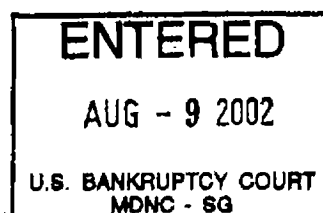


**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**



IN RE:)	
)	
Raymond Lee Coleman, Jr.)	Case Number: 02-81156
)	
Debtor.)	

ORDER

THIS MATTER came on for hearing on July 23, 2002 upon Motion by the Debtor for Sanctions against Jack Hester and Virginia-Carolina Agriculture. At the hearing, James B. Craven, III appeared on behalf of the Debtor, Benjamin Lovell appeared on behalf of the Chapter 13 Trustee, and William Yaeger appeared on behalf of Jack Hester. The Court, after reviewing the file and hearing the evidence, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on April 22, 2002. Prior to filing, the Debtor had issued a \$10,000 check to Virginia-Carolina Agriculture which was returned due to insufficient funds. Jack Hester is the manager and principal of Virginia-Carolina Agriculture. The Debtor then issued a replacement check which was also returned due to insufficient funds. Virginia-Carolina Agriculture was listed as an unsecured creditor with a debt of \$17,500 on the Debtor's bankruptcy schedules.

On May 17, 2002, a police officer from the Roxboro Police Department came to the Debtor's home and advised that he had a warrant for the Debtor's arrest for the worthless check. The Debtor informed the police officer that he was in Chapter 13. Later that day, Debtor's counsel faxed and mailed a letter to the Roxboro Police Department confirming the Debtor's bankruptcy filing. On Friday night, May 24, the police officer returned and directed the Debtor

to report to the Roxboro Police on May 25, 2002 for arrest. The Debtor's counsel then contacted Jack Hester's attorney, who was not familiar with the matter but agreed to call the Roxboro Police and asked them to hold off executing the arrest until May 29, 2002 to see if the matter could be resolved. On June 10, 2002, the Debtor was contacted by a Person County deputy and asked to surrender in Roxboro the next morning. The Debtor was arrested on June 11, 2002 for two felony violations, released on bond and ordered to appear in court on July 30, 2002.

The Debtor filed this motion for sanctions on June 18, 2002 requesting that the District Attorney of Person County and the Attorney General of North Carolina be enjoined from prosecuting the Debtor, that any claims by Virginia-Carolina Agriculture be disallowed and that Jack Hester and Virginia-Carolina Agriculture be sanctioned in the amount of \$5000 for violations of the automatic stay provisions of 11 U.S.C. § 362(a). At the hearing on this matter, the Debtor withdrew its request for injunctive relief against the District Attorney of Person County and the Attorney General.

DISCUSSION

Section 362(b)(1) of the Bankruptcy Code provides that the filing of a bankruptcy petition does not stay "the commencement or continuation of a criminal action or proceeding against the debtor." 11 U.S.C. §362(b)(1). The automatic stay does not apply to criminal proceedings, even if the debtor asserts that the underlying purpose of the criminal proceeding is debt collection. In re Gruntz, 202 F.3d 1074, 1085-87 (9th Cir. 2000); In re Byrd, 256 B.R. 246 (Bankr. E.D.N.C. 2000). The bankruptcy filing has no impact on whether Person County commences or continues criminal action against the Debtor. The Debtor relies on In re Penny, 414 F. Supp. 1113 (W.D.N.C. 1976), to support his motion. In that case, the court granted injunctive relief because evidence of bad faith by the prosecution existed. The Debtor has made

no allegations of bad faith in this case.

Section 362(b)(1) does not, however, authorize a creditor to recover a debt through a criminal proceeding. If a debtor has filed for bankruptcy, a creditor may not pursue criminal charges against the debtor for the primary purpose of attempting to recover a debt. In re Byrd, 256 B.R. at 252. In this instance, the Debtor presented no testimony or other evidence as to the motive of Hester and Virginia-Carolina Agriculture. The parties do not dispute the series of events outlined above, and these events provide no factual basis for the court to find that Hester's primary purpose in complaining to prosecuting authorities was to collect on a debt. Accordingly, the court finds that Hester's complaint to prosecuting authorities did not violate the automatic stay.

Therefore, the Debtor's motion to enjoin the District Attorney of Person County and the Attorney General of North Carolina from prosecuting the Debtor and that Jack Hester and Virginia-Carolina Agriculture be sanctioned is denied.

IT IS SO ORDERED.

This the 9 day of August 2002.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge