

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

IN RE:

Landon Franklin Vaughn

Debtor.

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Case No. 00-52107 C-13

**ORDER GRANTING MOTION FOR ORDER IMPOSING SANCTIONS
AGAINST ROBERT TAYLOR FOR WILLFUL VIOLATION
OF PROVISIONS OF BANKRUPTCY CODE SECTION 362 (a)**

THIS MATTER came on for hearing before the undersigned bankruptcy judge on March 21, 2001, in Winston-Salem, North Carolina upon the Debtor's Motion for Order Imposing Sanctions Against Robert Taylor for Willful Violation of Provisions of Bankruptcy Code Section 362 (a) and Directing Written Response. Appearing at the hearing were William V. Bost, on behalf of the Debtor, Robert Taylor, Pro Se, and Vernon Cahoon, on behalf of the Chapter 13 Trustee.

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) which this court may hear and determine. Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th cir. 1986).

After considering the arguments of counsel and the testimony and demeanor of the witnesses and reviewing the file, the court makes the following:

FINDINGS OF FACT

1. This Chapter 13 case was filed on October 20, 2000. An Order Confirming Plan

was entered on February 6, 2001.

2. At the time the petition was filed, Debtor was employed as a truck driver for Brown Trucking.

3. On or about December 22, 1999, the Debtor purchased a 1989 Kenworth Road Tractor, model K-100, from Robert Taylor for the sum of \$9,500.00. Mr. Taylor financed the transaction with terms requiring the Debtor to make monthly payments in the amount of \$1,000.00 with interest to be paid in the amount of \$20.00 per week. The Debtor granted Mr. Taylor a security interest in the Tractor, which was properly perfected by notation on the Certificate of Title.

4. As of the filing of the petition, the balance due under the agreement was \$4,500.00 plus interest. Mr. Taylor filed a secured proof of claim in that amount on November 17, 2000.

5. Between November 1, 2000 and March 15, 2001, Mr. Taylor made dozens of telephone calls to the Debtor demanding payment of the debt and, on certain occasions, threatening to get the Debtor fired. Mr. Taylor's last telephone call to the Debtor was approximately one week prior to the hearing.

6. On November 9, 2000, Mr. Taylor wrote to James Brown, a representative of the Debtor's then employer, informing him that the Debtor's truck was in poor condition. Mr. Taylor stated, "I am hoping you will demand that this truck is repaired to where it is safe to drive, or cancel Vaughn's lease until he makes these repairs to where it will pass federal D.O.T. inspection." The letter also made reference to prior phone calls Mr. Taylor had made to another representative the Debtor's employer, Kevin Slaughter.

7. Following Mr. Taylor's communications with the Debtor's employer, on November 9, 2000, the Debtor was suspended without pay until the truck could be inspected. The truck passed a D.O.T. inspection on November 16, 2000, and on November 26, 2000, the Debtor's employment was reinstated. The Debtor was suspended several other times so that the Debtor's employer could investigate allegations made by Mr. Taylor¹. As a result of the suspensions, a number of loads were missed, and the Debtor's employment with Brown Trucking was eventually terminated on February 7, 2000. The Debtor's Chapter 13 plan is behind as the Debtor has been unable to obtain comparable employment. The actions of Mr. Taylor have jeopardized the success of this plan

8. The last time Mr. Taylor personally inspected the truck was on or about August 2, 2000. A number of repairs were performed on the truck after August 2, 2000. Despite these facts, Mr. Taylor continues to maintain that the truck is a hazard on the road and that he will take "appropriate action" to see that it is not operated on the highways.

9. On December 13, 2000, Mr. Taylor wrote a letter addressed to the Chapter 13 Trustee, Debtor's counsel, and the Debtor stating the following:

I am going to make you an offer on the money you owe me for that truck I financed. I will take a one time payment of \$4,500.00 or I will take \$500.00 a month plus \$20.00 a week interest until it is completely paid for. As of 12-1-00 you owe me \$4,500.00 plus \$20.00 a week interest starting 12-22-99. I do not have any intentions of going through 2 ½ years of trying to get my money like you and Brother Bost has come up with. You decide what you want to do and let me know. Also I am not traveling another 350 miles again to see what takes [sic] I will not be in Winston-Salem on 12-21-00.

¹The specific dates of these suspensions were not provided to the court.

DISCUSSION

Section 362(a) provides that the filing of a petition under §§ 301, 302, or 303 initiates the operation of the automatic stay of the following:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) 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;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

See 11 U.S.C. § 362(a).

After the filing of the Debtor's bankruptcy petition, Mr. Taylor made numerous attempts collect a prepetition debt that was listed in the bankruptcy petition by telephoning the Debtor and

sending him written correspondence. Mr. Taylor's actions were willful and were in direct violation of the automatic stay. Section 362 (h) permits a court to award actual damages, attorney's fees, costs and, in certain situations, punitive damages for a willful violation of the automatic stay. 11 U.S.C. § 362 (h).² A willful violation of the automatic stay occurs when a creditor is aware of the stay and acts intentionally. In re Brown, 237 B.R. 316 (Bankr. E.D. Va. 1999) A creditor's actions against property of the estate may be construed as willful even if the creditor believes its actions to be justified. In re Brown, 237 B.R. 316 (Bankr. E.D. Va. 1999); see also In re Atl. Bus. and Community Corp., 901 F.2d 325, 329 (3rd Cir. 1990; In re Sharon, 200 B.R. 181, 200 (Bankr. S.D. Ohio 1996) (to prove a willful violation of the stay, it is not necessary to show that creditor had specific intent to violate the stay; it is sufficient to show that the party knew of the existence of the bankruptcy case and that the creditor's actions were intentional). There is no question that Mr. Taylor was aware of the Debtor's bankruptcy and that he acted intentionally. The fact that Mr. Taylor continued to contact the Debtor regarding the debt even after the present motion was filed demonstrates his complete disregard for the bankruptcy process. Having found a violation, the court now turns to 11 U.S.C. § 362 (h).

Imposing sanctions under § 362(h) for violation of the automatic stay requires a showing 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. Hamrick v. United States (In re Hamrick), 175 B.R. 890, 893 (Bankr. W.D.N.C. 1994); see also, In re Clayton, 235 B.R. 801 (Bankr. M.D.N.C. 1998).

²11 U.S.C. § 362 (h) provides:

"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."

Mr. Taylor's efforts to collect a pre-petition debt by directly communicating with and harassing the Debtor, with knowledge of the bankruptcy, constitutes a willful violation of the automatic stay which resulted in injury to the Debtor. The Debtor was suspended without pay from Brown Trucking from November 9, 2000 until November 26, 2000. The suspension was a direct result of the complaints by Mr. Taylor. On October 30, 2000, via telephone to Brown Trucking, and via written correspondence of November 9, 2000 to Brown Trucking, Mr. Taylor advised Brown Trucking that the "truck is about as junky and crappy as you'll find on the road." Mr. Taylor admits that when he made these statements he had not viewed the vehicle for months. Taylor's sole motivation in contacting Brown was to place the Debtor's job in jeopardy. The Debtor's suspension from work for one week as a result of the statements made by Mr. Taylor resulted in actual damages in the amount of \$1,611.16.³

Having determined that the Debtor is entitled to actual damages, the court is free to award attorneys' fees and, if warranted, punitive damages. Solfanelli v. Meridian Bank (In re Solfanelli), 206 B.R. 699, 703 (Bankr. M.D. Pa. 1996). The court finds that Debtor's counsel is entitled to the sum of \$250.00 for attorneys' fees and costs associated with bringing this motion before the court.

Next, the court will consider 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

³The Debtor's Schedule I showed gross monthly wages, salary, and commissions of \$6,928.00. The court divided \$6,928.00 by 4.3 weeks to estimate the Debtor's weekly pay of \$1,611.16.

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 cause 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. First, the court finds that Mr. Taylor's conduct, in harassing the Debtor and complaining to the Debtor's employer, was outrageous and showed complete disregard for the protections afforded the Debtor by the bankruptcy code. Second, the harm to the Debtor, the loss of employment, was severe, especially given that the Debtor was in the process of trying to create and implement a workable Chapter 13 plan. Third, Mr. Taylor actions were intended to do far more than collect a delinquent debt. Mr. Taylor went to a great deal of effort to see that the Debtor's employment was terminated. With regard to the fourth factor, the court is unaware of any provocation by the Debtor. Finally, with regard to Mr. Taylor's ability to pay damages, the court has no information as to Mr. Taylor's financial situation. However, the

court believes this factor to be of little relevance in that the relief granted by the court will require Mr. Taylor to pay only a minimal sum out of pocket. The court finds that, in order to compensate the Debtor for the actual damages incurred and to provide an appropriate punitive award, Mr. Taylor will be required to deliver the Certificate of Title for the vehicle to the Chapter 13 Trustee and relinquish his security interest in the vehicle.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that Robert Taylor willfully and knowingly violated the automatic stay in this case. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Robert Taylor is required to deliver the Certificate of Title for the 1989 Kenworth Road Tractor, with proper indorsement releasing the lien on the vehicle, to the Chapter 13 Trustee within ten (10) days following the entry of this Order. If Mr. Taylor fails to deliver the Certificate of Title to the Chapter 7 Trustee as required, the Court will enter an order canceling the lien and will direct the Department of Motor Vehicles to issue a new title. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Robert Taylor is required to pay Debtor's counsel, William V. Bost, the sum of \$250.00 within ten (10) days of the entry of this Order.

This the 20 day of April, 2001.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge