

11 U.S.C. § 362(a)(6)

11 U.S.C. § 362(k)

Punitive damages

In re Freeland, Case No. 19-32309-pcm7

08/12/20 Published

Debtors brought a motion for contempt against Verizon Wireless under 11 U.S.C. § 362(k) for violating the automatic stay. Verizon did not file a response to the motion or appear at the prove-up hearing on damages.

The court found that Verizon intentionally violated the automatic stay numerous times. Based on the evidence, the court awarded actual damages, non-economic damages, attorney fees, and punitive damages pursuant to 11 U.S.C. § 362(k).

The court observed that Verizon has been held liable for violating the automatic stay or discharge injunction in several cases around the country. It expressed concerns about Verizon's apparent lack of an effective system to avoid collection activity after a bankruptcy is filed.

Below is an opinion of the court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



PETER C. MCKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)
) Bankruptcy Case No.
Kirk and Tammy Freeland,)
) 19-32309-pcm7
)
) OPINION
)
_____ Debtors.)

Debtors Kirk and Tammy Freeland (referred to individually as "Kirk" or "Tammy" and collectively as "the Freelands") filed a Motion for Order of Contempt ("the Motion") for violation of the automatic stay imposed under 11 U.S.C. § 362(a)¹ against Verizon Wireless Services ("Verizon"). Doc. 18. For the reasons that follow, I find that Verizon violated the automatic stay and is liable for damages under § 362(k) in the total amount of \$24,931.95.

Background and Facts

The Freelands filed their chapter 7 bankruptcy petition on June 21,

¹ Unless otherwise indicated, all references to chapters and sections are to the Bankruptcy Code, 11 U.S.C. § 101, et seq.

1 2019. They listed Verizon on their bankruptcy schedules as a joint
2 liability. Doc. 1, Schedule E/F, G. Verizon also appears on the
3 Freeland's creditor matrix. Exhibit A.

4 The Freeland's received telephone calls at home from Verizon after
5 they filed their bankruptcy petition. In each instance, Tammy testified
6 that the callers identified themselves as representatives of Verizon and
7 Tammy identified herself.² In the initial calls, Tammy told Verizon
8 that she had filed bankruptcy and provided the caller with contact
9 information for her attorney. She also told Verizon it should not be
10 calling because of the bankruptcy filing. Tammy testified that Verizon
11 called approximately nine times after she filed her bankruptcy petition,
12 beginning in September of 2019 and stopping in early October of the same
13 year. Tammy testified that the last few times Verizon called, the caller
14 hung up immediately after the parties identified themselves. As a
15 result, Tammy testified that she believes Verizon was simply trying to
16 bully her.

17 In early October of 2019, the Freeland's received a bill from
18 Verizon at their home addressed to Kirk ("the September Bill"). Exhibit
19 B. The September Bill covered the period of September 11 through
20 October 10, 2019. It shows no current charges, but, on page one, a past
21 due balance of \$201.54, with a note right below the balance, in red
22 print, stating: "201.54 due immediately." Id. The next page of the
23 September Bill shows the same amount due in large print with a notation
24
25

26 ² Kirk testified that he was a truck driver during the relevant period
and away from home most of the time.

1 that states: "please pay immediately." Id.

2 In addition to the September Bill, the Freelands received, at their
3 home address, a collection letter dated September 26, 2019, from CBE
4 Group, Inc., (the Collection Letter), which states that "[y]our Verizon
5 account has been referred to CBE Group for collection. Please take this
6 opportunity to pay your account balance in full." Exhibit C. The
7 Collection Letter is addressed to Kafree Trucking. Kirk owns and
8 operates Kafree Trucking. The Freelands were not sure they had seen
9 previous bills from Verizon made out to Kafree Trucking and could only
10 speculate that the charges might be for a jet pack Kirk used in his
11 truck to obtain internet service. The date of the Collection Letter
12 overlaps with that covered by the September Bill, but shows a higher
13 balance due of \$576.00. Tammy testified that they had multiple lines,
14 but only one Verizon account. Ultimately, neither Kirk nor Tammy was
15 able to explain the nature of this bill and why it showed a different
16 balance and account number than the September Bill.

17
18 Tammy testified that when she received the communications from
19 Verizon, she was panicked. She testified that she questioned whether
20 her counsel had properly prepared and filed her bankruptcy. She also
21 testified that she realized at that point that Verizon was not going to
22 stop trying to collect the debt if left to its own devices.

23 Verizon did not respond to the Motion. The Certificate of Service
24 filed by the Freeland's counsel reflects that Verizon was served with
25 the Motion at the following addresses:

1 Verizon Wireless
2 Bankruptcy Administration -Notices
3 500 Technology Drive, #550
4 Weldon Springs, MO 63304- 2225

5 Verizon Wireless
6 c/o CT Corporation System
7 780 Commercial St., Ste. 100
8 Salem, OR 97301

9 Verizon Wireless Services, LLC
10 c/o Ronan Dunne, CEO
11 One Verizon Way
12 Basking Ridge, NJ 07920

13 Doc. 21.

14 Under Local Bankruptcy Rule 7007-1(b)(3), Verizon had 14 days to
15 respond to the Motion. No response was filed.

16 The Court set a preliminary hearing on the Motion for December 31,
17 2019. Doc. 20. Verizon received service of the motion and notice of
18 hearing on November 14, 2019. Doc. 23.

19 On December 31, 2019, the Court conducted the preliminary hearing
20 by telephone as scheduled. Verizon did not appear at the hearing. By
21 notice dated January 31, 2020, the Court scheduled a hearing for March
22 24, 2020, to allow the Freelandts to make a prima facia showing and prove
23 damages. The hearing was held as scheduled on March 24, but by
24 telephone due to COVID-19 restrictions. Again, Verizon did not appear.
25 At the March 24 hearing, the Court considered the testimony of the
26 Freelandts, Exhibits A through D, all of which were admitted, and the
arguments of counsel.

The Court scheduled a hearing for April 30, 2020, to announce its
Page | 4 OPINION

1 ruling. Doc. 33. However, after further consideration, the Court has
2 concluded that issuance of a written opinion is necessary to effectively
3 address Verizon's repeated violations of the automatic stay.

4 **Legal Analysis**

5 Section 362(a)(6) provides, with certain exceptions not applicable
6 here, that the filing of a bankruptcy petition stays "any act to
7 collect, assess, or recover a claim against the debtor that arose before
8 the commencement of the case under this title." The automatic stay
9 plays a vital role in, and is central to the functioning of, the
10 bankruptcy system. Far Out Prods. v. Oskar, 247 F.3d 986, 995 (9th Cir.
11 2001). The stay is imposed as a matter of law immediately upon
12 commencement of a bankruptcy case and
13

14 is designed to effect an immediate freeze of the status quo by
15 precluding and nullifying post-petition actions, judicial or
16 nonjudicial, in nonbankruptcy fora against the debtor or affecting
17 the property of the estate. The automatic stay plays a vital and
18 fundamental role in bankruptcy. The stay ensures that all claims
19 against the debtor will be brought in a single forum, the
20 bankruptcy court. The stay protects the debtor by allowing it
21 breathing space and also protects creditors as a class from the
22 possibility that one creditor will obtain payment on its claims to
23 the detriment of all others.

24 In re Ramirez, 183 B.R. 583, 587 (9th Cir. BAP 1995)(quoting Hillis
25 Motors, Inc. v. Hawaii Automobile Dealers' Ass'n, 997 F.2d 581, 585 (9th
26 Cir. 1993)).

27 With a certain exception not implicated here, § 362(k)(1) mandates
28 that an individual injured by a willful violation of the automatic stay
29 be awarded damages. "A 'willful violation' does not require a specific
30 intent to violate the automatic stay. Rather, the statute provides for

1 damages upon a finding that the defendant knew of the automatic stay and
2 that the defendant's actions which violated the stay were intentional."
3 In re Pace, 67 F.3d 187, 191 (9th Cir. 1995). Knowledge of the
4 bankruptcy "is the legal equivalent of knowing of the stay[.]" In re
5 Zartun, 30 B.R. 543, 546 (9th Cir. BAP 1983). Notice of the bankruptcy
6 may be given "by any means and in any manner[.]" including orally. In
7 re Stucka, 77 B.R. 777, 781 (Bankr. C.D. Cal. 1987). Formal notice from
8 the bankruptcy court is not required. In re Ozenne, 337 B.R. 214, 220
9 (9th Cir. BAP 2006)(citation omitted). "[A] good faith belief that the
10 stay is not being violated 'is not relevant to whether the act was
11 'willful' or whether compensation must be awarded.'"³ Morris v.
12 Peralta, 317 B.R. 381, 389 (9th Cir. BAP 2004)(citation omitted).

13 Verizon violated § 362(a)(6) in at least two ways. First, Verizon
14 violated the stay by repeatedly calling the Freelands after they filed
15 their bankruptcy petition. Tammy testified that, despite being told of
16

17
18 ³ There is some question whether the traditional standard described
19 above is still applicable after the United States Supreme Court's
20 decision in Taggart v. Lorenzen, 139 S. Ct. 1795 (2019). In Taggart, the
21 Supreme Court ruled that the proper standard for finding a violation of
22 the discharge injunction is whether there is "no objectively reasonable
23 basis for concluding that the creditor's conduct might be lawful under
24 the discharge order." Id. at 1801. The Supreme Court specifically left
25 open the question of whether this same standard applies in actions for
26 violations of the automatic stay. In the unpublished decision of Suh v.
Anderson (In re Jeong), 2020 Bankr. LEXIS 714 (9th Cir. BAP 2020), the
panel found that the new Taggart standard applies to violations of the
stay when the aggrieved party is not an individual, and therefore not
covered under § 362(k). Suh is distinguishable because the Freelands
are individuals within the meaning of § 362(k). In addition, even if
the Taggart standard applied, Verizon would be liable for damages
because there was no objectively reasonable basis for Verizon to
conclude that its actions were lawful under § 362.

1 the bankruptcy and to contact her counsel, Verizon continued to call
2 her. Second, Verizon violated the automatic stay when, approximately
3 three months after the petition date, it sent the Freelands the
4 September Bill asking for "immediate payment."⁴

5 The phone calls and delivery of the September Bill clearly were
6 intentional acts on Verizon's part. Verizon is a sophisticated,
7 commercial creditor that deals with bankruptcy cases as part of its
8 daily business activities. Verizon knew of the bankruptcy and intended
9 the acts that violated the stay. Furthermore, Verizon could have no
10 reasonable basis to believe its conduct did not violate the stay.
11 Verizon's collection attempts are the classic types of conduct that the
12 stay was intended to stop.

13 I therefore find that Verizon willfully violated the stay ten
14 times, nine times by telephone and once by sending the September Bill.

15 **Damages**

16 Section 362(k)(1) provides that an individual injured by a willful
17 violation of the automatic stay "shall recover actual damages, including
18 costs and attorneys' fees[.]" § 362(k)(1). In "appropriate
19 circumstances," punitive damages are also recoverable. Id.

20
21
22
23 ⁴ I conclude that the Freelands failed to meet their burden of
24 proving that CBE Group's sending of the Collection Letter constitutes a
25 willful violation of the stay by Verizon. The Collection Letter was
26 addressed only to Kafree Trucking and the record does not support a
finding that Verizon was aware that Kirk was doing business as Kafree
Trucking.

1 I. Actual Damages

2 A. Economic Damages

3 Tammy testified that she suffers from generalized anxiety and other
4 mental health issues for which she is actively being treated. In
5 September of 2019, she went to her primary care physician because of an
6 increase in her anxiety caused by Verizon's collection activity. Her
7 primary care physician prescribed her additional medications, which
8 initially did not help. Tammy had approximately four appointments with
9 her doctor because of increased anxiety and ongoing symptoms of post-
10 traumatic stress disorder. Tammy testified that her medical insurance
11 fully covered the cost of the doctor appointments and the medication.
12 However, in addition to seeking medical treatment, Tammy testified that
13 she had to take her custodial grandchild to daycare because of her
14 inability to function and her need to attend medical appointments. She
15 testified the daycare cost \$450.00 per month and her grandchild was in
16 daycare for two months. Tammy testified that the amounts shown on
17 Exhibit D, which include the childcare costs and travel expenses of
18 \$296.95 for Tammy's medical and attorney appointments, are an accurate
19 estimate of the economic damages she suffered as a result of Verizon's
20 conduct. The Court will award economic damages of \$1,196.95.

22 B. Emotional Distress Damages

23 Actual damages include damages for emotional distress. In re
24 Dawson, [390 F.3d 1139, 1148](#) (9th Cir. 2004). To be entitled to
25 emotional distress damages under § 362(k), "an individual must (1)
26 suffer significant harm, (2) clearly establish the significant harm, and

1 (3) demonstrate a causal connection between the significant harm and the
2 violation of the automatic stay (as distinct, for instance, from the
3 anxiety and pressures inherent in the bankruptcy process).” Id.
4 Emotional distress damages may be established in several ways:
5 corroborating medical evidence; non-expert testimony about
6 manifestations of mental anguish; or circumstances that make it obvious
7 that a reasonable person would suffer significant emotional harm. Id. at
8 1149-50.

9 I find that Verizon’s conduct in this case would cause a reasonable
10 person significant harm and that the Freelands have clearly established
11 such harm. This case can be distinguished from the potentially
12 excusable conduct of a bill slipping through the cracks, or an errant
13 telephone call from an unsuspecting employee whose system has not quite
14 caught up with the notice of bankruptcy. Tammy testified that her faith
15 in the bankruptcy process and her counsel were shaken. She testified,
16 credibly, about the telephone calls being triggers for her anxiety. She
17 repeatedly sought medical attention and put her grandchild in daycare
18 because of her increased anxiety. The Freelands were entitled to the
19 protection afforded by the automatic stay without harassment from
20 Verizon. I will award \$8,000.00 in emotional distress damages (\$750.00
21 per telephone call and \$1,250.00 for the September Bill).

22
23 C. Attorney Fees

24 The Freelands are also entitled to reasonable attorney fees
25 incurred in connection with the Motion. Counsel for the Freelands filed
26 a request for attorney fees in the amount of \$12,385.00 on May 13, 2020.

1 Doc. 37. The Freelands are not seeking the reimbursement of any costs.
2 I will allow the fees as requested, other than the sum of \$1,650.00.
3 Counsel billed for preparing discovery requests before he knew whether
4 the case would be contested. Doc. 37, Exhibit A (time entries dated
5 12/9/2019 and 12/26/2019). I find those services were not appropriate or
6 necessary. I find the balance of the fees to be reasonable. I will
7 therefore allow total fees of \$10,735.00.

8 II. Punitive Damages

9 Punitive damages may be awarded if a defendant's conduct was
10 malicious, wanton or oppressive, or if the violator engaged in
11 "egregious, intentional misconduct." In re Stinson, 295 B.R. 109, 122
12 (9th Cir. BAP 2003)(citation omitted), aff'd in part, rev'd in part on
13 other grounds, 128 Fed. Appx. 30 (9th Cir. 2005)(unpublished).

14 In the Motion, the Freelands asked for "mild deterrent sanctions"
15 not to exceed \$5,000.00.⁵ As requested, I will award the sum of
16 \$5,000.00 in punitive damages.

17 I find Verizon's conduct malicious, wanton and oppressive, and that
18 it engaged in egregious, intentional misconduct. Verizon deals with
19 bankruptcy filings as part of its normal course of business. Tammy
20 testified, credibly, that she told Verizon she had filed bankruptcy and
21

22
23 ⁵A request for deterrent or coercive sanctions is more appropriate for a
24 contempt motion relating to a violation of the discharge injunction
25 rather than the automatic stay. See In re Vargas, 2012 Bankr. LEXIS 856
26 (Bankr. E.D. Wash. 2012); In re Hawley, 2003 Bankr. LEXIS 448 (Bankr. D.
Idaho 2003). The Motion provided Verizon with notice that the Freelands
were seeking damages in excess of their actual damages, so I find it of
no consequence that the request was labeled as one for mild coercive
sanctions rather than punitive damages.

1 to contact her lawyer. Verizon's continued collection efforts
2 demonstrate egregious, intentional misconduct. In addition, Verizon
3 should have appropriate systems in place to avoid post-petition
4 telephone calls and collection bills when a customer is in a bankruptcy
5 proceeding or has received a discharge. As I will discuss next,
6 whatever system Verizon has in place clearly is woefully inadequate.

7 III. Verizon's Repeated Failure to Abide by the Automatic Stay and
8 Discharge Injunction.

9 Contempt actions against Verizon are not new to this Court. In
10 researching cases on violations of the automatic stay, the Court came
11 across the relatively recent case of In re St. Clair, [2018 WL 3629894](#)
12 (Bankr. D. Mont. 2018). In St. Clair, the debtors filed a contempt
13 action against Verizon for repeated violations of the automatic stay and
14 discharge injunction. The court in St. Clair stated:

15
16 Verizon has demonstrated a cavalier approach in
17 this case to the automatic stay, the Discharge Order, and
18 most recently, the Show Cause Order. Indeed, it appears that
19 Verizon's contempt is ongoing, given the most recent violation
20 of the Discharge Order occurred after the hearing.

21 Id. at *7. The court in St. Clair addressed an earlier case it had
22 decided involving Verizon, In re Lewis, [2017 WL 1233816](#) (Bankr. D. Mont.
23 2017), and discussed its research into additional cases involving claims
24 against Verizon from other jurisdictions, stating:

25 In Lewis, along with actual damages, this Court imposed
26 a fine or penalty of \$500 per violation on Verizon, and
there were 10 violations. A court may take judicial notice of
other court proceedings. Prior to doing so, this Court took
considered [sic] 3 other cases in which Verizon had been held
in contempt or otherwise sanctioned for automatic stay and

1 discharge violations. The similarities between those
2 cases, this case and Lewis suggest to this Court that \$500
3 per violation was simply insufficient for coercing Verizon to
4 scrutinize its practices and implement appropriate measures
5 that avoid violations of the automatic stay and discharge
6 injunction. As a result, in this case the Court is going to
7 impose a fine or penalty of \$1,000 per violation for a total
8 of \$8,000. An additional penalty of \$1,000 per violation
9 will be imposed if Verizon continues to violate Debtors'
10 discharge. Debtors are authorized to request additional fines
11 and attorney's fees if Verizon continues its violations.

12 St. Clair, 2018 WL 3629894, at *7.

13 It is apparent from the two decisions from Judge Hursh and the
14 other cases cited in his opinion that Verizon has a systemic problem.
15 The next time Verizon appears before this Court because it violated the
16 automatic stay or discharge injunction, the sanctions levied against it
17 likely will be much more significant and include non-monetary
18 obligations.

19 In summary, it appears that Verizon received correct and robust
20 notice of the Freeland's bankruptcy and the Motion and therefore cannot
21 blame its failure to timely stop collection efforts or to appear and
22 address the Motion on defective notice or service.⁶ The only conclusion
23 this Court can reach is that Verizon does not have an adequate protocol
24 in place to deal with bankruptcy cases or has made the business decision
25 that it is cheaper to pay for its mistakes when caught than to abide by
26 the law.

⁶ The compliance report filed by Verizon in response to the court's decision in St. Clair includes proper service addresses as suggested by Verizon's counsel. The addresses used by counsel for the Freeland's in connection with the Motion appear to be consistent with those suggested by Verizon in the St. Clair case. See In re St. Clair, Case No. 17-60940-BPH (Bankr. D. Mont.), Doc. 48, Exhibit B.

1 **Conclusion**

2 Verizon willfully and repeatedly violated the automatic stay
3 imposed by § 362(a)(6). The Freelandts are entitled to damages totaling
4 \$24,931.95. Counsel for Debtors should submit an order consistent with
5 this opinion.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26