

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
at ..... O'clock & ..... min ..... M  
APR 10 2003  
BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (3)

IN RE:

Rodney S. Dudney and  
Jennifer Wilkes Dudney,

Debtors.

Rodney S. Dudney and  
Jennifer Wilkes Dudney,

Plaintiffs,

v.

Pro Motors,

Defendant.

C/A No. 02-13169-W

Adv. Pro. No. 02-80352-W

ENTERED  
APR 10 2003  
V.L.D.

**JUDGMENT**

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court enters judgment against Pro Motors in the amount of \$5,274.80 in actual damages and \$1,000.00 in punitive damages for a total of \$6,274.80.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
April 9, 2003.

63-39

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

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EMILIA K. ARGOE, CLERK  
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**ORDER**

Chapter 13

THIS MATTER comes before the Court for a determination of damages. Rodney S. Dudney and Jennifer Wilkes Dudney ("Plaintiffs" or "Debtors") filed a Complaint seeking the turnover of property, a 1996 Dodge Stratus, pursuant to 11 U.S.C. §542<sup>1</sup> and for a determination of violation of the automatic stay pursuant to §362(a)(3) and §362(h).<sup>2</sup> Pro Motors ("Defendant") filed no response to the Complaint, and, on February 27, 2003, Plaintiffs submitted an Affidavit of Default. On March 6, 2003, the Clerk of Court entered an Entry of Default, and, on March 13, 2003, the Court granted Plaintiffs a default judgment, finding that the facts alleged are deemed admitted. After considering the pleadings, the evidence, and counsel's arguments, the Court makes the following Findings of

<sup>1</sup> Further references to the Bankruptcy Code shall be by section number only.

<sup>2</sup> Plaintiffs also filed a motion for immediate turnover of the vehicle, and, on November 26, 2002, the Court entered an Order requiring Pro Motors to make the vehicle available for inspection to Plaintiffs' insurance company. Upon Plaintiffs providing proof of full insurance coverage to Pro Motors, the Court ordered the immediate and temporary turnover of the vehicle to Plaintiffs.

Fact and Conclusions of Law.<sup>3</sup>

### FINDINGS OF FACT

1. On November 1, 2002, Plaintiffs filed a Voluntary Petition seeking Chapter 13 bankruptcy relief.
2. On November 1, 2002 or November 2, 2002, Defendant willfully and wrongfully repossessed the vehicle.
3. When Defendant repossessed the vehicle, it had actual notice of Plaintiffs' bankruptcy case.
4. Plaintiffs made repeated demands upon Defendant to return their vehicle to them; however, Defendant refused to return the vehicle.
5. On November 26, 2002, Defendant returned the vehicle to Plaintiffs.
6. Ms. Dudney testified that Plaintiffs suffered actual damages of lost wages totaling \$146.00 because of the wrongful repossession and retention of the vehicle. Specifically, Plaintiffs missed work to make Court appearances and because of the loss of their vehicle.
7. Ms. Dudney testified that Plaintiffs suffered actual damages of incurring alternative transportation totaling \$156.80.
8. Ms. Dudney testified that Plaintiffs suffered the inconvenience of not having their vehicle from November 1, 2002 through November 26, 2002. She testified that the amount of this damage was \$500.00.
9. Ms. Dudney testified that Plaintiffs have incurred attorney's fees and costs to resolve this matter. A statement of Plaintiffs' attorney's fees reflects fees totaling \$4,972.00.

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<sup>3</sup> 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.

10. Plaintiffs also request punitive damages of \$5,000.00.

### CONCLUSIONS OF LAW

The Fourth Circuit has defined a willful violation of the automatic stay as occurring when a creditor knows of a pending bankruptcy petition and intentionally attempts to continue collection procedures in spite of it. See Budget Serv. Co. v. Better Homes of Virginia, Inc., 804 F.2d 289, 293 (4th Cir. 1986) (upholding a finding of a willful violation of the automatic stay where the creditor was served with written notice of the bankruptcy filing yet the creditor repossessed one vehicle postpetition and attempted to repossess two others postpetition). The moving party bears the burden of proof in an action for violation of the automatic stay and must prove the violation by clear and convincing evidence. See Brockington v. Citizens & S. Nat'l Bank of South Carolina (In re Brockington), 129 B.R. 68, 70 (Bankr. D. S.C. 1991); see also Diviney v. Nationsbank of Texas (In re Diviney), 211 B.R. 951, 961 (Bankr. N.D. Okla. 1997), aff'd 225 B.R. 762 (B.A.P. 10th Cir. 1998).

The admitted facts indicate that Defendant knew of the pending bankruptcy petition when it repossessed the vehicle. Indeed, Plaintiffs alleged that they provided notice of their bankruptcy case on November 1, 2002 and that the repossession occurred afterwards on November 1, 2002 or November 2, 2002.

As to intentionally attempting to continue collection procedures, the Court finds that the admitted facts also demonstrate this element. The continued retention of collateral that was wrongly repossessed constitutes a willful violation of the automatic stay when the creditor has notice of the pending bankruptcy case. See Bolen v. Mercedes Benz, Inc. (In re Bolen), C/A No. 01-13028-W, Adv. Pro. No. 01-80333-W, slip op. at 8 (Bankr. D. S.C. Jun. 21, 2002).

In the context of a wrongful repossession of a vehicle that violates the automatic stay, the Court has previously awarded actual damages for lost wages, travel expenses, loss of equipment and materials from the repossessed vehicle, and attorney's fees and costs associated with the prosecution of a turnover and stay violation complaint. See Edmondson v. Arrowood (In re Edmondson), C/A No. 02-03848-W, Adv. Pro. No. 02-80193-W, slip op. at 3-4 (Bankr. D. S.C. Jul. 31, 2002); Bolen, at 12-13; see also Jennings v. R & R Cars & Trucks (In re Jennings), C/A No. 01-02330-W, Adv. Pro. No. 01-80044-W, 2001 WL 1806980 (Bankr. D. S.C. Sept. 17, 2001) (awarding, in the context of a lawful prepetition repossession but unlawful retention of the vehicle after the debtors filed bankruptcy, actual damages for rental of replacement vehicle, attorney's fees, and lost wages). The Court has not awarded actual damages for emotional distress when there is no support to illustrate an actual injury by specific corroborating testimony or medical evidence. See Jennings, at \*7. Based upon this precedent, the Court awards actual damages totaling \$5,274.80. This amount reflects the actual damages Plaintiffs assert they suffered with the exception of \$500.00 for inconvenience. The Court believes that inconvenience is not a separate element of damages but is already reflected in the actual damages award that compensates Plaintiffs for lost wages and making alternative transportation arrangements.

Previously, this Court has awarded punitive damages for the unlawful retention of a vehicle that was wrongly repossessed. See Edmondson, at 5 (awarding punitive damages totaling \$7,500.00 for continuing to retain a wrongly repossessed vehicle and never releasing it to the debtors); Bolen, at 14 (awarding punitive damages totaling \$12,500.00 where the creditor repossessed the vehicle early in the morning with notice of the bankruptcy filing, retained the vehicle for ten weeks, and directed the debtors to travel to another state to pick up the vehicle and then decided not to release

it). Comparing this case to precedent, the Court finds that these facts do no merit a similar punitive damages award. Indeed, Defendant wrongly repossessed the vehicle and did so during the early morning hours apparently. Further, Defendant should have returned the vehicle promptly upon realizing its violation of the automatic stay. See Bolen, at 11 (“Indeed, once it learned of the bankruptcy filing and its postpetition violation, Defendant had the duty to contact Debtor or his counsel and move quickly to restore matters to the status quo.”). However, Defendant ultimately returned the vehicle and did so in a shorter time frame than in Bolen. Further, Defendant did not cause the degree of suffering that the debtors in Bolen and Edmondson endured. Plaintiffs have suffered, though, and Defendant has acted wrongly. Accordingly, the Court believes a punitive damages award of \$1,000.00 is necessary to deter Defendant from further wrongdoing. See Brockington, 129 B.R. at 71 (awarding \$500.00 in punitive damages for wrongful repossession of the debtor’s vehicle that was returned to the debtor one day after repossession).

Based upon the admitted fact that the vehicle was turned over to Plaintiffs on November 26, 2002, the Court does not need to address the §542 aspect of the Complaint.

#### CONCLUSION

From the findings and conclusions above, the Court, therefore,

**ORDERS** the entry of a judgment against Defendant in the amount of \$5,274.80 in actual damages and \$1,000.00 in punitive damages for a total damages award of \$6,274.80.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
April 9, 2003.

  
UNITED STATES BANKRUPTCY JUDGE