

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

In re:)	
)	
Jeanette Macon Thorne,)	Case No. 08-80022
)	
Debtor.)	
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**ORDER DENYING APPLICATION
FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSE CLAIM**

THIS MATTER came on before the Court on June 5, 2008, after due and proper notice, upon the Application by Green Tree Servicing, LLC for Allowance of Administrative Expense Claim (the “Application”). Joseph E. Propst appeared on behalf of Green Tree Servicing, LLC (“Green Tree”), Donald D. Pergerson appeared on behalf of Jeanette Macon Thorne (the “Debtor”), and Benjamin E. Lovell appeared on behalf of the Chapter 13 Trustee. After consideration of the pleadings and other matters of record, the Court finds that the Application must be denied.

FACTS

The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on January 8, 2008 (the “Petition Date”). The Debtor is the owner of a 1995 Fleetwood Home (the “Mobile Home”). Green Tree holds a properly perfected security interest in the Mobile Home. Prior to the Petition Date, the Debtor was in default on payments for the Mobile Home, and Green Tree initiated proceedings to repossess the collateral.

On the morning of January 9, 2008, after the bankruptcy filing but prior to receiving notice of the filing, Green Tree, by and through its agent, began the process of repossessing the

Mobile Home. Later in the morning on January 9, the Warren County Sheriff formally notified Green Tree of the Debtor's bankruptcy filing. At the time of the notification, the Mobile Home had been partially disassembled and removed from its position. The Mobile Home's roof cap had been removed, the electrical feed disconnected, the water/sewer disconnected, the heat/air crossover disconnected, and certain interior and exterior trim removed in preparation for towing to Green Tree's storage facility. Upon notification of the bankruptcy filing, Green Tree reinstalled the Mobile Home. In doing so, Green Tree incurred expenses in the amount of \$5,225.00. Green Tree then filed the present Application seeking an administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A). in the amount of \$5,225.00 for post-petition services provided to the Debtor.

ANALYSIS

Pursuant to § 362(a)(3) of the Bankruptcy Code, the filing of a bankruptcy petition operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Section 362(k) provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k). "To constitute a willful act, the creditor need not act with specific intent but must only commit an intentional act with knowledge of the automatic stay." *In re Strumpf*, 37 F.3d 155, 159 (4th Cir.1994), *rev'd on other grounds*, 516 U.S. 16 (1995). Without notice of the bankruptcy filing, a creditor's initial violation of the automatic stay is not willful. *In re Preston*, 333 B.R. 346 (Bankr. M.D.N.C. 2005). Nevertheless, a creditor has an affirmative duty to remedy an automatic stay violation

once it has notice of a debtor's bankruptcy, and if it fails to do so, the stay violation becomes willful. *See, e.g., In re Diviney*, 225 B.R. 762, 776 (10th Cir. BAP 1998); *In re Will*, 303 B.R. 357, 364 (Bankr. N.D. Ill. 2003); *In re Freemyer Industrial Pressure, Inc.*, 281 B.R. 262, 267 - 268 (Bankr. N.D. Tex. 2002); *In re Taylor*, 190 B.R. 459, 461 (Bankr. S.D. Fla. 1995); *In re Bunch*, 119 B.R. 77, 80 (Bankr. D.S.C. 1990); *In re Adams*, 94 B.R. 838, 851 (Bankr. E.D. Pa. 1989).

In this case, Green Tree partially disassembled and began to remove the Debtor's Mobile Home *post-petition*. Green Tree's actions were in violation of the automatic stay. Upon learning of the Debtor's bankruptcy filing, Green Tree had an affirmative duty to remedy its stay violation and restore the pre-violation status quo. Green Tree did remedy its stay violation, however, if it had not, its stay violation would have become a willful violation and the Debtor would have been entitled to an award of actual damages pursuant to § 362(k).

Green Tree cannot avoid the cost of its affirmative duty to remedy its stay violation through an administrative expense claim. Section 503(b)(1)(A) allows for administrative expense claims for the actual and necessary costs and expenses of preserving the estate including wages, salaries, and commissions for services rendered post-petition. 11 U.S.C. § 503(b)(1)(A). The costs and expenses of the services provided by Green Tree to reinstall the Mobile Home were not actual and necessary costs and expenses of preserving the estate. If Green Tree had not provided these services, the Debtor would have been entitled to an award of damages against Green Tree for the costs the Debtor would have incurred to reinstall the Mobile Home. These costs and expenses would not have been borne by the Debtor's estate.

Based upon the foregoing, Green Tree's Application for Payment of Administrative Expenses is DENIED.

SERVICE LIST

Jeanette Macon Thorne
Debtor

Donald D. Pergerson
Attorney for Debtor

Joseph E. Propst
Attorney for Creditor

Richard M. Hutson, II
Trustee