

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
2001 NOV 19 PM 6:07
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Brenda Lillian Williams,

Debtor

Brenda Lillian Williams,

Plaintiff,

v.

Fairbanks Capital Corporation,

Defendant.

C/A No. 00-00770-W

Adv. Pro. No. 01-80105-W

ENTERED

NOV 23 2001

S. R. P.

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court orders that Brenda L. Williams ("Debtor") is entitled to \$6,757.60 in damages from Fairbanks Capital Corporation ("Fairbanks"). In addition, the Court orders Fairbanks to provide Debtor a complete accounting of all payments made on behalf of Debtor to Fairbanks within twenty days.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
November 19, 2001.

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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:

mailed
NOV 23 2001

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

SHEREE R. PHIPPS
Deputy Clerk

✓ *Keith*
✓ *Dependant*

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ORDER

Chapter 13

THIS MATTER comes before the Court for a determination of damages. Brenda L. Williams (“Debtor”) filed a Complaint alleging Fairbanks Capital Corporation (“Fairbanks”) violated the automatic stay pursuant to 11 U.S.C. §362¹ by filing an affidavit of noncompliance with a consent order, thus triggering relief from the automatic stay when, in fact, Debtor was not in default under the terms of the consent order and Fairbanks filed the affidavit because of its inaccurate records. As a result of Fairbanks’s actions, Debtor seeks the recovery of actual and punitive damages and costs. Fairbanks did not answer the Complaint, and, on September 14, 2001, the Clerk of Court entered default against Fairbanks in this matter. On October 10, 2001, this Court held a hearing to determine damages. Neither Fairbanks nor its counsel appeared to contest the damages

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

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alleged. After considering the evidence presented and counsel's arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rule 7052 of the Federal Rules of Bankruptcy Procedure.²

Debtor testified that, in attempting to resolve Fairbanks's violation of the automatic stay and then prosecuting this adversary proceeding, she missed five days of work. As a Vice-President at the Orangeburg-Calhoun Regional Medical Center, she earns \$51.44 per hour for an eight hour work day.

Additionally, Debtor testified that, during the time when Fairbanks violated the automatic stay, Debtor suffered high blood pressure as a result of Fairbanks's actions. Consequently, her doctor prescribed an additional medication to ameliorate this condition. Debtor estimated the cost of this medication is \$100.00 per month, and she has used this medication since May 2001.

Debtor and Martha Craft, a friend of Debtor, testified that Debtor further suffered emotional distress and depression because Fairbanks erroneously received relief from the automatic stay and would not respond to requests for correction.

Finally, Debtor incurred attorney's fees and costs associated with the prosecution of this action. At the hearing, Debtor testified that she and her attorney agreed to a fee of one-third of her total damages recovery; however, counsel has not sought the Court's approval of this arrangement pursuant to §329(a). The Court elects to determine

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.

reasonable attorney's fees incurred as a result of Fairbanks's actions to be based on an hourly rate and the amount of time required to prosecute this case and cases similar to it.

The Court concludes that Debtor is entitled to actual damages of \$5,757.60. The Court reaches this figure by adding the amount of Debtor's lost wages (\$2,057.60), the cost of Debtor's additional blood pressure medication (\$600.00), the emotional distress Debtor suffered (\$100.00), and reasonable attorney's fees Debtor incurred (\$3,000.00).³

In addition, the Court believes a punitive damages award is warranted in this instance. The Court considers the actions and misrepresentations of Fairbanks serious enough to merit a punitive damages award. The Court has previously indicated, in the context of filing motions for relief from the automatic stay, the importance of creditors providing accurate information to their attorneys who rely on this information when filing their motions. See In re Kilgore, C/A No. 98-08227-W, at 18 (Bankr. D. S.C. Jun. 19, 2000) (“[S]ophisticated creditors who . . . deal on a regular basis with debtors who are in bankruptcy and in arrears on their accounts, and who often appear before the bankruptcy court to request relief from the automatic stay, are expected to make true and accurate representations to the Court and their counsel. Creditors, who are in control of accounts information, are expected to communicate with their attorneys and provide them with accurate information on which the lawyers can rely in advocating the creditor's position, and they are also required to promptly account for debtors' payments or at least timely respond to debtors' questions regarding their account.”); In re Asbill, C/A No. 98-05819-W, at 7 (Bankr. D. S.C. Feb. 2, 1999) aff'd 3:99-0773-19 (D. S.C. Feb. 23, 2000) (“[T]his Court is confronted with creditors who file relief from stay motions asserting that debtors

³ At the hearing, counsel indicated that he worked between thirty-six and forty hours in this adversary proceeding and that his hourly rate is \$175.00.

are in arrears when in fact, after a reasonable inquiry, it appears that they are current in their payments. Such a lack of diligence by the creditors is not only a problem for the Court and the debtors, who can not only least afford the additional costs in attorney's fees but whose reorganization in some cases is dependent upon the retention of the collateral which is the subject of such motions, but is also even a problem for the creditors' attorneys that file these motions. To effectively be able to prosecute these motions and represent the truth of the matter alleged, these attorneys must be able to rely upon their clients and the information provided to them."'). Because it hopes to curb this problem, the Court relies on the allegations of Debtor admitted by default and its authority pursuant to §105 and awards punitive damages of \$1,000.00 to deter Fairbanks from engaging in further erroneous conduct.

Finally, the Court also orders Fairbanks to provide Debtor a complete accounting of all payments Fairbanks received from Debtor or her employer. This accounting must be in writing, and Fairbanks must deliver it to Debtor's counsel within twenty days of the entry of this Order.

For the foregoing reasons, it is therefore

ORDERED that Fairbanks shall pay Debtor damages for violation of the automatic stay and pursuant to §105 in the amount of \$6,757.60; and

ORDERED that Fairbanks must provide a full accounting to Debtor of all payments made by Debtor or on Debtor's behalf to Fairbanks within twenty days.⁴

⁴ In Debtor's proposed order, she asked the Court to order the Chapter 13 Trustee to resume payments to Fairbanks of the arrears provided for in Debtor's Plan; however, Debtor did not request this relief in her Complaint. Regardless, for the Court to deal with this request properly, Debtor should raise it in her main bankruptcy case, consult the Trustee, and submit a consent order to the Court providing for this relief with the Trustee's consent. Additionally, Debtor could also discuss with the Trustee a

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
November 19, 2001.

potential setoff of her damages award from Plan payments to Fairbanks if Fairbanks fails to pay the damages it owes Debtor.

CERTIFICATE OF MAILING

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Bankruptcy Court for the District of South Carolina hereby certifies
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was mailed on the date listed below to:

✓ mailed

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

SHEREE R. PHIPPS

Deputy Clerk

✓ Keith
✓ Defendant