

So Ordered.

Dated: May 10, 2022



Katherine M. Perhach

Katherine Maloney Perhach
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:
Brad F. Neitzel,
Debtor.

Chapter 7
Case No. 21-25185-kmp

**ORDER DENYING MOTION FOR ORDER HOLDING COLUMBIA HEIGHTS I, LLC
IN CONTEMPT FOR WILLFULLY VIOLATING THE AUTOMATIC STAY**

The Debtor has filed a Motion for Contempt seeking to hold Columbia Heights I, LLC (“Columbia Heights”) in contempt under 11 U.S.C. § 362(k) for willfully violating the automatic stay. The Motion turns on the interplay between the automatic stay of 11 U.S.C. § 362(a) and the Minnesota Rules of Civil Procedure. In Minnesota, a civil action is commenced when the summons is served on the defendant. The Minnesota rules further provide that the lawsuit is deemed dismissed with prejudice if the plaintiff fails to file the summons and complaint with the court within one year of service of the summons. In this case, Columbia Heights served the summons on the Debtor, thereby commencing the litigation against the Debtor, before the Debtor filed this bankruptcy case. However, Columbia Heights filed the summons and complaint with a Minnesota state court after the Debtor filed this bankruptcy case. The Debtor argues that the filing of the summons and the complaint with the Minnesota state court is a willful and intentional violation of the stay and the Debtor should be awarded attorneys’ fees in the amount of \$2,100.00. For the reasons stated below, the Court denies the Debtor’s Motion for Contempt and finds that Columbia Heights did not willfully violate the automatic stay.

FACTS

On or about June 15, 2020, the Debtor’s company, Iron Range Performance, LLC (“Iron Range”), entered into a ten-year commercial lease with Columbia Heights for commercial real estate located in Minnesota. Motion ¶ 1; Affidavit of Ryan J. Trucke, ¶ 2, Ex. A. The Debtor and his parents, Harold Neitzel and Linda Neitzel, executed personal guaranties of Iron Range’s obligations under the lease, including the full payment of rent. Motion ¶ 2; Trucke Aff. ¶ 2, Ex. A. On or about July 31, 2021, Iron Range ceased all business operations. Motion ¶ 3.

Columbia Heights prepared a summons and complaint against Iron Range, the Debtor, and the Debtor's parents for breach of the lease. *Id.* ¶ 4; Trucke Aff. ¶ 2, Ex. A. Columbia Heights asserted that it was entitled to \$1,440,984.61 from Iron Range due to its failure to pay rent for the term of the lease, and claimed that the Debtor and his parents were jointly and severally liable for that amount under the terms of their personal guaranties. Trucke Aff. ¶ 2, Ex. A. Columbia Heights also asserted a claim for conversion and civil theft against Iron Range for the alleged removal of an HVAC unit from the property. *Id.*

Columbia Heights caused its summons and complaint to be served on the Debtor's parents and the Debtor on August 26, 2021 and August 27, 2021, respectively. Motion ¶ 5; Trucke Aff. ¶ 2, Ex. B. The summons required Iron Range, the Debtor, and the Debtor's parents to file an answer to the complaint within twenty days of service. Trucke Aff. ¶ 2, Ex. A. Thereafter, the Debtor filed this Chapter 7 bankruptcy case on September 28, 2021. Motion ¶ 6. His parents filed a Chapter 7 petition on the same date. *In re Neitzel*, No. 21-25186-rmb. On October 5, 2021, Columbia Heights received notice of the Debtor's bankruptcy filing. Trucke Aff. ¶ 3.

Iron Range did not file a bankruptcy petition and failed to file an answer to the complaint. *Id.* at ¶ 4. Thus, on or about October 21, 2021, Columbia Heights filed the summons and complaint with the Minnesota District Court for Anoka County, along with an Affidavit of No Answer, Identification, Non-Military Status, Amount Due and Costs and Disbursements. Motion ¶ 9; Trucke Aff. ¶ 5, Ex. C. The Affidavit of No Answer sought judgment against Iron Range only. Trucke Aff. ¶¶ 5-6, Ex. C. Columbia Heights also prepared a Notice of Partial Dismissal of Claims Without Prejudice in which it sought to dismiss its claims against the Debtor and his parents due to their bankruptcy filings. *Id.* at ¶ 8, Ex. D. The Notice of Dismissal is dated October 21, 2021 and Columbia Heights' counsel states in his affidavit that he submitted the Notice of Dismissal along with a proposed Order dismissing the claims against the Debtor and his parents at the same time that he filed the Affidavit of No Answer against Iron Range. *Id.*

For some reason, the Minnesota state court "did not accept the filing or process the Notice of Dismissal or proposed order" and instead assigned a court file number and set a default judgment hearing for March 15, 2022. *Id.* at ¶ 9, Ex. E-F. Columbia Heights' counsel called the state court on December 1, 2021 to ask if the Notice of Dismissal would be accepted and processed, but he did not receive a response to his voicemail. *Id.* at ¶ 10.

Debtor's counsel asserted that on December 3, 2021, Columbia Heights' attorney "was again notified by telephone message that the debtors [sic] had filed for protection under Chapter 7 of the United States Bankruptcy Code" and that the Debtor was requesting immediate dismissal from the Minnesota state court litigation. Motion ¶ 9. Debtor's counsel further stated that when no document had been filed with the Minnesota state court dismissing the lawsuit as to the Debtor and no response had been received by the Debtor's attorney, the Debtor filed the Motion for Contempt that is currently before the Court. *Id.*

Columbia Heights' attorney stated in his affidavit that he intended to follow up in the first week of January 2022 and to refile the Notice of Dismissal and proposed order dismissing the claims against the Debtor and his parents but then received the Motion for Contempt. Trucke Aff. at ¶ 11. Columbia Heights' counsel noted in his affidavit that he "specifically and only attempted to enter the judgment against Iron Range" and not the Debtor. *Id.* at ¶¶ 12-13.

The Debtor claimed in his Motion for Contempt that Columbia Heights willfully and intentionally violated the § 362(a) stay by commencing the Minnesota state court litigation post-petition and seeking a money judgment against the Debtor. He requested an order awarding the Debtor damages for Columbia Heights' willful and intentional violation of the stay, including actual attorneys' fees of not less than \$1,000.00 pursuant to § 362(k)(1) and punitive damages. Subsequently, Debtor's counsel filed an "Application for Attorney's Fees on Contempt" itemizing attorney's fees of \$2,100.00 for services rendered for or on behalf of the Debtor in connection with the Motion for Contempt.

The Debtor's parents filed a similar motion for contempt in their bankruptcy case. Judge Blise has entered a decision and order denying that motion (the "Decision and Order"). *See In re Harold and Linda Neitzel*, No. 21-25186-rmb, Docket No. 29. The Motion for Contempt before this Court presents the same question that was before Judge Blise in the Debtor's parents' bankruptcy case: Did Columbia Heights violate the stay of § 362(a) when it served the complaint before the Debtor filed for bankruptcy, but filed the complaint with the Minnesota state court after the Debtor filed for bankruptcy? For the reasons stated in the Decision and Order, and below, this Court also concludes that Columbia Heights did not violate the automatic stay.

The filing of a bankruptcy petition imposes an automatic stay of "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a). The Minnesota Rules of Civil Procedure provide that "[a] civil action is commenced against each defendant when the summons is served upon that defendant." Minn. R. Civ. P. 3.01. Consequently, Columbia Heights "commenced" its litigation against the Debtor when it served the Debtor with the summons and complaint on or about August 27, 2021, before the Debtor filed this bankruptcy case, and not October 21, 2021, the date of the filing of the summons and complaint with the Minnesota state court, after the Debtor filed this bankruptcy case. Columbia Heights did not violate the stay by commencing the litigation against the Debtor before the Debtor filed this bankruptcy case.

The question then becomes whether Columbia Heights "continued" the litigation against the Debtor by filing the summons and complaint with the Minnesota state court after the Debtor filed this bankruptcy case. Based upon the facts presented, the Court finds that Columbia Heights did not continue the litigation against the Debtor by filing the summons and complaint

with the Minnesota state court. The Affidavit of No Answer filed with the Minnesota state court reveals that Columbia Heights was only seeking a judgment against Iron Range and not the Debtor. Trucke Aff. ¶¶ 5-6, Ex. C. Simultaneously with the filing of the summons and complaint and the Affidavit of No Answer, on October 21, 2021, Columbia Heights filed a Notice of Partial Dismissal of Claims Without Prejudice in which it sought to dismiss its claims against the Debtor due to his bankruptcy filing. *Id.* at ¶ 8, Ex. D. Columbia Heights also filed a proposed order dismissing the claims against the Debtor. *Id.* When the Minnesota state court did not docket the dismissal as it expected, Columbia Heights followed up to have the claims against the Debtor dismissed. *Id.* at ¶ 10. Columbia Heights did not attempt to “continue” the litigation against the Debtor. To the contrary, Columbia Heights immediately sought dismissal of the claims against the Debtor when it filed the complaint.

Additionally, the Minnesota procedural rules did not seem to offer much of a choice to Columbia Heights but to file the complaint and seek immediate dismissal of the Debtor. Iron Range was not in bankruptcy, so there was no stay in place as to Columbia Heights’ claims against Iron Range. Columbia Heights commenced litigation against Iron Range and the Debtor by serving the summons before the Debtor filed his bankruptcy petition. The Minnesota rules provide that an action is deemed dismissed with prejudice if the action is not filed with the court within one year of service. Minn. R. Civ. P. 5.04(a) (“Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties . . .”). If Columbia Heights had not filed the complaint with the Minnesota state court, it risked dismissal of its claims against Iron Range with prejudice. By pursuing its claims against the non-bankrupt entity, Iron Range, and simultaneously seeking the dismissal of the Debtor from the case, Columbia Heights did not continue the action against the Debtor nor willfully violate the stay. For these reasons and those more fully stated in the Decision and Order,

IT IS THEREFORE ORDERED: the Debtor’s motion for an order finding Columbia Heights I, LLC in contempt for violation of the automatic stay is denied.

IT IS FURTHER ORDERED: the application for attorneys’ fees filed by Debtor’s counsel is denied.

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