

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:)
)
GLENN DUNLAP, SR.)
(Chapter 13 Case 95-42043))
)
Debtor)
)
)
GLENN DUNLAP, SR.)
BRENDA A. DUNLAP)
)
Plaintiff)
)
v.)
)
BANK OF NEW YORK, DELAWARE,)
)
Defendant)

Adversary Proceeding

Number 98-4161

FILED
at 11 O'clock & 10 min. A.M.
Date 3/23/99
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia



ORDER

Plaintiffs Glenn and Brenda Dunlap filed this adversary proceeding on July 23, 1998, seeking a determination that notations made by Defendant Bank of New York on the credit report of Brenda Dunlap violated the co-debtor stay of 11 U.S.C. § 1301. Defendant was properly served by certified mail with the summons and complaint, but has failed to file responsive pleadings in the case. This Court entered an Order of Default on October 22, 1998.

This Court held a trial on December 23, 1998, solely on the issue of damages arising out of the Defendant's violation of the co-debtor stay. At the trial, Plaintiffs introduced testimony as to actual damages sustained. Glenn Dunlap, the Debtor, testified that he filed bankruptcy to deal with an unexpected financial situation. He testified that he specifically did not want his wife to be affected by his bankruptcy. She was an authorized user on his credit card from the Bank of New York. Subsequent to filing, he was with his wife when she attempted to buy a grill at Farmers Furniture and her credit application was declined. He testified that he did not tell her at that time about the bankruptcy, but that she later went back to the store and was shown a faxed copy of her credit report, which states that her Bank of New York account is "Included in Bankruptcy." *See* Pls.' Compl., Ex. A. Mr. Dunlap testified that he has been damaged by the embarrassment and anger this caused her which adversely affected their relationship after she discovered the damage to her credit.

Brenda Dunlap testified that she had never had trouble with her credit in the past. She has, since her husband's bankruptcy was filed, attempted to get credit at various places, including Farmers Furniture, Sears, Liberty Chrysler, Western Auto, and KMart. She finally was able to obtain credit to purchase a car through Norman Pontiac in Jesup, Georgia.

Plaintiffs testified that they had missed work and had suffered injury to their reputation as a result of Brenda Dunlap's inability to obtain credit. I therefore award compensatory damages in the following amounts:

Lost Wages (Brenda Dunlap)	\$110.96
Lost Wages (Glenn Dunlap)	\$304.00
Mileage to Hearings (5 trips)	\$125.40
Attorney's Fees	\$750.00
Injury to Reputation	\$5,000.00
TOTAL	<u>\$6,290.36</u>

Plaintiffs further requested that this Court award punitive damages in the amount of \$10,000.00.¹ Section 362(h) provides:

An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

Section 1301 does not specifically provide for an award of punitive damages; however, a co-debtor is an "individual injured" for purposes of Section 362(h) if the act which violates Section 362 also injured the co-debtor. See Matter of Bell, Ch. 13 No. 92-40220, Adv.

¹ Plaintiffs requested punitive damages in the amount of \$50,000.00 in their complaint. This request was amended at the hearing to \$10,000.00.

Pro. 93-4010 (Bankr. S.D.Ga. 1993) (Davis, J.). I find, however, that the actual damages awarded in this case are sufficient to vindicate Plaintiffs' rights, and decline to award punitive damages.

ORDER

For the foregoing reasons, judgment will be entered in favor of Plaintiffs and against Defendant in the amount of \$6,290.36.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 20th day of March, 1999.