

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

**Carl Wayne Ward, and
Patricia D. Ward**

Debtors.

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Case No. 07-52021

**ORDER DENYING DEBTORS' MOTION FOR SANCTIONS AGAINST DANNY
HEWETT FOR VIOLATION OF THE AUTOMATIC STAY**

THIS MATTER came on for hearing before the undersigned bankruptcy judge upon the Debtors' Motion for Sanctions Against Danny Hewett for Violation of the Automatic Stay ("Motion for Sanctions"). John Meadows appeared on behalf of the Debtors, Robert Lefkowitz appeared as Special Counsel on behalf of the Debtors, James E. Vaughn appeared on behalf of Danny Hewett ("Hewett"), and Kathryn L. Bringle appeared on behalf of the Chapter 13 Trustee. Having considered the Motion for Sanctions, the evidence offered at the hearing, and the arguments of counsel, the Court makes the following findings of facts and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

FACTS

The Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code on December 20, 2007 ("Petition Date"). An Order Confirming Plan was entered on March 18, 2008.

The female Debtor's mother, Ramona Hewett, and Hewett jointly own real property located at 226 Gaither Road, Winston-Salem, North Carolina (the "Real Property"). The female Debtor's mother resided at the Real Property on the Petition Date. The Debtors did not reside at

the Real Property at that time. The female Debtor's mother vacated the Real Property at some time after the Petition Date.

In July 2011, the Debtors moved into the Real Property. Hewett asserts that he told the Debtors they could live at the Real Property in consideration of the payment of the on-going real property taxes and the insurance coverage on the Real Property. However, the Debtors did not enter into a written lease agreement with Hewett.¹ The Debtors paid the insurance premiums for insurance coverage on the Real Property, but did not pay the real property taxes.

On February 13, 2012, Hewett filed a Complaint in Summary Ejectment against the female Debtor in Forsyth County small claims court ("small claims complaint"). The small claims complaint sought a judgment in the amount of \$764.10, which represented unpaid real property taxes that had accrued post-petition. At the small claims trial, Hewett informed the magistrate judge of the Debtors' Chapter 13 case. The magistrate judge noted the filing of the Suggestion of Bankruptcy, but determined that the action was not subject to the automatic stay and proceeded with the trial. Ten days later, on February 23, 2012, the magistrate judge entered a Judgment in Action for Summary Ejectment ("Summary Ejectment Judgment"). The Summary Ejectment Judgment awarded Hewett the unpaid real property taxes in the amount of \$764.10 and ordered that the Debtors be removed from the Real Property. As of the date of the hearing on this matter, the Debtors have not been ejected from the Real Property and Hewett has not attempted to collect the Summary Ejectment Judgment from the Debtors.

At no point did Hewett seek relief from the automatic stay to proceed with the prosecution of the small claims complaint. On February 29, 2012, the Debtors filed the Motion for Sanctions that is now before the Court. Hewett filed an objection to the Motion for Sanctions on May 25, 2012.

¹ The Court makes no finding of fact as to whether the parties entered into an oral lease agreement.

ANALYSIS

The automatic stay of § 362(a)(1) of the Code prohibits the commencement of a judicial action against the debtor that was or could have been commenced before the commencement of the bankruptcy case. 11 U.S.C. § 362(a)(1). The automatic stay is intended to preserve the status quo as of the date the bankruptcy case is filed. *See Jacobson v. Sweeney*, 82 F. Supp. 2d 458, 460 (D. Md. 2000); *In re Bulldog Trucking, Inc.*, 150 B.R. 912, 914 (Bankr. W.D.N.C. 1992). An individual injured by a creditor's willful violation of the automatic stay "shall recover actual damages, including costs of attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k).

In the present case, the Debtors allege that Hewett violated the automatic stay by initiating the ejectment proceeding in small claims court. By contrast, Hewett contends that he did not violate the automatic stay because, in filing the small claims complaint, he was merely attempting to collect a post-petition debt and was therefore not acting within the scope of the protections afforded by § 362(a)(1). The automatic stay "bars collection actions against the (1) debtor which actions could have been brought pre-petition; (2) property of the debtor in an effort to collect pre-petition debts; and (3) property of the estate regardless of whether the debt arose before or after the filing of the bankruptcy petition." *In re Leavell*, 190 B.R. 536, 537 (Bankr. E.D. Va. 1995) (citations omitted). The automatic stay does not, however, "prevent the commencement of a lawsuit to collect a post-petition debt." *In re Reynard*, 250 B.R. 241, 244 (Bankr. E.D. Va. 2000). *See also In re Allred*, 2004 WL 3502655, at *2 (Bankr. M.D.N.C.) (holding that a claim for misappropriation of trade secrets arose post-petition and therefore did not fall within the reach of § 362(a)(1)). Here, the Debtors did not move into the Real Property until July 2011, over three years after the Petition Date. The Debtors listed no ownership interest

in the Real Property on their petition. Thus, the filing of the small claims complaint did not violate the automatic stay because the lawsuit pertains only to the Debtors' post-petition actions.

Nonetheless, it is important to note that any attempt to collect on the Summary Ejectment Judgment will constitute a violation of the automatic stay. Section 1306 of the Code expands the definition of property of the estate in § 541 to include earnings and other property acquired by the debtor during the pendency of the chapter 13 case. 11 U.S.C. § 1306. Furthermore, the Order Confirming Plan dictates that "all property of the estate, as specified in 11 U.S.C. §§ 541 and 1306, shall continue to be property of the estate following confirmation until the earlier of discharge, dismissal, conversion, or closing of the case." Order Confirming Plan ¶ 18. As such, Hewett cannot act upon the Summary Ejectment Judgment while the Debtors' chapter 13 case is pending.

For the foregoing reasons, the Debtors' Motion for Sanctions is DENIED.

SO ORDERED.

SERVICE LIST

Carl Wayne Ward
Patricia D. Ward
Debtors

John A. Meadows
Attorney for Debtors

Robert Lefkowitz
Special Counsel for Debtors

James E. Vaughan
Attorney for Danny Hewitt

Kathryn L. Bringle
Trustee