

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN**

Cite as: [unpublished]

Robert B. Ciarpaglini, Plaintiff v. Jake's Mobil, et al., Defendants
(In re Robert B. Ciarpaglini, Debtor)
Bankruptcy Case No. 05-13002-7
Adversary Case No. 07-6-7

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

July 18, 2007

Robert B. Ciarpaglini, Pro Se Plaintiff
Jake's Mobil, The Cash Store, Hollywood Entertainment, KCRC-Kroger and Check-N-Go, Pro Se Defendants
Patrick B. Howell, Whyte Hirschboeck Dudek SC, Milwaukee, WI for Defendant PLS Financial Services, Inc.

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

While the Bankruptcy Code's automatic stay was in effect, several local businesses collected pre-bankruptcy debts from the debtor in this chapter 7 case, in violation of 11 U.S.C. § 362. According to the debtor-plaintiff, whose declarations are the only source of evidence for this default judgment, Jake's Mobil called him eleven times in the days after the bankruptcy filing; the manager went to his residence and successfully collected \$200. KCRC-Kroger called the plaintiff and threatened to notify the police regarding the plaintiff's bad check, causing him to drive to Illinois to pay the defendant \$60 as a result. The Cash Store called the plaintiff twelve times immediately after the bankruptcy filing, resulting in collection of \$100—one representative even told the plaintiff that the automatic stay did not apply to their debt. Check-N-Go called the plaintiff nine times after the filing and collected \$75. Hollywood Entertainment called the plaintiff four times after the bankruptcy filing, though collecting nothing. All of these actions violated § 362(a) of the Bankruptcy Code. Having received notice of the plaintiff's bankruptcy filing, the defendants' violations are considered willful.

The facts are conclusively established because the defendants have not answered the debtor's adversary complaint. The plaintiff filed a voluntary chapter 7 petition on April

19, 2005; a discharge was granted on September 27, 2005. He filed this adversary proceeding on January 18, 2007, alleging violations of the automatic stay. The Court entered a default against all five defendants on April 23. Likewise, no defendant appeared at a July 17 trial at which the plaintiff was to “prove up” damages. The plaintiff is entitled to a default judgment. I write only because the plaintiff requests unusual relief for violations of the automatic stay. The plaintiff prays for both compensatory damages, including for emotional distress, ranging from \$2,500 to over \$10,000 for each defendant, and punitive damages ranging from \$2,500 to \$10,000 per defendant.

Section 362(k) provides that “an 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.” At the very least, the defendants therefore must compensate the plaintiff for his costs in bringing this adversary proceeding and the amounts they collected from him in violation of the automatic stay.

Emotional distress damages also may qualify as actual damages. E.g., Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265, 269 (1st Cir. 1999); see Wantz v. Experian Info. Solutions, 386 F.3d 829, 833 (7th Cir. 2004) (emotional damages are actual damages under Fair Credit Reporting Act). But the plaintiff has not offered proof that he spent money treating the emotional distress caused by the defendants’ actions. To the extent that he prays for damages for emotional pain and suffering rather than any actual expenses he incurred, I will deny that request. Although I take at face value the plaintiff’s claims of emotional trauma, compensating him for them in the abstract is simply too speculative under a statute that protects primarily financial interests. See Aiello v. Providian Fin. Corp., 239 F.3d 876, 879 (7th Cir. 2001).

In “appropriate circumstances,” debtors injured by violations of § 362(a) may recover punitive damages. This is such a circumstance. The conduct of which the plaintiff complains was extreme: calling him repeatedly, denying that the automatic stay applied, threatening to notify law enforcement, even appearing at his residence. And, all of the defendants engaged in purposeful acts such as repeatedly calling the plaintiff, not merely technical ones like charging a bad check fee to his account.

The plaintiff’s request for thousands of dollars in punitive damages, though, is excessive. Punitive damages are appropriate only to punish a defendant “for the conduct that harmed the plaintiff, not for being an unsavory individual or business.” State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 423 (2003). Otherwise, a court risks infringing a defendant’s Fifth Amendment rights to due process and compensation for governmental takings of property. Accordingly, the Supreme Court has suggested that “an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety.” Id. at 425. Given the countervailing needs to protect the defendants’ constitutional rights and to deter the type of conduct exhibited in this case, a factor of two is appropriate. The plaintiff will be awarded punitive damages against each defendant for two times the amount the defendant collected from him post-petition.

An order will be entered accordingly.