

Dated: February 23, 2024
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Michael Edward Seebeck,
Debtor.

Case No. 23-25405
Chapter 13

OPINION AND ORDER DENYING
MOTION FOR CONTEMPT AND SANCTIONS

This case came before the Court on February 6, 2024, at 10:30 a.m., on Michael Edward Seebeck's ("Debtor's") *Motion for Contempt and Sanctions* ("Motion"). Debtor is *pro se*. Debtor sought to have Xfinity/Comcast ("Creditor") sanctioned for violating the automatic stay for turning off and failing to reinstate Debtor's internet service. Creditor was not initially noticed of the filing of the Debtor's initial bankruptcy petition, and no response to Debtor's motion was filed. Upon review of the record, filed documents, consideration of the Debtor's arguments, and relevant case law, the Court denies the *Motion for Contempt and Sanctions*.

BACKGROUND¹

On November 1, 2023, Debtor filed a petition commencing a case under Chapter 13 of the Bankruptcy Code.² The matrix attached to Debtor's petition listed five creditors, not including Xfinity/Comcast. On November 17, 2023, Debtor filed a *Motion for Contempt and Sanctions*,³ contending that Creditor violated the automatic stay by turning off Debtor's internet "shortly before 9:00 a.m. on November 8, 2023."⁴ In his Motion, Debtor further stated that Creditor received notice of the bankruptcy filing on November 2, 2023,⁵ and Creditor required the Debtor to make a payment to restore services.⁶

On December 12, 2023, the Court held a hearing on the Debtor's Motion. The Court clarified to Debtor that the Creditor was not properly served based on the certificate of service and that the Creditor was not listed on the matrix. That same day, the Debtor filed his schedules, which listed Creditor on his Schedule E/F as an unsecured creditor.⁷ The hearing on the Motion was continued to January 9, 2024, to allow the Debtor to file an amended certificate of service. On January 8, 2024, Debtor filed an Amended Certificate of Service, properly noticing Creditor of the motion for contempt and sanctions.

¹ 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). his 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.

² ECF No. 1.

³ ECF No. 14.

⁴ Contempt and Sanctions Mot. at 1.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ ECF No. 27.

At the hearing on January 9, 2024, the Court acknowledged that Debtor filed schedules and included the Creditor. The Court explained to the Debtor that the Creditor still did not receive notice of Chapter 13 case and provided the Debtor with instructions on how to properly serve the Creditor notice of the bankruptcy case. The Court continued the Motion to allow the Debtor to properly serve all creditors with the notice of bankruptcy case.

On January 23, 2024, Debtor filed an Amended Matrix and included Xfinity.⁸ On February 1, 2024, Debtor filed an Amended Matrix and Certificate of Service, which established a record with the Court and proof that the Debtor properly notified all his creditors of his bankruptcy case.

On February 6, 2024, the Court conducted another hearing on the Motion. The Debtor confirmed with the Court that his internet is on and working. The Court explained to the Debtor that since the Creditor just received official notice of the Debtor's Chapter 13 case, the Creditor was not in violation of the automatic stay when it turned off the Debtor's internet.

DISCUSSION

Under 11 U.S.C. § 362(k)(1),⁹ the Court may impose damages for violation 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

⁸ ECF No. 42.

⁹ Section 362(k)(1) states: "an individual injured by any willful violation of the stay provided by this section shall recover actual damages, includes costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1) (2023).

damages.¹⁰ A creditor willfully violates the stay if the creditor has actual knowledge of the stay.¹¹ “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.’”¹² The burden of proof rests with the debtor to show that the creditor had notice or actual knowledge of the case,¹³ and the standard of proof is preponderance of the evidence.¹⁴ 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 violation of s 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.*¹⁵

Here, Debtor did not meet his burden for obtaining sanctions against Creditor for violation of the automatic stay. The Creditor was not served notice of the Chapter 13 case at the time the Debtor alleged that internet service was turned off.¹⁶

¹⁰ *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)).

¹¹ *In re Sharon*, 234 B.R. 676, 687-88 (B.A.P 6th Cir. 199) (discussing “willful” violations of the stay in 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)).

¹² *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).

¹³ *Id.*

¹⁴ *In re Skeem*, 248 B.R. 312, 316 (Bankr. E.D. Tenn. 2000).

¹⁵ 11 U.S.C. § 342(g)(2).

¹⁶ Debtor use of the term “contempt” in his motion is unclear. Assuming that Debtor is seeking hold Creditor in contempt for violating the automatic stay, the criteria for holding Creditor in contempt were not met. To hold a party liable for civil contempt, movant must prove the following: (1) the party violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts; (2) the party did so with knowledge of the court’s order; and (3) there is no fair ground of doubt as to whether the order barred the party’s conduct—i.e., no objectively reasonable basis for concluding the party’s conduct might be lawful. *In re City of Detroit, Michigan*, 614 B.R. 255, 265-66 (Bankr. E.D. Mich. 2020) (quoting *Taggart v. Lorenzen*, 139 S. Ct. 1795

CONCLUSION

For the foregoing reasons, the Court finds that Creditor was not noticed of the Debtor's Chapter 13 case, and consequently, Debtor did not meet his burden of proving that Creditor willfully violated the automatic stay. Accordingly, it is **ORDERED**:

Debtor's Motion for Contempt and Sanctions is DENIED.

(2019)) (explaining elements for contempt). The first two elements must be proven by clear and convincing evidence. *Id.* If proven, the accused party may still avoid a contempt finding, by proving that his/her compliance with the order in question was impossible. *Id.* Here, there is simply no factual or legal support for holding Creditor in contempt.

Cc: Brian Roberts
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Michael Edward Seebeck, Debtor
Chapter 13 Trustee
All creditors on the Matrix