

ENTERED

JUL 13 2005

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FILED

at ___ O'clock & ___ min. ___ M

JUL 08 2005

United States Bankruptcy Court
Columbia, South Carolina (13)

In re,

Margaret G. Montoya,

Debtor.

Margaret G. Montoya,

Plaintiff,

v.

Penland Financial Services, Inc.,

Defendant.

C/A No. 05-03823

Adv. Pro. No. 05-80110

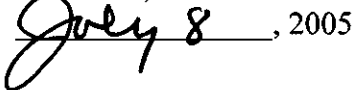
Chapter 13

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court finds that Margaret G. Montoya ("Debtor") is entitled to actual damages for rental car expenses (\$1,532.20); repair expenses (\$5,410.28); attorney's fees (\$2,500.00); and punitive damages (\$1,000.00). Accordingly, the Court enters a judgment for \$10,442.48 against Penland Financial Services, Inc.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

, 2005

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Chapter 13

ORDER

This matter comes before the Court upon a Motion and Complaint for Contempt ("Motion for Contempt") filed by Margaret G. Montoya ("Debtor"). Debtor filed the Motion for Contempt because Penland Financial Services, Inc. ("Defendant") failed to comply with the terms of an order that the Court entered on April 28, 2005 (hereinafter the "April 28, 2005 Order"). The April 28, 2005 Order required Defendant to immediately turnover a 1996 Lincoln Mark VIII ("1996 Lincoln") and a 2003 Ford Explorer ("2003 Ford") to Debtor because Defendant improperly repossessed or retained those vehicles in violation of the automatic stay provided by 11 U.S.C. § 362. On June 7, 2005, Debtor recovered the 1996 Lincoln and the 2003 Ford from Defendant. The Court conducted a hearing concerning Debtor's Motion for Contempt. Debtor, Debtor's counsel and a non-attorney employee of Defendant appeared at the hearing. After considering the evidence presented by Debtor and Defendant's employee and the legal arguments provided by, the

Court concludes that Debtor is entitled to damages in light of the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. On April 1, 2005, Debtor filed a petition for chapter 13 bankruptcy relief with the Court.
2. Defendant asserts a claim against Debtor that is secured by the 1996 Lincoln and the 2003 Ford.
3. Defendant repossessed the 1996 Lincoln pre-petition and repossessed the 2003 Ford post-petition.
4. Debtor's counsel advised Defendant of Debtor's bankruptcy filing and demanded turnover of the 1996 Lincoln and 2003 Ford.
5. Despite receiving notice of Debtor's bankruptcy, Defendant did not turnover the vehicles.
6. On April 12, 2005, Debtor instituted an adversary proceeding by filing a Complaint Seeking Turnover of Property pursuant to 11 U.S.C. § 542 (the "Complaint"). In the Complaint, Debtor also asked the Court to find Defendant in contempt of Court for violating 11 U.S.C. § 362 and 542. Furthermore, Debtor sought an award of damages pursuant to 11 U.S.C. §§ 105(a) and 362(h).
7. Defendant was properly served with the summons and Complaint and was required to file an answer to the Complaint within thirty (30) days of April 13, 2005. Defendant failed to file any response to the Complaint.

¹ 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.

8. On April 13, 2005, Debtor also filed a Motion for Immediate Turnover (“Motion for Turnover”) and a request for an expedited hearing. The Court granted Debtor’s request, and held the hearing on the Motion for Turnover on April 21, 2005. Defendant was properly served with the Motion for Turnover and notice of the April 21, 2005 hearing, but failed to appear.

9. In light of Defendant’s failure to appear at the April 21, 2005 hearing, the Court entered the April 28, 2005 Order, which required Defendant to immediately turnover the 1996 Lincoln and the 2003 Ford to Debtor.

10. It was not until June 7, 2005, that Debtor personally recovered the 1996 Lincoln and the 2003 Ford from Defendant by appearing at Defendant’s place of business and demanding the return of the vehicles. Thereafter, Debtor filed a Motion and Complaint for Contempt (“Motion for Contempt”).

11. In the Motion for Contempt, Debtor sought to collect actual and punitive damages from Defendant for its failure to comply with the terms of the April 28, 2005 Order.

12. The Court held a hearing on Debtor’s Motion for Contempt on June 21, 2005. Debtor appeared with her counsel. Defendant, a corporate entity, appeared through its non-attorney employee, Jeremiah Nelson (“Nelson”).

13. At the June 21, 2005 hearing, Debtor asserted that she has incurred loss-of-use damages for \$1,532.20, an amount associated with the cost of renting a motor vehicle during the time Defendant held possession of the 1996 Lincoln and 2003 Ford. Debtor also asserted that Defendant damaged the 1996 Lincoln and the 2003 Ford while they were in Defendant’s possession, and that the costs for repairing the damages totaled \$5,410.28.²

² Debtor submitted repair estimates from an auto dealership to corroborate her testimony.

Additionally, Debtor also contended that she incurred \$2,500.00 in attorney's fees to prosecute this case.

14. Nelson disputed Debtor's assertions and testified that Defendant did not damage the 1996 Lincoln and the 2003 Ford. Nelson alleged that Debtor must have damaged the vehicles herself. Furthermore, he justified Defendant's repossession of the 1996 Lincoln and 2003 Ford, despite Debtor's bankruptcy filing, by noting that Debtor failed to make timely prepetition payments to Defendant.

CONCLUSIONS OF LAW

"The Fourth Circuit Court of Appeals ruled that a bankruptcy court's statutory authority pursuant to Section 105 is a broad power that includes the authority to hold a party in civil contempt of court." Brown v. Goode, Peterson & Hemme (In re Brown), C/A No. 01-02595-W; Adv. Pro. No. 01-80040-W, slip op. at 13 (Bankr. D.S.C. Aug. 25, 2001) (citing In re Walters, 868 F.2d 665, 669 (4th Cir. 1989)). See also Mountain America Credit Union v. Skinner (In re Skinner), 917 F.2d 444, 447 (10th Cir. 1990) (concluding the Congress granted civil contempt authority to the bankruptcy courts under § 105(a) and citing numerous cases to find that "the weight of authority supports our holding that section 105(a) empowers bankruptcy courts to enter civil contempt orders"); In re Cherry, 247 B.R. 176, 186-87 (Bankr. E.D. Va. 2000) ("11 U.S.C. § 105(a) authorizes a bankruptcy court to hold a party in civil contempt for failing to comply with a previous order."). "Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of non-compliance[, and] [s]ince the purpose is remedial, it matters not with what intent the defendant did the prohibited act." McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949) (internal

citations omitted). See also In re Cherry, 247 B.R. at 187 (noting that in civil contempt proceedings a court may utilize judicial sanctions to accomplish either or both of the following purposes: to coerce a defendant to comply with a court's order and to compensate for losses sustained by the complainant).

Furthermore, the evidence presented by Debtor indicates that Defendant withheld possession of the 1996 Lincoln and the 2003 Ford from Debtor despite receiving notice of Debtor's bankruptcy filing. Accordingly, Defendant's possession of the 1996 Lincoln and the 2003 Ford during Debtor's bankruptcy and its failure to turnover the vehicles immediately following Debtor's demand for their return constitute willful violations of the automatic stay. See In re Bolen, 295 B.R. 803, 809 (Bankr. D.S.C. 2002) ("To retain the [collateral] and demand proof of insurance or other means of adequate protection before returning it to Debtor is a continuing and deliberate violation of the stay.") Thus, Defendant is also liable to Debtor for some measure of damages pursuant to § 362(h). Id. at 807 (citing Budget Service Co. v. Better Homes of Virginia, Inc., 804 F.2d 289 292-93 (4th Cir. 1986)).

Civil sanctions for failure to comply with the Court's April 28, 2005 Order may include "actual damages, attorney's fees, and when appropriate, punitive damages." In re Cherry, 247 B.R. at 187. Bankruptcy courts, pursuant to § 362(h), also have the authority to award compensatory damages, including attorney's fees and costs, and, under appropriate circumstances, punitive damages, without referencing a finding of civil contempt. 11 U.S.C. § 362(h).³ See also Budget Service Co. v. Better Homes of Virginia, Inc., 804 F.2d 289,

³ 11 U.S.C. § 362(h) provides that "[a]n 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."

293 (4th Cir. 1986) (“bankruptcy courts acting through bankruptcy judges may enforce the sanctions of § 362(h) without reference to a finding of civil contempt.”).

In this case, the evidence clearly demonstrates that Debtor has suffered damages because of Defendant’s failure to return the 1996 Lincoln and the 2003 Ford pursuant to the April 28, 2005 Order. From April 1, 2005 to June 7, 2005, the sixty-seven (67) day period that Defendant withheld possession of either or both of the 1996 Lincoln and the 2003 Ford, Debtor incurred \$1,532.20 in costs associated with renting a motor vehicle. Furthermore, the evidence indicates that the 1996 Lincoln and the 2003 Ford collectively suffered \$5,410.28 in damages while in the possession of Defendant. The Court also notes that Debtor has incurred \$2,500.00 in attorney’s fees during the prosecution of this matter. The \$2,500.00 represents approximately 12.5 hours of work at a billable rate of \$200.00 per hour, a reasonable rate with respect to the nature of this litigation. In light of Defendant’s actions, it is clear that the Court may assess compensatory damages and attorney’s fees under its civil contempt authority under § 105(a) and its authority under § 362(h).

Therefore, the Court awards Debtor the following: \$1,532.20 for the costs associated with her car rental expenses incurred during the time Defendant withheld possession of the 1996 Lincoln and the 2003 Ford, \$5,410.28 in repair expenses for the 1996 Lincoln and the 2003 Ford, and \$2,500.00 for attorney’s fees. In addition to the compensatory damages awarded to Debtor, the Court shall also award Debtor punitive damages in the amount of \$1,000.00 in light of Defendant’s blatant failure to comply with the April 28, 2005 Order and its disregard for the protections afforded to Debtor by the automatic stay.⁴

⁴ The Court notes that Defendant is presently involved in another similar adversary proceeding (Stevens v. Penland Financial Svcs. (In re Stevens), C/A No. 04-8977-W, Adv. Pro. No. 05-80133-W) in which Defendant has been ordered to turnover a wrongfully retained motor vehicle to a debtor in bankruptcy.

Accordingly, the Court shall award Debtor a judgment for \$10,442.48 against Defendant.

AND IT IS SO ORDERED.

Columbia, South Carolina,

July 8, 2005


UNITED STATES BANKRUPTCY JUDGE