

Dated: June 09, 2023
The following is ORDERED:



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Tracy L. Quinn
Debtor

Case No. 23-20930
Chapter 13

Tracy L. Quinn,

Plaintiff,

v.

Adv. Proc. No. 23-00031

R&R Capital Investment Group, LLC,

Defendant.

OPINION AND ORDER DETERMINING AND AWARING DAMAGES, SANCTIONS
AND ATTORNEY'S FEES

The matters before the Court arise from the Debtor/Plaintiff's Amended Complaint for Injunctive Relief and Complaint Seeking Contempt Remedies for Violation of the Automatic Stay [DE 10], the Expedited Motion for Relief from Automatic Stay and to Abandon Property Pursuant to 11 U.S.C. § 362 filed by the Debtor's Landlord, R&R Capital Investment Group, LLC [Bankr. DE 17], the Debtor's Response to the Motion [Bankr. DE 20], and the Landlord's Amended Expedited Motion for Relief from Automatic Stay and to Abandon Property Pursuant to 11 U.S.C. § 362. [Bankr. DE 34] The Motion for Relief from Automatic Stay, the Amended Motion and the Debtor's Response have now been resolved with the parties' Consent Order Lifting Automatic Stay as to Debtor's Business Address Pursuant to 11 U.S.C. § 362. [Bankr. DE 43] What remains for the Court to determine is the amount of damages, if any, incurred by the parties as a result of the Landlord's alleged violation of the automatic stay, Landlord's alleged violation of this Court's order granting Debtor's motion for injunctive relief, and the Debtor's alleged breach of the lease agreement.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (G) and (O). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII ("Bankruptcy Appeals") of the Federal Rules of Bankruptcy Procedure. This memorandum of decision constitutes the Court's findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 9014 and 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, testimony of witnesses, considered all of the evidence, and reviewed the entire record of the cause. Based upon that review, and for the following reasons, the Court determines that Debtor has met her burden of proof for a finding that Landlord intentionally

violated the automatic stay and violated the Court's order granting injunctive relief, and determines that Landlord is entitled to an unsecured claim for pre-petition rent and late fees.

**DISCUSSION OF BACKGROUND FACTS AND
PROCEDURAL HISTORY OF THE CASE**

The parties in this case have experienced a brief – yet volatile – relationship as landlord and tenant. The Court's introduction to this case was on the Debtor's Complaint for Injunctive Relief [DE 1] and Motion for Temporary Restraining Order [DE 2] in which the Debtor alleged that the Defendant/Landlord terminated access to her leased business property in violation of the automatic stay which went into effect when the Debtor's Chapter 13 bankruptcy case was commenced on February 23, 2023. The Court granted the Motion on March 23, 2023, and ordered that the Landlord immediately remove all locks on the property or other impediments of any kind that would prevent the Debtor's full use of the premises so that the Debtor might resume her cabinet-making business. [DE 6] While the Debtor's Motion for a TRO was pending, Landlord filed a Motion and then an Amended Motion for relief from the automatic stay in the Debtor's bankruptcy case, alleging a default in rent payments and environmental hazard concerns. [Bankr. DE 17, 34]¹ Debtor's Response to the Motion for relief from the automatic stay asserted that on March 11, 2023, Landlord locked the doors to the property and prevented Debtor from accessing the property, thereby interfering with her ability to earn income, complete work and collect invoices. [Bankr. DE 20]

Debtor subsequently amended her adversary Complaint for Injunctive Relief and Complaint Seeking Contempt Remedies for Violation of the Automatic Stay alleging that Landlord had actual notice of the automatic stay on February 23, 2023, yet the Landlord nevertheless

¹ As stated previously, the Landlord's Motion, Debtor's Response and Landlord's Amended Motion have now been resolved with a Consent Order terminating the automatic stay. [DE 43]

subsequently attempted to collect prepetition rent, placed locks on the premises in order to terminate Debtor's access to the property, and threatened the Debtor with criminal charges. [DE 10, ¶¶ 3, 4, 5 and 6] The Amended Complaint also points out that as of March 29, 2023, the locks were not yet removed from the property in violation of the automatic stay and in violation of this Court's Order of March 23, 2023. [DE 10, ¶ 9] Landlord confirmed this with his testimony at the March 29, 2023 hearing on Landlord's Motion for termination of the automatic stay.

The Amended Complaint also sets forth Debtor's claim for damages arising from her loss of income due to her breach of several cabinet-making contracts arising from her inability to access her business property and supplies. Her claimed damages amount to \$75,775 plus legal fees and expenses. [DE 10, ¶¶ 14, 15, 16, 17, 18, 19, 20 and 22] The Debtor also seeks punitive damages for Landlord's violation of the automatic stay. [DE 10, p.5 ¶ 3]

The parties ultimately reached an agreement to lift the automatic stay to allow Landlord to regain possession of the property [Bankr. DE 43], and the Court asked the parties to submit affidavits regarding their respective claimed fees and damages. In addition to the amounts claimed in Debtor's Amended Complaint, Debtor's attorney submitted a Statement of Attorney's Fees affirming that his hourly rate is \$275 and he expended 7.25 hours as a result of Landlord's alleged violation of the automatic stay, bringing the amount of Debtor's attorney's fee for prosecuting this adversary proceeding to \$1,993.75. [DE 11]

Landlord also submitted an Affidavit regarding contractual damages allegedly due and owing pursuant to the parties' lease [Bankr. DE 39], and Debtor filed an objection to some of the amounts claimed. [Bankr, D.E. 40] The parties subsequently entered into an Agreed Order on the Objection to Affidavit of [Landlord]. [Bankr. DE 45] The Agreed Order limits the Court's consideration of Landlord's damages solely to rent for the months of January 2023 through May

2023 in the amount of \$5,350 per month, plus a monthly late fee of \$500. [Bankr. DE 45, ¶¶ 1 and 2] The Agreed Order further specifies that the Court shall determine the classification or treatment of Landlord's claim. [*Id.* at ¶ 4]

In light of the two Consent/Agreed orders entered by the parties [Bankr. DE 43 and 45], the Court is left with the determination of Debtor's damages, fees and costs, if any, arising from Landlord's alleged violation of the automatic stay and violation of this Court's orders, and the treatment and amount of Landlord's damages, fees and costs, if any, arising from Debtor's alleged breach of the parties' lease.

LAW AND ANALYSIS

I. Debtor's Damages for Landlord's Violation of the Automatic Stay

The Court will first address the Debtor's allegations of Landlord's violation of the automatic stay and violation of the Court's Order of March 23, 2023, granting the Debtor's motion for a temporary restraining order. [DE 6]

From the moment a bankruptcy petition is filed under Chapter 7, 11, 12, or 13, the debtor and the debtor's estate are afforded the protection of an automatic stay against essentially all creditor collection activity, without any action by the bankruptcy judge. This broad protection is established in Bankruptcy Code § 362(a), which provides that the filing of a bankruptcy petition

operates as a stay, applicable to all entities, of . . . (1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

11 U.S.C. § 362(a); *see also City of Chicago v. Fulton*, ___ U.S. ___, 141 S. Ct. 585, 589 (2021).

The legislative history outlines the reasoning for this central element of bankruptcy law:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. Rep. No. 95-595, at 340 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97. Further,

the automatic stay is intended to provide not only a breathing spell from creditors' collection efforts, but also to safeguard creditors' rights by preventing different creditors from bringing different proceedings in different courts, thereby setting in motion a free-for-all in which opposing interests maneuver to capture the lion's share of the debtor's assets.

Cousins v. CitiFinancial Mortg. Co. (In re Cousins), 404 B.R. 281, 286 (Bankr. S.D. Ohio 2009)

(internal quotes and citation omitted).

The law regarding a creditor's violations of the automatic stay is well-settled within the Sixth Circuit:

Section 362(a) of the Bankruptcy Code provides, in relevant part, that the filing of a petition for relief under the Bankruptcy Code operates as a stay of "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case [.]” 11 U.S.C. § 362(a)(6). A violation of the automatic stay is treated as contempt of court, and compensable by sanctions. *Id.* § 362(k)(1). To recover under § 362(k), an individual must establish the following three elements: "(1) that a violation of the automatic stay occurred; (2) that the violation was committed willfully; and (3) that the violation injured the individual seeking damages.” *Barclay v. Reimer & Lorber Co. LPA (In re Barclay)*, No. 05-8019, 2006 WL 23819 at *4-5 (B.A.P. 6th Cir. Feb. 1, 2006) (citing *In re Skeen*, 248 B.R. 312, 316 (Bankr. E.D. Tenn. 2000)).

In stay violation litigation, debtors bear the burden of proof to establish by a preponderance of evidence the following elements:

- (1) that a bankruptcy petition was filed,

- (2) that the debtors are “individuals” under the automatic stay provision,
- (3) that the creditors received notice of the petition,
- (4) that the creditors’ actions were in willful violation of the stay, and
- (5) that the debtors suffered damages.

In re Flack, 239 B.R. 155, 16-63 (Bankr. S.D. Ohio 1999)(quoting *In re Rainwater*, 233 B.R. 126, 155 (Bankr. N.D. Ala. 1999)).

In re McCormick, Nos. 17-8039/8040/18-8015, 2018 WL 6787558, *5 (B.A.P. 6th Cir. Dec. 26, 2018) (ruling limited to case and parties). A violation of the automatic stay is “willful” if a “creditor knew of the automatic stay and violated the stay through an intentional act, even if the creditor did not specifically intend to violate the stay.” *Harker v. Eastport Holdings, LLC (In re GYPC, Inc.)*, 634 B.R. 983, 989 (Bankr. S.D. Ohio 2021) (citing *TranSouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676, 687 (B.A.P. 6th Cir. 1999) and *Squire v. Stringer*, 820 F. App’x. 429, 434 (6th Cir. 2020)). “[A] creditor is not only required to refrain from certain activity, but may be required to take affirmative action.” *Connor v. Property Fund 629, LLC (In re Connor)*, 641 B.R. 875, 883 (Bankr. M.D. Tenn. 2022) (citations omitted). Further, “a party’s subjective, good faith belief that he had a right to engage in the violating conduct is irrelevant.” *In re Smith*, 636 B.R. 521, 532 (Bankr., E.D. Tenn. 2021) (citing *In re Webb* 472 B.R. 665 (B.A.P. 6th Cir. 2012) (unpublished table decision).

The Court determines that the allegations in the Debtor’s Complaint state a claim for a violation of the automatic stay. Landlord was listed in the Bankruptcy Petition as a creditor/lessor on Schedules D, E/F and G, and listed on the Creditor Matrix. [Bankr. DE 1] The Chapter 13 Plan indicated the Debtor’s intention to assume the lease, and treated the \$10,700 rental arrearage as a special class unsecured claim. [Bankr. DE 2] Aside from the usual notifications of the filing from the Bankruptcy Court, Debtor’s counsel provided and Landlord acknowledged, through counsel and through the sworn testimony before the Court, notice of the Chapter 13 case and the imposition

of the automatic stay on February 23, 2023. [DE 10, ¶ 3] Because of Landlord’s constructive eviction of the Debtor on March 11, 2023 when Landlord placed locks on the premises, Landlord denied the Debtor the “breathing spell” that the automatic stay is intended to afford. Landlord’s “self-help” approach amounted to a willful violation of the automatic stay that resulted in financial injury to the Debtor.

In such cases, the debtor “*shall* recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” 11 U.S.C. § 362(k)(1) (emphasis added). The Court turns now to Debtor’s claim for actual and punitive damages.

(1) Actual Damages

While 11 U.S.C. § 362(k)(1) states that an award of actual damages is mandatory upon a showing of a creditor’s willful violation of the automatic stay and resulting injury, the debtor’s damages must still be proven by the evidence, and the award must be reasonable. *In re Cousins*, 404 B.R. at 289. “The damages must be computable to a reasonable degree of certainty and cannot be based on mere speculation, guess, or conjecture.” *Id.* (citation omitted).

In support of her claim for actual damages, Debtor’s attorney, Mr. Byrd, submitted a Statement of Attorney’s Fees itemizing the 7.25 hours accrued in commencing and prosecuting this adversary proceeding. Mr. Byrd also affirmed that his hourly rate is \$275, resulting in attorney fees of \$1,993.75. Debtor is not claiming an award for her attorney’s expenses. [DE 11]

In keeping with the Sixth Circuit’s directive of a lodestar analysis as set forth in *Ellison v. Balinski*, 625 F.3d 953, 960 (6th Cir. 2010) (citation omitted) and *Boddy v. United States Bankr. Ct., Western Dist. of Kentucky (In re Boddy)*, 950 F.2d 334, 338 (6th Cir. 1991), the Court notes that Mr. Byrd’s hourly rate and time expended are not in dispute in this case but the Court nevertheless finds Mr. Byrd’s \$275 hourly rate, and the 7.25 hours expended for prosecution of

this case to be reasonable. For these reasons, the Court hereby awards to Debtor, to be paid by Landlord, attorney's fees in the amount of \$1,993.75 for Mr. Byrd's fees incurred in prosecution of this adversary proceeding.

Debtor also submits a claim of lost wages and materials as a direct result of Landlord's willful violation of the automatic stay. In support of her claim, Debtor submits that she was obligated to complete production of cabinetry orders on five contracts, and lost a potential fee of \$16,875 on a contract she was unable to execute, all because of her inability – due to the “self-help” actions of Landlord – to access her workspace. [DE 10, ¶¶ 14-20] Debtor also submits that \$9,250 in building materials and supplies were lost due to exposure to the elements as a result of being locked out of her workspace. [DE 10, ¶ 19] At the April 26, 2023 hearing on Landlord's motion for relief from the stay, Debtor entered into evidence copies of the unfulfilled contracts for production of cabinets and the Court has considered this uncontroverted evidence. [April 26, 2023 collective trial exh. 4] The Debtor's claims remain undisputed. The Court will assume that Debtor would have been ready, willing and able to perform her obligations under the contracts – but for Landlord's willful actions in violation of the automatic stay – as there is no evidence in the record to contradict those claims. Her total claim for damages for lost wages and materials is \$75,775. The Court finds, however, that Debtor's contract with Arthur Taylor, *id.*, with a balance due of \$16,875 for labor costs was never executed by the parties thereto, and is therefore “based on mere speculation, guess, or conjecture.” *In re Cousins*, 404 B.R. at 289. The Court will accordingly deduct the amount claimed under the Taylor contract from the Debtor's damage award, resulting in damages in the amount of \$58,900 awarded to the Debtor, to be paid by Landlord, arising as a direct result of Landlord's willful violation of the automatic stay.

(2) Punitive Damages

The Court will now consider Debtor's claim for punitive damages by assessing Landlord's conduct. Courts are directed to look to the following factors when determining whether to award punitive damages:

- (1) whether the harm caused was physical as opposed to economic;
- (2) whether the conduct evinced an indifference to or disregard of the rights, health or safety of others;
- (3) whether the target of the conduct had financial vulnerability;
- (4) whether the conduct involved repeated actions or was an isolated incident; and
- (5) whether the harm was the result of intentional malice, trickery, or deceit.

In re Stringer, 586 B.R. 435, 447-8 (Bankr. S.D. Ohio 2018). In this case, Debtor's injury from Landlord's willful violation of the automatic stay was economic as opposed to physical. There is little question, however, that this Chapter 13 bankruptcy Debtor, already in a financially vulnerable state, only found her precarious financial situation exacerbated when Landlord's actions cut off access to her means of earning an income.

Landlord engaged in repeated attempts to collect his prepetition debt for rent arrearages, including texting the Debtor with profanity and requests for money. [DE 10, ¶ 4] [April 26, 2023 trial exh. 1] Landlord then threatened Debtor with criminal charges. [DE 10, ¶ 6] Landlord learned of the Debtor's bankruptcy filing and, with a complete disregard for federal law and the rights of the Debtor, placed locks on the building in order to deny Debtor access to her workspace. The Court finds that Landlord's willful conduct rises to the level of malice and harassment. For these reasons, the Court determines that punitive damages are appropriate pursuant to 11 U.S.C. § 362(k)(1) and awards the Debtor, to be paid by Landlord, an amount equal to her attorney's fees, or an additional \$1,993.75.

II. Violation of the Court's Order

On March 23, 2023, this Court entered an Order Granting Motion for Temporary Restraining Order [DE 6] which ordered, among other things, “[t]hat it is immediately required that [Landlord] remove all locks on the property at 3733 Homewood Road, Memphis, TN 38118, including from the gas meter, and any other locks, barriers, or impediments of any kind that would prevent the Debtor’s full use of the property.” *Id.* at ¶ 1. Landlord appeared in Court at the hearing on its motion for relief from the automatic stay on March 29, 2023 and testified that it had only received the Court’s order the day before, on March 28, 2023, but still the locks had not yet been removed. Debtor alleged in her Amended Complaint that as of April 7, 2023, the locks had still not been removed. [DE 10, ¶ 10]

[A] court may find a party in civil contempt if: (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 that the party’s conduct might be lawful. . . . The moving party must prove at least the first two elements by clear and convincing evidence.

In re Weaver, No. 17-32042, 2023 WL 3362064 *6 (Bankr. E.D. Mich. May 10, 2023) (discussing violation of a discharge order) (citations omitted). In this case, the evidence is clear and unchallenged that Landlord violated a definite and specific order of the Court. This Court has broad discretion in deciding on an appropriate sanction for a violation of a court order, “which will not be set aside absent an abuse of discretion.” *Id.* at *7 (citations omitted). In its discretion, the Court finds that as an appropriate sanction Debtor should be awarded and should be paid by Landlord an amount equal to her attorney’s fees, which amounts to an additional \$1,993.75.

III. Landlord’s Damages Arising from Debtor’s Breach of the Lease Agreement

As set forth above, Landlord filed a motion for termination of the automatic stay based on

Debtor's breach of the lease agreement – specifically, based on the Debtor's failure to pay rent and applicable late fees for the months of January 2023, February 2023, March 2023, April 2023, and May 2023. [Bankr. DE 45, ¶ 1] The Debtor's monthly rental payments were agreed to be \$5,350 with monthly late fees of \$500. The Debtor is therefore in arrears in the total amount of \$29,250 consisting of \$26,750 rent arrearage plus \$2,500 in late fees. The Court notes, however, that the post-petition rental arrearage of \$10,700 (rent for April 2023 and May 2023) is due in great part to Landlord's own making as the result of locking the Debtor out of her workspace, thereby putting Debtor in a position to default on her cabinet-making contractual obligations and impeding any opportunity of earning income to pay her rent. The Court finds Landlord's actions in this regard to be egregious and therefore reduces Landlord's claim for unpaid rent by \$10,700, plus the \$1,000 in late fees, that accrued post-petition. Landlord's remaining claim for pre-petition rent and late fees in the amount of \$16,050 (January 2023, February 2023 and March 2023) and the resulting late fees of \$1,500, shall be included through the Debtor's plan as a general unsecured debt.

CONCLUSION

Based on the facts presented and for the reasons set forth above, the Court finds that judgment is hereby awarded against Landlord in favor of Debtor in the amounts of \$1,993.75, \$58,900, \$1,993.75 and \$1,993.75, for a total of \$64,881.25 with post-judgment interest at the rate of 5.18% until paid in full. *See* 28 U.S.C. § 1961 and www.federalreserve.gov/releases/h15/ (visited June 8, 2023). Further, the Court finds that Landlord's remaining claim for pre-petition rent and late fees in the amount of \$16,050 (January 2023, February 2023 and March 2023) plus the resulting late fees of \$1,500, shall be included through the Debtor's plan as a general unsecured debt.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following

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