


Dated: September 24, 2024
The following is ORDERED:




Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
PEACOLA INETTA WALKER,
Debtor.

Case No. 23-22501-L
Chapter 13

PEACOLA INETTA WALKER,
Plaintiff,

v.
TRIPLE DIAMOND AUTO SALES, LLC,
BLACK DIAMOND AUTO SALES, LLC,
RODNEY CLAYBORNE, and
BERNARD EVANS,
Defendants.

Adv. Proc. No. 23-00064

DEFAULT JUDGMENT

THIS ADVERSARY PROCEEDING was commenced on May 26, 2023, with the filing of a *Complaint for Turnover of Property to the Estate and Damages for Violation of the Automatic Stay* [ECF No. 1]. The Plaintiff alleges that the Defendants violated the automatic stay by repossessing and withholding her automobiles with actual knowledge of the filing of her

bankruptcy petition. The Court heard the testimony of the Plaintiff on September 5, 2024, and kept the record open for two weeks to permit counsel for the Plaintiff to file statements concerning the attorneys' fees charged to the Plaintiff for their work in this proceeding. The deadline for filing statements concerning attorneys' fees has passed and the Court makes the following findings and conclusions.

BACKGROUND FACTS

The Debtor filed her voluntary petition under Chapter 13 of the Bankruptcy Code on May 23, 2023. The original Complaint in this adversary proceeding, filed May 26, 2023, by attorney Jonathan Garrett, sought recovery of a 2014 Ford Escape that the Plaintiff alleged to have been repossessed by Defendant Triple Diamond Auto Sales, LLC ("Triple Diamond") after her bankruptcy petition was filed with actual knowledge of the bankruptcy filing [ECF No. 1]. An Amended Complaint was filed June 13, 2023 [ECF No. 5]. This Complaint added Defendant Black Diamond Auto Sales, LLC ("Black Diamond") as a defendant and, in addition to the Ford Escape, sought recovery of a 2001 Jaguar XJ8 that Plaintiff alleged was also repossessed by Triple Diamond after her bankruptcy petition was filed with actual notice of the bankruptcy filing. New summonses were issued June 15, 2023 [ECF Nos. 7, 9, and 10]. When no answers were timely filed and no action was taken by the Plaintiff, the Court issued its *Sua Sponte Order to Show Cause Why Adversary Proceeding Should Not be Dismissed* [ECF No. 12]. Mr. Garrett responded by filing certificates of service showing service upon the Defendants by United States Mail addressed to their registered agents on June 23, 2023 [ECF Nos. 14 and 15].

The Plaintiff engaged new counsel, Mr. John E. Dunlap, who made his appearance and filed a Second Amended Complaint on October 17, 2023 [ECF No. 16]. This Complaint added Defendants Rodney Clayborne and Bernard Evans. Mr. Clayborne is alleged to be an agent for

Triple Diamond and Black Diamond. Mr. Evans is the registered agent for service of process and allegedly an owner of Black Diamond. Black Diamond is alleged to be the successor to Triple Diamond. New summonses were issued [ECF Nos. 18-21]. When no certificates of service or answers were filed, the Court issued a second order to show cause on February 6, 2024 [ECF No. 24]. Counsel for the Plaintiff requested that new summonses be issued, which was done on February 22, 2024 [ECF Nos. 26-29]. When no answers were filed, Mr. Dunlap filed a *Motion for Default Judgment* on May 7, 2024. The motion for default judgment was served on each of the four Defendants at an address on South Third Street, Memphis, Tennessee [ECF No. 33].

At the initial hearing on the motion for default judgment, the Court found that summonses were properly issued, that certificates of service were filed showing service by mail upon each of the Defendants on February 22, 2024, that no answers were timely filed, and that default should be entered [ECF No. 36]. The Court set an additional hearing for June 27, 2024, to consider the award of damages. After two continuances requested by the Plaintiff, the Court conducted a hearing on September 5, 2024, to determine the damages suffered by the Plaintiff.

JURISIDCTION, AUTHORITY, AND VENUE

Jurisdiction over an adversary proceeding arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The right of a debtor to seek damages for violations of the automatic stay and the right of a Chapter 13 debtor to obtain turnover of property of the estate that she may use or that she may exempt arises under the

Bankruptcy Code and thus is a core proceeding. *See* 11 U.S.C § 362(k), 542(a), 1303, and 28 U.S.C. § 157(b)(2)(E) and (O). The bankruptcy court has authority to enter a final order awarding damages for the willful violation of the automatic stay subject only to appellate review. *See* 28 U.S.C. § 157(b)(1). Venue of this contested matter is proper to the Western District of Tennessee because this matter arises in a bankruptcy case pending in this district. *See* 28 U.S.C. §1409(a).

FINDINGS OF FACT

The Plaintiff filed her voluntary petition on May 23, 2023. The petition reflects no prior bankruptcy cases dismissed in the 12 months preceding her filing.

The Plaintiff testified that her cars were repossessed after her bankruptcy petition was filed. Among the exhibits attached to the original and the amended complaint is a text exchange between the Debtor and Defendant Rodney Clayborne acknowledging that he had spoken with the “owners,” and that he was aware of the filing of the bankruptcy petition, and that the Plaintiff could obtain the return of her car by paying \$6,500 within ten days. Also among the exhibits is an unsigned demand letter from Triple Diamond Auto Sales, LLC, dated June 26, 2023, well after the bankruptcy petition was filed, demanding payment of \$6,454.92 plus a \$400 repossession fee. The Court finds that the Debtor’s vehicles were repossessed after her petition was filed and after the Defendants had notice of the filing.

The Plaintiff testified that as the result of the repossession of her cars, she was compelled to use rideshare services and to rely on family and friends to transport her children to and from school. She testified that she spent \$2,000 transporting her children to and from school. The Plaintiff also testified that she used rideshare services and relied upon family and friends to transport herself to and from work. The Plaintiff testified that she spent \$3,000 for this purpose. Finally, the Plaintiff testified that she was compelled to use grocery delivery services to obtain her

groceries when she had no access to her car, and that she spent \$2,000 for this service. The Plaintiff produced no receipts of these expenses.

On behalf of the Plaintiff, Mr. Dunlap admitted that she had no equity in either of the vehicles and that Triple Diamond has never filed a proof of claim in her bankruptcy case.

Mr. Dunlap stated that the Plaintiff had incurred attorney fees owed to Mr. Garrett in the approximate amount of \$1,500 and to himself in the approximate amount of \$1,000. Mr. Dunlap asked for punitive damages in the Second Amended Complaint. The Court invited him to file the affidavit of Mr. Garrett to support his request for attorney fees and any facts that would show the need for punitive damages. The Court invited Mr. Dunlap to document his own attorney fees. Neither of the attorneys filed a timely affidavit.

CONCLUSIONS OF LAW

Bankruptcy Code section 362(k) provides that “an individual injured by any willful violation of the automatic stay shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” 11 U.S.C. § 362(k).

Because the Plaintiff had no previous bankruptcy filings, the automatic stay came into effect upon the filing of her petition on May 23, 2023. 11 U.S.C. § 362(a). Although the Court would have preferred to hear the testimony of Mr. Garrett concerning his contacts with the Defendants, the record is reasonably clear that the Defendants either knew of the bankruptcy filing at the time of the repossession of the first vehicle or learned about it shortly thereafter. The record is clear that the Defendants retained the vehicles and made demand for payment well after the bankruptcy petition was filed. In fact, the Defendants retain possession to this day. The Defendants failed to answer the Second Amended Complaint or to appear in response to the motion for default judgment. The entry of the default was proper. The Defendants further failed to appear to oppose

the statements of the Plaintiff concerning her damages. Although the Court would have preferred the Plaintiff to present receipts of her actual costs, it is not difficult to imagine that the Plaintiff incurred significant expense as the result of having to obtain alternative means of transportation for herself, her children, and her groceries.

At the time of the hearing, it had been 471 days since the bankruptcy petition was originally filed. The Plaintiff testified that her damages over that period of time were \$7,000, or approximately \$15 per day. The Court finds this to be a reasonable approximation of the Plaintiff's actual damages for transportation expenses.

The Plaintiff failed to provide proof of her attorney fees, however, and no award is made with respect to those.

The Plaintiff also asked for punitive damages. Although there was sufficient proof that the Defendants' repossession and withholding of the Plaintiff's vehicles was willful, the failure of the Debtor to provide additional, direct proof of, for example, Mr. Garrett's interactions with the Defendants, prevents the Court from awarding punitive damages.

CONCLUSION

For the foregoing reasons, judgment shall be entered for the Plaintiff, Peacola Inetta Walker, against the Defendants, Triple Diamond Auto Sales, LLC, Black Diamond Auto Sales, LLC, Raymond Clayborne, and Bernard Evans, jointly and severally, in the amount of \$7,000, for which let execution issue.

cc: Debtor/Plaintiff
Attorney for Debtor/Plaintiff
Defendants
Attorney for Defendants (if any)
Chapter 13 Trustee
United States Trustee