

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

ENTERED  
JAN 03 00  
U.S. Bankruptcy Court  
Greensboro, NC  
AHH

IN RE: )  
 )  
Michael Wesley Niegro, ) Case No. 99-12348C-13G  
Melissa W. Niegro, )  
 )  
Debtors. )  
 )

ORDER

This case came before the court on December 28, 1999, for hearing upon Debtors' motion for sanctions against Cross Country Bank ("Cross Country") for violations the automatic stay. The Debtors and their attorney, J. Gordon Boyett, appeared for the hearing. No appearance was made on behalf of Cross Country. Having considered the motion, the evidence offered by the Debtors and the argument of counsel, as follows:

1. When this Chapter 13 case was filed on October 5, 1999, Cross Country was listed as a creditor in the schedules filed by the Debtors.

2. On October 19, 1999, a notice of the filing of this case was issued by the Clerk and served by mail upon Cross Country. The front of the notice included the following:

"CREDITORS MAY NOT TAKE CERTAIN ACTION

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 contained 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."

4. During the latter part of October, 1999, the male debtor received a telephone call from a representative of Cross Country regarding repayment of the indebtedness owed to Cross Country. The male debtor informed Cross Country that the Debtors had filed bankruptcy and gave the representative of Cross Country the telephone number for Debtors' counsel.

5. On or about October 26 or 27, 1999, each of the Debtors received a letter from Cross Country advising that a \$50.00 debit check which Cross Country had issued against Debtors' checking account in order to collect a payment from Debtors had been returned unpaid and that Cross Country had "redeposited this check for you in an effort to keep your account in good standing." The letter further stated that if the debit check was returned unpaid again, "[f]inance charges will be recalculated without the payment

and additional fees may be charged."

6. The male Debtor again called Cross Country, again informed Cross Country that the Debtors had filed a bankruptcy case and gave Cross Country the bankruptcy case number for Debtors' bankruptcy case.

7. The Debtors also called the office of the Chapter 13 Trustee and informed a representative of the Trustee that the collection letters had been received from Cross Country. As a result of this call from the Debtors, the Trustee sent a letter to Cross Country on November 18, 1999, which stated:

"The above-referenced individuals filed a Chapter 13 petition on October 5, 1999. As of that date, all income of the debtors came under the jurisdiction of the United States Bankruptcy Court for the Middle District of North Carolina, including post petition income. This means that as of that date, no entity could take funds of the debtor without Court approval. This office has been advised that your company is deducting from the above-referenced debtors' checking account in reference to an account which the debtors have. Such action is in direct violation of the bankruptcy stay in effect in this case.

Take notice that all deductions being honored by your company in reference to the loan should cease immediately and evidence of the termination of the deduction should be provided to this office not later than November 29, 1999. In addition to evidence of the termination, you are further advised that all monies deducted by your company as of the date of the petition filing, October 5, 1999, should be forwarded to this office. The monies received by the entity were received in violation of the bankruptcy stay.

This is a very serious matter which should be given your prompt attention. Our records indicate that Cross Country Bank has received notice and claim forms of the Chapter 13 filing and to-date no claim has been filed in this case. Please file a claim for any indebtedness owed to your company by the above-referenced debtors."

8. Notwithstanding the notice which was served on Cross Country on October 19, 1999, the calls from the Debtors and the letter from the Chapter 13 Trustee's office, Cross Country continued to debit Debtors' checking account. In doing so, Cross Country issued a total of eight debit checks of \$50.00 each against Debtors' checking account, including four debits which were issued after Cross Country had received the above-described telephone calls from the Debtors and the letter from the Chapter 13 Trustee's office.

9. Each of above-described debits from Debtors' checking account by Cross Country was an act on the part of Cross Country to collect or recover a claim against the Debtors that arose before the commencement of this case and also constituted an act to obtain property of the estate, and each of the debits occurred after Cross Country was notified that Debtors had filed a bankruptcy case and that such actions were prohibited. As such, each of the debits from Debtors' checking account constitutes a willful violation by Cross Country of the stay provided for under § 362 of the

Bankruptcy Code.

10. As a result of the unlawful debits from Debtors' checking account, Cross Country removed from Debtors' checking account and collected the sum of \$400.00, consisting of eight debits of \$50.00 each. In addition, as a result of Debtors' checking account being debited by Cross Country, insufficient funds remained in the account to cover checks which the Debtors had issued for utilities and other necessities, which resulted in Debtors incurring bank charges of \$58.00. In addition, as a proximate result of the violation of the automatic stay by Cross Country, the male Debtor missed work and sustained a loss of income of \$50.00 and the female Debtor missed work and sustained a loss of income of \$115.00. As a proximate result of the continuing violation of the automatic stay by Cross Country, the Debtors have incurred attorney's fees and are entitled to recover an attorney's fee of \$600.00, representing the reasonable value of the services rendered by the attorney for the Debtors in connection with the filing of the motion now before the court and the representation of the Debtors at the hearing on the motion.

11. Section 362(h) provides for the order of punitive damages under appropriate circumstances involving egregious, vindictive or intentional misconduct. The course of conduct of Cross Country in

which Cross Country continued to issue debits against Debtors' checking account even after receiving telephone calls from the Debtors and a letter from the Chapter 13 Trustee's office is aggravated and egregious. The continuing issuance of debits against Debtors' checking account over a three-month period of time, resulting in Debtors' checking account being overdrawn, created great uncertainty and concern on the part of the Debtors and resulted in the Debtors experiencing significant frustration, discomfort and anguish. Such conduct on the part of Cross Country is aggravated and egregious and warrants the imposition of punitive damages of \$2,000.00, plus disallowing any claim in this case by Cross Country for the indebtedness owed to Cross Country when this case was filed. These damages are warranted by the continuing course of conduct on the part of Cross Country after receiving verbal and written demand that such collection efforts cease.

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

(1) that the Debtors have and recover of Cross Country Bank the sum of \$1,223.00 as actual damages;

(2) that the Debtors have and recover of Cross Country the additional sum of \$2,000.00 as punitive damages; and

(3) that any claim filed by Cross Country for indebtedness

owed to Cross Country by the Debtors when this case was filed shall be disallowed.

This 30<sup>th</sup> day of December, 1999.

William L. Stocks

WILLIAM L. STOCKS  
United States Bankruptcy Judge