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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 04-22331
)
DANIEL N. TAYLOR,) Chapter 13
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) MEMORANDUM OF OPINION
) AND ORDER

The court issued an order requiring Household Automotive Finance Corp. to appear and show cause why it should not be held in civil contempt for refusing to return the debtor's repossessed vehicle. (Docket 20). The show cause order stated that, alternatively, the court would consider whether damages should be awarded to the debtor under 11 U.S.C. § 362(h). Attorney Bruce Freedman appeared at the hearing on behalf of Household and Charles Van Ness appeared on behalf of the debtor.

JURISDICTION

The court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 84-1 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

FACTS¹

The debtor filed his chapter 13 case on September 26, 2004. Household repossessed the debtor's 1999 Mercury Villager before the filing and has refused to return the vehicle despite repeated requests from debtor's counsel. The debtor's plan provides that Household will

¹ These are the undisputed facts based on the debtor's motion and the statements of counsel made at the hearing.

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be paid in full and he has given Household proof of car insurance. Household's sole justification for refusing to return the vehicle is that the court has not ordered it to do so.

DISCUSSION

"Under section 362(a) of the Bankruptcy Code, the filing of a petition creates a broad automatic stay protecting the property of the debtor. This provision 'has been described as one of the fundamental debtor protections provided by the bankruptcy laws.'" *Smith v. First Am. Bank, N.A. (In re Smith)*, 876 F.2d 524, 525 (6th Cir. 1989) (quoting *Midlantic Nat'l Bank v. New Jersey Dept. of Env'tl. Protection*, 474 U.S. 494, 503 (1986)). The filing of a bankruptcy petition operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). "[A] creditor violates the automatic stay by withholding possession of a Chapter 13 debtor's car after demand and tender of adequate protection." *TranSouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676, 686 (B.A.P. 6th Cir. 1999) (citations omitted).

A debtor injured by a willful violation of the automatic stay is entitled to recover actual damages, including costs and attorney fees, and in appropriate circumstances punitive damages. *See* 11 U.S.C. § 362(h). "To recover damages under § 362(h), the debtor must prove (1) that the violation of the stay was willful; and (2) that the individual seeking damages was actually injured by the violation of the stay." *United States v. Mathews (In re Mathews)*, 209 B.R. 218, 220 (B.A.P. 6th Cir. 1997). A specific intent to violate the stay is not required and a violation of the stay can be willful when the creditor knew of the stay and yet violated it by an intentional act. *See Sharon*, 234 B.R. at 687. The debtor has the burden of proving damages under § 362(h). *Id.*

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Household knows that the debtor filed a bankruptcy case, knows that the debtor has demanded that his car be returned, and knows that the debtor's plan offers adequate protection of Household's interest. Despite this, Household refuses to return the car without a court order. This behavior constitutes a willful violation of the automatic stay.

CONCLUSION

Household is found to have willfully violated the automatic stay. A hearing will be held on **December 7, 2004** at 1:30 p.m. to consider the issue of damages under 11 U.S.C. § 362(h).

IT IS SO ORDERED.

Date: 30 November 2004



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center on:

Bruce Freedman, Esq.
Charles Van Ness, Esq.
Craig Shopneck, Trustee