

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE
 SOUTHERN DISTRICT OF GEORGIA
 Augusta Division

IN RE:)	
)	Chapter 7 Case
LINDA C. RANDALL)	Number <u>89-10845</u>
)	
Debtor)	
_____))	at 2 O'clock & 25 min. P.M.
)	Date: 6-21-90
LINDA C. RANDALL)	
)	
Plaintiff)	
)	
vs.)	Adversary Proceeding
)	Number <u>89-1035</u>
DOCTORS & MERCHANTS CREDIT)	
BUREAU, INC., assignee of)	
HENRY D. SCOGGINS, M.D.)	
AND GEORGIA POWER COMPANY,)	
AUGUSTA DIVISION)	
)	
Defendant)	

ORDER AND JUDGMENT

Linda C. Randall, debtor in the underlying Chapter 7 bankruptcy proceeding brought this adversary proceeding against Doctors & Merchants Credit Bureau alleging an injury resulting from the willful violation of the stay provided by 11 U.S.C. 362. With the consent of both plaintiff and defendant, this court has considered the evidence presented at hearing, as well as additional evidence offered and after reviewing said evidence, makes the following findings of fact and conclusions of law.

Prior to the debtor filing for relief under Chapter 7 of Title 11 of the United States Code the defendant, Doctors & Merchants Credit Bureau, Inc. obtained a judgment against the debtor and filed a summons Of garnishment against her employer, Humana Hospital. Subsequent to the filing of the garnishment

proceeding, on June 8, 1989, the debtor filed for relief under Chapter 7. Subsequent to the filing of the Chapter 7 petition, the defendant was notified of the bankruptcy filing and filed a release of garnishment with the Clerk of the Civil Court of Richmond County, Georgia on June 14, 1989. The defendant did not serve the garnishee nor the debtor with a copy of the release. The Clerk of the Civil Court of Richmond County, Georgia failed to release the garnishment and the employer continued to make the required withholdings from the debtor's wages. In response to the continued garnishment withholdings, on June 28, 1989, the debtor's attorney filed a plea for stay in the Civil Court of Richmond County, Georgia. As the debtor's attorney failed to attach a proposed order to the plea or to a hearing no action was taken on the plea for stay. The garnishment continued until July 20, 1989. Upon receipt of the garnishment proceeds subsequent to the bankruptcy filing the defendant promptly remitted the proceeds to the debtor's attorney.

The automatic stay of 11 U.S.C. §362 is one of the fundamental debtor protections provided by the bankruptcy laws. The stay provides the debtor a breathing spell from his creditors. It

stops all collection efforts, all harassment, and all foreclosure actions. The stay permits the debtor to attempt a repayment or reorganization plan or simply to be relieved of the financial pressures that drove her into bankruptcy. H.R. Rep. No. 1595, 95th Cong., 1st Sess. 174-175 (1977). To provide meaning to the 362 stay, a creditor is required to take all affirmative action necessary to stop those collection actions that it has set in motion once the creditor receives knowledge of the bankruptcy filing. See generally, In re: Elder, 12 B.R. 491 (Bankr. M.D. Ga. 1981); In re: Dennis, 17 B.R. 558 (Bankr. M.D. Ga. 1982). Having determined that a garnishing creditor has an affirmative duty to stop the garnishment upon being notified of the bankruptcy filing, the issue to be resolved is whether under the facts of this case, the creditor took sufficient action. "To comply with the 362 automatic stay, a garnisher should stay garnishment by

advising state court personnel and the garnishee that, until further notice, any funds withheld by the garnishee or on hand with the court should be surrendered to the debtor, that the garnishee should not withhold any additional sums and that the state court should not receive additional sums. Williams v. H & H Service Store (In re: Williams), Ch. 7 Case No. 89-20499, Adv. No. 89-2021, slip op. at 8 (Bankr. S. D. Ga. Feb. 8, 1990). In this case, the defendant failed to comply with the requirements set forth in Williams, supra, by failing to notify the garnishee, the debtor's employer, of its

release of garnishment.

The Georgia Civil Practice Act applies to garnishment proceedings brought in the Civil Court of Richmond County, Georgia. O.C.G.A. §9-11-1, §9-11-81, §18-4-1. The Civil Practice Act requires that the garnishor's written release of garnishment be served upon the garnishee. O.C.G.A. §9-11-5 (" . . . every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties."). Defendant failed to serve the garnishee with its release of garnishment, and the Clerk failed to honor the filing and secure an order releasing the garnishment until July 20, 1989. During the period from June 14, 1989 until July 20, 1989, debtor's counsel made repeated inquiries to the defendant regarding the release of garnishment and attempted to obtain a stay in the Civil Court. These inquiries to the defendant provided sufficient facts which would cause a reasonably prudent person to make further inquiry. In re: Edwards, 5 B.R. 663 (Bankr. M.D. Ala. 1980).

In order to establish a willful violation of the automatic stay it is not necessary for the debtor to establish a subjective conscious intent to do harm on the part of the defendant for an act, or in this case the omission of an act, service of its release of garnishment upon the garnishee, to constitute a willful violation of the stay. All that is required is that the party violated the

stay with actual knowledge or reason to know that a case had been filed. In re: Bragg, 56 B.R. 46 (Bankr. M.D. Ala. 1985). The defendant knew of the bankruptcy filing, but failed to take the adequate steps necessary to effectuate a release of the garnishment.

On the issue of damages, however, from the evidence presented, this court cannot find that the debtor has sustained her burden of proving by a preponderance of the evidence that the continuation of the garnishment in violation of the automatic stay has caused her any monetary loss. The debtor testified merely that the continuation of the garnishment commenced two weeks prior to her filing for relief under chapter 7 had an effect on her job, but no explanation or evidence was offered to the extent or nature of the "effect". Section 362(h) mandates sanctions for a willful violation of the stay and an award of damages under this section is analogous to a finding of civil contempt. In this case, the continued garnishment withholding by her employer after the filing of her bankruptcy petition did cause the debtor distress and did require the borrowing of funds from relatives in order to meet necessary living expenses. The imposition of at least nominal sanctions for a willful stay violation is appropriate and in this instance One Hundred and No/100 (\$100.00) Dollars represents an appropriate sanction against the defendant and compensation to the debtor for the willful violation.

On the issue of attorney's fees, 362(h) mandates upon the determination of a willful violation that the debtor recover actual damages including costs and attorney's fees. From the facts presented, the debtor is entitled to attorney's fees in the amount of One Hundred and No/100 (\$100.00) Dollars. The facts of this case do not warrant the imposition of punitive damages. The defendant did take an affirmative steps toward withdrawing the pending garnishment, but simply failed to take all necessary steps. These facts are insufficient to warrant the imposition of such damages.

It is therefore ORDERED that Linda C. Randall recover judgment against Doctors & Merchants Credit Bureau, Inc. in the sum of Two Hundred and No/100 (\$200.00) Dollars as actual damages plus future interest at such rate as established

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 21st day of June, 1990.