NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 06-15873
	)	
TABIA G. WILLIAMS,	)	Chapter 13
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**MEMORANDUM OF OPINION**
	)	NOT FOR COMMERCIAL PUBLICATION

The debtor Tabia Williams filed a motion for creditor Toyota Motor Credit Corporation to appear and show cause why it should not be found to have violated the automatic stay provisions of 11 U.S.C. § 362(a)(3).[1] Toyota opposed the motion.[2] The court held an evidentiary hearing on the motion on May 2, 2007.[3] For the reasons stated below, the court finds that the creditor did not willfully violate § 362 and the motion is denied.[4]

JURISDICTION

Jurisdiction exists 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).

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[1] Docket 27.

[2] Docket 29.

[3] Docket 30.

[4] This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

FACTS

I.

The debtor presented her case through her own testimony, that of her husband Peter Hailey, cross-examination of Toyota's witnesses, and exhibits. Toyota presented its case through the testimony of David Keever, owner of Midwest Recovery Ltd., and Greg Eckert, a Toyota Area Sales Manager, together with cross-examination and exhibits.

II.

These findings of fact reflect the court's weighing of the evidence presented at the hearing, including determining the credibility of the witnesses. In doing so, the court considered each witness's demeanor, the substance of the testimony, and the context in which the statements were made, recognizing that a transcript does not convey tone, attitude, body language or nuance of expression. *See* FED. R. BANKR. P. 7052, incorporating FED. R. CIV. P. 52. When the court finds that a witness's explanation was satisfactory or unsatisfactory, it is using this definition:

> The word satisfactory 'may mean reasonable, or it may mean that the Court, after having heard the excuse, the explanation, has that mental attitude which finds contentment in saying that he believes the explanation–he believes what the [witness] says with reference to the [issue at hand]. He is satisfied. He no longer wonders. He is contented.'

United States v. Trogden (*In re Trogden)*, 111 B.R. 655, 659 (Bankr. N.D. Ohio 1990) (discussing the issue in context of bankruptcy code § 727) (quoting *First Texas Savings Assoc., Inc. v. Reed*, 700 F.2d 986, 993 (5th Cir. 1983)).

III.

On August 19, 2006, the debtor Tabia Williams purchased a Toyota 4Runner which she financed through Toyota Motor Credit Corporation. When she did not make either the first or

second payments due, Toyota initiated steps to repossess the vehicle through its agent Midwest Recovery Ltd. Midwest located the car on November 21, 2006 and transported it via a flatbed to its business location. On November 22, 2006, in accordance with Toyota's standard procedures, Toyota had the car picked up from Midwest and delivered to Adesa Auto Auction in Kentucky for examination and resale.

The debtor filed her chapter 13 case on November 27, 2006. The debtor's counsel called Toyota on November 28, 2006 to advise it of the filing and request that the car be returned. Toyota's general policy, upon being notified of a bankruptcy filing, is to immediately make arrangements for returning the vehicle to the debtor, a process that normally takes 48 to 72 hours. It usually takes one day to make arrangements with a third-party for the car to be transported from auction sites such as Adesa to the town where the car was repossessed, one more day for the actual transportation, and another day to notify the debtor that the car is available and can be picked up.

Toyota followed its policy by notifying Adesa and Midwest on November 28th that a bankruptcy had been filed and the car should be returned to Midwest. A glitch arose on November 29, 2006 because Midwest, for the first time in its business history, refused to accept the car because of an incident involving the debtor and her husband Peter Hailey the day after the repossession. The debtor and Mr. Hailey came to Midwest to retrieve personal belongings and also to express concern that the car had been driven by someone from Midwest after being repossessed. Tempers flared and comments were made all around that were intemperate. The upshot was that Midwest called the police, although the debtor and Mr. Hailey left with at least some of their belongings before the police arrived. David Keever, the owner of Midwest,

refused to have the car returned to Midwest because he did not want to run the risk of another incident.

Toyota then called the debtor's counsel to explain the problem and advise that the debtor could, if she wished, pick the car up immediately in Kentucky. That was not feasible, so counsel suggested that Toyota deliver the car to counsel's office in Cleveland and the debtor would pick it up from there. Toyota agreed and the car was delivered on Monday, December 4, 2006.

THE POSITIONS OF THE PARTIES

The debtor argues that Toyota delayed unreasonably in returning the car to her because of the ill-will that existed between Midwest and the debtor. Toyota claims that it acted within a reasonable period of time given the unexpected refusal of Midwest to accept the car.

LEGAL STANDARD AND DISCUSSION

The filing of a bankruptcy petition imposes a general stay against any collection activity related to prepetition debt. 11 U.S.C. § 362. Section 362 in its entirety "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 Envtl. Protection*, 474 U.S. 494, 503 (1986)). The debtor here invokes § 362(a)(3) which provides that the filing of a petition stays "any act to exercise control over property of the estate[.]" 11 U.S.C. § 362(a)(3). Property of the estate includes all of the debtor's legal and equitable interests in property, *see* 11 U.S.C. § 541(a)(1), which includes a car that is subject to a security interest. *See Transouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676, 681 (B.A.P. 6th Cir. 1999). A creditor who "retains lawfully repossessed collateral after receiving notice . . . of a bankruptcy case has engaged in conduct that is contemptuous." *In re Holman*, 92 B.R. 764, 768 (Bankr. S.D. Ohio 1988).

A debtor injured by a willful violation of the stay is entitled to 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 under § 362(h) [the predecessor to § 362(k)(1)], 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). The violation can be willful when the creditor knew about the bankruptcy case and yet deliberately acted in a way that violated the automatic stay. *In re Sharon*, 235 B.R. at 687.

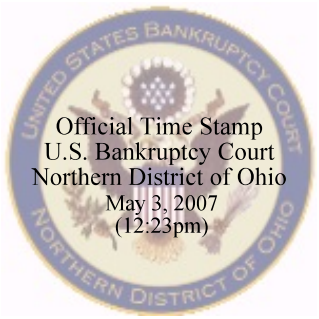
In this case, Toyota received notice of the bankruptcy filing on Tuesday, November 28, 2006. The car was, by that time, in Kentucky. There was no testimony to suggest that Toyota took the car to Kentucky for any reason other than to sell it at auction in accordance with its standard procedures. Toyota immediately took steps to transfer the car from Kentucky to Cleveland. Under the best of circumstances, it would have taken Toyota a day to arrange for the interstate transportation (Wednesday November 29) and a day of travel to return the car to Cleveland (Thursday November 30). Ideally, then, the car would have been available to the debtor on Friday December 1. This schedule could not be met because of the unexpected refusal of Midwest to accept the vehicle. There was no evidence to show that Midwest took this position out of malice; all of the testimony suggested that Midwest simply wished to avoid the possibility of another confrontation with the debtor. Along these same lines, there was no testimony to suggest that Toyota unduly delayed in making alternative arrangements when its customary procedures could not be used. Ultimately, the car was available to the debtor on Monday December 4, 2006. Under the circumstances of this case, Toyota did not delay unreasonably in returning the car and did not willfully violate § 362.

CONCLUSION

For the reasons stated, the debtor's motion for an order to show cause is denied because Toyota did not violate the automatic stay provisions of 11 U.S.C. § 362.

A separate order will be entered reflecting this decision.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge



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Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER**
	)	NOT FOR COMMERCIAL PUBLICATION

For the reasons stated in the memorandum of opinion entered this same date, the debtor's motion for an order on Toyota Motor Credit Corporation to show cause why it should not be found to have violated the automatic stay provisions is denied. (Docket 27).

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge