

**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 DENYING STAY PENDING APPEAL**

On November 5, 2002, the Court entered an Order Granting Motion for Contempt and For Turnover (the “**Contempt Order**”). On November 14, 2002, Defendant Kellogg Valley Motors, Inc. (“**Kellogg**”) filed its Notice of Appeal of the Contempt Order and a Motion for Stay Pending Appeal. Kellogg’s Motion for Stay Pending Appeal is currently before the Court.

The Contempt Order ordered Kellogg to immediately return a vehicle to Debtor and to release a lien on the vehicle and provide proof of such release to the Court within thirty (30) days. Kellogg has not returned vehicle or filed such a release with the Court as of the date of this Order. Kellogg requests a stay of the Contempt Order pending appeal arguing that allowing the Debtor to take possession of the vehicle will likely moot the appeal and otherwise allow the Debtor to leave the State of Arkansas with the vehicle. Kellogg maintains that it will hold said vehicle as supersedeas pending the conclusion of its appeal.

The bankruptcy court has discretion to grant a stay on such terms as are just, pursuant to Rule 8005.<sup>1</sup> To prevail, the moving party must demonstrate the following:

---

<sup>1</sup>All references to rules in this order refer to the Federal Rules of Bankruptcy Procedure unless otherwise indicated.

- (1) he is likely to prevail on the merits of the appeal;
- (2) he will suffer irreparable injury if the stay is denied;
- (3) the other party will not be substantially harmed by the stay; and
- (4) the public interest will be served by granting the stay.

*In re Martin*, 199 B.R. 175, 176 (Bankr. E.D. Ark. 1996) (citing *Community Federal Savings and Loan Assoc. v. Stratford Hotel company (In re Stratford Hotel Company)*, 120 B.R. 515, 516-517 (E.D. Mo. 1990)).

In this case, Kellogg has not asserted adequate grounds for a stay pending appeal. In support of its motion, Kellogg only alleges that the enforcement of the Contempt Order will moot its appeal and allow the Debtor to take the vehicle out-of-state. While these arguments appear to address the second element required to obtain a stay pending appeal, the other elements are either not addressed or not met. “The failure to even address these elements for relief requested is sufficient reason to deny the motion for stay.” *In re Martin*, 199 B.R. at 177.

With respect to the third element, the fact that Kellogg proposes to hold the vehicle pending appeal does not mean that the Debtor will not be substantially harmed by the stay; rather, the Debtor will likely be harmed by the stay because he needs his vehicle in order to work. Furthermore, Kellogg has not addressed the fourth element, and in any case, the Court fails to see how reenforcing Kellogg’s behavior by allowing it to keep a vehicle it repossessed in violation of the automatic stay is in the public interest. Rather, enforcing the provisions of the Bankruptcy Code better serves the public interest.

Finally and most significantly, Kellogg has not shown that it is likely to succeed on the merits of its appeal. Kellogg does not address this issue in its Motion for Stay Pending Appeal, but the

Court has reviewed its Designation of Record and Issues on Appeal and finds that Kellogg's only substantive assertion on appeal is that the Court erred in awarding damages past the date of Debtor's discharge for alleged stay violations and that there was no substantial evidence to support the award of damages to Debtor. At the trial on the merits, the Court made findings of fact based on the testimony given and determined that Kellogg blatantly violated the automatic stay by refusing to return the Debtor's vehicle with actual knowledge of the Debtor's bankruptcy filing. Such knowledge was admitted and clearly shown by Kellogg's demands that Debtor sign a reaffirmation agreement. Additionally, evidence was taken on the issue of Debtor's damages, and the grounds for the damages awarded are clearly set forth in the Contempt Order. Furthermore, the fact that the Court awarded compensatory damages for the period following Debtor's discharge is irrelevant. Kellogg's action which violated the automatic stay occurred before Debtor's discharge; Kellogg should have turned the vehicle over as soon as it learned of Debtor's bankruptcy. To put Debtor back in the same position he would have been in had the stay not been violated, the Court must award compensatory damages for the entire period he was unable to work.

Kellogg states in its Motion for Stay Pending Appeal that it holds the vehicle in its possession. It may be that Debtor's damages have continued to accrue as a result of Kellogg's failure to return the vehicle. The Court leaves this issue to Debtor's attorney to address, while reminding both parties that the Bankruptcy Code gives this Court authority to award costs and attorneys' fees to any individual debtor injured by a willful violation of the automatic stay.

For the reasons stated herein, Kellogg's Motion for Stay Pending Appeal is **DENIED**.

**IT IS SO ORDERED.**

---

HONORABLE AUDREY R. EVANS

UNITED STATES BANKRUPTCY JUDGE

DATED: \_\_\_\_\_

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