

**Dated: June 20, 2023**  
**The following is ORDERED:**



**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

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

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In re  
D'ASIA N. THOMPSON,  
Debtor.

Case No. 22-24041  
Chapter 13

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**MEMORANDUM OPINION AND ORDER  
DENYING DEBTOR'S MOTION FOR SANCTIONS WITH PREJUDICE**

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This case came on for hearing before the Court on May 16, 2023, on D'Asia N. Thompson's ("Debtor's") *Motion to Reopen Closed Case and Request for Fee Waiver* ("Motion to Reopen") and *Motion for Sanctions Against Creditor Mill Creek Apartments for Violation of the Automatic Stay Under 11 U.S.C. § 362 and Request for Expedited Hearing* ("Motion for Sanctions").<sup>1</sup> Debtor sought to reopen this case for the sole purpose of filing a motion for sanctions against Mill Creek Apartments ("Creditor") for violation of the automatic stay when

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<sup>1</sup> ECF Nos. 26 and 27.

Creditor proceeded with evicting the Debtor from her rental residence. Creditor filed responses to both the motions to reopen the case and motion for sanctions, contending that the case should not be reopened because the motion for sanctions is meritless<sup>2</sup> and the motion for sanctions should be denied because the automatic stay was not in effect at the time of the execution of the Writ of Possession and Creditor did not know of the bankruptcy at the time it began the eviction process.<sup>3</sup> In its supplemental filing, Creditor further seeks to annul the stay retroactively for equitable reasons.<sup>4</sup> This Court has granted Debtor's motion to reopen to rule on the merits of the Motion for Sanctions and request for annulment of the automatic stay. Upon review of the record, filed documents, consideration of the argument by the parties, and relevant case law, the Court denies the *Motion for Sanctions* with prejudice and annuls the automatic stay for reasons outlined below.

### **BACKGROUND**<sup>5</sup>

On August 31, 2022, Millcreek Apartments filed a Forcible Entry and Detainer ("FED") action in Shelby County General Sessions Court, Memphis, Tennessee ("State Court").<sup>6</sup> On September 18, 2022, Debtor filed her Chapter 13 petition.<sup>7</sup> Debtor did not list Mill Creek

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<sup>2</sup> ECF No. 34.

<sup>3</sup> ECF No. 35.

<sup>4</sup> ECF No. 41.

<sup>5</sup> This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This Opinion and Order shall constitute the court's findings of fact and conclusions of law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

<sup>6</sup> Def. Resp. at 2, ECF No. 35.

<sup>7</sup> ECF No. 1.

Apartments on its Schedule G or in its proposed plan. Mill Creek was not listed on the matrix and did not receive notice of this bankruptcy filing from the Court.

Creditor states (and Debtor does not dispute) that Debtor was served with the FED warrant that Creditor had obtained pre-bankruptcy on September 26, 2022.<sup>8</sup>

On October 14, 2022, while Debtor's Chapter 13 case was pending, Creditor obtained a judgment of possession. Debtor did not dispute Creditor's assertion that Debtor did not appear in state court or advise the state court or Creditor of the bankruptcy case.<sup>9</sup>

On November 14, 2022, Debtor's Chapter 13 case was dismissed, terminating the automatic stay pursuant to 11 U.S.C. § 362(c)(2)(B).<sup>10</sup>

On November 23, 2022, on Creditor filed for the Writ of Possession.<sup>11</sup> Shelby County General Sessions Court Clerk issued the Writ of Possession to the private process server for service on November 29, 2022.<sup>12</sup>

On December 4, 2022, the private process server served the Writ of Possession on Debtor.<sup>13</sup>

On December 12, 2022, Debtor's counsel contacted Creditor's counsel, for the first time since the Chapter 13 case was filed and advised him of the bankruptcy case.<sup>14</sup> Debtor's counsel

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<sup>8</sup> Def. Resp. at 2, ECF No. 35.

<sup>9</sup> Def. Resp. at 2, ECF No. 35.

<sup>10</sup> ECF No. 19.

<sup>11</sup> Def. Resp. at 2, ECF No. 35.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

asked that the Debtor be allowed to return to her apartment. Creditor did not agree to take any action to reverse the eviction.<sup>15</sup>

On February 14, 2023, the Chapter 13 Trustee's Final Report and Account was filed, showing that the Debtor paid no funds into the Chapter 13 case.<sup>16</sup>

On March 29, 2023, Debtor filed a *Motion to Reopen* and a *Motion for Sanctions*.<sup>17</sup> On April 10, 2023, Creditor filed its *Response in Opposition of the Motion to Reopen* and *Response in Opposition of the Motion for Sanctions*.<sup>18</sup>

The Court held an initial hearing on the motions and responses on April 18, 2023. At the hearing, Creditor's counsel proffered that Creditor did not know about the bankruptcy until he was first contacted by Debtor's counsel on December 12, 2022, and that Creditor was not listed in the Debtor's Chapter 13 plan or in any of the bankruptcy documents, and therefore, Creditor did not receive notice of the Chapter 13 filing. Debtor's counsel acknowledged that the Creditor was not listed in the Debtor's bankruptcy filings and Creditor was not contacted prior to the phone call on December 12, 2022. Debtor's counsel, however, contends that the automatic stay was in effect when Creditor obtained eviction judgment. The Court asked the parties to file supplemental documents addressing the legal issues before the Court.

On May 12, 2023, Creditor's counsel filed a supplemental brief.<sup>19</sup> Debtor's counsel did not submit a supplemental brief.

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<sup>15</sup> Sanctions Mot. at 2.

<sup>16</sup> ECF No. 22.

<sup>17</sup> ECF Nos. 26 and 27.

<sup>18</sup> ECF Nos. 34 and 35.

<sup>19</sup> ECF No. 41.

The Court held a second hearing on May 16, 2023. Creditor’s counsel asked the Court to deny Debtor’s motions to reopen the case and for sanctions, with prejudice, and award attorney’s fees in the amount of \$1,000.00 to Creditor’s counsel. Debtor’s counsel subsequently informed the Court that Debtor wished to withdraw the motion for sanctions.<sup>20</sup> Creditor reiterated his request to deny the motions to reopen and for sanctions with prejudice but withdrew his request for attorney’s fees. Despite Debtor’s last-minute effort to withdraw the motion for sanctions, the Court believes the motion for sanctions should be denied with prejudice.

On June 13, 2023, the Court granted Debtor’s to reopen.<sup>21</sup>

## **DISCUSSION**

### **A. Motion for Sanctions Denied with Prejudice**

A motion for sanctions is very serious matter and should not be filed without serious consideration. Under 11 U.S.C. § 362(k)(1),<sup>22</sup> the Court may impose damages for violations of the automatic stay if the movant proves, by a preponderance of the evidence, that: (1) the actions taken were in violation of the automatic stay; (2) the violation was willful; and (3) the violation caused actual damages.<sup>23</sup>

A creditor willfully violates the stay if the creditor has actual knowledge of the stay.<sup>24</sup>

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<sup>20</sup> Debtor’s counsel arrived twenty minutes late to the hearing and did not provide the Court with any additional legal arguments, but rather sought to withdraw the motion for sanctions.

<sup>21</sup> ECF No. 44.

<sup>22</sup> Section 362(k)(1) states: “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) (2023).

<sup>23</sup> *In re Collett*, Nos. 13-8033, 12-61190, 2014 WL 2111309, at \*4 (B.A.P. 6th Cir. May 21, 2014) (outlining the elements to recover actual damages under section 362(k)(1)).

<sup>24</sup> *In re Sharon*, 234 B.R. 676, 687–88 (B.A.P. 6th Cir. 1999) (discussing “willful” violations of the stay in the

“A ‘willful violation’ does not require proof of a specific intent to violate the stay, but rather ‘an intentional violation by a party aware of the bankruptcy filing.’”<sup>25</sup> The burden of proof rests with the debtor to show that the creditor had notice or actual knowledge of the case,<sup>26</sup> and the standard of proof is preponderance of the evidence.<sup>27</sup>

The Court may deny a debtor’s motion for monetary damages under 11 U.S.C. § 342(g)(2), if the creditor did not have notice of the bankruptcy:

*A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) (including a monetary penalty imposed under section 362(k)) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or if such failure occurs after such creditor receives notice effective under this section of the order for relief.*<sup>28</sup>

In this case, Debtor seeks actual damages of \$10,000.00 and punitive damages of \$25,000.00 as well as any attorney’s fees and costs associated with this motion, based on Creditor’s actions to evict the debtor.<sup>29</sup> Creditor lacked knowledge of the bankruptcy proceeding because it did not receive notice of the filing. The Creditor was not listed in the Debtor’s schedules and were no part of the Debtor’s Chapter 13 plan.<sup>30</sup> Creditor further contends that

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context of section 362(h), which has been amended to 362(k), and awarding fees where creditor knew about the bankruptcy and failed to return the repossessed vehicle); *In re Grine*, 439 B.R. 461, 466 (Bankr. N.D. Ohio 2010) (“[W]here the creditor received actual notice of the automatic stay, courts must presume that the violation was deliberate.”) (quoting *In re Kaneb*, 196 F.3d 265, 269 (1st Cir. 1999)).

<sup>25</sup> *In re Baer*, No. 10–21096, 2011 WL 3667511, at \*4 (Bankr. E.D. Ky. Aug. 22, 2011) (quoting *In re Sharon*, 234 B.R. at 687).

<sup>26</sup> *Id.* at \*4.

<sup>27</sup> *In re Skeen*, 248 B.R. 312, 316 (Bankr. E.D. Tenn. 2000).

<sup>28</sup> 11 U.S.C. § 342(g)(2).

<sup>29</sup> Sanctions Mot. at 4; ECF No. 27.

<sup>30</sup> Def. Resp. at 2, ECF No. 35.

when it served Debtor with a notice to appear in state court, Debtor did not notify Creditor that she had a pending Chapter 13 case.<sup>31</sup> Debtor (through counsel) conceded that Creditor received notice of the Chapter 13 case on December 12, 2022. At that point, Debtor's case had already been dismissed, the stay was no longer in effect, and the eviction had taken place. Debtor's counsel has not provided this Court with any evidence to show that Creditor had actual notice of the bankruptcy proceeding and violated the stay despite knowing about the bankruptcy. This Court finds and concludes that, Creditor did not have any knowledge of bankruptcy filing at the time it obtained its eviction judgment in state court. When Creditor proceeded with the Writ of Possession and the eviction, Debtor was no longer in bankruptcy.

Despite not providing Creditor with any notice of the Chapter 13 case, Debtor filed a Motion to Reopen the Chapter 13 case for sole purpose of seeking sanctions against Creditor. Debtor failed to meet its burden by a preponderance of the evidence that Creditor "willfully" violated the automatic stay and is therefore not entitled to damages. The Court finds that the Motion for Sanctions (an extraordinary remedy) was filed without sufficient due diligence. As such, the Court will not allow Debtor to simply withdraw its motions at the last minute. Rather, the Court denies Debtor's Motion for Sanctions with prejudice.

### **B. Annulment of the Stay**

This Court agrees that actions taken in violation of the automatic stay are "invalid and voidable and shall be voided absent limited equitable circumstances."<sup>32</sup> Here, there is no

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<sup>31</sup> *Id.*

<sup>32</sup> *Easley v. Pettibone Michigan Corp. (In re Easley)*, 990 F.2d 905, 911 (6<sup>th</sup> Cir. 1995) (holding that actions taking in violation of the automatic stay are invalid and voidable and should be voided absent limited equitable circumstances).

question that the stay was in effect when Creditor obtained a judgment in state court on October 14, 2022, while Debtor was in bankruptcy. As such, the Court must determine whether the automatic stay should be annulled on equitable grounds.

Creditor correctly contends that bankruptcy courts have statutory authority to annul the automatic stay and to do so “retroactively, thus validating action taken by a party at the time when he was unaware of the automatic stay.”<sup>33</sup> Pursuant to section 362(d),<sup>34</sup> the bankruptcy courts may annul the automatic stay upon the request of a party in interest, after notice and hearing. The annulment of the automatic stay retroactively validates the creditor’s action taking in violation of the automatic stay.<sup>35</sup> The automatic stay may be annulled only under extraordinary circumstances, “which include the debtor’s bad faith filing of the bankruptcy case, a creditor’s lack of ‘knowledge of the applicability of the automatic stay, and unfair prejudice to the creditor.’”<sup>36</sup>

Here, Debtor failed to notify Creditor on numerous instances, including when she was personally served with the judgment, or when she could have appeared in state court. Debtor also has a duty file a complete and accurate set of schedules and statements, include listing all creditors who may have claims.<sup>37</sup> The Debtor cannot omit a critical creditor from the bankruptcy case, fail to amend schedules, and then seek sanctions against the omitted creditor for violation

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<sup>33</sup> *Id.* at 910.

<sup>34</sup> Subsection 362(d), in relevant part, states: “On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .” 11U.S.C. § 362(d) (2023).

<sup>35</sup> *In re Burrell*, 186 B.R. 230, 235-36 (Bankr. E.D. Tenn. 1995) (discussing annulment of the automatic stay).

<sup>36</sup> *Burrell*, 186 B.R. at 235-36.

<sup>37</sup> *See* 11 U.S.C. § 521 (2023); Fed. R. Bankr. P. 1007, 1008, and 1009.



of the automatic stay. The Court concludes the automatic stay is annulled retroactively as to Mill Creek Apartments.

### **CONCLUSION**

For the foregoing reasons, the Court denies Debtor's *Motion for Sanctions*. Accordingly, it is **ORDERED**:

1. Debtor's *ore tenus* motion to withdraw *Motion for Sanctions* is denied.
2. The *Motion for Sanctions* is denied with prejudice.
3. The automatic stay is annulled as to Mill Creek Apartments regarding actions taking during the pendency Debtor's Chapter 13 case.
4. The parties shall bear their own fees and costs for this matter.

cc: Debtor  
Mill Creek Apartments  
Chapter 13 Trustee  
United States Trustee  
All Creditors on the Matrix