

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

ENTERED
MAR 11 2005
U.S. BANKRUPTCY COURT
MDNC - TD

IN RE:)
)
TERRELL C. BLAKE,) Case No. 04-13363
)
Debtor.)
_____)

MEMORANDUM OPINION

THIS MATTER came before the Court for hearing on February 24, 2005 upon the Motion for Sanctions Against A.R.C./Oakwood Forrest Manufactured Housing Community and their Agents Glenda Currie and Maima Raynes (the "Creditor") for Violation of the Automatic Stay (the "Motion for Sanctions"), filed by Terrell C. Blake (the "Debtor") on January 21, 2005. The Debtor appeared at the hearing with his attorney, J. Gordon Boyett. Anita Jo Kinlaw Troxler was present in her capacity as the Chapter 13 Trustee. The Creditor did not appear at the hearing.

Based upon a review of the Motion, the entire official court file, and the testimony presented by the Debtor at the hearing, the Court makes the following findings of fact and conclusions of law:

JURISDICTION

The Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151, 157 and 1334, and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(G), which this Court may hear and determine.

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FINDINGS OF FACT

1. On November 3, 2004, the Debtor filed his Chapter 13 petition (the "Petition") in this Court.

2. A.R.C./Oakwood Forrest Manufactured Housing Community (the "Creditor") was listed on the Petition

3. On November 3, 2004, the Creditor was served with the Petition by the Debtor's counsel via United States mail at the following address:

Oakwood Forest Manufactured Housing Community
4100 N. US Hwy. 29
Greensboro, NC 27405

The Petition was not returned to the Debtor's counsel by the United States Post Office.

4. The official website for A.R.C. lists the address of the Creditor as 4100 N. US Hwy. 29, Greensboro, North Carolina 27405.

5. On the Petition Date and thereafter, the Debtor resided at Oakwood Forest, a property owned and operated by the Creditor (the "Property") as a mobile home park.

6. The Debtor pays monthly payments to the Creditor in the amount of \$247.00 to rent the lot upon which the Debtor's mobile home is located.

7. The water service for the Property is provided by Oakwood Forest Utilities, LLC ("Oakwood Utilities"), a North Carolina corporation with its registered agent in Raleigh, North Carolina.¹ The Debtor testified that he receives a separate monthly bill for this water service.²

¹Oakwood Utilities is not a party to the Motion for Sanctions, and references to the Creditor do not include Oakwood Utilities.

²The Debtor testified that he was unsure whether the monthly payment of \$247.00 to the Creditor included the water service payment or whether it was merely for the rental of the lot.

The Debtor stated that he paid \$54.00 to Oakwood Utilities in the month of January and in the month of February for water service and that his payments were accepted.

8. The Debtor has significant health problems. The Debtor testified that he suffered a stroke in February of 2000. He also testified that he had heart bypass surgery in June of 2004 and will likely require a second heart surgery in the near future.

9. On or about December 28, 2004, the Creditor caused the water supply to the Debtor's mobile home to be shut off. An employee or employees of the Creditor discontinued the Debtor's water service by physically turning off the water supply to the Debtor's property. The Debtor telephoned the Creditor after realizing his water had been turned off and told the Creditor that he was in bankruptcy and that the past-due debt that he owed would be treated in his Chapter 13 plan. The Debtor spoke with Glenda Currie, a manager of the Creditor, who told him that she did not care if he was in bankruptcy and that he needed to catch up his payments or "hit the road." The Debtor testified that Ms. Currie told him that the Creditor would turn off the water and have him evicted if he did not pay. Within two to three hours after it was turned off, water service to the Debtor's mobile home was restored.

10. The Debtor testified that he told Ms. Currie and other employees of the Creditor on multiple occasions that he had filed a Chapter 13 bankruptcy. After the Debtor initially told Currie of his bankruptcy filing, the Debtor stated that Ms. Currie was not interested in getting any information from him to verify the filing. The Debtor testified that he asked twice if he could give Ms. Currie his case number, and she finally let him tell it to her.

However, he stated that he received a separate monthly bill for the water service, which he thought was \$54.00 per month.

11. Between December 28, 2004 and February 22, 2005, the Debtor's water supply was cut off two more times by the Creditor. Each time the Debtor telephoned the Creditor and informed an employee of the Creditor of his bankruptcy filing. On each occasion, water service was restored within two to three hours. The Debtor testified that during these telephone calls he repeatedly received comments from the Creditor to the effect that if he paid his bills as he was supposed to do, then he would not have to endure having his water cut off or an eviction action being filed against him.

12. The Debtor testified that on or about January 1, 2005, his niece hand-delivered a money order in the amount of \$247.00, payable to the Creditor, to the office of the Creditor where payment was typically received.

13. On January 7, 2005, the Notice to Creditors and Proposed Order of Confirmation (the "Plan") was filed by the Chapter 13 trustee.

14. On January 9, 2005, the Plan was served on the Creditor by the Clerk's Office via United States mail at the following address:

Oakwood Forest Manufactured
Housing Community
4100 N Us Hwy 29
Greensboro, NC 27405-3069

The Plan was not returned to the Clerk's Office by the United States Post Office.

15. The Debtor testified that on or about January 10, 2005, Maima Raynes ("Raynes") and another employee of the Creditor came to his residence and handed him an envelope containing the money order that his niece had delivered to the Creditor on January 1, 2005. Ms. Raynes told the Debtor that he needed to "pay his bills on time."

16. On January 21, 2005, the Motion for Sanctions was filed and served on the

Creditor by the Debtor's counsel via United States mail at the following address:

Glenda Currie & Maina Raynes
A.R.C. / Oakwood Forest Manufactured
Housing Community
4100 US Hwy. 29 N
Greensboro, NC 27405

The Motion for Sanctions was not returned to the Debtor's counsel by the United States Post Office.

17. The Debtor testified that he hand-delivered a copy of the Motion for Sanctions to the acting manager on duty for the Creditor shortly after the Motion for Sanctions was filed.

18. On January 26, 2005, a Notice of Hearing regarding the Motion for Sanctions was served on the Creditor by the Clerk's Office via United States mail at the following address:

Glenda Currie & Maina Raynes
A.R.C. / Oakwood Forrest Manufactured
Houseing Community (sic)
4100 US Hwy 29 N.
Greensboro, NC 27405-3069

On February 19, 2005, the Notice of Hearing regarding the Motion for Sanctions was returned to the Clerk's Office by the United States Post Office for "insufficient address."

19. On January 27, 2005, the Creditor filed a small claims lawsuit (the "Lawsuit") against the Debtor in Guilford County, Case No. 05CVM6862. The Complaint seeks to collect \$1,306.00 in past-due rent from the Debtor and to evict the Debtor from the premises.

20. The Debtor testified that on or about February 1, 2005, his niece again hand-delivered a money order in the amount of \$247.00 payable to the Creditor to the office of the Creditor where payment was typically received. This time the Creditor refused to accept the payment.

21. The Debtor testified that he personally gave notice of the February 24, 2005 hearing to the Creditor by placing a copy of the Notice of Hearing in an envelope and placing the envelope in an overnight mail slot in the Creditor's office door prior to the date of the hearing.

22. On February 23, 2005, two employees of the Creditor cut the Debtor's water supply for a fourth time. The Debtor showed the employees some of his bankruptcy documents, and they turned the water back on. The Debtor then called Ms. Currie on the telephone and told her again about the bankruptcy.

23. The Debtor testified that he was very disturbed by the harassment of the Creditor, including (a) turning off his water, (b) filing the Lawsuit, and (c) commenting to him regarding his obligation to pay his bills. He was so upset by these actions that on one occasion he had to take three nitroglycerin pills for his heart, and on another occasion he was taken to his doctor and given oxygen to calm him down.

CONCLUSIONS OF LAW

A fundamental protection afford an entity that files for relief under the Bankruptcy Code is the automatic stay of Section 362. See In re Kitts, Case No. 03-51284, slip op. at 3 (Carruthers, J. September 16, 2003). The stay prohibits creditors from picking apart the Debtor's assets and gives the Debtor an opportunity to propose a repayment plan. The scope of the automatic stay is broad and extends to any act to obtain possession of property of the estate or to exercise control over property of the estate. See id.

The Creditor violated the automatic stay in two respects. First, the Creditor filed a small claims lawsuit (the "Lawsuit") against the Debtor in Guildford County, Case No. 05CVM6862, on January 27, 2005. The Complaint seeks to collect \$1,306.00 in past-due rent from the Debtor

and to evict the Debtor from the premises. The Debtor testified that he informed employees of the Creditor, including Ms. Currie, several times that he had filed for Chapter 13 bankruptcy and that the pre-petition debt that he owed to the Creditor would be treated in the Debtor's Chapter 13 plan. The commencement of the Lawsuit post-petition to collect pre-petition past-due rent was a willful violation of the automatic stay.

Second, the Creditor discontinued the Debtor's water service on four separate occasions post-petition. On or about December 28, 2004—after receiving at least two notices of the bankruptcy filing from the Debtor and receiving additional notice from the Bankruptcy Clerk's Office—the Creditor shut off the Debtor's water supply for the first time. The Debtor telephoned the Creditor after realizing his water had been turned off and told the Creditor that he was in bankruptcy and that the past-due debt that he owed would be treated in his Chapter 13 plan. The Debtor spoke with Currie, who told him that she did not care if he was in bankruptcy, that he needed to catch up his payments or "hit the road." The Debtor testified that Currie told him that the Creditor would turn off the water and have him evicted if he did not pay. Within two to three hours after it was turned off, the water service was turned back on.

Between December 28, 2004 and February 22, 2005, the Debtor's water was cut off two more times by the Creditor. The Debtor again telephoned the Creditor and informed it of the bankruptcy case, and within two to three hours, the water service was turned back on. The Debtor testified that during these telephone calls he repeatedly received comments from the Creditor to the extent that if he paid his bills as he was supposed to do, then he would not have to endure having his water cut off or an eviction action being filed against him.

On February 23, 2005—the day before the hearing on the Motion for Sanctions—the

Creditor cut the Debtor's water off for a fourth time. The Debtor stated that he showed some of his bankruptcy documents to the two employees of the Creditor who turned off the water, and they turned the water back on. The Debtor testified that he spoke on the telephone with Currie on February 23, 2005, after his water was cut off for the fourth time, and told her again about the bankruptcy. The repeated discontinuation of the Debtor's water service by the Creditor was a willful violation of the automatic stay.

The Debtor testified that he was very disturbed by the harassment of the Creditor in the turning off of his water, the filing of the Lawsuit, and the comments made to him regarding the payment of his bills. He was so upset by these actions that on one occasion he had to take three nitroglycerin pills for his heart, and on another occasion he was taken to his doctor and given oxygen to calm him down.

Pursuant to 11 U.S.C. § 362(h), an individual injured by any willful violation of the automatic stay shall recover actual damages, including costs and attorneys' fees, and, in appropriate cases, may recover punitive damages. A willful violation of the automatic stay is one in which the party knew of the pending bankruptcy petition and intentionally acted in violation of the automatic stay. See In re Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 293 (4th Cir. 1986). The Debtor must prove the violation by clear and convincing evidence. See In re Kitts, Case No. 03-51284, slip op. at 4 (Carruthers, J. September 16, 2003). However, the Debtor does not have to show that the Creditor was aware of the automatic stay or that the Creditor intended to violate the automatic stay. See In re Clayton, 235 B.R. 801, 806 (Bankr. M.D.N.C. 1998). All that is required of the Debtor to show a willful violation of the automatic stay is to show that the Creditor was aware of the bankruptcy and that it intentionally cut off the

water supply to the Debtor's property. See In re Wills, 226 B.R. 369, 376 (Bankr. E.D. Va. 1998).

The Debtor met his burden of proof and has proven that (1) the actions of the Creditor were in violation of the automatic stay; (2) the actions of the Creditor were willful; and (3) the Debtor was injured as a result of the Creditor's actions. See In re Hamrick, 175 B.R. 890, 893 (Bankr. W.D.N.C. 1994).

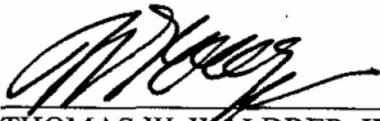
CONCLUSION

The automatic stay was violated by the Creditor on several occasions. The Creditor's behavior was willful, intentional, and egregious. Damages and attorneys' fees will be awarded to the Debtor.

The evidence presented at the hearing was insufficient for the Court to establish the actual damages of the Debtor. Further, the Court requires additional evidence to determine what, if any, punitive damages are warranted by the Creditor's violations of the automatic stay. The Court will hold a hearing to determine actual and punitive damages in this matter on March 24, 2005 in Greensboro, North Carolina. Reasonable attorneys' fees will be awarded to the Debtor's attorney, who shall file an affidavit concerning fees prior to the March 24, 2005 hearing date.

This opinion constitutes the Court's findings of fact and conclusions of law. A separate order shall be entered pursuant to Fed. R. Bankr. P. 9021.

This the 11 day of March, 2005.



THOMAS W. WALDREP, JR.
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

ENTERED
MAR 11 2005
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IN RE:)

TERRELL C. BLAKE,)

Debtor.)

Case No. 04-13363

ORDER

For the reasons stated in the memorandum opinion entered this date, it is ORDERED, ADJUDGED and DECREED that the Debtor will recover damages from the Creditor in an amount(s) to be determined at a hearing to be held on March 24, 2005 at 2:00 p.m. in the United States Bankruptcy Court, 101 South Edgeworth Street, Greensboro, North Carolina, 27401.

This the 11 day of March, 2005.



THOMAS W. WALDREP, JR.
United States Bankruptcy Court