

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re,

Brian Keith Payne and Britney Nicole Payne,

Debtor(s).

Brian Keith Payne
Britney Nicole Payne,

Plaintiff(s),

v.

Blue Ridge Cars and Trucks LLC,

Defendant(s).

C/A No. 24-02637-HB

Adv. Pro. No. 24-80041-HB

Chapter 13

ORDER AWARDING DAMAGES

THIS MATTER came before the Court for hearing on December 18, 2024, to consider the Motion to Determine Damages (the “Motion”) filed by Plaintiffs Brian Keith Payne (“Mr. Payne”) and Britney Nicole Payne (“Ms. Payne”) (collectively, the “Paynes”),¹ and the response thereto filed by Ronald G. Bruce (“Bruce”) on behalf of Defendant Blue Ridge Cars and Trucks LLC (“Blue Ridge”). After careful consideration of the record, the Court finds as follows.

BACKGROUND, UNDISPUTED FACTS, AND ADMITTED ALLEGATIONS

Pre-petition, Ms. Payne purchased a 2013 Chevrolet Tahoe (VIN: 1GNSCAE0XDR214713) (the “Chevrolet”) and a 2003 Ford F-350 (VIN: 1FTSW31F23EA95552) (the “Ford”) (collectively, the “Vehicles”) from Blue Ridge.² Blue Ridge financed the purchases and the debts to Blue Ridge are secured by liens encumbering the Vehicles.

¹ ECF No. 18, filed Nov. 8, 2024.

² Blue Ridge filed Claim No. 11-3 for \$16,837.89 fully secured by the Ford, with a pre-petition arrearage listed of \$2,444.13. Blue Ridge filed Claim No. 12-2 for \$7,247.07 secured by the Chevrolet (secured portion listed as \$7,010.00 and unsecured portion listed as \$237.07), with a pre-petition arrearage listed of \$963.07. See Claims Register in C/A No. 24-02637-HB.

Ms. Payne is listed as the owner on the Certificate of Title to the Chevrolet, and both Paynes are listed as owners on the Certificate of Title to the Ford.

On July 23, 2024 (the “Petition Date”), the Paynes filed a petition for relief under Chapter 13 of the Bankruptcy Code with the assistance of Christopher M. Edwards (“Edwards”) as counsel, initiating C/A No. 24-02637-HB. Included with the petition was a creditor mailing matrix, which listed the address for Blue Ridge. The Paynes’ schedules indicate they have interests in the Vehicles as well as a 1999 Ford F-150 with approximately 280,000 miles and have two minor children living with them.³

On the Petition Date, the Court issued a Notice of Chapter 13 Bankruptcy Case (Official Form 309I) (the “Notice of Chapter 13”), which advised creditors and parties-in-interest of important information about the Paynes’ bankruptcy case. At the very top, the Notice of Chapter 13 advised that a case had been filed and explained the following:

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors, the debtors’ property, and certain codebtors. **For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors.**

(emphasis added). The Notice of Chapter 13 was served by first class mail on July 25, 2024, on Blue Ridge at 3420 N Hwy 14, Greer, SC 29651-5323. That address matches the address later provided by Blue Ridge in its proofs of claim filed with the Court as the place where notices should be sent.

On July 30, 2024, the Paynes filed a Complaint against Blue Ridge to commence this adversary proceeding. The Complaint alleged that Blue Ridge is a limited liability company conducting business in Greenville County, SC, and that Blue Ridge received notice of the Paynes’

³ C/A No. 24-02637-HB, ECF No. 10, filed Aug. 7, 2024.

bankruptcy case as follows: by receiving the mailed Notice of Chapter 13; by Edwards calling and emailing Blue Ridge's agents on the Petition Date to advise that the Paynes had filed for bankruptcy; and by the Paynes personally texting the Notice of Chapter 13 to Stanley Nolt ("Nolt"), Owner of Blue Ridge, and Tiffany Norton ("Norton"), Operations Manager of Blue Ridge, on the Petition Date.

The Complaint further alleged that on July 25, 2024, with actual knowledge of the filing of the bankruptcy, Blue Ridge repossessed the Vehicles.⁴ According to the Complaint, on July 26, 2024, Edwards contacted Blue Ridge advising that the repossession violated the Bankruptcy Code and that Blue Ridge was required to return the Vehicles to the Paynes without delay. Norton is alleged to have advised Edwards that the Vehicles were repossessed due to the Paynes' lack of insurance coverage. The Complaint alleged that on the same day, Edwards sent a letter demanding the return of the Vehicles and warning Blue Ridge of the unlawful nature of its conduct and provided Blue Ridge another copy of the Notice of Chapter 13, a copy of a Chapter 13 plan proposing to pay Blue Ridge's claims in full plus 9.00% interest,⁵ and proof of insurance on the Vehicles. The Complaint alleged Blue Ridge still refused to return the Vehicles and that, as a result, the Paynes were without means of transportation, incurred expenses in finding alternative transportation, missed work by being unable to commute and were therefore less able to make their Chapter 13 plan payments, experienced emotional distress, and incurred attorney's fees and costs, and their residence suffered damages. The Complaint sought turnover of the Vehicles and damages, including attorney's fees and costs, costs of this action, and emotional distress damages,

⁴ The Complaint also alleged that Blue Ridge never issued a right to cure letter prior to the repossession as required by South Carolina law. However, no legal authority was provided or relief sought in connection with this allegation.

⁵ On August 6, 2024, the Paynes filed a Chapter 13 plan in their bankruptcy case proposing to pay Blue Ridge's claims secured by the Vehicles in full plus 9.00% interest without valuation or lien avoidance through disbursements made by the Chapter 13 Trustee. That plan was confirmed on November 14, 2024.

and punitive damages under [11 U.S.C. § 362\(k\)](#) for Blue Ridge’s willful violation of the automatic stay.

A Summons was issued on July 31, 2024, requiring Blue Ridge to file a motion or Answer to the Complaint by August 30, 2024. Also on July 31, 2024, the Paynes filed a Motion for Immediate Turnover and a Motion to expedite a hearing on the same. The Court granted the Motion to expedite and set a hearing for August 8, 2024. The record in this adversary proceeding indicates that the Vehicles were returned prior to the hearing.

Blue Ridge, despite having been properly served with the Summons and Complaint, did not make an appearance in this adversary proceeding and on September 4, 2024, the Paynes filed a Motion for Default Judgment and served it on Blue Ridge. On September 6, 2024, the Clerk of Court entered an Entry of Default against Blue Ridge and the Court entered a Default Judgment against Blue Ridge. The Default Judgment provided the Paynes “have reserved the right to seek and establish damages in this matter through separate pleadings.” A copy of that Default Judgment was served on Blue Ridge by first class mail on September 8, 2024.

REQUEST FOR DAMAGES

On November 8, 2024, the Paynes filed the Motion seeking \$6,897.99 in actual damages, consisting of the following:

- Damage caused to the Vehicles during the repossession of \$614.76;
- Loss of income and wages totaling \$375.28;
- Cost of alternative transportation for the 12 days in which the Vehicles were retained by Blue Ridge in the amount of \$840.00;
- Attorney’s fees in the amount of \$4,687.50 (as of that date); and

- Costs of this action in the amount of \$380.45. The Paynes filed a Statement in Support of Damages as an Exhibit to the Motion explaining that these costs consist of “filing and service costs” ([ECF No. 22](#)). The docket reflects payment of the \$350.00 filing fee for the Complaint, leaving \$30.45 in service costs.

The Motion also seeks punitive damages based on Blue Ridge’s willful violation of the automatic stay. A copy of the Motion was served on Blue Ridge and on Bruce on November 8, 2024. On November 19, 2024, the Court entered an Order setting a hearing for December 18, 2024, “to consider damages against Defendant Blue Ridge Cars and Trucks LLC” and requiring any pleadings in support of or opposition to the Motion be filed and served by December 11, 2024. Blue Ridge received due notice of the hearing notice.

On December 10, 2024, Bruce filed an objection to the Motion simply stating Blue Ridge opposes “the Motion to Determine Damages of the Plaintiff’s counsel and demands to be heard at the hearing scheduled for December 18, 2024.” The objection does not address the merits of the Motion or of the Complaint.

The Court held a hearing on December 18, 2024. Appearances were made by Edwards on behalf of the Paynes, Nolt, and Norton, Ms. Payne testified, and exhibits were admitted into evidence.

Nolt advised that Bruce no longer represents Blue Ridge in this case.⁶ Nolt did not offer any testimony but did provide the Court with a copy of a pamphlet in support of his contention that Blue Ridge complied with applicable law in repossessing the Vehicles, which was admitted into evidence without objection. He made arguments to the Court regarding why he should be allowed to speak on behalf of Blue Ridge, without an attorney, and requested relief from the Court

⁶ No Motion to withdraw as counsel or consent order providing for withdrawal has been filed or granted. *See* SC LBR 2091-1(a).

including that the Vehicles be returned to Blue Ridge and that the default judgment be vacated. His arguments included that Blue Ridge was within its rights to repossess the Vehicles and that Blue Ridge should never have returned the Vehicles to the Paynes. He alleged that he did not receive notice of the bankruptcy case prior to repossession.

Ms. Payne’s testimony at the hearing and the Paynes’ supporting exhibits corroborate the allegations of the Complaint and the actual damages listed in the Motion, though the exhibits reflect that the damage caused to the Ford during the repossession totaled \$622.74, not \$614.76 as listed in the Motion.⁷ The billing entries submitted in evidence, together with this Court’s records, support the reasonableness of the \$4,687.50 in attorney fees incurred as of November 8, 2024, and support a further award of \$1,687.50 for attorney fees incurred after November 8, 2024. Ms. Payne testified that incurring these damages has made it difficult for her and Mr. Payne to make their Chapter 13 plan payments. These damages were proximately caused by Blue Ridge’s repossession of the Vehicles post-petition.

APPLICABLE LAW

The Court has jurisdiction over this matter pursuant to [28 U.S.C. §§ 1334](#) and [157](#), this matter is a core proceeding pursuant to [28 U.S.C. § 157\(b\)\(2\)\(A\)](#), and the Court may enter a final order.

The filing of a bankruptcy petition creates an estate comprised of, among other things, “all legal or equitable interests of the debtor in property as of the commencement of the case”, “wherever located and by whomever held”. [11 U.S.C. § 541\(a\)\(1\)](#). The Vehicles are thus property of the estate. The filing of a bankruptcy petition also “operates as a stay, applicable to all entities, of” a number of actions, including “any act to obtain possession of property of the estate or of

⁷ As only \$614.76 for such damage was requested, the Court will limit the award for that damage to that amount.

property from the estate or to exercise control over property of the estate” and “any act to create, perfect, or enforce any lien against property of the estate”. [11 U.S.C. § 362\(a\)](#). “The automatic stay is a self-executing provision of the Bankruptcy Code and begins to operate nationwide, without notice, once the debtor files its petition for relief.” *In re Parast*, [612 B.R. 710, 716](#) (Bankr. D.S.C. 2020) (quoting *In re A.H. Robins Co., Inc.*, [63 B.R. 986, 988](#) (Bankr. E.D. Va. 1986), *aff’d*, [839 F.2d 198](#) (4th Cir. 1988)). “Any action in violation of the stay is void *ab initio*.” *Id.* (citing *Weatherford v. Timmark (In re Weatherford)*, [413 B.R. 273, 283-84](#) (Bankr. D.S.C. 2009)). Further, Section 362(k) provides, in relevant part, “an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” [11 U.S.C. § 362\(k\)\(1\)](#).

“To recover damages, Debtor must demonstrate that (1) a bankruptcy petition was filed; (2) that Debtor is an ‘individual’ protected under the automatic stay provision; (3) that Defendant received notice of the petition; (4) that Defendant’s actions in violation of the stay were ‘willful’; and (5) that Debtor suffered damages.” *In re Defeo*, [635 B.R. 253, 262](#) (Bankr. D.S.C. 2022) (citing *In re Hamrick*, [627 B.R. 619, 630](#) (Bankr. D.S.C. 2021)). “Debtor must prove a willful violation of the automatic stay by a preponderance of the evidence.” *Id.* (citing *Warren v. Dill (In re Warren)*, [532 B.R. 655, 660](#) (Bankr. D.S.C. 2015)).

“[A] willful violation of the automatic stay occurs if the creditor (1) knew the bankruptcy case existed and (2) intended to commit the act which violates the automatic stay.” *Id.* “The Fourth Circuit has determined that to be liable for a willful violation under § 362(k), the creditor need not act with a specific intent to violate the automatic stay but must only commit an intentional act with knowledge of the automatic stay.” *Id.* (citing *Citizens Bank of Md. v. Strumpf (In re Strumpf)*, [37 F.3d 155, 159](#) (4th Cir. 1994), *rev’d on other grounds*, [516 U.S. 16, 116 S.Ct. 286, 133 L.Ed.2d 258](#) (1995)). “An award of damages under section 362(k) must be founded on concrete, non-speculative evidence and cannot be based merely on speculation, guess or conjecture.” *Id.* at 265 (quoting *In re Banks*, [612 B.R. 167, 172](#) (Bankr. D.S.C. 2020)).

Church v. BIJ Motors, TX, LLC (In re Church), [663 B.R. 796, 804-05](#) (Bankr. D.S.C. 2024).

“There is no requirement that the creditor be given written notice of the bankruptcy; actual notice of the bankruptcy is sufficient.” *In re Davis*, [651 B.R. 192, 194](#) (Bankr. D.S.C. 2023) (citing

Houck v. Substitute Tr. Servs., Inc., [791 F.3d 473, 486](#) (4th Cir. 2015)). “Courts award punitive damages under § 362(k) for intentional or egregious conduct in order to deter similar future conduct.” *Id.* (citing cases in which punitive damages under § 362(k) had been awarded).

[11 U.S.C. § 542\(a\)](#) provides: “...an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, **shall** deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.” (emphasis added). [11 U.S.C. § 1303](#) grants the “trustee” rights referenced in this section to a Chapter 13 debtor. *See also* [11 U.S.C. § 1306\(b\)](#) (“Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.”).

By failing to timely respond to a Summons and Complaint, a defendant is deemed to have admitted the well-pleaded factual allegations of the Complaint. *See Vieira v. Lents (In re Lents)*, [650 B.R. 238, 244](#) (Bankr. D.S.C. 2023) (“Through default, a defendant is found to have admitted the well-pleaded factual allegations of the plaintiff’s complaint.”) (citing *Ryan v. Homecomings Fin. Network*, [253 F.3d 778, 780](#) (4th Cir. 2001)); *In re McGee*, [359 B.R. 764, 771](#) n.8 (9th Cir. BAP 2006) (“After default judgment, ‘facts alleged to establish liability are binding upon the defaulting party, and those matters may not be relitigated on appeal....’”) (quoting *Alan Neuman Prods., Inc. v. Albright*, [862 F.2d 1388, 1392](#) (9th Cir. 1988)).

[Fed. R. Civ. P. 55\(c\)](#) (made applicable to adversary proceedings by [Fed. R. Bankr. P. 7055](#)) governs a motion to vacate a default judgment. *U.S. v. Britton-Harr*, No. ELH-23-01921, [2024](#)

[WL 4434861](#), at *9 (D. Md. Oct. 7, 2024). That Rule provides “[t]he court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).”

The Local Rules of this Court provide:

In any petition for relief, motion, adversary proceeding, or other document, or objections or responses thereto:

- a. Individuals may represent themselves.
- b. An individual may represent an unincorporated business if that individual is the sole proprietor of that business.
- c. All partnerships, corporations and other business entities must be represented by an attorney duly admitted to practice as specified in SC LBR 2090-1, except with respect to the filing of proofs of claim or interests and related documents and reaffirmation agreements or unless allowed by the Court.

SC LBR 9011-2.

CONCLUSION

Nolt and Norton are prohibited from representing Blue Ridge as provided by SC LBR 9011-2(c). In any event, Nolt’s vague oral representations at the hearing on the Motion did not present any evidence or meritorious defenses to the Complaint or grounds for relief from the default judgment under Rule 60(b). As noted in the Order setting a hearing on the Motion, the only issue before the Court is the appropriate amount of damages, if any, that should be awarded to the Paynes. By failing to respond to the Summons and Complaint, Blue Ridge is deemed to have admitted the well-pleaded factual allegations therein. The allegations of the Complaint indicate that Blue Ridge received notice on the Petition Date that the Paynes’ bankruptcy case had been filed and proceeded to repossess the Vehicles anyway. By entry of the Default Judgment, the Court has determined that Blue Ridge willfully violated the automatic stay. The testimony and evidence presented at the hearing further substantiate this determination. Nolt’s arguments, which he offered as owner of Blue Ridge, indicated a lack of respect for the automatic stay imposed by

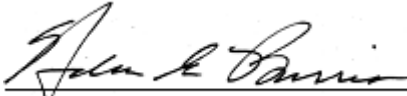
applicable law. Blue Ridge is in the business of selling vehicles and should be aware of the automatic stay and the hazards of violating the same. The actual damages requested in the Motion are corroborated by Ms. Payne’s testimony and the exhibits submitted into evidence, and the attorney fees and costs incurred by the Paynes are reasonable. The actions of Blue Ridge appear to be intentional, warranting punitive damages under § 362(k) to deter similar future conduct. The Court finds that, in addition to actual damages in the amount of \$8,585.49, the sum of \$4,292.75 in punitive damages, representing half the amount of the Paynes’ actual damages, is awarded to the Paynes against Blue Ridge. A separate judgment will be entered herewith.

IT IS, THEREFORE, ORDERED:

1. Blue Ridge must pay the Paynes damages in the total amount of \$12,878.24, consisting of actual damages in the amount of \$8,585.49 plus \$4,292.75 in punitive damages, **within thirty (30) days of the entry of this Order**, by check(s) made payable jointly to Brian Keith Payne and Britney Nicole Payne, delivered to Christopher M. Edwards at Moss & Associates, 1900 Laurens Road, Greenville, SC 29607;
2. All relief requested by Blue Ridge is denied; and
3. Pursuant to SC LBR 5075-1, service of this Order and Notice on Blue Ridge is delegated to the Paynes.

FILED BY THE COURT
12/30/2024




Chief US Bankruptcy Judge
District of South Carolina

Entered: 12/30/2024