcy filing when he phoned him and that he knew he could not ask for money while someone was in bankruptcy. Given this knowledge, the Court can reach no other conclusion but that Powell willfully violated the automatic stay by contacting Haynes after his bankruptcy filing. As a result of the Court's findings that Powell willfully violated the automatic stay, the Court will award Haynes actual damages in the amount of \$200.00 plus his attorney's fees incurred in bringing this action.

### **III. ORDER**

It is therefore **ORDERED** that the Plaintiff's Complaint for Sanctions Pursuant to 11 U.S.C. section 362(h) is **GRANTED**. The Plaintiff is awarded actual damages in an amount equal to his attorneys' fees in bringing this action plus \$200.00. The attorney for the debtor shall have thirty days from entry of this order to submit a summary of his fees to the Court.

Mailing Information:

Debtor

Debtor's Attorney

C. Jerome Teel, Attorney for Defendant, 87 Murray Guard Drive, Jackson, TN 38305

- 
1. 11 U.S.C. § 362(a).
  2. 11 U.S.C. § 101(15).
  3. 11 U.S.C. § 101(41).
  4. 11 U.S.C. § 541(a); 28 U.S.C. § 1334(e).
  5. 11 U.S.C. § 362(h) (1994).

6. See *Crysen/Montenay Energy Co. v. Esselen Assocs., Inc. (In re Crysen/Montenay Energy Co.)*, 902 F.2d 1098, 1105 (2d Cir. 1990); *Cuffee*, 901 F.2d at 329. Although courts are required to award actual damages to an injured plaintiff for violations of the automatic stay, the imposition of punitive damages is left to the court's discretion. See *In re Timbs*, 178 B.R. 989, 997 (Bankr. E.D. Tenn. 1994). The factors considered in a § 362(h) punitive damages action "include the nature of the creditor's conduct, the creditor's ability to pay the damages and the creditor's motives, and any provocation by the debtor." *In re Emberton*, 263 B.R. 817 (Bankr. W.D. Ky. 2001).