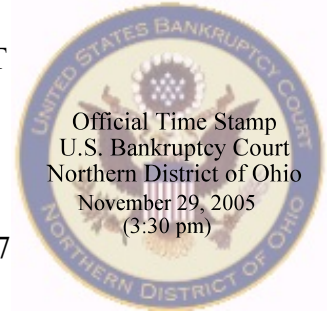


THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 04-25387
)
CHADD C. LEWIS,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

In an earlier opinion, this court held that First Merit Bank violated the automatic stay when it repossessed the debtor Chad Lewis’s truck and refused to return it. (Docket 90, 91). The court awarded actual damages to the debtor, including approving his request for attorney fees subject to filing an affidavit establishing the appropriate fees. The debtor has now filed an affidavit detailing the fees, First Merit objected to it, and the debtor’s counsel has filed a supplemental affidavit in response. (Docket 100, 108, 109). The issue for decision here is the amount of attorney fees which the debtor is entitled to recover from First Merit.

JURISDICTION

The court has jurisdiction of this matter under 28 U.S.C. § 1334 and General Order No. 84 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)(A) and (O).

DISCUSSION

Bankruptcy Code § 362(h) provides that “[a]n individual injured by any willful violation of a stay . . . shall recover actual damages, including . . . attorneys’ fees. . .[.] 11 U.S.C. § 362(h).

The court held in the first opinion that the debtor's attorney fee award would be "limited to time spent in December 2004 and January 2005 trying to recover the truck and time expended at the evidentiary hearing." The debtor has the burden of proving the amount of his attorney fees. *See Archer v. Macomb County Bank*, 853 F.2d 497, 499-500 (6th Cir. 1988).

In his affidavit, the debtor's counsel itemized his time, showing that attorneys in his firm spent 19.8 hours at hourly rates of \$150.00 and \$200.00, for a total of \$3,740.00. First Merit's objections and the court's rulings on them, follow:

1. The affidavit includes 2.4 hours of time related to the conversion of the debtor's case to chapter 13 and reconversion to chapter 7, which First Merit argues is outside the scope of fees defined by the court. The debtor contends that he only had to file the conversion to chapter 13 because First Merit would not return the truck while the case was a chapter 7 and then the debtor had to reconvert because, based on the amount of time elapsed before First Merit returned the truck and given its condition, the debtor could not formulate a chapter 13 plan. These activities are a consequence of First Merit's actions in violation of the bankruptcy code and they fall within the scope of the court's order that the fees relate to time spent trying to recover the truck.

2. The debtor noticed his initial motion for sanctions for hearing on December 16, 2004 and then re-noticed it for a later date, an activity that First Merit objects to. As the debtor did not request an expedited hearing and this motion was scheduled without sufficient notice, reimbursement for re-noticing it is not appropriate. Although First Merit objects to the entire time entry which includes this service, the supplemental affidavit shows that .2 hours of time at a

rate of \$150.00 per hour (\$30.00) was actually devoted to this service. The objection is sustained as to this amount.

3. First Merit objects to time entries which include the description “prepare and file” on the basis that the filing of pleadings is an office task which is not compensable. *See* General Order No. 93-1. This objection lacks merit based on counsel’s supplemental affidavit which states that those entries do not include time spent filing, but refer to counsel’s “review and final approval of such documents for filing.”

4. The affidavit includes entries for December 6 and 7, 2004 totaling .3 hours for conversations with First Merit’s counsel regarding return of the debtor’s truck. First Merit’s objection incorrectly asserts that these entries total .4 hours and argues that they are excessive. Reimbursement for these services is appropriate, however, as the court accepts counsel’s sworn statement that this time was actually spent in phone conversations with First Merit’s counsel and office personnel.

5. First Merit objects that the January 6 and August 4, 2005 entries are excessive based on the actual length of the hearings that took place on those dates. The entries include additional time spent preparing for the hearing and in discussions with counsel, however, and reimbursement for these service is clearly appropriate.

6. The affidavit includes 1.5 hours of time related to counsel’s preparation of the second show cause motion. First Merit objects on the basis that the two motions which the debtor filed on that issue were virtually identical. This objection is unfounded as counsel spent the time requested (and more) discussing the issue with the debtor, reviewing documentation, and revising the motion. First Merit’s additional argument that these fees should not be allowed

because the debtor chose not to prosecute his first motion is also without merit. The motion would not have been filed but for First Merit's unwarranted actions in repossessing the truck.

7. First Merit objects to counsel's hourly rate of \$200.00 and suggests a rate of \$125.00 instead. The debtor's counsel provided a sworn statement that this has been his actual billing rate since late 2004 and the court finds having reviewed countless fee applications that the rate is within the range of reasonableness in this district for this type of case. If First Merit wished to challenge the rate, it could have done so by providing information about rates that other attorneys, including its own, charge for similar representations. It did not do so.

CONCLUSION

For the reasons stated, the debtor is awarded his attorney fees in the amount of \$3,710.00 which he is entitled to recover from First Merit Bank under 11 U.S.C. § 362(h) based on its violation of the automatic stay. A separate order will be entered reflecting this decision.

Date: 29 November 2005

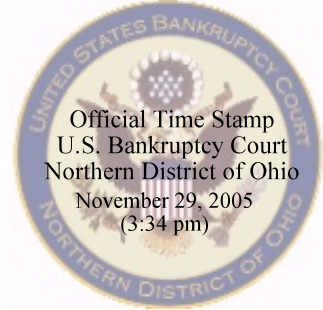


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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

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In re:) Case No. 04-25387
)
CHADD C. LEWIS,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion entered this same date, the debtor is awarded his attorney fees in the amount of \$3,710.00 which he is entitled to recover from First Merit Bank under 11 U.S.C. § 362(h) based on its violation of the automatic stay. (Docket 65).

IT IS SO ORDERED.

Date: 29 November 2005



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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