

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
Chester Wayne Sands and)
Robin Darlene Sands,) Case No. 10-12205C-13G
)
)
Debtors.)

SANCTIONS ORDER

This case came before the court on March 15 and March 29, 2011, for hearing upon Debtors' motion for sanctions against HSBC Mortgage Services, Inc. for violation of the automatic stay, and for recovery of attorney fees. Kristen S. Nardone appeared on behalf of the Debtors. Having considered the evidence offered by the Debtors and the matters of record in this case, the court finds and concludes as follows:

1. Upon the commencement of this case on December 2, 2010, the automatic stay became effective pursuant to section 362 of the Bankruptcy Code. Pursuant to section 362(a)(3), the automatic stay is applicable to and prohibits any act to obtain possession of property of the estate or to exercise control over property of the estate. Pursuant to section 362(a)(6) the automatic stay is applicable to and prohibits any act to collect, assess, or receive a claim against the debtor that arose before the commencement of the bankruptcy case.

2. When this case was commenced the Debtors were the owners of residential real property located at 5214 Bayberry Lane,

Greensboro, North Carolina ("Bayberry Lane Property"), which became property of the estate in this case upon the commencement of this case. Although the Debtors were no longer residing in the Bayberry Lane residence when this case was commenced, they had not yet removed all of their possessions from the property.

3. HSBC Mortgage Services, Inc. ("HSBC") is a creditor in this case pursuant to a promissory note from the Debtors that is secured by a deed of trust that encumbers the Bayberry Lane Property.

4. HSBC received actual notice of the commencement of this case and made an appearance in this case on December 14, 2010, when its authorized agent made a filing on behalf of HSBC.

5. Notwithstanding its actual knowledge of the filing of this case and the resulting automatic stay, agents of HSBC entered the residence located on the Bayberry Lane Property on January 10 and January 18, 2011, without any notice to or permission from the Debtors and without obtaining relief from the automatic stay. In doing so, HSBC, through its agents, removed the lock on the back door of the residence, placed a new lock on the back door, shut off the water supply and electricity, placed tape over the sinks and toilets, placed signs throughout the house and padlocked the gate to the backyard. When counsel for the Debtors was finally able to communicate with a representative of HSBC, such representative admitted that HSBC had entered the property and performed an

"initial secure" with respect to the property. Even after this contact from the Debtors' attorney and after the attorney had filed and served the motion for sanctions on HSBC, agents of HSBC again entered the residence located on the Bayberry Lane Property and again did so without notice to the Debtors and without obtaining relief from the automatic stay. Altogether, agents of HSBC entered the residence on the Bayberry Lane Property on at least four occasions after the commencement of this case.

6. The above-described actions of HSBC involving the Bayberry Lane Property were actions seeking to obtain possession of such property and involved HSBC exercising control over such property and enforcing its lien against the Bayberry Lane Property and constituted violations of the automatic stay. Such actions also constituted acts by HSBC to collect, assess, or recover a claim against the Debtors that arose before the commencement of this bankruptcy case which also constituted violations of the automatic stay.

7. The violations of the automatic stay by HSBC were willful violations because such violations occurred after HSBC was aware that this bankruptcy case had been filed and that the filing of the case automatically resulted in the imposition of the automatic stay in this case.

8. Under section 362(k)(1) of the Bankruptcy Code, an individual injured by any willful violation of the automatic stay

is entitled to recover the actual damages, including costs and attorney's fees, proximately caused by such violation, and in appropriate circumstances also may recovery punitive damages.

9. As a proximate result of the aforesaid violations of the automatic stay by HSBC, the Debtors have incurred attorney's fees for the services of their attorney related to the filing of the motion now before the court and the hearings which were held on March 15 and March 29, 2011. The attorney's fees incurred in pursuing the willful violations of the automatic stay by HSBC are in the amount of \$1,200.00 for the services rendered by Debtors' attorney, including communicating with HSBC, preparing and filing the motion for sanctions, preparing for the hearing and appearing on behalf of the Debtors at the hearing and based upon the attorney and her paralegal having spent 6.3 hours in performing such services at an hourly rate of \$200 for the attorney and \$80 for her paralegal, which the court finds to be reasonable compensation for the services rendered.

10. Under section 362(h) of the Bankruptcy Code an award of punitive damages is within the discretion of the trial court and proper only in appropriate circumstances, such as those in which the creditor has demonstrated egregious, vindictive, or intentional misconduct. See Lovett v. Honeywell, 930 F.2d 625, 628 (8th Cir. 1991); In re McHenry, 179 B.R. 165, 168 (9th Cir. BAP 1995); Davis v. IRS, 136 B.R. 414, 423 fn.20 (E.D. Va. 1992). In this case,

HSBC had actual notice of this bankruptcy case and was served with notice of the Debtor's motion for sanctions and notice of the hearings on such motion. HSBC is a large and sophisticated entity who is a frequent creditor in bankruptcy cases. As such, HSBC is expected to understand and respect the automatic stay. Yet, even after receiving notice of the motion for sanctions, HSBC again entered the Bayberry Lane Property. HSBC has shown no remorse for its violations of the automatic stay, and has made no efforts to explain or defend its conduct. Despite being served with the motion for sanctions and notices of the hearings on the motion for sanctions, HSBC failed to appear at the either of the hearings on the motion for sanctions or otherwise respond to the motion.

11. The automatic stay is a basic protection provided to debtors under the Bankruptcy Code, and for a creditor to blatantly ignore the automatic stay as HSBC has done, justifies a punitive damage award to get its attention, encourage it to correct its conduct, and to deter future violations. See In re Edmondson, 2002 WL 32389899 (Bankr. D.S.C.); In re Graves, 2003 WL 21781968 (Bankr. N.D. Iowa).

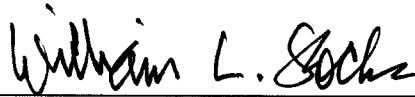
12. The primary purpose for awarding punitive damages for a willful violation of the automatic stay is "to cause a change in the creditor's behavior; the prospect of such change is relevant to the amount of punitive damages to be awarded." In re Shade, 261 B.R. 213, 216 (Bankr. C.D. Ill. 2001). See also In re Mann, 2004

WL 574354 (Bankr. M.D.N.C. 2004); In re Riddick, 231 B.R. 265, 269 (N.D. Ohio 1999). Considering all the evidence, the court finds that there has been intentional and egregious misconduct on the part of HSBC and concludes that punitive damages are appropriate in this case in the amount of \$7,500.00 to penalize HSBC for its willful and repeated violations of the automatic stay and to deter HSBC from similar conduct in the future.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

1. That the Debtors have and recover from HSBC Mortgage Services, Inc. the sum of \$1,200.00 for attorney's fees; and
2. That the Debtors have and recover from HSBC Mortgage Services, Inc. the additional sum of \$7,500.00 as punitive damages.

This 1st day of April, 2011.



WILLIAM L. STOCKS
United States Bankruptcy Judge