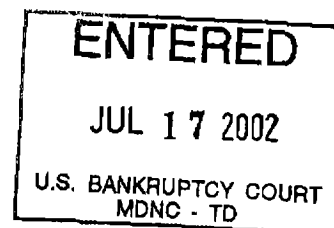


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION



IN RE:

James I. Shoe

Debtor.

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Case Number: 01-51841

ORDER

THIS MATTER came on for hearing before the undersigned bankruptcy judge in Winston-Salem, North Carolina upon the motion by Debtor that Capital One be held in contempt for violations of the automatic stay and of the discharge injunction. Esten H. Goldsmith appeared before the Court as attorney for James I. Shoe (hereinafter "Debtor"). The Court, after receiving the testimony and the exhibits and reviewing 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 Debtor filed a Chapter 7 bankruptcy petition on August 3, 2001. At the time of filing, the Debtor listed Capital One as a creditor. The Debtor received his discharge on November 5, 2001. Capital One was served notice of the bankruptcy filing and a copy of the discharge order.
2. The Debtor received billing statements from Capital One for the months of September 2001, October 2001, November 2001, December 2001, January 2002 and February 2002. The Debtor also received three telephone calls from Capital One regarding the collection of the debt.
3. During this time period, the Debtor was suffering from an illness, and the post-petition collection attempts by Capital One caused the Debtor additional distress and anguish, and resulted in the Debtor having to spend time with his attorney in an effort to stop the continued demands from Capital One.
4. Pursuant to §362(a) of the Bankruptcy Code, the automatic stay is effective upon filing of the petition. Section 362(a)(6) prohibits any act to collect a prepetition claim against the debtor. 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."
5. 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 of §362(h). In re Wills, 226 B.R. 369, 376 (Bankr. E.D.Va. 1998).
6. The discharge injunction as provided in §524 of the Bankruptcy Code enjoins the

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commencement or continuation of actions to collect debts discharged in bankruptcy. Section 524(a)(2) provides that a discharge "operates as an injunction against the commencement or continuation of an action, the employment of a process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived." 11 U.S.C. §524 (a)(2).

7. Although §524 does not explicitly authorize monetary damages for violation of a discharge injunction, the court may award actual damages pursuant to the statutory contempt powers set forth in 11 U.S.C. §105. In re Hardy, 97 F.3d 1384 (11th Cir. 1996); Thomas v. Resolution Trust Corporation (In re Thomas), 184 B.R. 237 (Bankr. M.D.N.C. 1995). In order to be found in civil contempt pursuant to §105, "the offending party must have knowingly and willfully violated a definite and specific court order." Thomas, 184 B.R. at 241.

8. In this case, Capital One repeatedly communicated with the Debtor after the Debtor filed his bankruptcy petition, both before and after the discharge, in an attempt to collect a discharged debt. Accordingly, this Court finds Capital One in contempt for knowingly and willfully violating the discharge order and, and further finds that Capital One committed a willful violation of the automatic stay for which the Debtor is entitled to relief as provided in §362(h).

9. Capital One filed no response to the motion that they be held in contempt for violations of the automatic stay. Counsel for the Debtor served Capital One at its corporate headquarters and served its legal department.

10. The Debtor's counsel presented a detailed statement of time reflecting 16.2 hours, including six hours of travel time. The Court finds that the Debtor is entitled to recovery of reasonable attorney's fees at a rate of \$150 an hour, \$75 an hour for travel time, and \$60 an hour for paralegal time in the total amount of \$1,875.00. The Court believes that the Debtor did suffer some mental anguish and distress, and will award \$100.00 to compensate for damages due to this distress. See In re Covington, 256 B.R. 463 (D.S.C. 2000); In re Carrigan, 109 B.R. 167 (W.D.N.C. 1989).

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that Capital One is required to pay monetary damages in the amount of \$100.00 to the Debtor, and attorney's fees in the amount of \$1,875.00 to the Debtor's attorney, Esten H. Goldsmith. It is further ORDERED, ADJUDGED AND DECREED that payment shall be made within ten (10) days after the entry of this order.

This the 16 day of July 2002.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge