

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

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In Re)	
)	
Gailon Arthur Joy,)	
)	
Debtor.)	
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Gailon Arthur Joy,,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 07-43128-JBR
Three Angels Broadcasting Network, Inc.,)	
)	Chapter 7
Danny Lee Shelton,)	
)	Adversary No. _____
John P. Pucci, Esq.,)	
)	
Jerrie M. Hayes, Esq.,)	
)	
Gerald S. Duffy, Esq.,)	
)	
Fierst, Pucci & Kane, LLP.,)	
)	
and)	
)	
Siegel Brill Gruepner Duffy & Foster P. A.)	
)	
Defendants.)	
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Plaintiff Gailon Arthur Joy, the debtor herein (“Plaintiff”), alleges for his complaint against Defendants Three Angels Broadcasting, Inc., Danny Lee Shelton, John P. Pucci, Esq. Jerrie M. Hayes, Esq., Gerald S. Duffy, Esq. Fierst, Pucci & Kane, LLP., and Siegel Brill Grupner Duffy & Foster P. A. (“Defendant”), as follows:

I. GENERAL ALLEGATIONS

1. This adversary proceeding is brought in connection with the above-captioned case pending under Chapter 7 of Title 11, U.S.C. § 701 et seq.
2. Statement of Jurisdiction. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157, and 11 U.S.C. §§ 362, 544, 549, 550 and 551.

This adversary proceeding is a “core” proceeding pursuant to 28 U.S.C. § 157(b).

3. Plaintiff is the debtor herein as a "person aggrieved" by breach of the Automatic Stay according to 11 U.S.C. § 362 (h).
4. Plaintiff is a party of interest within the meaning of 11 U.S.C. § 502(a) with standing to come before this Honorable Court.
5. Defendant Three Angels Broadcasting Network, Inc. is a creditor of the Debtor and has filed an appearance in the main case [#15] seeking an extension of time in which to file a claim and an emergency motion [#16] for relief from the Automatic Stay.
6. Defendant Danny Lee Shelton is co-plaintiff with Defendant Three Angels Broadcasting Network, Inc. in the case 07-40098-FDS, now pending in the Central District of Massachusetts.
7. Gailon Arthur Joy, the Plaintiff herein (“Plaintiff”), filed a Voluntary Chapter 7 Petition on August 14, 2007.
8. Upon information and belief, Defendants assert a claim against the Plaintiff. Defendants have filed a case against the Plaintiff and another, which case is now pending as 07-40098-FDS in the Central District of Massachusetts, seeking unspecified damages including monetary payment.
9. The Debtor Plaintiff listed this case in his Statement of Financial Affairs included with his Voluntary Petition.
10. The Debtor Plaintiff feels the case 07-40098-FDS has no merit and that the Defendants have no valid claim against him. However, the time spent defending the case, which he has proceeded in pro se because he cannot afford to pay for counsel, is having a significant impact on his ability to conduct his business and earn a living.
11. Defendants have had notice of the Bankruptcy Case Filing (see Exhibit 6) and have continued their collections activities against the Plaintiff despite the application of the Automatic Stay provisions of 11 U.S.C. § 362(a)(5).
12. Pursuant to 11 U.S.C. § 362(a)(5), any act to collect a debt, to the extent that such debt arose before the commencement of the bankruptcy case is a violation of the automatic stay.
13. Pursuant to applicable law, any actions taken in violation of the automatic stay are null and void.
14. Defendants have now filed a Motion for Relief from the Automatic Stay in not-so-tacit recognition that the Automatic Stay applies to their actions taken from the time of the Bankruptcy Case Filing to date.

15. II. COUNT ONE

(Defendants Shelton and 3ABN)

16. Plaintiff realleges and incorporates herein all preceding allegations of this Complaint.
17. The automatic stay prohibited Defendants from any act to collect a debt from the Debtor until such time as the Court should have granted relief from the automatic stay provisions.
18. Defendants were on notice of this bankruptcy case as evidenced by their statement of September 13, 2007 (Exhibit 6).
19. Defendants did not file any motions with this Court requesting relief from the automatic stay prior to November 13, 2007.
20. This Court did not grant any motion for relief from the automatic stay prior to November 13, 2007, and no motion requested nor order granted retrospective relief, that is, prior to the date of the order.
21. Nevertheless, as set forth below, Defendant violated the Automatic Stay after the petition in this case was filed and before November 13, 2007.
22. Defendants' contacts with the Debtor constituted continued attempts to collect a debt from the debtor on a claim that arose before the commencement of the bankruptcy case.
23. Defendants' motions with the United States District Court (D. Central Mass.) in case 07-40098-FDS constituted actions in derogation of the mandate of the Automatic Stay that no continuation of collection activities may be carried out without the expressed permission of this Court, and even then only after the applicable waiting period has ended.
24. Accordingly, Defendants' attempts to collect this debt from the Debtor are void or voidable.
25. In Defendants' motions with the United States District Court in case 07-40098-FDS, the Voluntary Petition and Schedules filed in this case were attached as an exhibit.
26. Defendants have moved for Relief from the Automatic Stay, explicitly recognizing that they are required to seek the permission of this Court for further collections activities.
27. Accordingly, Defendants' activities to collect a debt from the Debtor Plaintiff were and are a knowing and willful violation of the Automatic Stay.
28. Plaintiff was put to spend his own time both in answering the messages of the Defendants in violation of the Automatic Stay, preparing to meet the orders of the district court during the pendency of the Automatic Stay, and attending the status conference hearing at which he objected, through his bankruptcy attorney, to the violation of the automatic stay, in sum at least 10 hours. While he cannot quantify his lost profits, he has in the past done paralegal work and been compensated at twenty-five dollars per hour, making a calculation of his personal loss of earnings some \$250.00

29. Plaintiff incurred legal costs and fees in the sum of one thousand five hundred ninety-three dollars and sixty cents (\$1,593.60), at 7.85 hours plus costs, prior to the filing of this Adversary Proceeding, which would not have arisen except for Defendants' improper conduct.
30. Plaintiff requests that this Court enter a judgment finding that Defendants' actions, as described above, are willful violations of the Automatic Stay and the Defendants should be held liable for punitive damages for their actions as well as liable to Plaintiff for his own costs.

AIII. COUNT TWO

(Defendant Pucci)

31. Plaintiff realleges and incorporates herein all preceding allegations of this Complaint.
32. Defendant Pucci violated the Automatic Stay on or about October 24, 2007, by filing a motion in the case 07-40098-FDS for further proceedings. See Exhibit 1. The Motion contained as its own Exhibit the Bankruptcy Case Filing in this case, 07-43128-JBR. See Exhibit 2.
33. An order issued as a result of this filing compelling the Debtor Plaintiff to turn over his business equipment to the Defendants 3ABN and Shelton for their examination. See Exhibit 3.
34. The effect of this order is to make it impossible for the Debtor Plaintiff to conduct his normal business operations.
35. A Status Conference was held on November 13, 2007, which was attended by Defendant Pucci.
36. Defendant Pucci violated the Automatic Stay on November 13, 2007, by failing to terminate the proceedings against the Debtor Plaintiff and instead participated in the prosecution of the case against the Debtor Plaintiff on that date.
37. Defendant Pucci has violated the Automatic Stay on at least two occasions, and has done so willfully, knowledgeably, and as attorney for the Defendants 3ABN and Shelton.
38. Wherefore, the Debtor Plaintiff demands judgment in the amount of \$5,000 per occurrence of willful violation of the Automatic Stay, or \$10,000, from Defendant Pucci and for his reasonable and necessary attorney fees to prosecute this Adversarial Proceeding.

IV. COUNT THREE

(Defendant Duffy)

39. Plaintiff realleges and incorporates herein all preceding allegations of this Complaint.
40. Defendant Duffy violated the Automatic Stay on or about October 24, 2007, by filing

a motion in the case 07-40098-FDS for further proceedings. See Exhibit 1. The Motion contained as its own Exhibit the Bankruptcy Case Filing in this case, 07-43128-JBR. See Exhibit 2.

41. An order issued as a result of this filing compelling the Debtor Plaintiff to turn over his business equipment to the Defendants 3ABN and Shelton for their examination. See Exhibit 3.
42. The effect of this order is to make it impossible for the Debtor Plaintiff to conduct his normal business operations.
43. A Status Conference was held on November 13, 2007, which was attended by Defendant Duffy.
44. Defendant Duffy violated the Automatic Stay on November 13, 2007, by failing to terminate the proceedings against the Debtor Plaintiff and instead participated in the prosecution of the case against the Debtor Plaintiff on that date.
45. Defendant Duffy has violated the Automatic Stay on at least two occasions, and has done so willfully, knowledgeably, and as attorney for the Defendants 3ABN and Shelton.
46. Wherefore, the Debtor Plaintiff demands judgment in the amount of \$5,000 per occurrence of willful violation of the Automatic Stay, or \$10,000, from Defendant Duffy and for his reasonable and necessary attorney fees to prosecute this Adversarial Proceeding.

IV. COUNT FOUR

(Defendant Hayes)

47. Plaintiff realleges and incorporates herein all preceding allegations of this Complaint.
48. On or about November 5, 2007, Defendant Hayes sent a letter to the Debtor Plaintiff and to his lawyer stating that the Debtor Plaintiff should produce his equipment to submit to the Defendants' examination in accord with the sua sponte order of the Magistrate Judge of the district court in case 07-40098-FDS (D. Central Mass). See Exhibit 3
49. On or about November 6, 2007, Defendant Hayes sent a letter to the Debtor Plaintiff demanding that his equipment be made available on November 9, 2007. See Exhibit 4.
50. On or about November 9, 2007, Defendant Hayes sent a letter to the Debtor Plaintiff demanding, among other things, that the Debtor Plaintiff send his equipment to Minnesota for inspection by her expert. See Exhibit 5.
51. Defendant Hayes violated the Automatic Stay at least three times, on or about November 5, 2007, November 6, 2007, and November 9, 2007, by failing to terminate the proceedings against the Debtor Plaintiff and instead participated in the prosecution of the case against the Debtor Plaintiff on that date.

52. Defendant Hayes has violated the Automatic Stay on at least two occasions, and has done so willfully, knowledgeably, and as attorney for the Defendants 3ABN and Shelton.
53. Wherefore, the Debtor Plaintiff demands judgment in the amount of \$5,000 per occurrence of willful violation of the Automatic Stay, or \$15,000, from Defendant Duffy and for his reasonable and necessary attorney fees to prosecute this Adversarial Proceeding.

IV. COUNT FOUR

(Defendants Shelton and 3ABN)

54. Plaintiff realleges and incorporates herein all preceding allegations of this Complaint.
55. Defendants Shelton and Three Angels Broadcasting, Inc. assert that the Debtor Plaintiff owes them an unspecified sum of money as damages.
56. Defendants Shelton and Three Angels Broadcasting, Inc. have taken actions in derogation of the Automatic Stay as stated above in enfurthrance of their attempts to determine and collect the debt claimed.
57. Defendant Joy has had to endure no less than six intentional violations of the Automatic Stay which has caused him loss of income and to defend himself against the claims of creditors who should have instead respected the Automatic Stay and not moved for relief after taking their collections efforts.
58. Wherefore, the Debtor Plaintiff demands judgment issue that the claims of Defendant Shelton and Three Angels Broadcasting, Inc. are null and void for their violations of the automatic stay in pursuit of collection of their claimed debts.
59. Wherefore, the Debtor Plaintiff demands that the aggregated claims against the attorneys (jointly representing Defendants Shelton and 3ABN) be held jointly and severally liable against their clients as well, in the amount of \$35,000, or \$5,000 per occurrence of intentional violation of the Automatic Stay.

WHEREFORE, Plaintiff respectfully requests Judgment issue:

- A. For a determination that Defendant's postpetition contacts with the Plaintiff were in violation of the automatic stay pursuant according to 11 U.S.C. § 362 and are, thus, null and void;
- B. For an injunction prohibiting the Defendants from their continued wanton, willful and intentional acts to obtain a judgment and collect from the Plaintiff Debtor an amount he completely denies owing, but does not have the resources with which to defend himself from the onslaught propounded by the Defendants;
- C. For his damages in the amount of \$250, plus attorney fees and costs of \$1,593.60, against the Defendants jointly and severally.
- D. For avoidance of any claims of the Defendants and/or Defendants' assignees, successors, predecessors or representatives against the Debtor;

- E. For punitive damages in the amount of \$5,000 per occurrence of violation of the Automatic Stay, or at least \$35,000.
- F. That the Plaintiff may be awarded his attorneys' fees and costs incurred herein; and
- G. For such other and further relief as the Court deems just and proper.

Gailon Arthur Joy, Debtor,
By His Attorneys,

/s/ Laird J. Heal

Laird J. Heal BBO #533901
78 Worcester Road, P. O. Box 365
Sterling, MA 01564
978-422-0135

Dated: November 14, 2007

CERTIFICATE OF SERVICE

I, LAIRD J. HEAL, ESQ., certify that I am not less than eighteen (18) years of age; that I electronically filed with the Clerk of the Bankruptcy Court the herein-enclosed First Amended Complaint to Enforce Automatic Stay on November 14, 2007, and upon receipt of the notice of electronic service, I have caused service of the same as follows:

Mail Service: Regular, first-class United States mail, postage fully pre-paid, addressed to:

Gailon Arthur Joy
P. O. Box 1425
Sterling, MA 01564

Electronic Service: via the court's Electronic Case Filing system which returned notification of such service upon the following, and otherwise by first-class mail, postage-pre-paid:

Janice G. Marsh
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/s/ Laird J. Heal
Laird J. Heal