

362(b) : ~~The failure to route B notice by a ~~single~~~~
Corp failure to route B notice is not a technical
violation so as to excuse compliance w/ 362.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

In the matter of:)

HERCHEL WAYNE BLAIR)
SHERYL ANN BLAIR)
(Chapter 13 Case 187-00593))

Debtors)

HERCHEL WAYNE BLAIR)
SHERYL ANN BLAIR)

Plaintiffs)

v.)

SOUTH CAROLINA NATIONAL BANK)

Defendant)

Adversary Proceeding

Number 187-0039

FILED

at 11 O'clock & 38 min. AM

Date 2/11/88

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER

The Debtors brought this action against South Carolina National Bank ("SCNB"), an unsecured creditor, to obtain civil contempt sanctions, reasonable attorney's fees, compensatory damages and exemplary damages for a willful violation of the stay provisions of Section 362. After a trial on the merits I make the following Findings of Fact and

Conclusions of Law.

FINDINGS OF FACT

1) On June 1, 1987, the Debtors filed their Chapter 13 petition. In the ordinary course, an Order for relief was entered by the Bankruptcy Court, the Clerk of the United States Bankruptcy Court sent notice and SCNB received such notice. The internal procedures of SCNB failed to route the notice to the appropriate parties within the Bank and in turn, the Bank's collection procedures continued unabated by the filing of the Debtors' petition. SCNB's post petition collection efforts included: (a) A certified letter from Mr. Bradley of SCNB to the Debtors advising them that a suit would be filed to collect a deficiency owed on their repossessed car; (b) service of a lawsuit on the Debtors on July 17, 1987.

2) Sheryl Ann Blair underwent heart surgery within a year prior to filing the petition. She has five spinal fusions in her back. She has been unemployed for the past 2½ years due to various medical conditions. For some time prior to filing the petition she had been pressured by her creditors. In February of 1987 SCNB repossessed her car. In part to obtain relief from creditor pressure she filed the Chapter 13 petition

on June 1, 1987. Mrs. Blair was much relieved by the filing of this petition.

Mrs. Blair received a certified letter from SCNB's lawyers near the end of June, 1987. She took the letter to her attorney and thought that the matter would be resolved.

Upon being served by SCNB's complaint on Friday night, July 17, 1987, she was frightened, crying and upset. Mrs. Blair was anxious and unable to sleep. She went to see Dr. Baxley who prescribed tranquilizers which she has continued taking since being served with the lawsuit. On Monday, July 20, 1987, Mrs. Blair contacted her attorney who explained that she did not have to be concerned because she was protected by the automatic stay of Chapter 13. Notwithstanding her attorney's advice, she continued to worry and be upset because she did not fully understand the law.

3) The parties stipulate that: (1) The Debtors' attorney had no contact with SCNB in response to the certified letter sent on their behalf; (2) the Debtors' attorney had no contact with SCNB in response to the July 17, 1987, complaint; (3) SCNB contacted the Debtors' attorney in response to the filing of this adversary proceeding; (4) SCNB offered \$125.00 in cash and to reduce the outstanding deficiency of

\$1,810.00 by \$250.00; (5) the Debtors' attorney advised his clients of their rights under Code Section 362; (6) notice of the Chapter 13 petition was received by SCNB, but it was not properly forwarded to the Bank's collection attorney; (7) the State Court proceeding initiated by SCNB after the filing of the Debtors' Chapter 13 petition is still pending.

CONCLUSIONS OF LAW

The filing of a bankruptcy petition under Section 301, 302 or 303 of the Bankruptcy Code operates as a stay which enjoins all parties from any collection activities against the debtor that arose before the commencement of the case. Collection efforts which are enjoined by the automatic stay include:

"A commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title."

11 U.S.C. Section 362(a)(1) (emphasis added). The existence of the automatic stay in any case filed under the Bankruptcy Code is

not a trifling matter.

"The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harrassment, 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."

H.R. 95-595, 95th Cong. 1st Sess. 340-2 (1977); S.R. 95-989, 95th Cong. 2nd Sess. 54, 55 (1978), U.S. Code Cong. and Admin. News 1978, pp.5787, 5840, 6296-6297.

SCNB stipulates that it received notice of the Chapter 13 petition which was filed on June 1, 1987, but that it did not promptly forward the notice to its collection attorneys.¹

Under Code Section 362(h):

"An individual injured by any willful violation of the stay provided by this section shall recover actual damages, including costs and attorneys fees, and, in appropriate circumstances, may recover punitive damages."
(Emphasis added).

¹ The record is unclear whether, in fact, the notice was ever forwarded by SCNB to its attorneys. The record indicates that it was not until this adversary was commenced, that SCNB suspended, but did not dismiss, its collection activities against the Debtor.

SCNB admits that it has committed a "technical" violation of the stay, but argues that its actions did not rise to the level of a "willful violation" as contemplated by Section 362(h). Counsel for SCNB cites In re Tel-A-Communications Consultants, Inc., 50 B.R. 250 (Bankr. D.Conn. 1985), for the proposition that something more than merely taking action with knowledge of the stay is necessary for the act to be considered willful. That court held that it was appropriate to examine the judicial construction which has been given to similar language in Code Section 523(a)(6) in determining whether conduct was willful as contemplated in Code Section 362(h). Id. In this Circuit, the applicable standard under Code Section 523(a)(6) is that to be "willful", an act must have been "wrongful and without just cause or excuse, even in the absence of personal hatred, spite or ill will . . . it means nothing more than intentionally doing a wrong act which necessarily leads to injury." In re Dowdy, Adv. No. 587-0026 (Bankr. S.D.Ga. Jan. 1988) quoting Vickers v. Home Indemnity Co., Inc., 546 F.2d 1149 (5th Cir. 1977); In re Askew, 22 B.R. 641 (Bankr. M.D.Ga. 1982), Aff'd 705 F.2d 469 (11th Cir. 1983).

SCNB argues that it was its own internal negligence in not forwarding the notice of the Debtor's bankruptcy to its collection attorneys which resulted in an inadvertent and technical violation of the stay. SCNB appears to

suggest that some sort of subjective conscious intent to do harm is necessary for a violation of the automatic stay to be considered willful. The Court finds this argument unpersuasive. There need not be subjective conscious intent to do harm for an act to constitute a willful violation of the stay. Instead, all that is required is that a 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).

Clearly, SCNB's post-petition collection efforts were in violation of the stay. Some question has been raised by SCNB, however, whether the collection efforts undertaken by its attorneys are "intentional" in the absence of actual knowledge by the attorneys that the Debtor had filed a bankruptcy petition on June 1, 1987. In this case, on or about June 3, 1987, a notice was sent from the Clerk of the Bankruptcy Court to the offices of SCNB notifying them that the Debtor had filed a bankruptcy petition. At some point near the end of June, 1987, the Debtor received a certified letter from SCNB's attorneys. On July 17, 1987, over six weeks after notice of the Debtor's bankruptcy petition had been sent to SCNB, the Debtor was served with a copy of SCNB's complaint. It was not until the August 3, 1987, filing of this adversary by the Debtor's attorney, some nine weeks after the Debtor's bankruptcy petition had been filed, that SCNB's attorneys actually became aware that the automatic stay was in

place. The amount of time which elapsed between SCNB's receipt of notice that the Debtor had filed a petition in bankruptcy and the time when its attorneys became aware that the automatic stay was in place is appalling. There was ample time for SCNB to notify its attorneys that the Debtor had filed bankruptcy. Hankins v. R.H.Macy and Company, Inc. d/b/a Davison's, Adv. No. 184-0071 (Bankr. S.D.Ga. Dec. 10, 1984) (The Court found that eight days was ample time for Davison's billing agent to communicate news of the debtor's filing to Davison's collection attorneys). SCNB may not fail to instruct its agent that the automatic stay has come into place, and then seek to use that failure as a shield against liability. See In re Bragg, supra. Moreover, it is axiomatic that a principal shall be held liable for the acts of its agents acting in the scope of their employment. In re Smith, Adv. No. 187-0017 (Bankr. S.D.Ga. July 2, 1987).

It is no excuse that SCNB is a large organization and has internal problems in disseminating bankruptcy notices to its collection attorneys. This court could possibly understand a delay of a few days, but ~~is~~ not a delay which spanned several weeks. Moreover, it appears that notification to the Bank's attorneys came not from the Bank itself, but rather from an adversary proceeding filed by the Debtor.

Sheryl Ann Blair underwent heart surgery within a year prior to filing the petition and has had five spinal fusions in her back. As a result of SCNB's post-petition collection efforts she became anxious and was unable to sleep. Her fear and anxieties caused her to seek medical attention and she has been taking tranquilizers three times a day since being served by SCNB. If SCNB did not know that Sheryl Ann Blair was a fragile and medically sensitive woman before they proceeded with their post-petition collection efforts, they know it now. Given Sheryl Ann Blair's emotional and physical sensitivities, and SCNB's knowledge of her condition, it is particularly egregious if SCNB has allowed its state court action against her to remain pending.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that:

- 1) The Defendant shall pay to the Plaintiff compensatory damages in the sum of \$200.00 for medical expenses and cost of medication;
- 2) The Defendant shall pay to the Plaintiff reasonable attorney's fees in the amount of \$100.00. Certainly,

counsel's time and effort would justify a significantly higher award but for the stipulation that he made no effort short of litigation to cause SCNB to cease its collection efforts. Had counsel called or written the creditor who thereafter persisted in pursuing Debtor, then this litigation would clearly have been "necessary". However, a telephone call and/or letter would likely have resolved the matter at less cost, and I award only the estimated time necessary for counseling Debtor to make such contact.

- 3) The Defendant shall pay to the Plaintiff exemplary damages in the amount of \$250.00 for its filing of the State Court case in violation of the stay and its failure to dismiss that case between August 3, the date this adversary proceeding was filed and the date of trial. In the event that the Defendant fails within ten (10) days to show to the satisfaction of this Court that it has dismissed its pending State Court action within a reasonable time after October 15, 1987, the date of trial, judgment will be entered for an additional \$500.00 in punitive damages.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 9th day of February, 1988.

FILED

11 O'clock & 38 min. A.M.

United States Bankruptcy Court

2/11/88

For the SOUTHERN District of GEORGIA

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *MB*

No. 187-00593

Adversary No. 187-0039

HERCHEL WAYNE BLAIR
SHERYL ANN BLAIR

v.

SOUTH CAROLINA
NATIONAL BANK

**JUDGMENT
ON DECISION
BY THE COURT**

Plaintiff,

Defendant

This proceeding having come on for trial or hearing before the court, Honorable

Lamar W. Davis, Jr.

, United States Bankruptcy Judge,

presiding, and the issues having been duly tried or heard and a decision having been rendered,

It is Ordered and Adjudged

That the Defendant, SOUTH CAROLINA NATIONAL BANK, shall pay to the Plaintiffs, HERCHEL WAYNE BLAIR and SHERYL ANN BLAIR, the sum of \$200.00 for medical expenses and cost of medication; and

That the Defendant, SOUTH CAROLINA NATIONAL BANK, shall pay to Plaintiffs, HERCHEL WAYNE BLAIR and SHERYL ANN BLAIR, reasonable attorney's fees in the amount of \$100.00; and

That the Defendant, SOUTH CAROLINA NATIONAL BANK, shall pay to Plaintiffs, HERCHEL WAYNE BLAIR and SHERYL ANN BLAIR, the sum of \$250.00 for its filing of the State Court case in violation of the stay and its failure to dismiss that case between August 3, 1987, the date this adversary proceeding was filed and the date of trial. In the event that the Defendant fails within ten (10) days to show to the satisfaction of this Court that it has dismissed its pending State Court action within a reasonable time after October 15, 1987, the date of trial, judgment will be entered for an additional \$500.00 in punitive damages.

MARY C. BECTON

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: February 11, 1988

By:

Patsy C. Burkhalter
Deputy Clerk