UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re	
STEPHANIE A. RANDLE,	Case No. 91-26267-K
Debtor.	Chapter 13
STEPHANIE A. RANDLE and SHIRLEY SMITH,	
Plaintiffs,	
vs.	Adv. Proc. No. 95-0630
RONNIE DODSON, BEVERLY DODSON, AND JACKSONVILLE AUTO SALVAGE,	
Defendants.	

MEMORANDUM AND ORDER COMBINED WITH RELATED ORDERS AND NOTICE OF THE ENTRY THEREOF

This bifurcated trial came on to be heard on March 28, 1996, upon the complaint of the above-named plaintiffs, Stephanie A. Randle and Shirley Smith, seeking the imposition of sanctions and damages against the above-named defendants, Ronnie Dodson, Beverly Dodson, and Jackson Auto Salvage, pursuant to 11 U.S.C. § 362(h).

The narrow and limited question for judicial determination here is whether or not the above-named defendants have "willfully" violated the automatic stay provisions provided by 11 U.S.C. § 362(a).

By virtue of 28 U.S.C. § 157(b)(2)(G), (A), and (O) and *In re Depew*, 51 B.R. 1010 (Bankr. E.D. Tenn. 1985), this is a core proceeding.

Based on statements of counsel, the sworn testimony of the parties and witnesses, the 16 trial exhibits, and the entire case record as a whole, the following shall constitute the Court's findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 7052.

The relevant background facts may be briefly summarized as follows: On June 7, 1991, the above-named plaintiff-debtor, Stephanie A. Randle ("Mrs. Randle") filed an original petition under chapter 13 of the Bankruptcy Code. Paragraphs 12b and 14b of her Chapter 13 Statement reflect in relevant part that General Motors Acceptance Corporation ("GMAC") holds a lien on a 1990 Chevrolet Cavalier automobile. On July 26, 1991, Mrs. Randle's chapter 13 plan was confirmed. Plaintiff, Mrs. Shirley Smith, the Mother of Mrs. Randle, is a co-owner of the automobile and co-signatory on the debt to GMAC.

On or about October 5, 1993, Mrs. Randle was viciously assaulted and her automobile was stolen as a result of a horrible "car jacking" incident. The automobile subsequently was recovered by the police in a ditch in Lonoke, Arkansas. Eventually, the automobile was taken to the defendant, Jacksonville Auto Salvage ("JAS"), which is owned by the defendants, Ronnie and Beverly Dodson.

JAS made certain repairs to the automobile. The testimony is disputed whether or not such repairs were authorized by the plaintiffs or Mrs. Randle's non-filing spouse, Ricky Randle. Mrs. Randle did not have the financial ability to pay for the repairs; and ultimately, JAS sold the automobile and applied the proceeds to extinguish the postpetition debt consisting of the repair and storage bills. Certain notice matters under applicable Arkansas State law also are in dispute.

Mrs. Randle thereafter filed the instant adversary proceeding against the defendants seeking actual and punitive damages in the amount of $50,000 for alleged violation of the automatic stay, conversion, fraud, breach of duty, and violations of Arkansas statutory law, and attorney's fees. As noted, the sole issue here centers around section 362(h) of the Bankruptcy Code.

11 U.S.C. § 362(h) provides as follows:

> "Any 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." (emphasis added.)

A violation of the automatic stay is in essence a violation of the legislative mandate of the Congress and is sanctionable conduct.

Section 362(h) of the Bankruptcy Code provides that an injured "individual" shall recover actual damages, including costs and attorney's fees, that result from a willful violation of the automatic stay and, in appropriate circumstances, may also recover punitive damages. 11 U.S.C. § 362(h). Sanctions under section 362(h), except those in the form of punitive damages, are mandatory for willful violations of the stay and may be imposed against the creditor, the creditor's attorney, or both.

The cases have construed a "willful" violation as an intentional or deliberate act taken with either knowledge that the act is in violation of the automatic stay, knowledge of the automatic stay, knowledge of the bankruptcy filing, or notice of sufficient facts to cause a reasonably prudent person to make additional inquiry to determine whether a bankruptcy petition has been filed. See, e.g., *In re Forty-Eight Insulations, Inc.*, 54 B.R. 905, 909 (Bankr. N.D. Ill. 1985) (holding that a willful violation is a deliberate and intentional act done with the knowledge that the act is in violation of the stay); *In re Wagner*, 74 B.R. 898, 903-05 (Bankr. E.D. Pa. 1981) (holding that a willful violation is a deliberate act taken with knowledge of the automatic tay and the knowledge of the bankruptcy filing is legally equivalent to knowledge of the automatic stay); *In re Stucka*, 77 B.R. 777, 783 (Bankr. C.D. Cal. 1987) (holding that a willful violation is any intentional or deliberate act taken with knowledge of the bankruptcy filing, or with notice of sufficient facts to cause a reasonably prudent person to make additional inquiry to determine whether a bankruptcy petition has been filed). See also *In re Atlantic Business & Community Corp.*, 901 F.2d 325, 329 (3rd Cir. 1990); *In re Taylor*, 884 F.2d 478, 482-83 (9th Cir. 1989); *In re Bloom*, 875 F.2d 224, 227 (9th Cir. 1989); *Budget Serv. Co. V. Better Homes of Va., Inc.*, 804 F.2d 289, 290 (4th Cir. 1986). Courts generally require an additional finding of bad faith or maliciousness in order to impose punitive damages. *In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1105 (2d Cir. 1990).

Lack of knowledge or notice of a bankruptcy case by an entity means that its actions in violation of the automatic stay under 11 U.S.C. § 362(a) are not willful, and therefore, not sanctionable. See, for example, *In re Bennett*, 135 B.R. 72 (Bankr. S.D. Ohio 1992). A long-distance telephone call from the chapter 7 debtors' attorney to the creditor was sufficient notice of the bankruptcy filing, so that the creditor's

subsequent action was a "willful violation" of the automatic stay. See, for example, *In re Coons*, 123 B.R. 649 (Bankr. N.D. Okla. 1991). As noted, a creditor acts in "willful" violation of the automatic stay, so as to be liable for damages, when the creditor acts deliberately with knowledge that the act is in violation of the stay. *In re Alberto*, 119 B.R. 985 (Bankr. N.D. Ill. 1990), reconsideration denied 121 B.R. 527.

Based upon the undisputed evidence presented at the trial, the court finds that the defendants did not at times relevant have actual notice or knowledge of the pendency of Mrs. Randle's chapter 13 case and of the automatic stay under 11 U.S.C. § 362(a) nor sufficient facts to cause a reasonably prudent person to make inquiry to determine whether a bankruptcy petition had been filed by Mrs. Randle. Although the automatic stay of section 362 is effective upon the date of the filing of the chapter 13 petition, where the violation of the stay is innocent or inadvertent, the imposition of sanctions is not an appropriate remedy.

Notwithstanding the "red flags" or constructive notice theory, the court concludes, considering a totality of the particular facts and circumstances and applicable law, that the defendants have not deliberately, intentionally, or "willfully" violated the automatic stay as contemplated under 11 U.S.C. § 362(h). Admittedly, neither the plaintiffs nor Mr. Randle at times relevant here ever advised the defendants of the pendency of Mrs. Randle's chapter 13 case and of the automatic stay.

In accordance with the foregoing.

IT IS ORDERED THAT:

1. The plaintiffs' complaint seeking the imposition of sanctions against the defendants pursuant to 11 U.S.C. § 362(h) is denied in this bifurcated trial.

2. The parties may proceed in the appropriate State court in order to resolve the remaining and bifurcated counts contained in the plaintiffs' original complaint. 28 U.S.C. § 1334(c); 11 U.S.C. § 362(d)(1). Compare 28 U.S.C. § 1409(d).

3. The defendants' prior discovery motion seeking a protective order is rendered moot by this ruling, and the court shall promptly return, unopened, to the defendants in care of their attorney herein

the sealed financial information previously provided by the defendants in connection with the pending discovery dispute. (There being no willful violation of the stay, no sanctions or damages will be imposed. Thus, the financial information sought by he plaintiffs is no longer relevant here.)

BY THE COURT

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DAVID S. KENNEDY
CHIEF UNITED STATES BANKRUPTCY JUDGE

DATE: April 1, 1996

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