

HB

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at _____ O'clock _____
SEP 26 2002
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (9)

IN RE:

James Henry Edmondson, Sr. and
Teresa Annette Edmondson,
Debtors.

C/A No. 02-03848-W

Adv. Pro. No. 02-80193-W

James Henry Edmondson, Sr. and
Teresa Annette Edmondson,
Plaintiffs,

JUDGMENT

v.

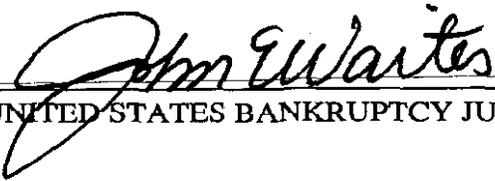
Chapter 13

Kevin Arrowood d/b/a
Kevin Arrowood Automotive,
Defendant.

ENTERED
SEP 26 2002
K.R.W.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order, the Court denies Kevin Arrowood's ("Defendant") Motion to Reconsider an Order and Judgment (the "Motion"). Further, at this time, the Court does not award sanctions as requested by James Henry Edmondson, Sr. and Teresa Annette Edmondson ("Plaintiffs") because Plaintiffs did not demonstrate they provided Defendant an opportunity to withdraw his Motion. Because Defendant's Motion and conduct may be sanctionable, the Court sets a further hearing on Plaintiffs' Motion for Sanctions for October 17, 2002 at 9:30 a.m. at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, South Carolina.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
September 26, 2002.

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:

Sept. 26 2008

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KW

KAREN R. WEATHERS
Deputy Clerk

H Burns
David Alfred
Lina McMaster
Edmondsons
&
Kevin Arrowood

UNITED STATES BANKRUPTCY COURT
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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

ORDER

Chapter 13

ENTERED
SEP 26 2002
K.R.W.

THIS MATTER comes before the Court upon Kevin Arrowood's ("Defendant") pro se Motion to Reconsider (the "Motion") an Order and Judgment ("Judgment") entered on July 31, 2002 which granted James H. Edmondson, Sr. and Teresa A. Edmondson ("Plaintiffs") a judgment against Defendant for willfully violating the automatic stay in the amount of \$9,845.95. In the Motion, Defendant asserts that he did not receive notice of the hearing on damages held on July 25, 2002 until July 29, 2002. Further, Defendant denies that he was involved in the postpetition repossession of Plaintiffs' truck, an action this Court ruled a violation of the automatic stay. Plaintiffs opposed the Motion and requested sanctions against Defendant by their Motion for Sanctions filed on September 16, 2002. At the hearing on these matters, Defendant was represented by counsel.

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FINDINGS OF FACT

The record reflects that Defendant was timely served by U.S. Mail with the following: Summons and Complaint on May 24, 2002, Motion for Preliminary Injunction and Turnover of Property on May 17, 2002, Affidavit of Default and Motion for Damages Hearing on July 1, 2002, a Notice of Damages Hearing by the Clerk of Court on July 8, 2002, and this Court's Order and Judgment awarding damages by Clerk of Court July 31, 2002. All service by U.S. Mail on Defendant was directed to his address at:

Kevin Arrowood
P.O. Box 1716
Cowpens, SC 29330.

The evidence also indicates Defendant refused an earlier express mail service of a Motion for Preliminary Injunction and Turnover of Property directed to the same address on May 23, 2002.

At the hearing on the Motion, Defendant admitted that the post office box address was correct and that he received mail directed there. Furthermore, he admitted that he provided that address to Plaintiffs' attorney as his mailing address. However, Defendant testified that, although the box was registered in his name and he paid for it, he shared it with two other people and that he did not regularly check or pick up his mail at the box. Defendant introduced three mailings from Plaintiffs' attorney, which included copies of the Summons and Complaint and Notice of Damages Hearing, and he testified he did not pick up these mailings until July 29, 2002. These mailings were postmarked with the dates of May 24, 2002 (the Summons and Complaint), June 13, 2002 (proof of insurance on the truck at issue) and July 18, 2002 (Notice of Damages Hearing).

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On July 1, 2002, Plaintiffs' attorney filed an affidavit of default. The Clerk entered Defendant's Default on July 2, 2002. A Notice of Damages Hearing was issued and served on Defendant at his post office box address by the Clerk of Court on July 8, 2002. The damages hearing was held on July 25, 2002, at which neither Defendant nor any counsel representing him appeared.

The parties agree that the Motion to Reconsider, being filed more than ten days after the Judgment, is to be considered under the standards of Federal Rule of Civil Procedure 60.¹

CONCLUSIONS OF LAW

Defendant seeks reconsideration of the Judgment on two grounds:

- 1) Defendant did not receive adequate notice of the Summons and Complaint and Damages Hearing because service by mail pursuant to Bankruptcy Rule 7004 is not proper under the circumstances of this case.

Service by mail of the Summons and Complaint is appropriate and authorized pursuant to Bankruptcy Rule 7004 and is also applicable to contested matters pursuant to Bankruptcy Rule 9014. The record reflects service was timely and made to Defendant's proper address. The postmarked envelopes that served the pleadings and notice further indicates the mailings were timely delivered to Defendant's box by the postal service. Defendant never testified that he did not receive notice of the damages hearing as sent by the Clerk of Court. Furthermore, the Court finds Defendant's testimony that he did not receive the pleadings and notice in a timely matter lacks credibility and is unconvincing. Even if truthful, Defendant's failure to check his own post

¹ Further references to the Federal Rules of Civil Procedure shall refer to the Rule number only. References to the Federal Rules of Bankruptcy Procedure shall refer to the Bankruptcy Rule number only.

office box in a reasonably timely fashion, particularly after he had provided the address to Plaintiffs' counsel after refusing express mail from that counsel, provides no defense to the default judgment and does not constitute grounds under Rule 60 to set aside the Judgment.

- 2) Defendant should not be subject to an action for willful violation of the automatic stay served upon him by mail and to punitive damages unless and until he had filed a proof of claim in the U.S. Bankruptcy Court.

The Court finds the case cited by Defendant's counsel, In re Vickie Lynn Marshall, C/A No. LA 96-12510 SB, Adv. Pro. No. AO 96-1838SB, slip op. (C.D. Cal. May 24, 2001) to be inapplicable and distinguishable from this matter. The Court further holds that this argument is without merit and does not constitute grounds for relief pursuant to Rule 60.

The Court further notes that grounds raised in Memorandum in Support dated September 17, 2002 by Defendant's counsel were either not applicable or abandoned by Movant as they were not argued at the hearing.

Having fully considered the Defendant's arguments and the evidence presented, the Court denies Defendant's Motion.

Next, the Court considers Plaintiffs' Motion for Sanctions. Considering the clear lack of merit of Defendant's grounds for reconsideration and the false testimony offered in support of it, the Court finds Defendant's Motion frivolous. Moreover, Defendant's Motion has caused Plaintiffs to incur more costs and these proceedings to be delayed. Although Defendant's Motion may be sanctionable, the Court will not award sanctions at this time pursuant to Bankruptcy Rule 9011 because Plaintiffs did not demonstrate that they provided Defendant an opportunity to withdraw his Motion. However, the Court finds Defendant's Motion and conduct may meet the



standard for sanctions pursuant to 28 U.S.C. §1927, 11 U.S.C. §105, and the inherent power of this Court. See In re Asbill, C/A No. 98-05819, slip op. (Bankr. D.S.C. Feb. 2, 1999) aff'd, C/A No. 3:99-0773-19, slip op. (D.S.C. Feb. 23, 2000). Because Defendant had limited notice of the Motion for Sanctions, the Court sets a further hearing on the Motion for Sanctions for **October 17, 2002 at 9:30 a.m. at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, South Carolina** and advises parties that it will consider sanctions pursuant to the Motion and all of the above cited statutes at that time.

AND IT IS SO ORDERED.

Columbia, South Carolina,
September 26, 2002.


UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
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