UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

IN the Matter of	:	
	:	
BETTY KARAS,	:	Case No. 91-2890-C H
	:	Chapter 7
Debtor.	:	
	:	

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ORDER--APPLICATION FOR ORDER TO SHOW CAUSE

Debtor's Application for Order to Show Cause proceeded to hearing on April 13, 1992. Debtor appeared in person and with her attorney of record, R. L. Morgan. The Montgomery County Memorial Hospital appeared by its attorney of record, Thomas G. Ross.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Court dictated its findings and conclusions into the record and now enters its memorandum of decision.

ISSUE

The Debtor, Betty Karas, prays that the Memorial County Hospital (hereinafter "Hospital") be held in contempt of Court for filing a small claims action against Debtor after the filing of the petition herein; for proceeding to judgment against Debtor on that action; and, for causing an execution to issue on the judgment.

Hospital answered by alleging that it did not have notice of the bankruptcy petition.

FINDINGS

1. Debtor and her husband filed their voluntary petition under Chapter 7 of the Bankruptcy Code (Title 11 U.S.C.) on October 4, 1991. An order for relief was issued on the same date. Debtor's husband subsequently dismissed his petition.

2. Debtor scheduled Hospital as holding an unsecured non-priority claim in the amount of $615.00.

3. Debtor gave Hospital's address as P.O. Box BD, Des Moines, Iowa 50304.

4. Debtor received this address from billing statements from Preferred Medical Deposit, Inc., which showed Hospital's address as P.O. Box BD, Des Moines, Iowa 50304.

5. Notice was given to Hospital by using this address. Notice to this address was not returned to the sender.

6. Hospital had employed Preferred Medical Deposit as their billing agent for their billing of accounts. These billing statements showed the P.O. Box address as a depositing box for a bank in Des Moines.

7. Hospital had terminated this relationship but no notice was given to Debtor of this termination.

8. Debtor had received correspondence from Hospital showing Hospital's address as 2301 Eastern Avenue, Red Oak, Iowa 51566. Debtor knew that Hospital was located in Red Oak, Iowa.

9. During November 1991, Hospital's financial counselor contacted both Debtor and her attorney's office by phone. During both conversations, Hospital's employee was advised that a bankruptcy petition had been filed.

10. On November 21, 1991, Hospital commenced a small claims action against Debtor and her husband in Montgomery County. The prayer was for $820.17, plus costs. The original notice listed Hospital's address as 2301 Eastern Avenue, Red Oak, Iowa 51566.

11. Counsel for Debtor filed an appearance and answer in the small claims action on January 2, 1992. The answer stated that a bankruptcy petition had been filed on October 4, 1991, and gave the case number. A copy of the bankruptcy petition was attached as was a copy of Schedule A listing Hospital as a creditor. This schedule also showed Hospital's address as P.O. Box BD, Des Moines, Iowa 50304.

12. The small claims action proceeded to trial on January 17, 1992. Hospital's employee appeared without counsel. Neither the defendants nor counsel appeared. The Magistrate presiding over the small claims trial noted that Betty Karas had filed a Chapter 7 bankruptcy petition in the Southern District of Iowa.

13. The Magistrate then proceeded to state as follows:

> The Court notes that Bankruptcy #91-2890-C does not list the plaintiff above as a Schedule F creditor, defendant counsel having provided the Court with a

> copy of said Schedule F listing the plaintiff at P.O. Box BD, Des Moines, Iowa, an incorrent [sic] address the correct one being that listed herein on the petition. The address listed on the bankruptcy filing appears to be the address of Preferred Medical Deposits in Des Moines, Iowa, a former agent-collection point for the plaintiff, and not the plaintiff, as known by both defendants according to filed contract dated 10 July 1991 appearing of record in this matter.

14. Judgment was entered against Darwin Karas in the amount of $190.17 and against Betty Karas in the amount of $630.00. Costs of $39.58 were assessed prorata against each defendant.

15. On January 21, 1992, Hospital's employee caused a praecipe for execution to issue against Darwin and Betty Karas in the amount of $820.17 plus court costs of $39.58.

16. General execution issued for the respective judgments.

17. Thereafter, the wages of Debtor, Betty Karas, at Good Samaritan Care Center of Red Oak, were garnished.

18. On February 13, 1992, Debtor corrected the address of Hospital in the case file to show the Hospital's address as 2301 Eastern Avenue, Red Oak, Iowa 51566.

19. On February 21, 1992, Hospital's employee gave notice to the Sheriff, Montgomery County, to stop the execution of judgment.

20. Counsel for Debtor has submitted a statement for services rendered in the amount of $2,375.00. This is for a total of 23.75 hours at $100.00 per hour.

DISCUSSION

11 U.S.C. § 362(a)(1) provides for a broad stay of litigation against the debtor. It is limited to actions which could have been commenced before the commencement of the case or which are based upon claims that arose before commencement of the case.

It is one of the most basic protections provided by the Bankruptcy Code.

> It [the automatic stay] gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.
>
> The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

S. Rep. No. 989, 95th Cong., 2d Sess. 54-55 (1978), H.R. Rep. No. 595, 95th Cong. 1st Sess. 340-42 (1977), reprinted in 1978 U.S.C.C.A.N. 5787 at 5840 & 6296-97.

"The automatic stay is a self-executing provision of the

Bankruptcy Code and begins to operate nationwide, without notice, once the debtor files its petition for relief." In re A.H. Robins Co., Inc., 63 B.R. 986, 988 (Bankr. E.D. Va. 1986), aff'd, 839 F.2d 198 (4th Cir. 1988), cert. dismissed, 487 U.S. 1260 (1988).

11 U.S.C. § 362(h) provides that a debtor injured by a willful violation of the stay shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

A "willful" violation for § 362(h) purposes does not require an intent to violate the stay, only that the creditor knew of the stay and intended to do the violating act. In re Bloom, 875 F.2d 224, 227 (9th Cir. 1989).

Hospital contends that it did not have notice of the bankruptcy filing because of the incorrect address on the schedule and because it had not received an official notice from the Bankruptcy Court.

However, the provisions of § 362 are automatic and self-operating and those who have knowledge of the pendency of a bankruptcy action and stay are bound to honor the stay unless and until it is properly lifted. NLT Computer Servs. v. Capital Computer Sys., 755 F.2d 1253, 1258 (6th Cir. 1985) (citing Clay v. Johns-Manville Sales Corp., 722 F.2d 1289 (6th Cir. 1983), cert. denied, 467 U.S. 1253 (1984)).

Hospital had knowledge of the bankruptcy filing in

November 1991, prior to the filing of the small claims action after having talked with Debtor and with her attorney's office.

On January 17, 1992, the day of the trial in small claims court, both the magistrate and Hospital had actual knowledge that Betty Karas had filed a bankruptcy petition and Hospital was a scheduled creditor.

The automatic stay halts further proceedings against the Debtor by a court as well as by a party. That is, a tribunal may not go forward with its deliberations in a submitted matter without relief from stay having first been obtained. Ellison v. Northwest Engineering Co., 707 F.2d 1310, 1311 (11th Cir. 1983) (holding unaffected by 709 F.2d 681 (11th Cir. 1983)).

Hospital permitted the small claims action to proceed to judgment and then proceeded to have a general execution issue on the judgment. Although no monies were received and the execution was returned unsatisfied, notice had been given to Betty Karas's employer, the Good Samaritan Care Center.

The Court concludes that Hospital knew that Betty Karas had filed for relief under the Bankruptcy Code with the consequent issuance of the automatic stay. Notwithstanding this, Hospital intentionally commenced a small claims action against Betty Karas and caused a general execution to issue on the judgment. According, Hospital willfully violated the

provisions of 11 U.S.C. § 362.

11 U.S.C. § 362(h) provides that an individual injured by a willful violation of a stay shall recover actual damages, including costs and attorney's fees. In appropriate cases that individual may recover punitive damages.

Debtor has presented evidence that she has incurred costs in the nature of attorney's fees as a result of this violation. The attorney's fees are for 23.75 hours at $100.00 per hour. The hourly rate of $100.00 per hour is reasonable. However, the entries of March 5, 1992 and April 2, 1992 contain lumped entries for speaking with a third person, without identifying the subject matter thereof or specific time alloted thereto, and for traveling to the courthouse and "briefing" without stating the nature of the legal problem and the specifics thereof. These entries are unsupported as to the subject matter thereof. Therefore, the hours on March 5, 1992 must be stricken and the hours on April 2, 1992 must be reduced by 3.50 hours for lack of specificity. See generally In re Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1988) (standards for fee applications). Accordingly, 17.25 hours are approved at $100.00 per hour for a total bill of $1,725.00.

Under the circumstances of this case, the Court will not grant punitive damages.

IT IS ACCORDINGLY ORDERED that Betty M. Karas has been injured in the amount of $1,725.00 as a result of the willful

violation of the stay by Montgomery County Memorial Hospital.

LET JUDGMENT ENTER ACCORDINGLY.

Dated this 28th day of April, 1992.

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RUSSELL J. HILL
U.S. Bankruptcy Judge