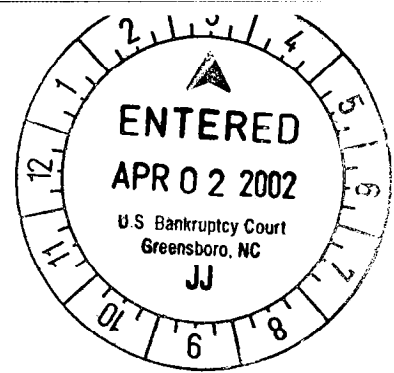


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:)
)
Linda J. Sawyer,) Case No. 01-13639C-7G
)
Debtor.)
)

ORDER

This case came before the court on March 19, 2002, for hearing upon a motion by Debtor seeking damages from Direct Merchants Bank ("Direct") for willful violation of the automatic stay. Debtor appeared at the hearing with her attorney, Stan H. Dick. No appearance was made on behalf of Direct. Having considered the evidence offered by the Debtor and the matters of record in this case, the court finds and concludes as follows:

1. Prior to December of 2001, the Debtor became delinquent in paying amounts owed to Direct on a credit card account.
2. When this Chapter 7 case was filed on December 18, 2001, Direct was listed as a creditor in the schedules filed by the Debtor. The amount owed on the account was listed at \$518.00.
3. On December 18, 2001, a notice of the filing of this Chapter 7 case was issued by the clerk of the bankruptcy court and served by mail upon Direct. The front of the notice included the following statement:

Creditors May Not Take Certain Actions: The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other

action in violation of the Bankruptcy Code, you may be penalized.

The reverse side of the notice contained the following statement:

Creditors May Not Take Certain Actions - Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain 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. Approximately two weeks after Debtor filed her Chapter 7 petition, Debtor received a letter from Direct notifying her that her credit card was no longer valid.

5. On January 22, 2002, Debtor's counsel sent a facsimile to Direct, advising Direct of the Chapter 7 filing by Debtor.

6. On February 6, 2002, Debtor received a letter from Direct dated February 4, 2002, which offered a settlement and requested that Debtor pay some of the pre-petition debt owed to Direct. Debtor's counsel again notified Direct by facsimile dated February 7, 2002, of Debtor's bankruptcy filing and Debtor's intention to have the debt owed to Direct discharged.

7. On February 11, 2002, Carrie Lucas, a representative from Direct, called the residence where Debtor was living, requesting that Debtor call Direct about her account.

8. During the period from late December of 2001 through

March 5, 2002, representatives of Direct attempted to call Debtor on nearly a daily basis, sometimes several times a day and sometimes in the evening, regarding her account with Direct. Debtor has talked with Direct representatives on six different occasions in January and February of 2002.

9. Debtor testified that she has suffered some emotional distress because of the bankruptcy filing and the subsequent letters and calls from Direct attempting to collect the indebtedness owed by Debtor. Debtor also has suffered some anxiety because the calls have been directed to her at her son's home, where she is currently residing.

10. Debtor has visited a doctor once regarding her stomach problems, which Debtor testified were exacerbated by the bankruptcy filing and the contacts from Direct.

11. On February 28, 2002, the Debtor filed the motion now before the court seeking damages and attorney fees for violation of the automatic stay based upon the continuing collection efforts by Direct. The motion was served on Direct on February 28, 2002, and a notice of hearing was served on Direct on March 4, 2002, notifying Direct that Debtor's motion would be heard on March 19, 2002.

12. Section 362(a)(6) of the Bankruptcy Code prohibits any act to collect, assess or recover a claim against a debtor that arose before the commencement of the bankruptcy case. The repeated

phone calls and the collection letters that were sent to the Debtor by Direct during January and February of 2002, constituted acts by Direct to collect indebtedness owed to Direct that arose before the commencement of this case and, as such, constituted violations of § 362(a)(6).

13. Section 362(h) of the Bankruptcy Code provides that an individual debtor injured by a willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." Conduct by an entity with notice of the automatic stay which violates the automatic stay constitutes a willful violation of the automatic stay for purposes of § 362(h).

14. In the present case, Direct was notified that the Debtor had filed for bankruptcy protection, having been served with a copy of the initial notice of the filing and having been notified of the filing by facsimile transmissions to Direct. Based upon the clear language of the notice, Direct was provided actual notice that future collection efforts were stayed and that it could be penalized if it attempted to collect a debt or take other action in violation of the Bankruptcy Code. Despite such notification, Direct continued to call Debtor and send letters to Debtor, requesting that she settle and pay the delinquencies on her account, all of which acts constituted willful violation of the automatic stay. Therefore, pursuant to § 362(h), the Debtor is

entitled to recover actual damages, including costs and attorney's fees, from Direct. The actual damages suffered by Debtors is \$45.00, representing the loss of income sustained by Debtor when she was absent from work to appear at the hearing on March 19, 2002. Debtor has also incurred attorney's fees resulting from the violation of the automatic stay by Direct in the amount of \$600.00 based upon her attorney having expended four hours in preparing and presenting the motion seeking damages for the violation of the automatic stay, at a charge of \$150.00 per hour. The amount of time expended by the attorney and the hourly rate charged are reasonable and the Debtor is entitled to recover the sum of \$600.00 for attorney's fees from Direct. Accordingly, the court finds and concludes that Debtor has suffered actual damages, including attorney's fees, of \$645.00 as a result of the violation of the automatic stay by Direct. The court further finds that the violation of the automatic stay by Direct, involving letters and numerous telephone calls after Direct had actual notice of the filing of this case and the automatic stay, is egregious and warrants the imposition of punitive damages of \$1,000.00 against Direct.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED that the Debtor have and recover of Direct Merchants Bank the sum of \$645.00 as actual damages and the sum of \$1,000.00 as punitive damages.

This 1st day of April, 2002.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge