

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In Re: ) Chapter 7  
 )  
Josefina Galutan, ) No. 12 B 31837  
 )  
Debtor. ) Judge Carol A. Doyle

**Order Awarding Damages for Violation of Automatic Stay**

This matter is before the court on the motion of the debtor, Josefina Galutan, for sanctions against Owtel, Inc. On October 17, 2012, the court concluded that Owtel intentionally and repeatedly violated the automatic stay in attempting to collect a debt owed to it by the debtor. The court held an evidentiary hearing on November 14, 2012 at 11:30 a.m. regarding damages for the violations of the automatic stay.

The court made factual findings on the record in open court on both October 17, 2012 and November 14, 2012 in support of its ruling. The court supplements those findings with the following findings of fact and conclusions of law:

1. The debtor filed a chapter 7 bankruptcy petition on August 10, 2012. Her amended Schedule F, filed on August 15, 2012, listed Owtel as an unsecured creditor with a claim of \$74.00. On August 12, 2012, Owtel began a pattern of systematic harassment of the debtor by phoning her, often twice per day, at least every other day and often every day, continuing through the morning of the November 14, 2012 hearing.
2. The debtor and her counsel have repeatedly informed Owtel that she filed for bankruptcy, beginning with the debtor faxing a notice to Owtel on or about August 12, 2012. On September 4, 2012, Debtor's counsel, Brian Deshur, called Owtel's office, told Owtel representatives of the bankruptcy filing, and faxed a notice of the filing to a supervisor in Owtel's office. Deshur called Owtel a second time on October 9, 2012. The Owtel employee acknowledged that the company knew of the bankruptcy filing but requested further "proof" and asked to speak with the debtor directly. Deshur informed a supervisor with Owtel that he would be filing a motion for sanctions, and the supervisor stated that she did not believe that the law prohibited their actions to collect the debt despite the bankruptcy case. A representative of Owtel also told the debtor that the information provided regarding her bankruptcy petition was merely an "application" for bankruptcy and did not prevent Owtel from trying to collect on the debt. Owtel continued to violate the automatic stay by calling the debtor twice a day after this conversation.

3. In addition to the repeated telephone calls to debtor's cell phone and land line, Owtel also continued to send written demands for payment after the petition date.
4. Owtel was served with the debtor's motion for sanctions through its President, David Chen, but has not responded to the motion. Owtel was also served with the order granting the motion and setting another hearing for November 14, 2012 for a prove-up regarding damages. The court took testimony from the debtor on November 14, 2012 and found her to be a credible witness. The court also accepted uncontested affidavits and written exhibits from the debtor and has considered the motions and related filings and exhibits that have been submitted in support of the motion.
5. Based on the uncontested evidence and the testimony of the debtor, the court concludes as follows:
  - A. Section 362(a) of the Bankruptcy Code prohibits any creditor from attempting to collect on any pre-petition debt. 11 U.S.C. § 362(a). It provides that the stay applies to all entities and prohibits "any act to collect, assess, or recover a claim against the debtor that arose" before the date the bankruptcy petition was filed. *Id.* § 362(a)(6). The stay comes into existence automatically upon the filing of the petition and prohibits all collection activities unless an exception to the stay applies. No exception to the automatic stay applies to the debt in question.
  - B. Section 362(k) of the Bankruptcy Code provides that an individual injured by a willful violation of the stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." *Id.* § 362(k)(1).
  - C. Owtel has had actual knowledge of the debtor's bankruptcy since August 12, 2012. It has chosen to intentionally and repeatedly violate the automatic stay in an attempt to collect the debt owed to it by the debtor.
  - D. While purely emotional injuries without accompanying financial loss are not compensable under 362(k) in the Seventh Circuit, the court may still award actual damages, including costs and attorney's fees, and punitive damages where the actual harm suffered by the debtor is not compensable. *Dailey v. Chase Bank U.S.A., N.A.*, 2007 Bankr. Lexis 4323, at \*2-\*3 (C.D. Ill. Bankr. Dec. 18, 2007).
  - E. The debtor has suffered actual damages in the amount of \$2,940, the attorney's fees expended in enforcing the automatic stay up until the November 14, 2012 hearing.

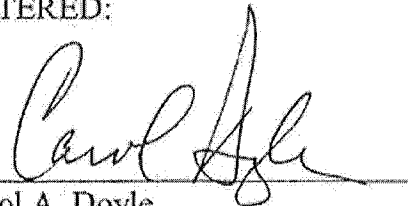
- F. Because Owtel has had actual notice that it has been repeatedly violating the automatic stay and refuses to comply with it, punitive damages are appropriate.
- G. The debtor presented evidence that Owtel is a sizeable international telecommunications company that does business in the U.S., Canada, Hong Kong, and the Phillipines, with over 700 employees worldwide.
- H. Based on the evidence presented, the court finds that punitive damages in the amount of \$15,000 is appropriate.
- G. If Owtel does not immediately cease all attempts to collect on the debt owed by the debtor, the court will consider requiring the debtor to pay \$500 per day for every day in which the harassment of the debtor continues, in addition to the \$17,940 it must pay to the debtor pursuant to this order.

IT IS THEREFORE ORDERED that:

1. Owtel must pay the debtor \$17,940 within 15 days of service of this order by mail upon Owtel.
2. The court will consider additional sanctions if Owtel does not pay the debtor \$17,940 within 15 days of the service of this order upon it by mail or if Owtel continues to violate the automatic stay by continuing to attempt to collect a debt from the debtor in any way.

Dated: November 16, 2012

ENTERED:



Carol A. Doyle  
United States Bankruptcy Judge