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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

ETHEL JEAN WILLIAMS,

DEBTOR.

**CASE NO. 00-41270-13
CHAPTER 13**

**ORDER GRANTING DEBTOR'S MOTION FOR SANCTIONS AND
DENYING CREDITOR'S MOTION FOR SANCTIONS**

This matter is before the Court on opposing motions for sanctions. The debtor appears by counsel Fred W. Schwinn. Creditor Autos, Inc. ("Autos"), appears by counsel Richard F. Hayse. The Court has reviewed the relevant pleadings and is now ready to rule.

FACTS

Sometime before June 2000, the debtor obtained a loan from Autos, giving a security interest in a car. According to Autos, the debtor's car insurance company tried to obtain a premium payment through an automatic withdrawal from her bank account on June 2, 2000, but was not successful. Apparently, the debtor had also defaulted on her loan, and Autos repossessed the car on June 8. On June 14, the debtor filed a chapter 13 bankruptcy petition, along with a plan under which she would pay Autos \$2,300 as the holder of a claim secured by her car. Her plan also identified her car insurance provider.

According to the debtor's Schedule I, she is single and has three dependent daughters. She earns about \$50 per month, but receives Social Security benefits, welfare assistance in the form of cash

and food stamps, and a tax refund (presumably through the Earned Income Tax Credit program). She proposed to pay \$100 per month into her chapter 13 plan.

As soon as she filed for bankruptcy, the debtor's attorney contacted Autos and arranged the return of her car. On June 15, the insurance provider sent a letter to Autos informing it that the debtor's coverage would be canceled effective 12:01 a.m. on June 27. Autos did not provide written notice of this letter to the debtor, her attorney, or the chapter 13 trustee. According to Autos, on June 16, the debtor talked to her insurance agent, who told her that her coverage would lapse after June 26 unless she paid the premium due to extend it, and she told the agent that she would seek coverage elsewhere. The coverage did lapse on June 27. Two days later, the debtor obtained insurance coverage from another company.

Meanwhile, Autos repossessed the car on June 28. A neighbor notified the debtor that an unknown person had driven her car away, and the debtor reported its apparent theft to the police, who later notified her that Autos had repossessed the car. The debtor rented another car on June 30. The debtor contends these events caused her to suffer not only the car rental expense, but also mental anguish, aggravation, and inconvenience.

On June 30, the debtor's attorney provided proof of her new insurance coverage, and Autos returned the car to her. She apparently returned the rental car the following day.

A short time later, the debtor filed a motion for sanctions against Autos, pursuant to 11 U.S.C.A. §362(h), for its knowing, willful, and intentional violation of the automatic stay imposed by §362(a). She asks that Autos pay her \$27.58 for her out-of-pocket car rental expense, \$100 to compensate her for her mental anguish, aggravation, and inconvenience, and \$500 in attorney's fees

and costs, and also pay \$1,000 in punitive damages to her bankruptcy estate. In response, Autos claims its action in repossessing the car was substantially justified to protect its security interest, and suggests that the debtor should be required to reimburse it for the attorney fees it incurred in protecting its interest as a result of her willful decision to allow insurance coverage to lapse on the car.

DISCUSSION AND CONCLUSIONS

The filing of the debtor's bankruptcy petition imposed "a stay, applicable to all entities, of— . . . (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C.A. §362(a). Furthermore, "[a]n 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." A party in interest, such as Autos in this case, must seek relief before it may take actions prohibited by the stay, and generally, notice and a hearing must be provided to the debtor. *See* §362(d); Fed. R. Bankr. P. 4001(a)(1). Ordinarily, such a motion requires at least ten days notice. *See* D. Kan. Local Rule 6.1(e)(1) (responses to non-dispositive motions to be served within 11 days); D. Kan. Local Bankr. Rule 9013.2(b) ("Except for cause shown, a motion filed less than 10 days before hearing may not be considered by the court."). If a stay relief motion is opposed, it may be up to 30 days after the motion was filed before a hearing is held on it. §362(e). Furthermore, an order granting stay relief is stayed for 10 days after its entry, unless the court orders otherwise. Fed. R. Bankr. P. 4001(a)(3).

Recognizing that the termination of property insurance coverage, coupled with the delay ordinarily involved in obtaining stay relief, imposes an unfair risk of loss on a creditor with a security interest in a debtor's motor vehicle, the Bankruptcy Court for the District of Kansas passed a local rule

to make some quicker relief available to such creditors, while also protecting debtors from improper seizures of their vehicles. D. Kan. Local Bankr. R. 4070.1. In pertinent part, the rule provides:

(c) Termination of Insurance. If during the pendency of a case, insurance is canceled, not renewed, expires or lapses for any reason, on any motor vehicle, the following sequence of events may occur:

(1) Notice of Intent. A creditor with an allowed claim secured by the motor vehicle for which insurance has been terminated, . . . or has received notice of the insurer's intent to terminate insurance for any reason . . . must notify, in writing, the debtor, the debtor's attorney and the trustee of the termination, or notice of intent to terminate insurance. Service of notice upon the debtor and the debtor's attorney must be in the manner specified in Fed. R. Bankr. P. 7004(b)(9).

(2) Injunction. The debtor is enjoined from using the motor vehicle for which insurance has, in fact, been terminated as long as the motor vehicle remains uninsured.

(3) Possession. If the debtor fails to provide proof of reinsurance to the creditor within 5 business days following delivery of the notice provided in subsection (c)(1), or fails to provide proof of re-issuance by the day before termination of any grace period granted by the insurer, if later, the debtor must surrender the motor vehicle to the creditor or the creditor may take possession of the motor vehicle securing its claim and hold it pending presentation of proof of insurance by the debtor.

(4) Motion for relief from stay. Within 5 days after taking possession of a motor vehicle, the creditor must file with the court a motion for relief from the automatic stay under §362 of the Code.

(Some revisions of the rule took effect on March 15, 2001, but none of them affect the rule's application to this case). This rule gives the creditor a way to protect its interest more quickly than the usual procedure for seeking relief from the stay, and authorizes it to take action that would otherwise violate the stay. It also provides some immediate protection by enjoining the debtor from using the motor vehicle while it is uninsured. However, it does not authorize the creditor to violate the stay without following the dictates of the rule.

In this case, Autos does not allege that it made any effort to comply with Rule 4070.1(c)(1) at all, even though it apparently received notice of the impending termination of the debtor's insurance soon after June 15. It concedes, however, that it took the debtor's car on June 28. Of course, because of the earlier turnover of the car, Autos clearly knew that the debtor had filed for bankruptcy, and so was protected by the automatic stay. The only defense Autos offers is that its action was "substantially justified" because the debtor knowingly and willfully allowed her insurance coverage to lapse, thus exposing Autos to an unnecessary risk of loss. Autos suggests that the Court can therefore excuse its failure to comply with the rule based on another local bankruptcy rule, Rule 9011.3(c). This argument, though, overlooks the nature of Rule 4070.1. It is not a rule that imposes obligations on creditors involved in matters before this Court beyond the obligations already imposed by the Bankruptcy Code and Federal Bankruptcy Rules, but instead, is one that authorizes them to take action that would otherwise violate §362(a) and be punishable under §362(h). By failing to make any effort to follow Rule 4070.1, Autos violated the automatic stay and subjected itself to sanctions under §362(h). The Court will not be imposing sanctions because Autos violated the local rule, a matter that is relevant to sanctions under Local Rule 9011.3(c), but because it violated §362(a).

The debtor asks for the following sanctions: (1) \$27.58 for car rental expense; (2) \$100 to compensate her for the mental anguish, aggravation, and inconvenience caused by Autos' June 28 repossession; (3) \$500 in attorney fees and costs incurred because the repossession caused her attorney to speak to the debtor several times about the possibility that her car had been stolen, to call Autos' attorney and fax proof of her new insurance coverage, and to file the motion for sanctions and attend a hearing on it; and (4) \$1,000 in punitive damages. She wants the first three items paid to her

or her attorney, and the fourth to her bankruptcy estate (presumably for distribution to her creditors). Autos contends the debtor would have incurred the car rental even if it had not repossessed her car because Rule 4070.1(c)(2) enjoined her from using her car while she had no insurance for it. However, the debtor obtained new insurance on June 29, and did not rent another car until June 30. If Autos had not taken her car, she would still have had and been able to use it on June 30, the day she was instead forced to obtain the rental car. Otherwise, Autos contends the debtor's mental anguish and attorney's fees were all caused by her own failure to maintain insurance protection for her car. Autos does not question the amount of or necessity for the attorney fees the debtor incurred.

The Court concludes that Autos is subject to sanctions under §362(h). Autos clearly had notice of the pendency of the debtor's bankruptcy case, and apparently had as much as eleven days' warning (depending on when the insurance company's letter was delivered to it) that her current insurance coverage would terminate on June 27. The debtor also has only minimal earned income, so unlike many debtors, she could presumably more easily refrain from driving her car, as required by Local Rule 4070.1(c)(2) while it was not insured. Autos does not allege that the debtor did drive the car after the insurance was terminated and while she still had the car on June 27 and 28. Despite these circumstances, Autos chose to ignore the automatic stay, and made no effort to invoke the procedure established by Rule 4070.1. Consequently, the Court concludes that Autos should pay the debtor the car rental expense and \$100 for the mental anguish and inconvenience caused by the wrongful repossession. Autos should also pay the debtor's attorney the requested \$500 in attorney fees and expenses. The Court believes these sanctions are sufficient to convince Autos to modify its approach if a similar problem should arise in the future, and therefore declines to impose any punitive damages

sanction. *See Diviney v. NationsBank of Texas, N.A. (In re Diviney)*, 225 B.R. 762, 776-77 (10th Cir. B.A.P. 1998) (considering two standards used to decide whether to impose punitive damages). Autos should take heed, however, that the Court may not be so generous if Autos proceeds similarly in the future.

Turning to Autos' motion for sanctions, the Court notes that Autos does not cite any authority under which the Court could require the debtor to pay Autos' attorney fees because she allowed the insurance on her car to terminate. The Court is not aware of any such authority. Furthermore, as indicated above, the debtor's action did not justify Autos' violation of the automatic stay. Autos' request for sanctions must be denied.

For these reasons, Autos is ordered to pay \$127.58 to the debtor and \$500 to her attorney as sanctions under 11 U.S.C.A. §362(h) for its willful violation of the automatic stay. Autos' motion for sanctions is denied.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of July, 2001.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE