



**ORDERED** in the Southern District of Florida on July 24, 2017.

A handwritten signature in black ink, appearing to read "John K. Olson". The signature is written in a cursive style and is positioned above a horizontal line.

John K. Olson, Judge  
United States Bankruptcy Court

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
Fort Lauderdale Division  
www.flsb.uscourts.gov**

In re:

Case No.: **15-14096-JKO**

**Mark Brian Messinger,**

Chapter: 13

Debtor.

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**ORDER GRANTING MOTION FOR CONTEMPT AND SANCTIONS [ECF 78]**

**THIS CASE** came on for hearing May 24, 2017 upon Debtor’s Motion for Contempt and Sanctions against Glenn Verdult, Lee E. Burrows, and Ruth Camm [ECF 78]. The Debtor, Mark Brian Messinger (“Messinger”), filed a Chapter 13 Voluntary Petition seeking bankruptcy protection on March 5, 2015. [ECF 1]. Creditor, Glenn Verdult (“Verdult”), was properly listed on Schedule F. At the time of the bankruptcy filing, Messinger had a state court action pending against him and his wife in the Superior Court of California in County of Orange brought by Verdult (the “Verdult Litigation”). This action was being litigated by attorneys Lee E. Burrows

(“Burrows”) and Ruth Camm (“Camm”). [Ex. B]. Burrows became aware of Messinger’s Florida bankruptcy on March 6, 2015 and Camm became aware of Messinger’s Florida bankruptcy on or before March 22, 2016. [Ex. 4; Ex. 17, Decl. Ruth Camm]. On or before March 22, 2016, Camm also downloaded documents from PACER showing that Messinger filed bankruptcy in Florida. [Ex. 17, Decl. Ruth Camm]. On March 23, 2015, this Court granted Messinger an extension of the automatic stay “until further Order of this Court.” [ECF 19].

### **Findings of Fact**

Throughout this bankruptcy proceeding, Messinger’s automatic stay remained in effect over the Verdult litigation; neither Burrows nor Camm moved for relief from the automatic stay on Verdult’s behalf. Burrows and Camm knew that the filing of a bankruptcy petition<sup>1</sup> initiates an automatic stay because they worked together in filing an adversary proceeding on Verdult’s behalf in Messinger’s 2013 Nevada bankruptcy seeking relief from the automatic stay. [Ex. 17, Attachment 1, ECF 47 (Motion for Relief from Co-Debtor Stay Property: Glenn Verdult . . . on behalf of Lee E. Burrows)].

Nevertheless, with the automatic stay in effect, Burrows and Camm continued to serve notice and email Messinger, demanding he show up to hearings in California and threatening him with sanctions were he not to show up. [Ex. 7, 17]. While the automatic stay was in effect, Burrows or Camm sent Messinger: a Notice of a Mandatory Settlement Conference, a Notice of Order to Show Cause, and a Demand for Exchange of Expert Witness Information [Ex. 17]. Messinger also received a litany of emails from Camm, starting on April 21, 2016, **thirteen**

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<sup>1</sup> Here the automatic stay was effective on March 5, 2015, and was extended on March 23, 2015, although it was effective on the filing of the petition and for 30 days thereafter because Messinger, having one pending bankruptcy case within the year prior to filing of this bankruptcy, had the burden of proving that this filing was in good faith. *See* 11 U.S.C. 362 (c)(3)(B) and ECF 11. Having met his burden, the court granted the extension of the automatic stay. [ECF 19].

**months** after the bankruptcy was filed, and at the very least a month since Camm was unequivocally notified about the bankruptcy. First, Camm emailed Messinger that he needed to be at a Settlement Conference. [Ex. 7-10]. Then, in later email exchanges, Messinger reiterated to Camm that he was in bankruptcy [Ex. 11], that Verdult was getting paid through the confirmed plan, and even went so far as to provide Camm with the statute to indicate to her that she was violating the automatic stay with her continued email correspondence [Ex. 13].

Nevertheless, Camm responded:

You are still on trial for fraud and Lisa was not in bankruptcy at all. [Ex. 14].

Please check your [sic] with your BK [bankruptcy] attorney. Fraud cannot be discharged in BK. Also Lisa was not included in the BK so we are moving forward with every cause of action against her, while moving forward against you with the Fraud cause of action. The judge is going to order sanction [sic] against you and Lisa for not appearing. Further the next Mandatory Settlement Conference is set for the day trial starts. I will file and serve official notice next week, together with a motion for sanction. [Ex. 16].

As a result of the numerous notices and emails sent to Messinger indicating that he needed to come to California for the Verdult litigation, Messinger incurred out-of-pocket expenses. First, Messinger purchased airline tickets from Florida to California on four occasions and from California to Florida on three occasions, totaling \$7,247.72. [Ex. 19]. Second, because of the continuing Verdult litigation, Messinger had to hire the Peralta law firm in California, and because of the instant action on the Motion for Contempt, Messinger had to hire Florida counsel, thus expending \$9,122.32 in legal fees and costs. [Ex. 19-20]. Additionally, as Messinger claims, he did not just bear financial costs, but also emotional costs. Messinger claims to have been burdened by increased stress from the court notices and attorney emails he rightfully expected to stop upon filing for bankruptcy. The stress then inhibited him from sleeping, induced a panic attack, and culminated in Messinger claiming to have fallen down the stairs and injuring himself,

which then prevented him from working. In all, between having to travel for the Verdult litigation and becoming injured, Messinger claims to have missed somewhere between twenty and twenty-five days of work, at \$200 to \$300 per day.<sup>2</sup>

On the other hand, Verdult was not shown to have had something to do with the alleged automatic stay violations.

### **Conclusions of Law**

#### **Violation of the Automatic Stay**

Upon filing a bankruptcy petition and pursuant to 11 U.S.C. § 362(a), an automatic stay operates to stay the “continuation . . . of a judicial . . . action or proceeding against the debtor that was . . . commenced before [bankruptcy filing].” The automatic stay is “designed to give the debtor ‘a breathing spell from its creditors. It stops all collection efforts, all harassment . . . [i]t permits the debtor . . . to simply be relieved of the financial pressures that drove him into bankruptcy.’” *Ellison v. Nw. Eng’g Co.* 707 F.2d 1310, 1311 (11th Cir. 1983) (quoting H.R.Rep. No. 595, 95th Cong.2d Sess. 340).

Consequently, if the automatic stay is willfully violated, 11 U.S.C § 362(k) provides a private right of action for “actual damages, including costs and attorneys’ fees, and, in appropriate circumstances . . . punitive damages.” Conduct willfully violates the automatic stay where “the violator (1) knew of the automatic stay and (2) intentionally committed the violative act, regardless whether the violator specifically intended to violate the stay. . . . [T]he violator need [not] be aware of the provisions of section 362. It is sufficient that the violator had actual knowledge of the bankruptcy case.” *In re Govero*, 439 B.R. 917, 921 (Bankr. S.D. Fla. 2010); *see also In re Dynamic Tours & Transp., Inc.* 359 B.R. 336, 343 (Bankr. M.D. Fla. 2006)

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<sup>2</sup> A transcript from the trial is not available; however, the Court has reviewed the audio recording. Any party in interest may order a transcript from the court reporter.

(holding that “subjective beliefs or intent of the creditor are irrelevant” to whether the creditor violated an automatic stay).

Messinger wasn't provided with the full statutory protections of an automatic stay. Here, Burrows and Camm both knew of Messinger's bankruptcy. They knew that bankruptcy initiates an automatic stay. And they knew that they had to seek relief from the automatic stay to continue ongoing litigation, which they actually attempted to do in Messinger's preceding Nevada bankruptcy. Thus, by knowing there was a bankruptcy in Florida and thereby an automatic stay, and knowing that it is necessary to seek relief to continue ongoing litigation, and not doing so, Burrow and Camm consequently satisfy the first requirement of a willful automatic stay violation: knowledge of the automatic stay.

Furthermore, though Burrows and Camm suggest that it was the Superior Court of California ordering them to send notices to Messinger, Burrows and Camm had the documents at their disposal to allay the California court's concerns. Burrows and Camm could have, and should have, shown the California court that the Florida bankruptcy had stayed the Verdult litigation. Both attorneys had access to PACER, actually accessed it, and Camm even downloaded the Florida bankruptcy proceeding documents from PACER. They did not need to reach out to Messinger and demand that *he* show the California court those very same documents. This evidences unacceptable and illegal actions by these California lawyers.

Regardless of the fact that the automatic stay was in place, Burrows and Camm sent notices to Messinger telling him he needed to be in court, and Camm emailed Messinger threatening him with sanctions and demanding his presence in California court. Both attorneys had the ability to show the California court PACER documents proving that there was a Florida bankruptcy proceeding; instead, Burrows and Camm acted of their own volition to send out

notices and emails to a debtor protected by the automatic stay. Thereby, Burrows and Cam satisfy the second requirement for a willful violation of an automatic stay: intentionally committing the violative acts.

Unlike his attorneys, Verdult was not shown to have directed or consulted with Burrows and Camm about their actions that violated the automatic stay. Therefore, he does not fulfill the first or second requirement needed to willfully violate an automatic stay, and thereby is not liable under § 362(k).

### **Actual Compensatory and Punitive Damages**

When an automatic stay is violated, the remedy includes attorney's fees and costs and other expenses incurred by the debtor to attend court hearings. *In re Heidkamp*, 334 B.R. 713, 718-19 (Bankr. M.D. Fla. 2005); 11 U.S.C. § 362(k). Additionally, at appropriate times punitive damages may be warranted and "set at a level adequate to insure it will punish and deter." *In re Dynamic Tours*, 359 B.R. at 344 (Bankr. M.D. Fla. 2006). In *Sundquist v. Bank of America, N.A.*, the court identified that the appropriate "case for punitive damages under 362(k)(1) entails some showing of reckless or callous disregard for the law or for rights of others." 566 B.R. 563, 610 (Bankr. E.D. Cal. 2017). And when such callous disregard is evident, punitive damages with a single-digit ratio to compensatory damages "comport with due process . . . [and] achiev[es] the State's goals of deterrence and retribution." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

Here, the automatic stay violation led Messinger to incur a total of \$9,122.32 in legal fees and costs (so far) and \$7,247.72 in airfare to attend court hearings he was improperly notified about. Also, by imposition of having his presence demanded for at court hearings, and not having the automatic stay respected more generally, Messinger missed between twenty and twenty-five

days of work at about \$200 to \$300 per day, totaling on the conservative side \$4,000. Therefore, Messinger's remedy is, in part, his attorney fees and costs, costs incurred from traveling, and missed income, totaling \$20,370.04 against both Lee Burrows and Ruth Camm, jointly and severally.

Furthermore, because Camm failed to take even the most rudimentary steps to respect Messinger's Florida bankruptcy proceeding and the automatic stay, or even just the statues emailed to her outlining why she was violating Messinger's automatic stay, Camm is also liable for punitive damages. Here, Camm had previous knowledge about at least one bankruptcy filing, the presence of an automatic stay, and the necessity of requesting relief from stay. When she continued to email and send notices to Messinger insisting that he come to California court, she was, as the *State Farm* court would put it, callously disregarding Messinger's right to his automatic stay. In order to sufficiently punish and deter any such subsequent offensive conduct from Ruth Camm and someone of Ruth Camm's financial stature, a lower single-digit multiplier is proper. Therefore, Ruth Camm is liable for two-times the compensatory damages: \$40,740.08 in punitive damages.

Accordingly, it is **ORDERED** that:

- 1) Debtor's Motion for Contempt and Sanctions [ECF 78] is hereby **GRANTED**.
- 2) Lee Burrows and Ruth Camm are hereby held in **CONTEMPT**.
- 3) Debtor Mark Brian Messinger is hereby awarded compensatory damages in the amount of \$20,370.04 against both Lee Burrows and Ruth Camm, jointly and severally. Lee Burrows and Ruth Camm are **DIRECTED** to remit payment to Debtor's attorney within 21 days of this order. If Camm and Burrows fail to remit payment within 21 days, Debtor's attorney is authorized to file a notice of non-compliance, which may result in

additional contempt sanctions.

- 4) Debtor Mark Brian Messinger is hereby awarded punitive damages in the amount of \$40,740.08 against only Ruth Camm. Ruth Camm is **DIRECTED** to remit payment to Debtor's attorney within 21 days of this order. If Camm fails to remit payment within 21 days, Debtor's attorney is authorized to file a notice of non-compliance, which may result in additional contempt sanctions.

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The Clerk is directed to serve copies of this order on the parties to this dispute.