

ENTERED

SEP 15 2005

K.R.W.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
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SEP 15 2005
United States Bankruptcy Court
Columbia, South Carolina (S)

In re:

Herbert Louis Young,

Debtor.

Herbert Louis Young,

Plaintiff,

v.

Elite Financial Services, Inc.,

Defendant.

C/A No. 04-10260-W

Adv. Pro. No. 04-80353-W

Chapter 13

ORDER

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court finds that Herbert Louis Young ("Debtor") is entitled to actual damages for costs associated with obtaining alternative methods of transportation (\$250.00); actual damages for costs associated with maintaining auto liability insurance on 1997 Dodge truck (\$26.13); actual damages for lost income (\$6,000.00); actual damages for attorney's fees and costs (\$9,026.62); actual damages for emotional distress (\$2,000.00); and punitive damages (\$7,697.25). Accordingly, the Court enters a judgment for \$25,000.00 against Defendant.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

September 15, 2005

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Chapter 13

ORDER

THIS MATTER comes before the Court for a determination of damages. On April 21, 2005, the Court entered an Order Granting Summary Judgment¹ (hereinafter referred to as the "Summary Judgment Order") to Herbert Louis Young ("Debtor"), concluding that Elite Financial Services, Inc. ("Defendant") was liable for a willful violation of the automatic stay. To establish the amount of damages caused by Defendant's willful violation of the automatic stay, the Court conducted a damages hearing. After considering the evidence and legal arguments presented by Debtor and Defendant, the Court concludes that Debtor is entitled to damages.²

FINDINGS OF FACT³

1. On July 10, 2003, Debtor purchased a 1997 Dodge Ram 1500 truck ("1997 Dodge") with financing from Defendant. Defendant secured the financing provided to Debtor by

¹ Young v. Elite Financial Svcs., Inc. (In re Young), C/A No. 04-10260, Adv. Pro. No. 04-80353, slip op. (Bankr. D.S.C. Apr. 21, 2005).

² 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 also adopted as such.

³ The Findings of Fact provided in this Order adopt, and in some instances reiterate the Findings of Fact provided in Summary Judgment Order.

obtaining a lien against Debtor's 1997 Dodge.

2. On August 31, 2004, Debtor filed for Chapter 13 bankruptcy relief. Debtor listed Defendant as a secured creditor in his bankruptcy schedules. Defendant was served with a Notice of Meeting of Creditors and Chapter 13 Plan and Related Motions in Debtor's case.

3. Defendant admitted that it received timely notice of Debtor's bankruptcy. Defendant participated in Debtor's Meeting of Creditors and questioned Debtor on the record.

4. On November 1, 2004, Defendant repossessed Debtor's 1997 Dodge without obtaining stay relief from the Court prior to the repossession.

5. On November 4, 2004, Debtor filed a complaint against Defendant. In the complaint, Debtor asserted that Defendant willfully violated the automatic stay provided by 11 U.S.C. § 362 by improperly repossessing the 1997 Dodge without obtaining stay relief from the Court.

6. On December 9, 2004, the Court entered an order that required Defendant to turnover the 1997 Dodge to Debtor. Consequently, Defendant returned the 1997 Dodge and its contents to Debtor later that day.

7. Debtor subsequently filed a Motion for Summary Judgment, and the Court entered the Summary Judgment Order on April 21, 2005. Following entry of the Summary Judgment Order, the Court held a damages hearing to determine the amount of damages that Debtor was entitled to collect from Defendant. At the damages hearing, Debtor asserted that he incurred loss-of-use damages of \$250.00, an amount associated with the cost of obtaining alternative modes of transportation during the time Defendant held possession of the 1997 Dodge. Debtor also contends that he is entitled to \$26.13 as compensation for the cost of maintaining auto liability insurance on the 1997 Dodge during the 39 days that Defendant

improperly withheld possession of it.

8. Debtor supplements his disability income by performing painting and carpentry construction services. Debtor contends that he lost five employment projects because he was unable to obtain adequate transportation during the time Defendant held possession of the 1997 Dodge. The evidence presented in this case indicates that Debtor was given \$4,000.00 in cash as an advance to procure materials and cover costs for a certain project. Apparently, the \$4,000.00 was stored inside the 1997 Dodge when Defendant repossessed it postpetition. Defendant returned the \$4,000.00 to Debtor when it returned the 1997 Dodge to Debtor.

9. On cross-examination at the hearing, Debtor provided testimony describing the five lost projects and their approximate values as follows:

- (a) A project for a Mr. Sullivan's valued at over \$11,000.00.
- (b) A project for a Mr. Hale valued at \$300.00.
- (c) A project for Charles Little valued at \$620.00.
- (d) A project for Costell Little valued at \$500.00.
- (e) A project for Ruth Richie valued at \$1,500.00.

In light of the value of the lost jobs, Debtor estimated that he lost \$6,000.00 in income during the time he was without the use of the 1997 Dodge.

10. Debtor also asserted that he incurred legal fees and costs during the prosecution of this matter. Counsel for Debtor submitted an affidavit of fees and costs in which counsel states that she charged Debtor \$200.00 per hour. The affidavit of fees indicates that Debtor's counsel has worked 41.6 hours on this case. Thus, Debtor has incurred \$8,320.00 in attorney's fees, which includes \$600.00 in attorney's fees for travel time to and from the

damages hearing and time spent representing Debtor at the hearing. The affidavit also indicates that Debtor incurred \$513.00 in paralegal expenses for 5.4 hours of paralegal time at a rate of \$95.00 per hour. Finally, the affidavit of fees and costs also indicates that Debtor incurred \$193.62 in costs. Therefore, the overall costs that Debtor incurred in prosecuting this matter is \$9,026.62.

11. Debtor also advised the Court that he suffers from Post Traumatic Stress Disorder (“PTSD”), a condition that developed following Debtor’s military service during the Viet Nam conflict. Apparently, Debtor takes medication and receives therapy for his PTSD. Debtor’s medication was in the 1997 Dodge when Defendant repossessed it. Consequently, Debtor was unable to take his medication since Defendant withheld possession of the 1997 Dodge following the repossession. Moreover, Debtor was unable to attend his scheduled therapy sessions. Debtor testified that he suffered a severe physical reaction and nightmares related to his inability to take his medication.⁴ Additionally, Debtor’s girlfriend testified that she noticed that Debtor complained of these problems and exhibited a short-tempered and edgy disposition during the period he was without his medication. In light of such problems, Debtor asserts that he is entitled to compensation for damages arising from the emotional distress that is a by-product of Defendant’s improper repossession of the 1997 Dodge.

12. Finally, Debtor also contends that he is entitled to collect punitive damages since Defendant was aware of the Debtor’s bankruptcy filing. Furthermore, Debtor notes that Defendant is sophisticated creditor that regularly deals with bankruptcy matters, and has a history of being active in bankruptcy cases.

13. In response to Debtor’s assertions, Pharisee Hall (“Hall”), an officer of Defendant,

⁴ Debtor testified that because he was without his medication, he experienced the constant feeling that bugs were crawling over him.

presented testimony in which he contended that Defendant was justified in repossessing the vehicle without obtaining relief from stay because Debtor failed to maintain auto liability insurance on the 1997 Dodge. Hall also testified that his repossession agent notified him that the 1997 Dodge did not have current tags while in the possession of Debtor. Furthermore, Hall believed that the repossession was justified because he was under the impression that the Court would dismiss Debtor's case. Finally, Hall asserted that he was entitled to repossess the 1997 Dodge despite the application of the automatic stay because he believed that Debtor had fraudulently given him an incorrect social security number when he applied for a loan from Defendant. Therefore, in light of the testimony provided by Hall, Defendant concludes that it has demonstrated mitigating circumstances that significantly minimize the amount of damages to be awarded Debtor.

CONCLUSIONS OF LAW

Since the Court has concluded that Defendant is liable for a willful violation of the automatic stay in the Summary Judgment Order, the Court must determine the amount of damages that Debtor is entitled to collect. See 11 U.S.C. § 362(h) ("An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages."). See also Bolen v. Mercedes Benz, Inc. (In re Bolen), 295 B.R. 803, 810 (Bankr. D.S.C. 2002) (utilizing 11 U.S.C. § 362(h) to award actual and punitive damages for a willful violation of the automatic stay). Accordingly, the Court shall discuss the extent of actual damages and punitive damages that Debtor is entitled to recover under the circumstances of this case.

I. Actual Damages

Debtor contends that he suffered the following actual damages: (1) expenses associated with obtaining alternative modes of transportation while Defendant withheld possession of the 1997 Dodge and other loss-of-use costs, (2) lost income arising from the repossession of the 1997 Dodge, (3) attorney's fees and costs, and (4) damages associated with emotional distress.

In light of the circumstances of this case, the Court concludes that the \$250.00, which Debtor paid to procure alternative methods of transportation while Defendant was in possession of the 1997 Dodge, is a reasonable amount of damages incurred by Debtor. Furthermore, the Court finds it proper to require compensation for the \$26.13 in damages for costs associated with maintaining auto liability insurance on the 1997 Dodge for the benefit of Defendant for the 39 days that Defendant improperly possessed Debtor's vehicle.

With respect to lost wages caused by Defendant's improper repossession of the 1997 Dodge, the Court notes that the evidence indicates that Debtor was given \$4,000.00 in cash as an advance for materials and labor for a particular construction project. The \$4,000.00 advance demonstrates the extent of Debtor's business activities that allow him to earn supplemental income. In light of Debtor's detailed testimony concerning the five projects he was unable to work and Defendant's ineffective impeachment of Debtor on cross-examination, Debtor's contention that he lost approximately \$6,000.00 of income during the time Defendant held possession of the 1997 Dodge appears credible. Therefore, the Court concludes that Debtor is entitled to \$6,000.00 in damages for lost wages caused by the improper repossession of the 1997 Dodge during Debtor's bankruptcy.

The Court also concludes that the affidavit of fees provided by Debtor's counsel

demonstrates that Debtor incurred \$9,026.62 in attorney's fees and costs during the prosecution of this case. This amount is reasonable in light of the time that Debtor's counsel has been required to put into this case since Defendant requested continuances of hearings in order to obtain new counsel and has vigorously litigated this matter.

Moreover, the Court is inclined to award Debtor damages for emotional distress. See In re Johnson, No. 97-06698-W, 2001 WL 1806979, at *6 (Bankr. D.S.C. June 26, 2001) (noting that court have recognized, when appropriate, emotional damages as allowable actual damages under § 362 and awarding damages for emotional distress to debtors as a result of a willful violation of the automatic stay). See also In re Papp, C/A No. 01-01785, slip op. at 10 (Bankr. D.S.C. June 21, 2004) (awarding damages for emotional distress); Rupe v. Providian Nat'l Bank & Presidio, LLC (In re Rupe), C/A No. 02-15468-W, Adv. Pro. No. 03-80042-W, slip op. at 6 (Bankr. D.S.C. June 20, 2003) (same); Nichols v. Countrywide Home Loans, Inc. (In re Nichols), C/A No. 97-01703-B, Adv. Pro. No. 01-80076-B, slip op. at 5-6 (Bankr. D.S.C. Feb. 4, 2002) (same); In re Boone, 235 B.R. 828, 838 (Bankr. D.S.C. 1998) (same). In this case, Defendant's improper repossession of the 1997 Dodge prevented Debtor from taking the medication left inside the vehicle. The lack of medication and the stress from the incident caused Debtor to suffer from aggravated symptoms associated with his PTSD. Moreover, because Defendant improperly repossessed the 1997 Dodge postpetition, Debtor was unable to attend a scheduled therapy session.

Finally, Defendant contends that Debtor is not entitled to damages for emotional distress because he did not present any medical testimony demonstrating the distress or harm he suffered. However, Debtor submitted sufficient documentary evidence indicating that Debtor takes medication and receives therapy for PTSD. Moreover, Debtor's girlfriend

provided credible eyewitness testimony describing the emotional problems caused by Debtor's lack of medication, which was a clear by-product of Defendant's willful violation of the stay. Accordingly, the Court concludes that under the circumstances Debtor proved emotional distress without the need for medical testimony. See In re Covington, 256 B.R. 463, 467 (Bankr. D.S.C. 2000) (deciding to award damages for emotional distress without medical testimony). Therefore, under the unique evidentiary circumstances of this case, the Court finds that Debtor suffered \$2,000.00 in damages for emotional distress.

II. Punitive Damages

This Court has previously determined that “[w]hen a creditor blatantly violates the automatic stay, it risks being assessed punitive damages.” Edmondson v. Arrowood (In re Edmondson), No. 02-03848-W, Adv. Pro. No. 02-80193-W, 2002 WL 32389899, at *2 (Bankr. D.S.C. Jul. 30, 2002). In this case, the Court finds that Defendant's improper repossession of the 1997 Dodge without obtaining relief from the automatic stay from the Court is an egregious willful violation of the automatic stay because Debtor was well aware of Debtor's bankruptcy filing. Furthermore, Defendant is a sophisticated creditor that has appeared before this Court and properly sought relief from stay in other cases. Not only did Defendant improperly repossess the 1997 Dodge, Defendant exacerbated the violation by holding the 1997 Dodge for a period of 39 days. During that time, Debtor was without the medication he needed to control his PTSD. He was also unable to properly dispense the \$4,000.00 advance he was provided.

Defendant contends that it was justified in repossessing the vehicle because it was unable to confirm liability insurance coverage for the 1997 Dodge. Defendant also asserted that Debtor failed to maintain proper tags on the vehicle. Moreover, Defendant blames its

former counsel for advising Defendant that it could repossess the 1997 Dodge because Debtor has allegedly provided Defendant with an incorrect social security number for purposes of fraudulently procuring a loan from Defendant. All of these contentions have no merit. This Court has previously concluded that “[t]o retain the Truck and demand proof of insurance or other means of adequate protection before returning it to [d]ebtor is a continuing and deliberate violation of the stay and increased the damages of [d]ebtor.” In re Bolen, 295 B.R. at 809. Furthermore, the procedures for obtaining relief from stay established by this Court and the Bankruptcy Code provide Defendant with an efficient means to obtain relief from the stay if Debtor had actually failed to maintain liability insurance on the 1997 Dodge. Finally, Defendant improperly assumed that Debtor committed an act of fraud when it discovered that the social security number on Debtor’s loan documents differed from the social security number that Debtor used to file his bankruptcy case. A letter in the record of this case indicates that the United State Trustee conducted an investigation into this matter and discovered that Social Security Administration incorrectly assigned Debtor two social security numbers. Thus, Defendant’s allegations of fraud appear contrary to the evidence of this case.

Therefore, under the circumstances of this case, the Court concludes that an award of \$7,697.25 in punitive damages is the proper amount to deter Defendant from violating the stay in such an egregious manner in future cases.

III. Conclusion

In light of the foregoing and considering the totality of the circumstances, the Court awards Debtor the following: \$250.00 for the costs associated with obtaining alternative methods of transportation, \$26.13 for costs associated with maintaining auto liability

insurance on the 1997 Dodge while it was in the possession of Defendant, \$6,000.00 in lost income associated with Defendant's improper repossession of the 1997 Dodge, \$9,026.62 for attorney's fees and costs, and \$2,000.00 in damages for emotional distress. In addition to the actual damages awarded to Debtor, the Court shall also award Debtor punitive damages in the amount of \$7,697.25 in light of the egregious nature by which Defendant willfully violated the stay provisions of 11 U.S.C. § 362. Accordingly, the Court shall award Debtor a judgment against Defendant for \$25,000.00.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
September 15, 2005