

5362 stay violation for failure to return and sale of Ch. 13  
 Debtor's vehicle to 3rd party BFP despite court order.  
 Damages - car, disallowed other's claim  
 Money's loss

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
 Savannah Division

In the matter of: )

THELMA LATRELL JACKSON )  
 (Chapter 13 Case 90-41713) )

Debtor )

THELMA LATRELL JACKSON )

Plaintiff )

v. )

BILLY WATSON )  
 d/b/a B & W Motors )

Defendant )

Adversary Proceeding

Number 90-4282<sup>204</sup>

**FILED**

at 10 O'clock & 15 min. AM

Date 4/22/91

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

MEMORANDUM AND ORDER

This matter comes before the Court upon a Complaint to Recover Money or Property and for damages for the Defendant's continued violation of the Automatic Stay and contempt of Orders of this Court. Upon consideration of the evidence adduced at the hearing of January 22, 1991, the briefs and other documentation submitted by the parties together with applicable authorities I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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The Debtor filed a Petition under a Chapter 13 of the Bankruptcy Code with this Court on September 21, 1990, and duly listed the Defendant as a Creditor on her Schedules. On September 24, 1990, the Defendant repossessed the Debtor's 1984 Mercury Topaz vehicle. Notwithstanding multiple notices of the Debtor's Chapter 13 filing, the Creditor retained the vehicle and refused to return it to the Debtor. The Defendant was first notified of the Debtor's Chapter 13 filing by telephone call from Debtor's counsel on September 20, 1990. The Defendant was notified a second time on or about September 23, 1990, by the Clerk of this Court by mailed copy of the Court's Section 341 Order and Notice which specifically outlined the protection granted the Debtor under the Bankruptcy Code making specific reference to 11 U.S.C. § 362 and 11 U.S.C. § 1301 and warning the Defendant that should unauthorized action be taken by a creditor against a Debtor or the property of a Debtor the Court may punish that Creditor. Notwithstanding that notice, the Defendant still refused to return the Debtor's automobile.

The Defendant received a third notice of the Debtor's Chapter 13 filing by mailed copy of the Court's notice of Trial on the Debtor's motion to recover the automobile which was scheduled for November 29, 1990. Upon hearing the above matter on November

29, 1990, with the Defendant absent, this Court ordered the Defendant to return the 1984 Mercury Topaz and all personal belongings to the Debtor. On November 29, 1990, the Debtor and her attorney presented a true copy of the above-referenced order to the Defendant at which time the Defendant informed the Debtor that he had sold the vehicle. On December 12, 1990, the Debtor filed a second Adversary Proceeding seeking damages against the Defendant for his actions. On January 22, 1991, the Defendant did appear with counsel before the Court for a hearing on the December 12th Motion. At the hearing on that Motion, the Defendant stated that he did in fact have the automobile in his possession. The Debtor was deprived of the use of her vehicle for 82 days.

At the conclusion of the hearing on this matter, I determined that the Defendant had violated the Automatic Stay on at least four occasions. I then awarded the Debtor compensatory damages in the amount of the value of the vehicle, or \$1595.00. In addition, I found that the Debtor's attorney was entitled to fees in the sum of \$930.00. The Debtor was also awarded \$820.00 for the loss of use of her vehicle, which represents the amount of \$10.00 per day for each of the 82 days the Debtor was deprived of the use of her vehicle. Finally, the Defendant's claim in the amount of \$325.00 submitted in the Debtor's Chapter 13 case was denied. The matter was taken under advisement to review the propriety of

punitive damages for the Defendant's continuing violation of the Section 362 Stay and/or contempt of an Order of this Court. Inasmuch as the disallowance of the Defendants claim is punitive in nature and the Defendant is ordered to pay the attorney's fees of the Debtor and has essentially made the Debtor whole for her loss, I find that the deterrent purpose of punitive damages has been met. Therefore, this judgment is sufficient and no additional punitive damages will be awarded.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that the Debtor be awarded compensatory damages in the amount of \$1,595.00 for the value of the lost vehicle, plus \$820.00 for the loss of use of said vehicle for a total amount of \$2,415.00. In addition, the Debtor's attorney shall be awarded fees in the amount of \$930.00 for the prosecution of this action. Finally, the Defendants claim in the amount of \$325.00 in the Debtor's pending Chapter 13 case shall be disallowed.

  
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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 18<sup>th</sup> day of March, 1991.  
*april*