

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
<b>ROOSEVELT WATT,</b>	)	<b>CASE NO. 14-65344 - MHM</b>
	)	
Debtor.	)	
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	)	
ROOSEVELT WATT,	)	
	)	
Movant,	)	
	)	
v.	)	<b>CONTESTED MATTER</b>
	)	
CONSUMER CHOICE	)	
AUTOMOTIVE GROUP, INC.,	)	
	)	
Respondent.	)	

**ORDER ON MOTION FOR SANCTIONS**

This matter arose upon Debtor's motion seeking damages for violation of the automatic stay of 11 U.S.C. § 362 (Doc. No. 10) ("Motion"). Debtor filed a Chapter 13 petition initiating this case August 5, 2014. Debtor claims Consumer Choice Automotive Group, Inc. ("Respondent") violated the automatic stay granted by 11 U.S.C. § 362 when Respondent repossessed Debtor's 2007 Jeep Cherokee (the "Vehicle") post-petition, August 5, 2014.

## I. STATEMENT OF FACTS.

Debtor was given possession of the Vehicle June 6, 2014 in exchange for financial consideration.<sup>1</sup> Debtor filed the Chapter 13 petition initiating the instant case August 5, 2014 at 3:52 pm. Debtor testified that he used the Vehicle to file the bankruptcy petition and then drove to another location where he faxed a copy of the notice of petition to Respondent. Debtor testified that the Vehicle was repossessed by Respondent several hours later. Respondent's attorney proffered that the vehicle was repossessed pre-petition, but provided no evidence supporting that proffer.

After Respondent repossessed the Vehicle, the two parties exchanged communications. On August 7, 2014, one of Debtor's employers, who is an attorney, requested Respondent return the Vehicle to Debtor. On August 11, 2014, Debtor's attorney, Latrice Latin, make a second request for return of the Vehicle, to which counsel for Respondent responded by demanding proof of insurance. Debtor promptly sent Respondent proof of insurance. After receiving the proof, Respondent allowed Debtor to retrieve the vehicle August 15, 2014.

## II. DISCUSSION.

Upon the filing of a bankruptcy petition, all property and interests of a debtor become property of the bankruptcy estate and protected by the automatic stay of 11 U.S.C. § 362(a). A creditor may not unilaterally take possession of nor exercise

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<sup>1</sup> Respondent granted Debtor possession of the vehicle June 6, 2014, under either a sale or a rental agreement pending financing for a sale. The nature of the agreement need not be decided. See discussion in Part II.A, *infra*.

control over any property included in such an estate regardless of the nature of its claim over such property or its contentions. Failure to comply with the automatic stay is punishable in the form of monetary penalties for actual damages incurred by a debtor, attorneys fees incurred by a debtor, and, in cases where the creditor has exercised sufficient disregard for the automatic stay, punitive damages.

**A. The Vehicle was property of estate protected by the automatic stay.**

Upon the filing of a bankruptcy case, the automatic stay of 11 U.S.C. § 362(a) becomes effective over property of the estate. With some exceptions not relevant here, the estate consists of “all legal equitable interests of the debtor in property as of the commencement of the case” “wherever located and by whomever held.” 11 U.S.C. § 541(a)(1). Even when a debtor is not eligible under §109(h) to commence a bankruptcy case, the automatic stay is still in full force and effect. *See e.g., In re Ross*, 338 B.R. 134, 138 (Bankr.N.D.Ga.2006) (J. Bonapfel).

Respondent argues that the Vehicle was not property of the estate because it was in Debtor’s possession only by virtue of a rental agreement pending approval of financing to purchase the Vehicle. Respondent asserts that the Vehicle was repossessed pre-petition; accordingly, Debtor did not have any interest in the Vehicle which could have become property of the estate. Debtor argues he had purchased the Vehicle. Because the only evidence presented showed that the Vehicle was repossessed post-petition, Respondent’s argument must fail. Assuming *arguendo* Debtor’s only interest had been a possessory interest as part of a rental agreement, that possessory interest would have been

part of the estate under 11 U.S.C. § 541(a)(1) (“all legal or equitable interests....”). Respondent put forward no evidence suggesting the Vehicle was anything other than property of the estate protected by the automatic stay.

**B. Respondent violated the Automatic Stay.**

A creditor may not take possession of nor exercise control over property that is part of the estate. 11 U.S.C. § 362(a)(3). Furthermore, creditors who have legally obtained possession of property of the estate are required to return the property to a debtor. *Rutherford v. Auto Cash, Inc. (In re Rutherford)*, 329 B.R. 891, 886 (Bankr. N.D.Ga. 2005) (J. Drake). “A creditor who repossesses a vehicle prior to the filing of a bankruptcy case cannot unilaterally insist that the debtor provide adequate protection, such as proof of insurance, as a condition to the return of the car, unless the creditor moves immediately in the bankruptcy court for an order requiring adequate protection.” *Stephens v. Guar. Auto, Inc. (In re Stephens)*, 495 B.R. 608, 613 (Bankr. N.D. Ga. 2013) (J. Bonapfel) (citing *See, e.g., Castillo v. Three Aces Auto Sales (In re Castillo)*, 456 B.R. 719, 724 (Bankr. N.D.Ga. 2011) (J. Drake); *cf. Roche v. Pep Boys, Inc. (In re Roche)*, 361 B.R. 615 (Bankr. N.D.Ga. 2005). Thus, Respondent violated the automatic stay when it repossessed the Vehicle and when it refused to return the Vehicle without proof of insurance.

**C. Debtor is entitled to actual damages.**

Pursuant to 11 U.S.C. § 362(k)(1) “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 circumstance, may recover punitive damages." "A 'willful' violation occurs when the creditor knows the automatic stay had been invoked and intended the action that violated the stay." *In re Rutherford*, 329 B.R. at 898 (Bankr. N.D.Ga. 2005) (citing *Jove Engineering, Inc. v. I.R.S.* 92 F.3d 1539, 1555 (11<sup>th</sup> Cir. 1996)). Violation of the automatic stay does not require that the creditor specifically intended to violate the stay; it requires only that the creditor intended the action that violated the stay. *Jove Engineering* 92 F.3d at 1555. "If an individual is injured by a willful violation of the automatic stay, [he or she] is entitled to 'actual damages, including costs and attorneys' fees.'" *In re Roche*, 361 B.R. at 362, 11 U.S.C. § 362(h).

Debtor made numerous efforts to inform Respondent the Vehicle was under the protection of the automatic stay and should be returned. Respondent was given constructive notice by Debtor August 5, 2014 at 5:55 p.m., when Debtor's employer faxed a copy of the notice of petition. Debtor again contacted Respondent August 7, 2014, requesting the Respondent return the Vehicle. At the time of constructive notice given by Debtor and failure of Respondent to return, or even attempt to return, the Vehicle Respondent's actions became willful under *Rutherford* and *Jove Engineering*. Thus, Respondent was in violation of the automatic stay from August 5, 2014.

As explained in *Roche*, actual damages are calculated as the monetary loss incurred over the period of violation plus attorney's fees. Because Respondent was in violation of the automatic stay from 5:55 p.m. August 5, 2014, until return of the vehicle

August 15, 2014, actual damages are the lost revenue incurred by Debtor through that period.

Debtor testified he was unable to perform his job as a courier because Respondent repossessed the Vehicle. Debtor testified that he lost \$1,800 worth of work during the period Respondent possessed the vehicle. However, Debtor also testified that his average monthly income from use of the Vehicle is \$1,500 to \$2,500. Having considered the testimony presented, actual damages are more appropriately accounted for by applying Debtor's average monthly income over the period during which Respondent was in violation of the stay. The Vehicle was held for 10 days of the 31 days in August; at estimated monthly revenue of \$2,500, Debtor would have incurred approximately \$806.45 of lost income.

**D. Punitive damages are appropriate in this case.**

“Section 362(k) authorizes the Court to award punitive damages in ‘appropriate circumstances.’ As a general rule, punitive damages for a violation of the automatic stay are appropriate only when the violator has engaged in egregious, intentional misconduct. *See, e.g., Roche v. Pep Boys, Inc. (In re Roche)*, 361 B.R. 615 (Bankr. N.D.Ga. 2005) (J. Drake). “Courts typically consider the following factors in determining whether to award punitive damages: (1) the nature of the violator's conduct; (2) the nature and extent of the harm to the debtor; (3) the violator's ability to pay; (4) the motives of the

violator; and (5) any provocation by the debtor.” *In re Stephens*, 495 B.R. at 615 (citing *In re Roche*, 361 B.R. at 617).

With respect to the first factor, “the nature of the violator's conduct,” Debtor made early efforts to inform Respondent of the filing of the Chapter 13 petition and to request return of the vehicle. Respondent did not respond until nearly a week later and, before returning the Vehicle, demanded proof of insurance – a demand it is not entitled to make. *In re Stephens*, 495 B.R. at 613.

With respect to the second factor, “the nature and extent of the harm to the debtor,” Debtor did lose income and the use of the Vehicle as transportation. Debtor testified it was his primary method of transportation and, as a result of Respondent’s possession of the vehicle, Debtor’s ability to move about the city was severely limited in addition to the loss of ability to work. No evidence was presented as to the remaining factors.

Respondent’s actions were sufficiently egregious to warrant punitive damages equal to 1.5 times the amount of actual damages. Respondent flagrantly disregarded the automatic stay for its own benefit. While Respondent’s eventual compliance with the automatic stay did mitigate these damages, it is important that creditors comply promptly with Federal law. This court awards an additional \$1,209.68 in punitive damages for Respondent’s substantive disregard for the automatic stay in this case.

### III. CONCLUSION.

Respondent willfully violated the automatic stay granted by 11 U.S.C. § 362. Respondent's violation was sufficiently flagrant to warrant punitive damages equal to three times the amount of actual damages. Accordingly, it is hereby

**ORDERED** that Respondent shall pay \$806.45 in actual damages, \$1,209.68 in punitive damages, and Debtor's attorney's fees associated with the Motion.

IT IS SO ORDERED, this the 26<sup>th</sup> day of November, 2014.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE