



**IT IS ORDERED as set forth below:**

**Date: July 21, 2008**

**W. H. Drake  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
CHERYL LYNN BUCCIARELLI,	:	07-13114-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTOR.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Motion for Contempt, filed by Cheryl Bucciarelli (hereinafter the “Debtor”) against Jeffrey Duncan. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(G), (O); § 1334. The Court held a hearing on the Motion on April 25, 2008. Following argument by the party without the submission of any evidence, the Court took this matter under advisement. The following constitute the Court’s findings of fact and conclusions of law.

On December 21, 2007, the Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code. The Debtor listed Duncan as a creditor with a claim for legal fees incurred prepetition. On February 21, 2008, Duncan, along with another attorney, Ms. Sternlieb, filed an adversary proceeding against the Debtor in which they assert that the legal fees owed by the Debtor in connection with a divorce proceeding are nondischargeable.

In January and February 2008, Duncan's office sent invoices to the Debtor for fees incurred prepetition. In March 2008, Duncan's office sent an invoice to the Debtor for the prepetition fees, as well as a bill for \$200 in fees that Mr. Duncan apparently incurred in dealing with the dischargeability issues surrounding the prepetition fees. The Debtor asserts that this conduct constitutes a violation of section 362(a)(6) and seeks an award of punitive damages in the amount of \$2,500.

Duncan contends that he was tracking his time spent on the adversary proceeding in order to seek payment of these fees as part of the nondischargeable debt at issue in the adversary proceeding and was unaware that his clerical employee was mailing invoices to the Debtor until he received the Debtor's motion for contempt. Duncan acknowledges that he was negligent in failing to instruct his employee not to continue sending the invoices to the Debtor, but submits that his conduct was not willful or malicious and that the invoices have, in no way, injured the Debtor.

Section 362(a)(6) of the Code provides that the filing of a bankruptcy petition operates as a stay as to “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case.” 11 U.S.C. § 362(a)(6). The automatic stay comes into effect immediately upon the commencement of the bankruptcy case and is “good against the world, regardless” of whether a party has notice of the stay or the bankruptcy filing. *In re Peralta*, 317 B.R. 381 (9th Cir. BAP 2004); *see also In re Smith*, 180 B.R. 311 n.17 (Bankr. N.D. Ga. 1995) (Murphy, J.). Sending an invoice in an effort to collect a prepetition debt can result in a violation of section 362(a)(6). *In re Nosler*, 2007 WL 4322315 (Bankr. M.D. Fla. 2007); *In re Sullivan*, 367 B.R. 54 (Bankr. N.D.N.Y. 2007); *In re Joens*, 2003 WL 22839822 (Bankr. N.D.Iowa 2003) (“Mailing collection letters requesting cure of a default is the type of conduct which violates the automatic stay.”).

Pursuant to section 362(k), damages arising from willful violations of the automatic stay are available to “individuals” harmed by such violations. *See* 11 U.S.C. § 362(k).” A violation of the automatic stay is “willful” if the party “(1) knew the automatic stay was invoked and (2) intended the actions which violated the stay.” The fact that the party did not intend to violate the automatic stay and acted without malice does not preclude a finding of contempt and an assessment of appropriate sanctions. *In re Jove Engineering, Inc.*, 92 F.3d 1539, 1554 (11th Cir. 1996).

Here, there is no question that Duncan violated section 362(a)(6) by mailing numerous invoices to the Debtor. Duncan's office mailed the invoices, albeit without his knowledge, in an attempt to collect the fees. Duncan was responsible for instructing his staff not to bill the Debtor, but failed to do so. It is also clear that the violation was willful, as there can be no question that Duncan was aware of the existence of the Debtor's bankruptcy case when his office sent the invoices.

That being said, actual damages are available only upon a showing that the Debtor suffered an injury. 11 U.S.C. § 362(k)(1); *see also In re Hutchings*, 348 B.R. 847 (Bankr. N.D. Ala. 2006) ("The plain language of section 362(h) of the Bankruptcy Code explicitly requires, *as a prerequisite to maintaining such an action, that a debtor must have first been 'injured' by the stay violation.*"). Further, punitive damages are appropriate only when the creditor has acted maliciously or in bad faith. *See In re Rutherford*, 329 B.R. 886 (Bankr. N.D. Ga. 2005).

In this case, the Debtor submitted no evidence to establish that she suffered any injury from receiving these invoices. It is undisputed that Duncan was unaware that his employee was still billing the Debtor, that the employee was not told that the Debtor was in bankruptcy, and that neither the Debtor nor her counsel contacted Duncan to inform him of the invoices and to offer him an opportunity to correct the situation prior to the filing of the motion for contempt. In such a situation, the Court cannot conclude that Duncan acted with malice or in bad faith. The Court is also persuaded that punitive

damages are not necessary to ensure that Duncan will take proper care to prevent this situation from recurring.

For these reasons, the motion for contempt is hereby **GRANTED in part and DENIED in part**. The Court finds that Duncan violated the automatic stay, pursuant to section 362(a)(6). The Court further finds that the Debtor has failed to prove an entitlement to damages.

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