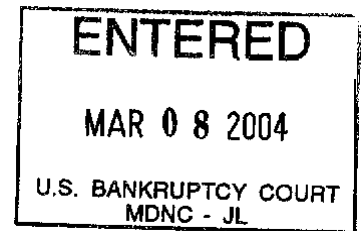


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



IN RE:

PAUL T. MANN,

DEBTOR.

CASE NO 03-82973 C-13

ORDER

This case came on for hearing in Winston Salem, North Carolina, at a specially set time and place for the Court to hear (1) Motion by Debtor for Sanctions against Countrywide Home Loans, Inc. ("Countrywide") for Violation of the Automatic Stay; (2) Motion by Countrywide to Enforce Settlement Agreement and (3) Motion by Countrywide to Approve and Enforce Settlement Agreement. Lawrence S. Maitin appeared on behalf of Paul Mann ("the Debtor"), Ben Love11 appeared on behalf of Richard M. Hutson, Chapter 13 Trustee, and John Meadows appeared on behalf of Countrywide. A proceeding to prosecute a violation of the automatic stay is a core proceeding within the meaning of 28 U.S.C. § 157(b)(1) and (2).

Section 362(h) of the Bankruptcy Code provides that "[a]n 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." 11 U.S.C. § 362(h). The parties have reached a settlement as to the amount of actual damages and attorney fees for a total in actual damages of \$11,600.00. The remaining issue for the court to determine is whether punitive damages are appropriate and, if so, in what amount.

BACKGROUND

On or about September 9, 2003, the Debtor tiled a petition for relief under Chapter 13 of the Bankruptcy Code and Countrywide was listed in the schedules filed by the Debtor as a secured creditor with two liens against the Debtor's real property.

On September 29, 2003, a notice of the tiling of this case was issued by the Clerk and served by mail upon Countrywide at two separate locations, Plano, Texas and Van Nuys, California. The front of the notice included the following:

CREDITORS MAY NOT TAKE CERTAIN ACTIONS

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The back of the notice contains the following statement:

Prohibited actions against the debtor and certain codebtors are listed in § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or other property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

There is no indication that Countrywide did not receive the notice of the filing of the bankruptcy petition.

On or about October 5, 2003, Countrywide, through its authorized real estate brokers, changed the locks on the Debtors' real property located at 5805 Renee Drive, Durham, North Carolina, and removed items of personal property belonging to the Debtor. At the time, the Debtor was not residing in the property. Some of the personal property was damaged and left both inside and outside the home. Numerous items of personal property were removed by the

agent of Countrywide and have never been recovered by the Debtor. These items include Christmas ornaments, baby clothes, family pictures, a christening dress and household items. A wedding dress was the only item that was returned to the Debtor, but was returned damaged as it had been removed from protective packaging. Countrywide was unable to locate for return any items other than the wedding dress. Mrs. Mann, the Debtor's wife, testified that she met an individual at the home who stated that he was the realtor for Countrywide and that the items had been removed so Countrywide could market the home. She testified that the realtor also advised her that the items of personal property left in the home were sold or given to the workers as partial payment for cleaning out the house.

On October 6, 2003, Debtor's counsel demanded, through Countrywide's authorized agents and real estate brokers, the return of the items of personal property and advised the parties that they were in violation of the automatic stay.

On October 27, 2003, the law firm of Brice, Vander, Linden and Wemick, P.C., filed a Notice of Appearance and Request for Service of Notice on behalf of Countrywide in this case. On or about November 10, 2003, Countrywide, through its agents, returned to the Debtor's property and drained all of the water from the pipes in the home, removed bolts from the front door and once again changed the locks on the property. Countrywide also left a sign at the front of the home that the property was being winterized and "Do Not Enter." The Debtor was not residing in the property at this time.

Counsel for the Debtor contacted Countrywide and was advised that the Countrywide Field Services Corporation was responsible for winterizing the property. Countrywide filed no motions with the court nor contacted the Chapter 13 Trustee or the Debtor's counsel before

taking these actions. Counsel for the Debtor contacted the law firm of Brice, Vander, Linder and Wemick, P.C. regarding these actions and his intention to file a motion for sanctions. Counsel for the Debtor did not receive a response.

The Debtor proposed a Chapter 13 Plan in which Countrywide would be paid through the plan and treated as a long term, non-dischargeable debt. The Chapter 13 Plan, providing for payments to Countrywide, was confirmed by Order of the court on November 21, 2003. The Debtor is current with his Chapter 13 payments and the Chapter 13 Trustee is remitting monies to Countrywide.

On or about December 8, 2003, counsel for the Debtor filed this Motion for Sanctions against Countrywide. Brice, Vander, Linden and Wemick, P.C. was served with a copy of the motion. On or about December 15, 2003, the law firm of Brice, Vander, Linden and Wemick, P.C. filed a second Notice of Appearance on behalf of Countrywide and on or about December 23, 2003, H. Terry Hutchens of Hutchens, Senter & Britton filed a Notice of Appearance on behalf of Countrywide.

The actions taken by Countrywide to enter the Debtor's property and remove and damage property are willful acts in violation of the stay provided under § 362 of the Bankruptcy Code. The Debtor and Countrywide have reached an agreement as to the amount of actual damages and settled on the sum of \$10,000 for the loss and destruction of property and \$1,600 in payment of attorney fees. Countrywide stands ready to pay these amounts.

PUNITIVE DAMAGES

Section 362 (h) provides for the payment of punitive damages under appropriate circumstances, Actual damages are awarded for a violation of the automatic stay, so an act more

egregious than a willful violation must occur to award punitive damages. See In re Brown, 237 B.R. 316 (Bankr. E.D. Va. 1997). See also In re Knaus, 889 F.2d 773,776 (8th Cir. 1989) ('appropriate circumstances' for punitive damages interpreted to mean "egregious, intentional misconduct on the violator's part"); In re Davis, 265 B.R. 453 (Bankr. N.D. Fla. 2001); In re Bloom, 875 F.2d 224, 227 (9th Cir. 1989) (requiring egregious intentional misconduct).

The course of conduct of Countrywide in entering the Debtor's property not once, but twice, is aggravated and egregious. The actions of Countrywide were deliberate and unwarranted and resulted in the loss of irreplaceable personal effects. While these items might not have had much monetary value, they had an incredible sentimental value. Countrywide was clearly aware of this bankruptcy proceeding as it had received notice and its counsel had filed a notice of appearance with the court. On two separate occasions, agents of Countrywide entered the Debtor's property. On two occasions Countrywide changed the locks and prevented the Debtor from obtaining access to his own property. Numerous cherished possessions of personal property were destroyed or lost. It is difficult to imagine more deliberate, unwarranted and egregious conduct.

The underlying purpose of an award of punitive damages is to ensure that the conduct will not be repeated. In re Shade, 261 B.R. 213,216 (Bankr. C.D. Ill. 2001) ("primary purpose of punitive damages awarded . . . is to cause a change in the creditor's behavior"); see also In re Novack, 223 B.R. 363 (Bankr. M.D. Fla. 1997) (granting punitive award based on gravity of creditor's offense and set award at level sufficient to ensure that it will punish and deter). Numerous courts have set forth different factors to be considered in awarding punitive damages. The most complete list of factors is found in In re Shade and includes the following: the nature

of the creditor's conduct (the degree of reprehensibility); the nature and extent of harm to the debtor; the creditor's ability to pay damages, the level of sophistication of the creditor; the creditor's motives; any provocation by the debtor; and the creditor's efforts to defend its action, mitigate their effect or show remorse. Shade, 261 B.R. at 216.

In this case the nature of the creditor's conduct was truly reprehensible and unjustifiable under any circumstances. The creditor entered the Debtor's property without permission and lost and destroyed the Debtor's personal property. The harm to the Debtor is immeasurable and can never be undone. Cherished items like family photographs and ornaments made by children are irreplaceable and thus the harm is even more severe. As to the creditor's ability to pay damages, Countrywide is a national company that finances thousands of homes. Countrywide is a frequent creditor in bankruptcy courts and is, or should be, aware of the provisions of the Bankruptcy Code relating to the automatic stay. As to the creditor's motives, there is no evidence of malice, but the creditor acted with reckless disregard for the Debtor's property. The court is unaware of any provocation by the Debtor. As to the creditor's efforts to defend its actions, mitigate their effect or show remorse, Countrywide did not present any evidence at the hearing. The court is unaware of what, if any, efforts it made to locate the missing items of personal property.

Most of the factors weigh against Countrywide. This Court cannot recall sanctioning Countrywide for a prior violation of the automatic stay so it is the court's hope and opinion that this was an isolated incident. However, Countrywide must take measures and implement procedures to ensure that similar incidents do not occur.

The conduct on the part of Countrywide is aggravated and egregious and warrants the

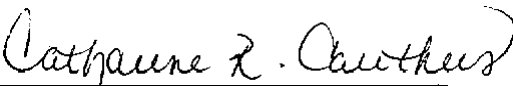
imposition of punitive damages. The Court has considered the factors pertaining to the determination of the amount of the punitive damages and finds that the sum of \$7,500.00 in punitive damages is appropriate.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

(1) that the Debtor shall have and recover from Countrywide the agreed sum of \$11,600.00 as actual damages of which \$1,400.00 shall be paid to counsel for the Debtor;

(2) that the Debtor shall have and recover from Countrywide the additional sum of \$7,500.00 as punitive damages. Of this amount, \$3,750.00 shall be remitted directly to the Debtor and \$3,750.00 shall be remitted to the Office of the Chapter 13 Trustee for disbursement to creditors.

This is the 8 day of March, 2004.


Catharine Carruthers
United States Bankruptcy Judge