

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-19482
)
DIANA JONES,) Chapter 13
)
Debtor.) Judge Arthur I. Harris
)
)
) ORDER

This matter came before the Court on the motion of the debtor for an order directing Troy McQueen and Troy’s Autobody & Mechanical (Troy) to appear and show cause why they should not be held in civil contempt for willful violation of the automatic stay. The motion and notice of hearing were served on Troy. Troy did not file a written response or appear at the hearing on the motion on December 5, 2002. For the reasons that follow, debtor’s motion is granted and Troy McQueen and Troy’s Autobody & Mechanical are ordered to appear before this Court on December 19, 2002, at 3:00 p.m. for an evidentiary hearing to show cause why they should not be held in civil contempt for willful violation of the automatic stay.

According to the debtor’s motion and statements of debtor’s counsel, the debtor filed for Chapter 13 bankruptcy protection on August 28, 2002, at which

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time Troy was in possession of the debtor's 1995 GMC Jimmy truck. Troy continues to have possession of the truck and refuses to release the truck until it receives payment of \$1510.22 on its prepetition debt. Debtor's counsel further stated that Troy eventually received both written and oral notice of the August 28, 2002, bankruptcy filing. The debtor contends that Troy's failure to release the truck is a willful violation of § 362(a)(3). The debtor seeks of attorney fees of \$500 and punitive damages of \$1000 under § 362(h).

The Court finds that the debtor has presented sufficient information to warrant a show cause hearing to be scheduled for December 19, 2002, at 3:00 p.m. Nevertheless, nothing in this order should be interpreted as a determination by the Court that Troy has in fact violated the automatic stay or that the debtor is entitled to immediate turnover of the truck without first commencing an adversary proceeding and, if necessary, demonstrating adequate protection. *Compare In re Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990) ("A turnover action is an adversary proceeding which must be commenced by a properly filed and served complaint. Bankruptcy Rule 7001.") and *In re Camall Co.*, 16 Fed. Appx. 403, 407, 2001 WL 897441, **3 (6th Cir. July 31, 2001) (unpublished)(following *Perkins* in that party seeking turnover must file an adversary proceeding rather than motion); *with*

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In re Sharon, 234 B.R. 676, 687 (BAP 6th Cir. 1999) (declining to address need for adversary proceeding in turnover action because issue was not raised in proceeding below).

Accordingly, the Court hereby orders Troy McQueen and Troy's Autobody & Mechanical to appear before this Court on December 19, 2002, at 3:00 p.m. for an evidentiary hearing to show cause why they should not be held in civil contempt for willful violation of the automatic stay.

IT IS SO ORDERED.

/s/ Arthur I. Harris 12/09/2002
Arthur I. Harris
United States Bankruptcy Judge