

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
O'clock & min. 12  
**MAY 11 2005**

BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (11)

IN RE: )  
)  
Jerome Miller and Sylvia Coates Miller, )  
)  
Debtor(s). )  
\_\_\_\_\_)  
)  
Jerome Miller and Sylvia Coates Miller, )  
)  
Plaintiffs, )  
)  
v. )  
)  
Lloyd Willing and Willing's Used Cars, Inc., )  
)  
Defendants. )  
\_\_\_\_\_)

C/A No. 04-15104-W

Adv. Pro. No. 05-80032-W

**ENTERED**

**MAY 11 2005**

**K. E. P.**

**JUDGMENT**

Chapter 7

Based upon the Findings of Fact and Conclusions of Law recited in the attached Order of the Court, Jerome Miller and Sylvia Coates Miller have a judgment against Lloyd Willing and Willing's Used Cars, Inc., jointly and severally, in the amount of \$5,000.00 in actual damages, and 7,000.00 in punitive damages, for a total of \$12,000.00.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
May 11, 2005

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C/A No. 04-15104-W  
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**ORDER**

Chapter 7

**ENTERED**  
MAY 11 2005  
K. E. P.

THIS MATTER comes before the Court for a determination of damages. Jerome Miller and Sylvia Coates Miller (the "Debtors" or "Plaintiffs") filed an amended complaint alleging Lloyd Willing ("Willing") and Willing's Used Cars, Inc. ("Willing's"), (collectively, the "Defendants") willfully violated the automatic stay of 11 U.S.C. § 362<sup>1</sup> by repossessing Plaintiffs' 1997 Jeep Grand Cherokee Laredo ("the Jeep") postpetition and without obtaining relief from the automatic stay. As a result of Defendants' actions, Plaintiffs commenced this adversary proceeding on February 2, 2005, seeking turnover of the Jeep in addition to actual damages, including costs and attorney's fees, and punitive damages. Defendants did not answer the amended complaint, and on April 6, 2005, default was entered against Defendants.

On May 3, 2005, after notice to Defendants, the Court held a hearing to determine damages. Defendants did not timely appear at the call of the case, but Heather Stradley, office manager of

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

Willing's, appeared belatedly during the hearing. The Court permitted her to participate and testify on the issue of damages.<sup>2</sup>

After considering the evidence presented at the hearing, other matters appearing of record, matters deemed established by Defendants' default,<sup>3</sup> and the arguments of counsel, the Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bank. P. 7052.<sup>4</sup>

### **FINDINGS OF FACT**

1. Plaintiffs filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on December 22, 2004.
2. When Plaintiffs filed their petition, they had possession and ownership of the Jeep which they had purchased from Willing's for \$5,995.00.
3. Willing's claims a purchase money security interest in the Jeep.
4. Defendant Willing is the owner and operator of Defendant Willing's.
5. Willing's was scheduled as a secured creditor and listed on the mailing matrix for Plaintiffs' Chapter 13 case. As a result, Willing's was mailed a notice of the filing of that case. That notice informed the recipient that the filing of the case "automatically stays certain collection and other actions against the debtor [and] the debtor's property."
6. Defendants had actual knowledge of Plaintiffs' Chapter 13 case by January 18, 2005, when

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<sup>2</sup> Defendants' position is that damages could not be significant because the Jeep was not in working order when it was repossessed and that no contents or parts were removed.

<sup>3</sup> See Ryan v. Homecomings Fin. Network, 253 F.3d 778, 780 (4<sup>th</sup> Cir. 2001) (defendant's default admits plaintiff's well-pleaded allegations of fact).

<sup>4</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.

Willing personally attended Plaintiffs' § 341 meeting of creditors.

7. Notwithstanding such knowledge, Defendants, on January 24, 2005, caused the repossession of the Jeep.
8. Defendants at no point sought relief from the automatic stay pursuant to § 362(d).
9. On January 25, 2005, counsel for Plaintiffs informed Defendants in writing that the repossession violated § 362, demanded return of the Jeep, and informed Defendants of the consequences of a willful violation of the automatic stay.
10. Defendants acknowledged repossessing the Jeep and receiving Plaintiffs' demand but refused to return the Jeep.
11. On March 14, 2005, Plaintiffs converted their bankruptcy case to Chapter 7 for reasons unrelated to this adversary proceeding.
12. After Defendants failed to answer the present adversary proceeding, the Court, on April 8, 2005, entered a default Order requiring Defendants to deliver the Jeep to Plaintiffs' residence within five (5) days of the order. The Order was personally served on Willing on April 14, 2005, but Defendants continued to retain the Jeep.
13. On April 15, 2005, a representative of Willing's, Thomas Jay, attended the § 341 meeting of creditors in the Chapter 7 case. Jay stated on the record that he had repossessed the Jeep for Defendants and that it was being used for parts. Counsel for Plaintiffs informed Jay that the default Order served on Willing required him to return the Jeep and that Willing would be in contempt if he refused to do so. Defendants nevertheless continued to retain the Jeep.
14. On April 25, 2005, Defendants returned the Jeep to Plaintiffs at their residence. This date was three (3) months after the repossession and eleven (11) days after personal service of the

default Order requiring return of the Jeep.

15. Plaintiffs obtained from rental agencies two quotations for rental of vehicles comparable to the Jeep. The lesser of these was \$1,299.00 per month.
16. The Jeep was not in running condition when it was repossessed. However, the mechanical problems could be repaired by Plaintiffs themselves. The repossession delayed Plaintiffs' efforts to return the Jeep to their use.
17. On return of the Jeep, Plaintiff Sylvia Miller found that parts had been removed from the Jeep. The battery was missing, as were the two back seats. Sylvia also found tools in the Jeep that were not in it when it was taken, indicating someone had been working inside it during its absence.
18. Personal items that had been in the Jeep when it was repossessed were also missing. Several days after its return, the bottoms and backs of the seats were placed in the Jeep, but they were not fully reinstalled. Throughout this entire period, Willing's continued to retain a key to the Jeep in its file.
19. In September 2003, Plaintiffs filed a Chapter 13 case which was ultimately dismissed. Willing's, a creditor in that case as well, sent a representative named Angie to the § 341 meeting of creditors. As Plaintiffs were returning to their home in Aiken, they saw Angie and Willing talking by the roadside. Willing motioned them to pull over, expressed anger over the bankruptcy filing, and attempted to block them from continuing home. He verbally abused Plaintiffs, physically assaulted Plaintiff Jerome Miller, and pursued them in a threatening fashion when they fled. Plaintiffs then called the police, who met them at a public location and remained there to restore the peace.

20. As a proximate result of the repossession and retention of the Jeep, Plaintiffs incurred the following losses or expenses: loss of use of the Jeep, loss of battery and other contents, and expense from the labor necessary to reinstall the rear seats.
21. Plaintiffs also experienced emotional distress and inconvenience as a result of the repossession and retention of the Jeep and their loss of its use. Plaintiffs testified that they had to arrange transportation for children to school and for meeting other family needs on a daily basis because the family's only other vehicle was used by Mr. Miller to attend his job in Hilton Head, South Carolina.
22. Plaintiffs also incurred attorney's fees and costs in prosecuting this adversary proceeding.

#### CONCLUSIONS OF LAW

In this case, it is clear that Defendants committed a willful violation of the automatic stay. In the Fourth Circuit, a willful violation occurs when a creditor knows of the pending bankruptcy petition and intentionally attempts to continue collection procedures in spite of it. Budget Serv. Co. v. Better Homes of Virginia, Inc., 804 F.2d 289, 293 (4<sup>th</sup> Cir. 1986). The amended complaint alleges Defendants knew of the bankruptcy case when they repossessed the Jeep. This allegation is deemed established because of Defendants' default, and the evidence moreover confirms this fact. Defendants therefore willfully violated § 362.

The Court also concludes that Plaintiffs are entitled to actual damages in the amount of \$5,000.00, including attorney's fees and costs. Under the circumstance of this case, the following amounts for damages are reasonable:

Loss of use – three months	\$1800.00
Battery	35.00
Labor for reinstallation of rear seats	340.00

Personal contents (2 TV's and clothing)	<u>225.00</u>
Total	\$2,400.00

Furthermore, reasonable compensation for Plaintiffs' emotional distress would be \$250.00. After reviewing the fee affidavit of Plaintiffs' counsel, the reasonable value of his services are \$2,350.00, including services performed after the hearing to prepare a proposed order.

In addition, the Court believes a punitive damages award is warranted in this instance. In recent years this Court has awarded substantial punitive damages where a creditor willfully repossessed a vehicle in violation of § 362, particularly when the creditor then continued to retain possession. See Bolen v. Mercedes Benz, Inc. (In re Bolen), 295 B.R. 803 (Bankr. D.S.C. 2002) (\$12,500.00 where creditor repossessed vehicle postpetition and retained possession for ten (10) weeks pending proof of insurance, then required debtor to travel to North Carolina to retrieve it); Edmondson v. Arrowood (In re Edmondson), C/A No. 02-03848-W, Adv. Pro. No. 02-80193-W (Bankr. D.S.C. Jul. 30, 2002) (\$7,500.00 where creditor repossessed truck valued at \$300.00 and never returned it); compare In re Evans, C/A No. 02-14104 (Bankr. D.S.C. Apr. 23, 2003) (\$5,000.00 where repossession agency failed to notify its tow truck driver that creditor had canceled repossession order; driver repossessed car postpetition, damaging its transmission; but repossession agency returned car the same day); and cf. Nichols v. Countrywide Home Loans, Inc. (In re Nichols), C/A No. 97-01703-B, Adv. Pro. No. 01-80076-B (Bankr. D.S.C. Feb. 4, 2002) (\$38,000.00 where mortgage creditor repeatedly attempted to lift stay inappropriately, to post payments incorrectly, and to add escrow charges while disregarding debtor's attempt to reconcile the account). Other courts have also severely punished creditors who demonstrate their disdain of the automatic stay by retaining property that was repossessed improperly. Bolen, 295 B.R. at 811 - 12 (citing cases with

punitive damages ranging from \$30,000.00 - \$40,000.00).

A primary function of punitive damages is to deter future wrongful conduct. The precedent in this District clearly establishes the importance of respecting the effects of the automatic stay. Despite being expressly informed of this record, Defendants blatantly flouted the mandates of § 362. They repossessed the Jeep knowing of the bankruptcy case; retained it for three (3) months, knowing that act was a violation of law; and continued to retain it in direct violation of this Court's turnover order. Apparently this was not an isolated indiscretion, as Defendants' conduct in Plaintiffs' prior case demonstrates.

This Court views the automatic stay as a cornerstone of bankruptcy law. Its observance is essential to accomplish the objectives of liquidation, reorganization, or exemption under any Chapter. The Court must do what is required to preserve this statutory protection for Debtors and the estate. Therefore, based upon the totality of the circumstances, including consideration of the lowest amount necessary to deter future abuses, the Court awards punitive damages against Defendants in the amount of \$7,000.00. The following factors also weighed into the determination of punitive damages:

1. Defendants are commercial creditors which are experienced in bankruptcy procedure.
2. Defendants possessed a clear knowledge of the automatic stay when they repossessed the Jeep postpetition.
3. Defendants retained the Jeep for a long period of time and failed to comply with the Court's order of turnover.
4. The physical damage done to the Jeep and loss of contents.
5. Condition and value of the Jeep at the time of the repossession.

IT IS THEREFORE ORDERED that Plaintiffs have a judgment against Defendants, jointly and severally, in the amount of \$5,000.00 actual damages, and 7,000.00 punitive damages, for a total of \$12,000.00.

**AND IT IS SO ORDERED.**



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UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
May 11, 2005