IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

IN RE: CURTIS RANDALL RANEY **4:02-bk-14975 E**
CHAPTER 7

CURTIS RANDALL RANEY **PLAINTIFF**

v. **AP NO. 4-02-ap-1190E**

KELLOGG VALLEY MOTORS **DEFENDANT**

ORDER GRANTING MOTION FOR CONTEMPT AND FOR TURNOVER

Debtor's Motion for Contempt[1] and for Turnover came on for hearing on September 30, 2002. Roland E. Darrow, III , Esq. appeared for Debtor Curtis Randall Raney, who was present, and Stephen Bennett, Esq. appeared for the Defendant, Kellogg Valley Motors, Inc. ("**Kellogg**"). Gill Cunningham, co-owner of Kellogg, also appeared.

The issue before the Court was whether Kellogg should be required to return a vehicle it had repossessed from the Debtor, and whether Kellogg should be liable for damages for willful violation of the automatic stay. At the conclusion of the hearing, the Court found that Kellogg willfully violated the automatic stay and explained its reasoning. This finding and the facts to support it are a part of the record. The Court directed Kellogg to return the vehicle to the Debtor and granted damages in the amount of Kellogg's lien on the vehicle. The purpose of this opinion is to explain the damage award. In order to provide that explanation, the Court must review certain facts; that review follows.

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[1]Although Debtor styled his motion as a motion for contempt, the Court treats it as a motion for damages rather than contempt because a statute has been violated rather than a court order. *See James v. Bank (In re James)*, 257 B.R. 673, 677-678 (8th Cir. B.A.P. 2001).

Debtor had previously purchased a vehicle from Kellogg and was significantly behind in payments. Debtor filed this Chapter 7 case on May 3, 2002. A Notice of Chapter 7 Bankruptcy, Meeting of Creditors and Deadlines was mailed to all creditors on May 8, 2002. At the hearing on September 30, 2002, Kellogg stipulated that they had received the Notice and were therefore aware that the Debtor had filed bankruptcy. However, according to the testimony of Cunningham, Kellogg had previously employed a repossession company to repossess the Debtor's vehicle, and Kellogg failed to notify the repossession company that the Debtor had filed bankruptcy. On Thursday, July 25, 2002, approximately two and one-half months after Debtor's bankruptcy filing, the vehicle was repossessed. On Saturday, July 27, 2002, Debtor went to Kellogg's office and attempted to redeem the vehicle by paying the delinquent payments. Kellogg, fully aware that Debtor was in bankruptcy, refused to return the vehicle. Cunningham testified that he would not accept Debtor's check because it was not certified funds, and because the amount of the check did not include the costs of the repossession (which had occurred in violation of the automatic stay!). Kellogg continued to hold the vehicle.

On August 2, 2002, counsel for Kellogg mailed a Reaffirmation Agreement to Debtor's counsel; a copy of the cover letter and Reaffirmation Agreement was admitted as Plaintiff's Exhibit 1. The Reaffirmation Agreement states the outstanding balance on the loan to be $6,815.49. According to the Debtor's testimony, the Reaffirmation Agreement was not presented to him until after the Motion for Contempt and For Turnover was filed (the motion was filed-marked by the court on August 2, 2002, at 9:12 a.m.).

In short, Kellogg knew there was a bankruptcy, but displayed a complete disregard for the automatic stay. There is no doubt Kellogg knew about the Debtor's bankruptcy at the time the

vehicle was repossessed and that it refused to return the vehicle, even after Debtor offered payments. The cover letter and reaffirmation agreement mailed by Kellogg reflects that Kellogg continued to hold the vehicle and negotiate with the Debtor regarding the return of the vehicle by requesting payments and attempting to get a Reaffirmation Agreement signed. Kellogg's violation of the automatic stay and refusal to return the vehicle to Debtor warrants sanctions, including compensatory and punitive damages. 11 U.S.C. § 362(h); *Hubbard v. Fleet Mortgage Co.*, 810 F.2d 778, 781-782 (8th Cir. 1987); *In re Rhodes*, 147 B.R. 492, 494 (Bankr. W.D. Ark. 1992); *In re NWFX, Inc.*, 81 B.R. 500, 503-505 (Bankr. W.D. Ark. 1987).

According to the evidence presented, the balance due on the loan securing the vehicle is $6,815.49. The Court awarded damages not only to compensate the Debtor for his loss, but also to sanction Kellogg's behavior. According to Debtor's testimony, he lost approximately $150.00, half of his daily wage, on the date of the repossession because his tools were in the vehicle and he was unable to work. The tools were returned to the Debtor later that day but the Debtor was then without transportation and therefore unable to work for seven weeks. Debtor stated that his weekly salary was $720.00 a week which resulted in a loss of $5,040.00 in wages. The amount of damages incurred by the Debtor is $5,190.00, for seven weeks plus one-half day of lost wages, and the amount of the sanctions against Kellogg for willful violation of the automatic stay is $1,625.49.

Kellogg is ordered to immediately return the vehicle, a 1995 Chevrolet Silverado pickup, Vehicle Identification Number 2GCBK19K8S1112112, to the Debtor and to take action necessary to release the lien on it. Kellogg is directed to file an affidavit in this court within 30 days after entry of this order evidencing the release of lien.

IT IS SO ORDERED.

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HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATED:_____

cc: Mr. Roland E. Darrow, III, Esq.
Mr. Stephen Bennett, Esq.
James F. Dowden, Trustee
U.S. Trustee