

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

**IN RE:**

**MARY BETH KITTS,  
  
Debtor.**

**CASE NO. 03-51284- C13**

**ORDER FINDING VIOLATION OF THE AUTOMATIC STAY  
AND AWARDING ACTUAL AND PUNITIVE DAMAGES**

THIS MATTER came on for hearing before the undersigned bankruptcy judge on September 10, 2003 in Winston-Salem, North Carolina, on the Motion by the Debtor for a finding of violation of the automatic stay by Jason and Melissa Taylor ("the Taylors"). Appearing before the Court was Gail Arneke, counsel for the Debtor and John Knight, counsel for the Taylors. The Court, after having reviewed the evidence presented, makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

Mary Beth Kitts ("the Debtor") filed a petition for relief under Chapter 13 of the United States Bankruptcy Code on May 6, 2003. The Debtor's Chapter 13 plan was confirmed by Order of the Court on July 29, 2003 and requires the payment of \$3,120.00 per month to the Chapter 13 Trustee. The Debtor is current with her payments to the Chapter 13 Trustee and part of her income is derived from boarding horses on her property.

The Debtor and her two minor children reside at 5229 Murray Road, Winston-Salem, North Carolina. There is not a well or any other access to water located on her property. The

Debtor has rights under a Deed of Easement that is duly recorded in the Office of the Register of Deeds of Forsyth County, North Carolina, specifically, the perpetual right and easement to obtain water from a well located on adjacent property known as 5225 Murray Road. The Taylors rent the adjacent property at 5225 Murray Road. Their lease is subject to the perpetual easement for the well. The lease also provided that an agreement will be executed between the residents of 5229 Murray Road (the Debtor's residence) and 5225 Murray Road (the Taylor's residence) regarding the proration of the electric bill for the operation of the well pump. The operation of the water pump is furnished by electricity, which is read through the meter on the Taylors' property and billed to the Taylors. In the past the Debtor has remitted the sum of \$100.00 per month to the Taylors, with the last payment being made in August, 2003.

The Taylors contend that the Debtor has added additional horses to board on her property and that this has resulted in increased costs for the operation of the pump. No evidence was presented to show any increased costs. The lease provided that if there is a dispute between the parties as to the proration of the electric bill, an independent third party will make an assessment as to the proper division of the bill. No request has been made that a third party make an assessment of the proper division of the bill.

The Taylors were aware of the filing of the bankruptcy petition and on or about September 2, 2003, without any prior notice to the Debtor, the Taylors shut off the water line from the well to the Debtor's property. The Debtor and her minor children were forced to vacate the property and stay at a hotel. The Debtor had to pay to have water delivered to the property to ensure that the boarded horses had water to drink. The Debtor had to seek assistance from the local fire department to deliver water for the animals and missed time from work as a result of

having to manually haul water to the animals. She also incurred costs to clean clothes as she was unable to use her washer and dryer. Despite requests from counsel from the Debtor, the Taylors refused to turn the water back on and as of the date of the hearing, the water is still turned off. The Debtor has incurred hotel bills, cleaning expenses and bills for additional equipment for watering horses in the amount of \$608.17.

The Taylors contend that while the Debtor has the right to an easement to the pump, there is no corresponding right to water from the pump. The Taylors further contend that even if she has a right to water from the pump, turning off the water is not a violation of the provisions of 11 U.S.C. § 362 as it is not an act to exercise control over property of the Debtor.

#### DISCUSSION

One of the most fundamental protections afforded an entity that files for relief under the bankruptcy code is the automatic stay. The stay prohibits creditors from picking apart the Debtor's assets and gives the Debtor an opportunity to propose a repayment plan. The scope of the automatic stay is broad and extends to any act to obtain possession of property of the estate or to exercise control over property of the estate. The Taylors shut off the water supply to the Debtor's home. The Debtor owns this home. Surely, making one's home uninhabitable is exercising control over property of the Debtor. Additionally, the Taylors' refusal to supply water to horses was not only inhumane, but it jeopardized the continuation of a portion of the Debtor's income and therefore it jeopardized her ability to continue to fund her Chapter 13 Plan. The Taylors knew the Debtor had minor children; they knew she boarded horses and they knew she had filed for protection under the bankruptcy code. Their actions are a clear and knowing violation of the automatic stay.

Pursuant to 11 U.S.C. § 362(h), an individual injured by any willful violation of the stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages. The Fourth Circuit has determined that a willful violation is one in which the party knew of the pending petition and intentionally acted in violation of the automatic stay. Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 293 (4<sup>th</sup> Cir. 1986). The Debtor must prove the violation by clear and convincing evidence. It is not necessary to prove that the Taylors were subjectively aware of the law imposing the stay or that they intended to violate the stay. See In re Clayton, 235 B.R. 801, 806 (Bankr. M.D.N.C. 1998). All that is required of a willful violation is that the Taylors were aware of the bankruptcy and that they intentionally cut off the water supply to the Debtors property. See In re Wills, 226 B.R. 369, 376 (Bankr. E.D. Va. 1998). The Debtor has carried her burden of proof and proven that (1) the actions taken were in violation of the automatic stay; (2) the violation was willful; and (3) the debtor was injured as a result of the violation. See In re Hamrick, 175 B.R. 890, 893 (Bankr. W.D.N.C. 1994). The evidence presented reflects actual damages for hotel and cleaning costs as well as additional equipment for watering horses in the amount of \$608.17. These actual damages will be awarded.

The Court now has to determine if circumstances exist to warrant the recovery of punitive damages. Punitive damages may be awarded in appropriate circumstances for a willful violation of the stay. 11 U.S.C. § 362(h). The Restatement of Torts defines punitive damages as follows:

- (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.
- (2) Punitive damages may be awarded for conduct that is outrageous,

because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

Restatement of Torts (Second) § 908 (1979).

The following factors are useful in determining whether punitive damages are warranted given the facts of this case:

- (1) the nature of the offending party's conduct;
- (2) the nature and extent of the harm to the debtor;
- (3) the nature and extent of the harm the offending party intended to cause;
- (4) any provocation by the debtor; and
- (5) the offending party's ability to pay damages.

Solfanelli v. Meridian Bank (In re Solfanelli), 206 B.R. at 704 (citing In re M.J. Shoerama, Inc., 137 B.R. 182, 190 (Bankr. W.D. Pa. 1992) and In re B. Cohen & Sons Caterers, Inc., 108 B.R. 482, 487 (Bankr. E.D. Pa. 1989)). Having considered the foregoing factors, the Court finds that punitive damages are appropriate.

The Court finds that cutting off the water supply to the Debtor's home made the home uninhabitable and forced her to leave the premises. The inability to supply water to the horses put the horses in potential danger and jeopardized a source of income of the debtor. The Taylors knew that this was a drastic act and they made it with intent to harm and inconvenience the Debtor. There is no evidence that the Debtor provoked this action. The Debtor was current on the agreed monthly payments of \$100 per month. If the Taylors believed that the Debtor should be paying more per month for the operation of the pump, then they had the right to seek a resolution from an independent third party. Finally, with regard to the Taylor's ability to pay damages, the

court has no information as to the Taylor's financial situation.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that the Taylors willfully and knowingly violated the automatic stay in this case and must immediately restore the Debtor's use of the water well and pump located on their property. The Debtor will be awarded \$100 per day for each day following September 10, 2003 on which water is not restored. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Debtor is awarded actual damages in the amount of \$608.17 and punitive damages in the amount of \$1,500. The Taylors are ordered to remit the total sum of \$2,108.17 in good funds to the Chapter 13 Trustee within twenty (20) days of the entry of this order and that the failure to remit the funds pursuant to this Order shall result in the issuance of a show cause order by this Court. IT IS FURTHER ORDERED that this Court will conduct a separate hearing on the appropriate future relationship between the parties in relation to water usage on October 1, 2003, at 9:30 a.m., in the United States Bankruptcy Court for the Middle District of North Carolina, 226 South Liberty Street, Winston-Salem, N.C., Courtroom No. 1.

This the 16<sup>th</sup> day of September, 2003.

**CATHARINE R. CARRUTHERS**

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Catharine R. Carruthers  
United States Bankruptcy Court