

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

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225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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December 4, 1998

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Subject: *Brian E. and Petrina J. Stromseth v. Crystal Water, Inc. (In re Stromseth)*, Adversary No. 98-1015, Chapter 7; Bankr. No. 98-10118

Dear Counsel:

The matter before the Court is Plaintiffs-Debtors' complaint for damages arising from Defendant's violation of the automatic stay. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying judgment shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that a technical violation of the automatic stay did occur but that Plaintiffs suffered no actual damages. The Court further concludes that punitive damages are not appropriate under the circumstances presented.

SUMMARY OF FACTS. The trial on November 17, 1998 did not yield much conflicting evidence. Defendant's principal, Steve Hanson, acknowledged that he did have a heated conversation with Debtor Brian Stromseth in the parking lot of Brian Stromseth's place of employment to try to get Defendant's claim resolved. Hanson acknowledged using vulgar language after some provocation by the Debtor. Hanson did not physically threaten Brian Stromseth. Hanson also acknowledged that the small claims action in Codington County did continue after the petition was filed but he could not fully explain why, though he and the Clerk of Courts had a conversation about it. Hanson stated that he had the judgment satisfied once he understood that the small claims action should not have continued post-petition. Debtor Petrina Stromseth also said Hanson called her after their bankruptcy petition was filed. She acknowledged that the conversation was very short and that he

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used no vulgar or intimidating language. Hanson stated he later worked with the Stromseths to get some, but not all, of Defendant's water softening and purification equipment returned.

Two witnesses to the parking lot incident essentially confirmed Hanson's and Brian Stromseth's testimony. None of them indicated that Brian Stromseth suffered any embarrassment or animosity from his fellow employees because of the incident. Though unsettling at the time they occurred, neither Debtor suffered any physical or emotional distress from their post-petition encounters with Hanson. Hanson had no previous experience with a customer filing bankruptcy. Once Hanson understood he had violated the automatic stay, he took all reasonable measures to "undo" what he had done. Debtors also could not identify any financial harm that occurred based on the small claims judgment that Defendant obtained post-petition.

DISCUSSION. Defendant violated the automatic stay because of Hanson's post-petition contact with Debtor Brian Stromseth and Defendant violated the automatic stay by not stopping the small claims action. The issue thus becomes what damages, if any, should be awarded Debtors for those violations.

To recover actual damages for a violation of the automatic stay, the debtor must show that he was injured by the violation and that the violation was willful. *Lovett v. Honeywell*, 930 F.2d 625, 628 (8th Cir. 1991). To some degree,¹ Hanson understood that he should not contact Debtors directly to resolve Defendant's claim after Debtors filed bankruptcy. That knowledge, whether based on the Notice of Commencement of Case that Defendant received, or on Hanson's conversation with Debtors' attorney, was sufficient to make Defendant's violations of the stay willful. However, Debtors simply have not presented evidence of any actual injuries they suffered because of these stay violations. Defendant did not withhold or take property of the estate without Debtors' consent. See *Expeditors International of Washington, Inc. v Colortran, Inc. (In re Colortran, Inc)*, 210 B.R. 823, 827-28 (B.A.P. 9th Cir. 1997), *aff'd on these grounds, rev'd on another*, 1998 WL 792307 (9th Cir. Nov. 13, 1998). Debtors did not show any financial or personal impact from their conversations with Hanson or from the short time that Defendant's small claims judgment stood.

¹ Debtors did not schedule Defendat Crystal Water, Inc., as a creditor. Defendant received a copy of the Notice of Commencement of case through a Bank. That may have contributed in part to Hanson's limited knowledge about the effect of the stay on his business.

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Punitive damages may only be recovered under "appropriate circumstances." *Lovett*, 930 F.2d at 628. In this Circuit, appropriate circumstances are those where the violator's misconduct was intentional and egregious. *Id.* Those circumstances are not present here. Hanson's parking lot conversation with Debtor Brian Stromseth was brief and heated, but no harm was threatened and no harm ensued. Moreover, once Defendant better understood the implications of its and Hanson's actions, it took immediate and appropriate steps to rectify them, including working with an attorney to satisfy Debtors' complaint and promptly satisfying the small claims judgment. *Id.* at 629; compare *Knaus v. Concordia Lumber Co. (In re Knaus)*, 889 F.2d 773, 776 (8th Cir. 1989) (egregious circumstances existed when creditor's controlling officer attempted to have the debtor excommunicated from his church).

A judgment for Plaintiffs-Debtors will be entered but no damages will be awarded. Each party shall bear their own attorney's fees and costs as provided by *Lovett*, 930 F.2d at 629, since no actual damages were awarded.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: adversary file (docket original; copies to parties in
interest)

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

DEC 04 1998

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

I hereby certify that a copy of this document
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DEC 04 1998

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By 

Case: 98-01015 Form id: 122 Ntc Date: 12/04/1998 Off: 3 Page : 1
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