

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

ENTERED
JUL 16 2002
U.S. BANKRUPTCY COURT
MDNC - TD

IN RE:)
)
Lloyd Wayne Livengood, Sr. and)
Mamie Pinkston Livengood,)
)
Debtors.)

Case Number: 02-51426

ORDER

THIS MATTER came on for hearing before the undersigned bankruptcy judge in Winston-Salem, North Carolina upon the Motion by Debtors for Sanctions against W.F.S. Financial for violation of the automatic stay. Appearing at the hearing was William V. Bost, attorney for Lloyd Wayne Livengood, Sr. and Mamie Pinkston Livengood (hereinafter "Debtors") and Christopher White, attorney for W.F.S. Financial. The Court, after receiving the testimony, considering all the exhibits and the file, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure:

1. The Debtors filed a Chapter 7 bankruptcy petition on June 6, 2002. At the time of filing, the Debtors listed W.F.S. Financial as a creditor, with a security interest in the Debtors' 1998 Chevrolet.
2. At the time of filing, the Debtors were in default under the terms of the security agreement with W.F.S. Financial. The 1998 Chevrolet was purchased for use by the Debtors' son, and had been damaged in an accident prior to the filing date. The vehicle was uninsured at the time of the accident.
3. On June 10, 2002, Mr. Livengood contacted W.F.S. Financial to advise that he had filed for bankruptcy and to obtain the number for the local branch office in Charlotte, North Carolina. On that same date, Mr. Livengood called W.F.S. Financial's Charlotte office and spoke to Ed Bobbitt, a senior loan service counselor. Mr. Livengood informed Mr. Bobbitt of the bankruptcy filing and that the vehicle had been damaged in an accident.
4. During the course of that telephone conversation, Mr. Bobbitt ascertained the name of the Debtors' attorney and the location of the vehicle at Ridge Runners in Bryson City, despite some difficulty conversing with Mr. Livengood. Mr. Livengood is disabled and is unable to read or write. Mr. Livengood's testimony was inconsistent with some of his prior statements and at times he appeared confused as to the events of June 10, 2002. Additionally, Mrs. Livengood testified that Mr. Livengood takes a lot medications and gets confused.
5. Subsequently, Mr. Bobbitt, contacted the Debtors' attorney's office to confirm the bankruptcy information and contacted Ridge Runners to confirm the location of the vehicle. W.F.S. Financial did not telephone the Debtors again after speaking with the Debtors' attorney.

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6.. Pursuant to § 362(a) of the Bankruptcy Code, the automatic stay is effective upon filing of the petition. Section 362(h) 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."

7. A debtor is not required to prove that the creditor had the specific intent to violate the stay. In re Clayton, 235 B.R. 801, 806 (Bankr. M.D.N.C. 1998). Conduct by a creditor which violates the automatic stay when the creditor has notice of the bankruptcy constitutes a willful violation of the automatic stay for purposes §362(h). In re Wills, 226 B.R. 369, 376 (Bankr. E.D.Va. 1998).

8. In this case, when W.F.S. Financial was contacted by the Debtors post-petition, its employee attempted to gather information from Mr. Livengood regarding the Debtors' attorney and the location of the damaged vehicle. W.F.S. Financial made no effort to collect on the debt nor did it make any threats regarding the debt.

9. Accordingly, the Court finds that the actions of W.F.S. Financial did not violate the automatic stay.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that the Debtor's motion for order imposing sanctions is denied.

This the 15 day of July 2002.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge