

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**



IN RE:

Lorrane Burwell Hughes

Debtor

B-05-80389 C-13D

**ORDER DIRECTING J.C. PENNEY, INC TO REFRAIN FROM CONTACTING
CO-DEBTOR MAE BURWELL**

THIS MATTER came on for hearing before the undersigned bankruptcy judge on the Motion for Sanctions filed by counsel for the Debtor. Based upon the record it appears that the Debtor filed a Chapter 13 petition on February 9, 2005 and J.C. Penney, Inc. was listed as an unsecured creditor in the amount of \$872.00 for account No 27279043651. Mae Burwell, the mother of the Debtor, is a co-debtor on the J.C. Penney, Inc. account. On at least ten occasions since the filing of the Chapter 13 petition, representatives of J.C. Penney, Inc. have telephoned Mae Burwell at her home and demanded payment on this account. No contact has been made with the Debtor.

Debtor's counsel contends that the actions of J.C. Penney, Inc. were a known violation of 11 U.S.C. Section 1301(a) and that such conduct is sanctionable and he requests that pursuant to 11 U.S. C. Section 362(h) that the Court (1) award damages in the amount of \$872 by forfeiture of any J.C. Penney, Inc. claim against the Debtor or the co-Debtor; (2) award costs in this proceeding including reasonable attorney fees in the amount of \$1,000 and (3) award such other and further relief as the Court deems just and proper.

Section 1301 of the Bankruptcy Code provides that a creditor may not act, or commence or continue any civil action to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor unless the co-debtor became liable on the debt in the ordinary course of such individual's business or the case is closed, dismissed, or converted to a case under Chapter 7. Neither of these exceptions apply to the matter before the court. In order to pursue a co-debtor, the creditor is required to seek relief from the co-debtor stay. J.C. Penney, Inc. has not sought relief from the co-debtor stay and the contact with the co-debtor is a violation of this code section.

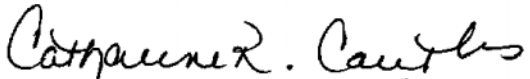
Section 1301 does not however provide for sanctions for a violation of the co-debtor stay. A violation of the automatic stay under section 362, gives the court the right to give an individual injured by any willful violation, the right to recover actual damages, including costs and attorneys' fees, and in appropriate circumstances, punitive damages. See 362(h). The sanctions imposed under 362(h) are expressly limited to violations under 362 and do not extend to Section 1301.

This court therefore finds that there has been a willful violation of the co-debtor stay of section 1301. No damages or attorney fees will be awarded. J.C. Penney, Inc. is ordered to cease and desist from any further contact with the co-debtor unless and until relief from the co-debtor stay has been granted by the Court.

In the event that there is a further violation of the co-debtor stay, such action shall constitute a willful violation of an order of this court and the court will consider awarding damages, including attorney fees and costs and if appropriate, sanctions for the failure to comply with orders of this court.

It is further ordered that a copy of this order be served on J.C. Penney, Inc by counsel for the Debtor, by serving a registered agent, director or managing officer of the company.

This is the 29 day of April, 2005.


United States Bankruptcy Judge