

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

2002 JUL 30 PM 2: 54

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

James Henry Edmondson, Sr. and
Teresa Annette Edmondson,

Debtors.

James Henry Edmondson, Sr. and
Teresa Annette Edmondson,

Plaintiffs,

v.

Kevin Arrowood d/b/a Kevin
Arrowood Automotive,

Defendant.

C/A No. 02-03848-W

Adv. Pro. No. 02-80193-W

ENTERED

JUL 31 2002

D.G.

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court finds that James Henry Edmondson, Sr. and Teresa Annette Edmondson ("Plaintiffs") are entitled to actual damages in the amount of \$2,345.95 for Kevin Arrowood's willful violation of the automatic stay. Plaintiffs are also entitled to punitive damages in the amount of \$7,500.00. A judgment is therefore entered in the amount of \$9,845.95 against Kevin Arrowood.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 30, 2002.

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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JUL 31 2002

Buc 40 serve:

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

*McMaster
Arrowhead
hb*

DEBI GREEN

Deputy Clerk

EDL 31

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ORDER

D.G.

Chapter 13

THIS MATTER comes before the Court for a determination of damages. James Henry Edmondson, Sr. and Teresa Annette Edmondson (“Plaintiffs”) filed a Complaint alleging Kevin Arrowood (“Defendant”) willfully violated the automatic stay of 11 U.S.C. §362 by directing an agent to repossess Plaintiffs’ 1972 Chevrolet Truck (the “Truck”) postpetition and without obtaining relief from the automatic stay.¹ As a result of Defendant’s actions, Plaintiff seeks the recovery of actual damages, including costs and attorney’s fees, and punitive damages. Defendant did not answer the Complaint, and, on July 2, 2002, the Clerk of Court entered a default against Defendant in this matter. On July 25, 2002 and after notice to Defendant, this Court held a hearing to determine damages. Neither Defendant nor any counsel representing him appeared to contest the damages alleged. After considering the evidence presented and counsel’s

¹ Further references to the Bankruptcy Code shall be by section number only.

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arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.²

FINDINGS OF FACT

1. Plaintiffs filed a Voluntary Petition for relief under Chapter 13 of the Bankruptcy Code on March 28, 2002.
2. When Plaintiffs filed their petition, they had possession and ownership of the Truck.
3. Defendant is the sole lien holder on the Truck.
4. Defendant contacted Plaintiffs' attorney on April 12, 2002 and inquired whether Plaintiffs filed bankruptcy. Plaintiffs' attorney confirmed that her clients had indeed filed bankruptcy on March 28, 2002.
5. On April 20, 2002, a repossession agent working on behalf of Defendant attempted to repossess the Truck. Mr. Edmondson, however, informed the agent that he had filed bankruptcy. In addition, Mr. Edmondson provided the agent with his bankruptcy attorney's business card and suggested the agent contact Mr. Edmondson's attorney. The agent did not repossess the Truck at that time.
6. On April 24, 2002 at approximately 10:30 p.m., the agent returned and repossessed the Truck.
7. As a result of the repossession, Mr. Edmondson testified that he suffered the following damages:

² The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

- (a) Loss of the Truck, \$300.00;
- (b) Loss of tools and other work equipment inside the Truck at the time of repossession, \$200.00;
- (c) Loss of prescription safety eyeglasses inside the Truck at the time of repossession, \$103.50;
- (d) Loss of the benefit of prepaid expenses for the truck (taxes and insurance), \$325.00;
- (e) Difficulties in obtaining alternative means of transportation to and from work, (no value ascribed);
- (f) Cost to obtain a replacement vehicle tag, \$20.00;
- (g) Attorney's fees, \$1,154.42; and
- (h) Costs incurred in mailing and serving the Order and Notice of Emergency Hearing, \$67.45.

CONCLUSIONS OF LAW

The Court concludes that Plaintiffs are entitled to actual damages in the amount of \$2,345.95. This amount includes the loss of the Truck (\$300.00), tools and equipment (\$200.00), prescription safety glasses (\$103.50), prepaid expenses (\$305.00) as well as the costs incurred to replace the vehicle's tag (\$20.00) and to maintain this adversary proceeding (\$1,350.00 in attorney's fees and \$67.45 in costs).³ The Court finds that Plaintiffs are not entitled to the entire

³ At the hearing, the Court entered into evidence a time sheet prepared by Plaintiffs' attorney that reflected the amount of fees and costs incurred in this adversary proceeding. The total is \$1,154.42; however, this amount includes costs for postage and hiring a process server. The Court has decided to treat costs separately, so it considers only the fees incurred, which total \$1,086.97. This amount does not include counsel's time in appearing at the damages hearing on

amount of the prepaid expenses of the Truck because Plaintiffs were able to use the Truck for part of the period for which expenses were paid. Accordingly, the Court prorates these prepaid expenses and finds that Plaintiffs suffered damages by incurring the loss of the benefit of these prepaid expenses in the amount of \$305.00.⁴

In addition, the Court believes a punitive damages award is warranted in this instance. The Court notes that, in recent decisions, several courts severely punished creditors who demonstrated their disdain of the automatic stay by retaining property that was repossessed improperly. See Diviney v. Nationsbank of Texas (In re Diviney), 225 B.R. 762, 778 (BAP 10th Cir. 1998) (affirming a punitive damages award of \$40,000.00 for the creditor's postpetition repossession, retention, and sale of the debtors' vehicle despite notice that the debtors' case was reinstated and active); Progressive Motors, Inc. v. Frazier, 220 B.R. 476, 479 (D. Utah 1998) (affirming a punitive damages award of \$20,000.00 that increased to \$30,000.00 in ten days if the damages award were not paid where the creditor repossessed a vehicle postpetition without obtaining relief from the automatic stay and subsequently sold it at auction); In re Meeks, 260 B.R. 46, 48 (Bankr. M.D. Fla. 2000) (finding that a debtor was entitled to punitive damages of \$35,000.00 and canceled the debtor's indebtedness on the repossessed vehicle for the creditor's

Plaintiffs' behalf, and counsel totaled this additional time at one hour and twenty minutes. Plaintiffs' attorney charges \$175.00 per hour, and, including this additional time as part of the fees, the Court finds that Plaintiffs incurred attorney's fees in the amount of \$1,350.00.

⁴ The Court prorated Plaintiffs' insurance by determining that Plaintiffs paid \$312.32 for insurance coverage for a period of 180 days. Plaintiffs had use of the Truck for twelve of the 180 days; accordingly, the Court found that Plaintiffs suffered the loss of the prepaid expense for 168 days of insurance coverage totaling \$295.00. Likewise, regarding the vehicle taxes, Plaintiffs paid \$12.68 for annual property taxes. Plaintiffs used the Truck for a portion of the year; however, they suffered the loss of this prepaid expense for 252 days, totaling approximately \$10.00.

improper postpetition repossession of the vehicle after receiving actual notice of the debtor's filing bankruptcy on at least three occasions). Closer to home, this Court decided to award a minimal amount of punitive damages where a creditor mitigated its damages by promptly returning the repossessed vehicle after learning of the debtor's bankruptcy. See Brockington v. Citizens & S. Nat'l Bank of South Carolina (In re Brockington), 129 B.R. 68, 71 (Bankr. D. S.C. 1991) (finding that punitive damages of \$500.00 were warranted for the willful violation of the automatic stay but noting that these damages were mitigated because the creditor voluntarily returned the vehicle to the debtor the day after it was repossessed). The Court concludes this case contrasts Brockington as, instead of returning the repossessed collateral one day after learning of the debtor's bankruptcy case (the creditor's action in Brockington), Defendant continues to retain the Truck. Moreover, the retention creates a situation where Plaintiffs must arrange alternative means of transportation in order for Mr. Edmondson to travel to and from work. Further, the situation is exacerbated by the facts that Defendant knew of Plaintiffs' pending bankruptcy case, took matters into his own hands, flouted bankruptcy laws, and repossessed the Truck. When a creditor blatantly violates the automatic stay, it risks being assessed punitive damages.

Because of the egregious facts of this case, the Court rules that Plaintiffs are entitled to punitive damages of \$7,500.00. This amount of punitive damages is intended to deter Defendant and other creditors from such actions. The automatic stay is one of the most essential and basic protections a debtor has when filing bankruptcy. To ignore it as blatantly as Defendant has and continues to do in this case merits a serious punitive damages award that will get Defendant's attention, encourage him to change his policy, and deter him from engaging in further erroneous

conduct.

IT IS THEREFORE ORDERED that Plaintiffs are entitled to actual damages for the value of the Truck, lost tools and prescription work eyeglasses inside the Truck at the time of repossession, expenses relating to the Truck for which Plaintiffs have already paid, and costs and attorney's fees. The actual damages total \$2,345.95, and Plaintiffs are also entitled to punitive damages in the amount of \$7,500.00. A judgment is therefore entered in the amount of \$9,845.95 against Kevin Arrowood.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 30, 2002.

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