

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET
AUG 07 2008

IN RE:) CHAPTER 13
)
)
MARK E. PULLEN,)
MARY KAY PULLEN,) CASE NO. 07-65415-MHM
)
Debtors.)

MARK E. PULLEN,)
MARY KAY PULLEN,)
)
Movants,)
v.) **CONTESTED MATTER**
)
GARY HARRIS and)
CAIN V. HARRIS,)
)
Respondents.)

ORDER REGARDING DEBTORS' MOTION FOR CONTEMPT

On October 26, 2007, Debtors filed a Motion for Contempt for Violation of the Automatic Stay (the "Motion for Sanctions"). Hearing was held January 4, 2008.

The facts appear to be undisputed: On October 20, 2007, in an email to Debtors' attorney, Gary Harris, apparently acting on behalf of his son Cain Harris as purported owner of a one-half undivided interest in Debtors' residence and the purported owner of a security interest in the residence,¹ warned:

I suggest that you inform [Debtors] of this matter so they will not be shocked when Cain [Harris] arrives with the police and a locksmith.

¹ The facts underlying the dispute between Mr. Harris and Debtors are set out in the Memorandum of Opinion entered May 23, 2008 [Doc. No. 155].

Debtors' attorney informed Debtors of Mr. Harris' threat, which was never carried out, and Debtors now allege that they suffered emotional distress as a result of the threat. Debtors seek imposition of sanctions in the amount of the attorneys fees incurred for filing the sanctions motion and an unspecified amount for emotional distress.

In pleadings filed in response to the Motion for Sanctions and in his oral argument at the hearing, Mr. Harris asserted that he had an apparently unfettered right to possession of Debtors' residence. Thus, he argues, his threat, even if he had acted upon it, does not violate the automatic stay or any other provision of the Bankruptcy Code.

The nature of Mr. Harris' interest in Debtors' residence is the subject of two consolidated adversary proceedings. Debtors challenge Mr. Harris' asserted interest in the residence on several grounds. If Debtors prevail on any of their challenges to Mr. Harris' interest in their residence, Harris' interest in the property would be rendered at best a lien. Although Mr. Harris asserts he is a tenant in common with Ms. Pullen, until this court determines the nature of his interest in the property, Harris has no right to assert a right to possession unless he first obtains either the consent of Debtors or the permission of this court, after filing an appropriate motion. The automatic stay protects even contingent interests of a debtor, even a bare possessory interest. *Brown v. Chesnut*, 422 F. 3d 298 (5th Cir. 2005).

Because Mr. Harris was required to seek modification of the automatic stay before taking any action to take possession of the residence, Mr. Harris' threat to take action without first obtaining relief from the stay necessitated the filing of this Motion for Sanctions by Debtors. Additionally, Mr. Harris' threat to take action to take possession of

the residence violated Debtors' rights to quiet enjoyment of the property, which was protected by the automatic stay. Mrs. Pullen's emotional distress was credible and understandable. Mr. Harris vigorously pursued legal arguments that appear not to have been well-founded in fact or law. Additionally, Mr. Harris' threat appears to arise from an unexplained personal hostility of Mr. Harris' attorney toward Debtors. Accordingly, imposition of sanctions is appropriate. It is hereby


ORDERED that sanctions in the amount of \$1,000.00 are imposed against Mr. Harris and his attorney, jointly and severally, payable directly to Debtors for violation of the automatic stay, violation of their rights to quiet enjoyment of their real property, and for emotional distress. It is further

ORDERED that sanctions in the amount of \$2,500.00 are imposed against Mr. Harris and his attorney, jointly and severally, payable as reimbursement for attorneys fees incurred for the filing of the Motion for Sanctions. It is further

ORDERED that the above sanctions shall be delivered to Debtor's attorney within 30 days of the date of entry of this order and a certificate of such payment filed within three days thereafter.

The Clerk is directed to serve a copy of this order upon Debtors, Debtors' attorney, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 6th day of August, 2008.


MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE