

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

<b>IN RE:</b>	)	
	)	
<b>Eric W. Sheets</b>	)	<b>Case No. 00-50505 C-13W</b>
<b>Gwendolyn M. Sheets</b>	)	
	)	
<b>Debtors.</b>	)	
	)	

**ORDER DENYING DEBTORS' MOTION FOR SANCTIONS**

THIS MATTER came on for hearing before the undersigned bankruptcy judge on April 25, 2001, in Winston-Salem, North Carolina upon the Debtors' motion for sanctions against Education Credit Management Corporation, Kelly Prettner and Paul Maltibal. Appearing at the hearing were James L. Tennant, on behalf of the Debtors, and Vernon Cahoon, on behalf of the Chapter 13 Trustee.

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O) which this court may hear and determine.

After considering the arguments of counsel and reviewing the file, the court makes the following findings of fact.

On or about February 10, 1992, the male debtor's parents, Everette E. Sheets and Shirley J. Sheets, executed a promissory note ("Note") to Education Credit Management Corporation ("ECMC") for a student loan to allow the male debtor to attend Liberty University. The male debtor is listed as the "Student" on the Note; he is not listed as a "Borrower" and he did not sign the Note as a Co-Maker.

The Debtors filed a Chapter 13 petition on March 15, 2000, and ECMC was listed as a creditor in the Debtors' schedules. On March 30, 2001, the Debtors filed the present motion alleging that ECMC, Kelly Prettner, and Paul Maltibal have been contacting and harassing the male debtor's mother, Shirley Sheets, to collect the amount due under the Note in violation of the co-debtor stay pursuant to 11 U.S.C. § 1301. The Debtors requested sanctions, including punitive damages and attorney's fees. At the hearing, Debtors' counsel stated that Kelly Prettner and Paul Maltibal were not served with the motion and the Debtors were not seeking sanctions against these individuals.

Section 1301 of the Bankruptcy Code provides that, with certain exceptions, "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. . ." 11 U.S.C. § 1301. Known as the "co-debtor stay", section 1301 protects the Chapter 13 debtor from indirect pressures from his creditors exerted through friends or relatives who are co-obligors.

The court finds that the debt at issue in this case is not a debt of these Chapter 13 debtors. Based on the documentation provided to the court, it appears that the only obligors on the Note were Everette E. Sheets and Shirley J. Sheets, the male debtor's parents. Accordingly, there is no codebtor stay in effect pursuant to § 1301, and the Debtors' request for punitive damages and attorney fees is denied.<sup>1</sup>

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<sup>1</sup>There is no provision in § 1301 for the payment of damages, including costs and attorney fees, for violation of the co-debtor stay. Section 362 defines the scope of the automatic stay as it relates to the *Debtor*. (emphasis added). Awards of costs and attorney fees and punitive damages are limited to willful violations of the automatic stay pursuant to § 362 (h), which does not apply to violations of the co-debtor stay. *In re Sommersdorf*, 139 B.R. 700 (Bankr. S.D. Ohio 1991) (while § 362 (h) states that an individual injured by any willful violation of a stay provided by that section *shall* recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, punitive damages, there is no such similar provision in § 1301). In

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that the Debtors' motion for sanctions against Educational Credit Management Corporation, Kelly Prettnner, and Paul Maltibal is hereby denied.

This the 8 day of May, 2001.

**CATHARINE R. CARRUTHERS**

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Catharine R. Carruthers  
United States Bankruptcy Judge

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the absence of a statutory authorization, a prevailing party is not entitled to an award of attorney's fees. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247-255 (1975).