

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

PATTI J. BOGACZ,)

DEBTOR)

CASE NO. BK88-728

MEMORANDUM

A hearing on the application for contempt was heard on August 15, 1988. James Haas of Silver, Wieland & Haas, Omaha, Nebraska, appeared on behalf of debtor. Jack Barrett of Omaha, Nebraska, appeared on behalf of Motor West. This Memorandum constitutes the Court's findings of fact and conclusions of law pursuant to Bankr. R. 7052.

Debtor filed a Chapter 7 petition. Several weeks later, Motor West repossessed her car. Debtor filed a motion for sanctions for violation of the automatic stay of Section 362. The Court has considered the affidavits offered at the August 15, 1988, hearing; Filing No. 10, the affidavit of Motor West filed August 5, 1988; Filing No. 13, the supplemental affidavit of Mr. Haas filed August 19, 1988; Filing No. 14, the supplemental affidavit of Mr. Barrett filed August 23, 1988.

The evidence of movant is that both debtor and her attorney spoke with one or more employees of Motor West after Motor West repossessed debtor's car following the Chapter 7 filing. No employee agreed to return possession of the vehicle even after receiving actual notice of the filing. At least one employee stated that although Motor West's lawyer advised a return of the vehicle, Motor West would not do so.

Motor West's response is that after consulting an attorney, the responsible employees of Motor West agreed to make the car available to debtor and attempted to reach her by phone, to no avail.

This Court believes debtor and not the story of Motor West. Motor West has not denied any of the factual statements made on behalf of debtor.

Even if the Court believed that three days after Motor West learned of the Chapter 7 filing, the responsible employees agreed to permit debtor to have the car, in order to convince this Court that Motor West employees acted innocently and in good faith, more than a few telephone calls to debtor were necessary. Motor West should have and easily could have redelivered the car. It

DISTRICT OF NEBRASKA
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Judith M. Napier
Clerk U.S. Bankruptcy Court

did not, but instead allowed its attorney to file a response to this motion, for the first time letting debtor and counsel know of the car's availability.

Such action on behalf of a business and its employees is in violation of the automatic stay of Section 362(a)(3).

This Court has authority to monetarily sanction willful violators of Section 362. See 11 U.S.C. § 362(h). The Court finds that although the initial repossession was accomplished without actual notice of the bankruptcy filing and, therefore, was not willful, continued possession by Motor West after receiving such actual notice was willful, and sanctions are appropriate.

Debtor was without transportation for herself and three children for thirteen days. She was required to pay for taxi cabs to visit the grocery store and to pick up medicine for her family. One child is confined to a wheelchair and she was unable to provide that child and the others any recreation because of the lack of a vehicle. She was required to pay an attorney to get the vehicle back.

Her actual out-of-pocket expenses are:

| | |
|---|-----------------|
| a) Taxi | \$ 20.00 |
| b) Additional attorney fees | <u>\$476.00</u> |
| | \$496.00 |
| c) Reasonable value of her family inconvenience for thirteen days | <u>\$200.00</u> |
| TOTAL | \$696.00 |

This Court believes this violation to be so serious that punitive damages are appropriate. The evidence is strong that employees of the company specifically refused to return the vehicle, and as a matter of fact, Motor West never did return it. Debtor was required to obtain transportation to the company location to obtain possession.

Therefore, the Court awards debtor \$696.00 actual damages and \$500 punitive damages. The total amount is to be paid through the Clerk of Bankruptcy Court within fifteen days from the date this order is final.

Judgment for \$1,196.00 entered against Motor West.

Separate journal entry shall be filed.

DATED: September 26, 1988.

BY THE COURT:

Quinty
Chief Judge *Mahoney*