SO ORDERED.

SIGNED this 23rd day of October, 2025.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In re:	
Kimberly Jane Freeland,	Chapter 7
	Case No. 25-10572
Debtor.	

ORDER DENYING DEBTOR'S MOTION TO ENFORCE AUTOMATIC STAY, TO DECLARE POST-PETITION SALE VOID, AND FOR SANCTIONS UNDER 11 U.S.C. § 362(K)

This case came before the Court for hearing on October 16, 2025, on the Motion to Enforce Automatic Stay, to Declare Post-Petition Foreclosure Sale Void, and for Sanctions Under 11 U.S.C. § 362(k) (the "Motion") filed by Kimberly Jane Freeland ("Debtor"), ECF No. 17, as well as the response filed by U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCAF Acquisition ("Creditor"). ECF No. 24. At the hearing Debtor and counsel for Creditor appeared.

Debtor is pro se. For the reasons stated herein, the Court will deny Debtor's motion.

BACKGROUND

Prepetition, Creditor commenced a foreclosure action against Debtor in the General Court of Justice Superior Court Division of Guildford County (the "Superior Court"). Case No. 24SP002424-400. On September 4, 2025, at 9:25 a.m., Debtor filed a voluntary petition for relief under chapter 7. ECF No. 1. At 9:59 a.m., Debtor filed a Notice of Bankruptcy Case Filing in the Superior Court case. ECF No. 17, at 8. At 10:32 a.m., Debtor forwarded an image of this Notice of Bankruptcy Case Filing by electronic mail to John Kearns. Debtor's Ex. 8. Debtor testified that Kearns had previously represented Creditor and that she believed he still did. Kearns responded to Debtor's message explaining that he was no longer counsel for Creditor, ECF No. 28, at 00:32:30-00:33:30, and he forwarded the message to current counsel at approximately 10:56 a.m., four minutes before the scheduled foreclosure sale. ECF No. 17, at 12. The foreclosure sale was held at 11:00 a.m. on September 4, 2025. Id., at 15. The following day, the Superior Court issued a Report of Foreclosure Sale. Id. at 7. Later that same day, Creditor filed a Motion to Set Aside Report of Foreclosure Sale, id. at 9, and on September 8, 2025, the Superior Court entered an order setting aside the report of foreclosure sale. Id. at 15.

On September 24, 2025, Debtor filed a Motion to Enforce Automatic Stay, Declare Foreclosure Acts Void, for Sanctions Under 11 U.S.C. § 362(k), and for Ancillary Relief. ECF No. 11. On October 9, 2025, Debtor amended the motion. ECF No. 17. Debtor seeks an Order from this court (1) enforcing the automatic stay; (2) declaring the foreclosure sale void ab initio; (3) directing the striking/expungement of all sale-related filings in the state court; and (4) awarding damages, fees, and sanctions against Creditor under 11 U.S.C. § 362(k). Debtor did not offer evidence of actual damages caused by the foreclosure sale.

DISCUSSION

The automatic stay is the fundamental protection for a debtor seeking reorganization under the bankruptcy code. It arises upon the filing of a bankruptcy petition and prohibits "the commencement, . . . of a judicial, administrative, or other action or proceeding against the debtor that was . . . commenced before the commencement of the case under this title . . . ." 11 U.S.C. § 362(a); see also In re Brockington, 129 B.R. 68, 70 (Bankr. D.S.C. 1991). Willfully violating the stay comes with serious consequences. "[A]n individual injured by any willful violation of a stay . . . shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k). To be entitled to sanctions under § 362(k), a debtor must show that "1) the actions taken are in violation of the automatic stay; 2) the violation was willful; and 3) the debtor was injured as a result of the violation." In re Clayton, 235 B.R. 801, 806 (Bankr. M.D.N.C. 1998). The debtor bears the burden of proof. In re Banks, 612 B.R. 167, 172 (Bankr. D.S.C. 2020). Finally, "[a]n award of damages under section 362(k) must be founded on concrete, non-speculative evidence and cannot be based merely on speculation, guess or conjecture." Id. (citing In re Bolin, No. CA 12-02442-DD, 2012 WL 4062807, at *2 (Bankr. D.S.C. Sept. 13, 2012) (citation modified)). "[T]he court cannot award damages, costs or fines where none have been proven, even if both Rule 9011 and 11 U.S.C. § 362 have been violated." Clayton, 235 B.R. at 810 (citation modified). Therefore, even if a debtor can prove a violation of the automatic stay, failure to offer proof of damages is fatal to an award of sanctions under § 362(k). See id.

I. The foreclosure sale is of no effect by operation of state law.

Debtor seeks an order enforcing the automatic stay and declaring the foreclosure sale void ab initio.[1] Under N.C. GEN. STAT. § 45-21.27, a foreclosure sale does not become final until after a ten-day upset bid period following the sale. When the automatic stay comes into effect before the expiration of this

[1] Declaratory relief may be obtained only in an adversary proceeding. Fed. R. Bankr. P. 7001(i). Nevertheless, for the reasons set forth herein, declaratory relief with respect to the efficacy of the foreclosure sale is unnecessary.

ten-day upset bid period, the foreclosure sale does not become final. The sale must be re-noticed and the sale must be re-done if the stay is later modified or terminated. N.C. GEN. STAT. § 454-21.22.[2] In this case, the bankruptcy case was commenced after the entry of any authorization or order by the clerk of superior court pursuant to G.S. 45-21.16 and prior to the expiration of the ten-day upset bid period and is therefore without effect by operation of N.C. GEN. STAT. § 45-21.22. Thus, the Court need not enter an Order declaring the foreclosure sale void ab initio.[3]

II. Debtor is not entitled to damages under § 362(k).

Although the foreclosure sale may have violated the automatic stay, any violation was not willful. A creditor willfully violates the automatic stay when "[t]here is ample evidence in the record

[2] "When, after the entry of any authorization or order by the clerk of superior court pursuant to G.S. 45-21.16 and before the expiration of the 10-day upset bid period, the foreclosure sale is stayed pursuant to 11 U.S.C. § 105 or 362, and thereafter the stay is lifted, terminated, or dissolved, the trustee or mortgagee shall not be required to comply with the provisions of G.S. 45-21.16 [notice of hearing], but shall advertise and hold the sale in accordance with the provisions of G.S. 45-21.16A [notice of sale and contents thereof], 45-21.17 [posting and publishing notice of sale 20 days prior to sale], and 45-21.17A [request for notice of sale]." N.C. GEN. STAT. § 45-21.22. (c) ("Procedure . . . upon debtor's bankruptcy before completion of sale").

[3] Debtor also requested that this Court enter an order striking and expunging all sale-related filings that accompany the foreclosure proceeding under state law. ECF No. 17, at 8, 9, 15. The foreclosure action itself was not commenced postpetition and did not violate the stay. Even though the foreclosure sale apparently occurred postpetition in this case, there is no further relief required because debtor did not offer any evidence of damages from the sale itself, and the sale is of no effect under state law due to the commencement of the bankruptcy proceeding prior to the expiration of the upset bid period. Debtor does not cite any basis for expunging the entire state court record of the foreclosure proceeding, and any irregularities in the state court foreclosure process or expungement of its records are a matter for the state court in the event the foreclosure action is reactivated.

to support the conclusion that [the creditor] knew of the pending petition and intentionally attempted to [continue collection procedures] in spite of it." In re Hamrick, 175 B.R. 890, 892 (W.D.N.C. 1994) (alterations in original) (citing Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292-293 (4th Cir. 1986)). Thus, for conduct to be willful, it must be intentional or deliberate. Id. Courts will not impose sanctions for a mere technical violation of the automatic stay—especially where a creditor takes prompt remedial action. See, e.g., In re McMullen, 386 F.3d 320, 330 (1st Cir. 2004) ("a creditor that commits a technical violation of the automatic stay, due to lack of notice, has an affirmative duty to remedy the violation as soon as practicable after acquiring actual notice of the stay").

In this case, Debtor filed the petition on September 4, 2025, at 9:25 a.m., and the foreclosure sale occurred at 11:00 a.m. Even if Creditor received actual notice of the bankruptcy filing immediately, this is insufficient time for Creditor to have stopped the foreclosure sale. Debtor's evidence indicated that the email informing Creditor of her case was sent to current counsel four minutes before the sale occurred. There was no evidence that Creditor received and reviewed the email prior to the commencement of the sale. Creditor promptly took the necessary steps to remedy any technical violation the next day by filing the Motion to Set Aside Report of Foreclosure Sale. Thus, although the foreclosure sale may have technically violated the automatic stay, any violation was not willful. Additionally, even if Creditor had willfully violated the automatic stay, Debtor offered no evidence of attorney's fees or other damages. See Clayton, 235 B.R. at 810. For these reasons, Debtor's request for damages, fees, sanctions, declaratory relief, and expungement of the state court records will be denied.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that Debtor's Motion to Enforce Automatic Stay, to Declare Post-Petition Sale Void, and for Sanctions Under 11 U.S.C. §362(k) is denied.

[END OF DOCUMENT]

Parties to be served

25-10572

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Sydney Marie Cauthen
Counsel for Creditor Via CM/ECF

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