UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: ALLISON KATHERINE FITZSIMMONS

Debtor. Case No.: 18-11914-j7

Memorandum Opinion and Order

THIS MATTER is before the Court on Bank of the West's ("the Bank's") Motion for Sanctions for Violation of the Automatic Stay ("the Motion for Sanctions").[1] Docket No. 43. The Court held a final hearing on the Motion for Sanctions on October 21, 2019 and took the matter under advisement. Jacqueline K. Kafka represented the Bank and Clifford C. Gramer, Jr. represented creditor Custom Craft, Inc. ("Custom Craft"). After considering the evidence and arguments of counsel, the Court finds that Custom Craft willfully violated the automatic stay. Consequently, the Court will grant in part the Bank's request for compensatory damages. The Court will deny the Bank's request for punitive damages.

I. Findings of Fact

Debtor commenced this bankruptcy case on July 31, 2018. Docket No. 1. On the same day, Debtor filed a statement of intention to retain and redeem a 2016 Hyundai Genesis (the "Vehicle"), which was collateral securing debts to the Bank and Custom Craft, and which was in Custom Craft's possession at the time the bankruptcy case was commenced. Docket No. 8. Notice of the Debtor's bankruptcy case was sent to Custom Craft via first class mail on August 2, 2018. A. Gallegos Test., 1:28:52 – 1:31:33; Docket No. 10. Custom Craft received the notice, then scanned

[1] Although Debtor Allison Katherine Fitzsimmons ("Debtor") joined in the Motion for Sanctions when it was filed in March 2019, she withdrew her support for the Motion for Sanctions on October 10, 2019. Docket No. 84.

and uploaded a copy to its electronic file relating to the Vehicle. A. Gallegos Test., 1:28:52 – 1:31:33.

A meeting of creditors occurred on September 5, 2018 and Debtor filed a Motion to Redeem the Vehicle ("Motion to Redeem") on September 20, 2018. Docket No. 9, 15. The Bank filed an objection to the Motion to Redeem on October 1, 2018, arguing that the value of the Vehicle was $22,845, rather than $1,114, as Debtor proposed. Docket No. 19. After the Bank and Debtor reached an agreement that Debtor could redeem the Vehicle for $7,000, the Court entered a stipulated order on January 3, 2019 granting Debtor's Motion to Redeem. Docket No. 34. The order required Debtor to pay any expenses related to Custom Craft's mechanics' lien. Docket No. 34. Shortly thereafter, on January 17, 2019, Debtor was granted a discharge and the bankruptcy case was closed. Docket Nos. 36, 37. Custom Craft was not sent a copy of the Motion to Redeem, the notice of deadline to file objections to the Motion to Redeem, the Bank's objection, or the stipulated order granting the Motion to Redeem. Docket Nos. 17, 19, 34.

Meanwhile, during Debtor's negotiations with the Bank, Custom Craft foreclosed its mechanics' lien on December 5, 2018 and obtained the certificate of title to the Vehicle issued by the State of New Mexico without seeking relief from the automatic stay. A. Gallegos Test., 1:28:02 - :45; Docket No. 45, pg. 3. On January 8, 2019, Custom Craft engaged in an email exchange with the Debtor's stepfather about the Vehicle. A. Gallegos Test., 1:32:20. In this exchange, the Debtor's stepfather notified Custom Craft that the Debtor had been in bankruptcy when Custom Craft obtained the certificate of title to the Vehicle. A. Gallegos Test., 1:36:43; Bank Exh. 23. Two days later, on January 10, 2019, Custom Craft sold the Vehicle to an auto wholesale company. Bank Exh. 24; A. Gallegos Test., 1:38:37 – 1:41:05.

II. Discussion

The Bank alleges that Custom Craft violated the automatic stay by 1) enforcing its mechanics' lien on the Vehicle and taking title to the Vehicle without requesting relief from the stay, despite receiving notice of Debtor's bankruptcy case, and 2) selling the Vehicle to a wholesaler after being reminded of the bankruptcy case by Debtor's stepfather in January 2019. Docket No. 43. The Bank further asserts that Custom Craft failed to remedy its violation of the stay and, therefore, its conduct was willful. Docket No. 43. Custom Craft argued in response that it could not have violated the automatic stay because the stay terminated as a matter of law in October 2018 before it foreclosed its mechanics' lien. Docket No. 45.

A. The Automatic Stay

Upon the filing of a voluntary petition for relief that commences a bankruptcy case, with limited exceptions, the stay arises automatically to stop all actions against the debtor and against property of the bankruptcy estate. *See* 11 U.S.C. § 362(a)(1) and (3)[2] ("[A] petition . . . operates as a stay . . . of the commencement or continuation . . . of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case under this title" and stays "any act to obtain possession of property of the estate"); *Fortier v. Dona Anna Plaza Partners,* 747 F.2d 1324, 1330 (10th Cir. 1984) (stating that the automatic stay "stops all collection efforts, all harassment, and all foreclosure actions" (citation omitted)). The purpose of the automatic stay is "to protect the debtor from collection efforts and to protect creditors from inequitable treatment." *Lee v. McCardle* (*In re Peeples*), 880 F.3d 1207, 1216 (10th Cir. 2018) (citation omitted). However, the Court has authority to "terminat[e], annul[], modify[], or condition[]" the automatic stay as it applies against property for cause or where "the debtor does

[2] All statutory references in this Memorandum Opinion are to title 11 of the United States Code.

not have an equity in such property" and "such property is not necessary to an effective reorganization." § 362(d)(1) and (2). Unless the Court modifies the stay or the stay is terminated by operation of the Bankruptcy Code, it remains in effect as to acts against property of the estate until such property is no longer property of the estate, and remains in effect as to acts against the debtor and property of the debtor until the discharge is granted or denied or the debtor's bankruptcy case is dismissed or closed. *See, e.g.,* § 362(c)(1), (2); § 362(h); § 521(a)(6).

"It is well established that any action taken in violation of the stay is void and without effect." *Ellis v. Consol. Diesel Elec. Corp.,* 894 F.2d 371, 372 (10th Cir. 1990). This is so even if the creditor took the action without actual knowledge of the automatic stay. *Job v. Calder* (*In re Calder*), 907 F.2d 953, 956 (10th Cir. 1990) ("Ordinarily, any action taken in violation of the stay is void and without effect . . . even where there is no actual notice of the existence of the stay."); *Rushton v. Bank of Utah* (*In re C.W. Mining Co.*), 477 B.R. 176, 192 (10th Cir. BAP 2012) ("The effect of violating the automatic stay is to void the action, whatever the context.") (citation omitted), *aff'd*, 749 F.3d 895 (10th Cir. 2014).

B. Custom Craft Violated the Automatic Stay

Custom Craft does not dispute that the automatic stay applied to enforcement of its mechanics' lien upon commencement of Debtor's bankruptcy case. Further, Custom Craft does not dispute that it received notice of Debtor's bankruptcy case, attached a copy of the notice of commencement of the case to the Vehicle file, and exercised its lien rights and took title to the Vehicle without seeking or obtaining relief from the stay to pursue enforcement of its mechanics' lien. A. Gallegos Test., 1:28:52 – 1:31:33.; A. Gallegos Test., 1:28:02 - :45; Docket No. 45, pg. 3. Custom Craft argues that it could not have violated the automatic stay because the stay terminated by operation of law under §§ 362(h) and 521(a)(6) (hanging paragraph) when Debtor failed to

redeem the Vehicle within the periods set forth in § 521(a)(2) or § 521(a)(6). Docket No. 45. The Court disagrees.

The automatic stay did not terminate and the property was not abandoned under § 521(a)(2)

Section 362(h)(1) terminates the automatic stay and results in abandonment of property from the bankruptcy estate, by operation of law, if, within the applicable times set by § 521(a)(2), a chapter 7 debtor (A) fails to file a statement of intention required under § 521(a)(2) that complies with the requirements of § 362(h)(1)(A) and (B) fails to take timely the action specified in the statement of intention.[3] The only times specified in § 521(a)(2) are:

(a) the time to file the statement of intention; and

(b) the time to "perform" the intention with respect to the property.

It is undisputed that the Debtor filed a compliant statement of intention within the time specified in § 521(a)(2)(A) stating an intent to redeem the Vehicle. Custom Craft asserts the automatic stay terminated pursuant to § 362(h)(1)(B) because Debtor failed to perform her intent to redeem within the 30-day period specified in § 521(a)(2)(B). Section 521(a)(2)(B) requires that a chapter 7 debtor "within 30 days after the first date set for the meeting of creditors under section

[3] Section 362(h)(1) provides:

> (1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—
>
> (A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and
>
> (B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

341(a), or within such additional time as the court, for cause, within such 30-day period fixes, *perform his intention with respect to such property* . . . ." (emphasis added).

The issue before the Court is what is required under § 521(a)(2)(B) for a debtor "to perform her intention" to redeem. Custom Craft agues that in order to perform her intention to redeem, Debtor must have completed the redemption under § 722. Under § 722, redemption occurs when the redemption price is paid full.[4]

An examination of the language of § 521(a)(6) is instructive to determine what is required under § 521(a)(2)(B) for a debtor to perform her intention to redeem. Section 521(a)(6) and the associated "hanging paragraph,"[5] provide that, to prevent automatic termination of the stay and abandonment from the estate with respect to personal property encumbered by a purchase money security interest held by a creditor with an allowed claim for the purchase price, the debtor must, not later than 45 days after the first meeting of creditors under § 341(a), either enter into a reaffirmation agreement with respect to the allowed secured claim or "redeem[] such property from the security interest pursuant to section 722." Section 521(a)(6) shows that when Congress intended to require a debtor to complete a redemption under § 722 to prevent termination of the stay and abandonment of personal property, Congress knew how to say so.[6] *Cf. In re Golek*, 308 B.R. 332, 337 (Bankr. N.D. Ill. 2004) ("When Congress wants to say something, it knows how to

[4] Section 722 provides: "An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

[5] The "hanging paragraph" is a paragraph not assigned a subsection number or letter placed beneath subsection (7) of § 521(a) that relates to § 521(a)(6).

[6] *See also Sunahara v. Burchard* (*In re Sunahara*), 326 B.R. 768, 779 (9th Cir. BAP 2005) (quoting *Golek* with approval).

say it, and in this instance, Congress did not say it"). Congress said so in § 521(a)(6) and the hanging paragraph but did not say so in §§ 362(h)(1)(B) and 521(a)(2)(B).

Debtor's Motion to Redeem filed within the applicable 30-day period and her diligent prosecution of the motion was sufficient performance under § 521(a)(2) to prevent termination of the automatic stay and abandonment. "Section 521[(a)](2)(B) should not be read as mandating that debtors must entirely consummate their stated intention within [thirty] days" because whether a debtor's intention is realized may depend on factors outside of the debtor's control. *Price v. Delaware State Police Federal Credit Union* (*In re Price*), 370 F.3d 362, 372 (3d Cir. 2004) (construing a prior version of § 521(a)(2)(B), which provided a debtor 45 days to "perform his intention" and giving examples of barriers to reaffirmation of a debt within 45 days). Instead, a debtor is required to "only do all that is within the [debtor's] power and control." *In re Perez*, No. 7-10-11417 JA, 2010 WL 2737187, at *7 (Bankr. D.N.M. July 12, 2010). Hence, a debtor's motion to redeem may be sufficient performance of the debtor's intent so as to continue the stay, even if the property is not actually redeemed within the period set forth in § 521(a)(2), where factors outside the debtor's control prevent "consummation" of the debtor's intent. *See, e.g.*, *In re Alvarez*, No. 10-B-28565, 2012 WL 441257, at *6–7 (Bankr. N.D. Ill. Feb. 10, 2012) (stating that the "[d]ebtors ha[d] complied with the 'performance' requirement of both Section 521(a)(2) and Section 521(a)(6) by filing the motion to redeem"); *Baer v. HSBC Auto* (*In re Baer*), No. 10-21096, 2011 WL 1832490, at *3 (Bankr. E.D. Ky. May 12, 2011) ("[B]y making a motion to redeem the vehicle, the [p]laintiff took steps as to redeem the vehicle sufficient to satisfy the requirements in § 521(a)(2)(B) and § 362(h)(1)(B)."); *In re Molnar*, 441 B.R. 108, 115 (Bankr. N.D. Ill. 2010) (stating that the debtor "'perform[ed] his intention' by doing all that he knew to perform, and therefore the automatic stay . . . remain[ed] in effect").

Here, Debtor filed a Motion to Redeem the Vehicle on September 20, 2018, fifteen days after the meeting of creditors. Docket No. 15. The Bank objected ten days later, on October 1, 2018, arguing that the market value of the Vehicle was $22,845, not $1,114. Docket No. 19. Debtor could not take any further action to perform her intention absent a court ruling on the Motion to Redeem or an agreement with the Bank. The Court held a preliminary hearing on the Motion to Redeem on November 1, 2018 and scheduled a final hearing for January 3, 2019. Docket Nos. 22, 29. Before the final hearing, the parties stipulated to an order, entered January 3, 2019, under which the Debtor could redeem the Vehicle from the Bank for $7,000, with the Debtor to pay any expenses related to Custom Craft's mechanics' lien and necessary repairs to the Vehicle. Docket No. 34. After entry of the stipulated order, the fact that Custom Craft had title to the Vehicle prevented Debtor's redemption of the Vehicle pursuant to the Order. The Court concludes that the Debtor filed the Motion to Redeem within the applicable 30-day period and diligently prosecuted the Motion to Redeem, which was sufficient to prevent automatic termination of the stay and abandonment under §§ 362(h)(1)(B) and 521(a)(2)(B).

The automatic stay did not terminate and the property was not abandoned under § 521(a)(6)

Custom Craft asserts the automatic stay terminated pursuant to § 521(a)(6) and the associated hanging paragraph because Debtor failed to redeem the Vehicle under § 722 within the 45-day period specified in § 521(a)(6). For the reasons set forth below, § 521(a)(6) did not apply.

Section 521(a)(6) provides:

> in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

(A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or

(B) redeems such property from the security interest pursuant to section 722.

The hanging paragraph provides for termination of the stay and abandonment of the property from the estate if the debtor fails to act within the 45-day period set forth in § 521(a)(6).

By its express terms, § 521(a)(6) applies only to "personal property as to which a creditor has an *allowed* claim for the purchase price secured in whole or in part by an interest in such personal property." (Emphasis added.) Here, although the Bank held a purchase money lien against the Vehicle, it did not have an allowed claim. In a Chapter 7 case, a claim is an allowed claim if a proof of claim is filed and no objection to the claim as been filed or if the claim has been allowed by order of the court. *See* §§ 502(a) and (b) (in a Chapter 7 case, a claim, proof of which is filed under § 501, is deemed allowed, unless a party in interest objects. If an objection is filed, the court determines the amount of the claim.). The Bank did not file a proof of claim and therefore did not have an allowed claim. Because the Bank did not have an allowed claim, § 506(a)(6) did not apply.

C. Custom Craft's Violation of the Automatic Stay was Willful

If a stay violation is willful, the Court may award compensatory and, in appropriate circumstances, punitive damages. *See* § 362(k)(1); § 105(a). For a stay violation to be considered "willful" the creditor must know of the bankruptcy case and intend to take the actions that violated the automatic stay; specific intent to violate the automatic stay is not required. *In re Johnson*, 501 F.3d 1163, 1172 (10th Cir. 2007). This principle is well established. *See, e.g., In re Golan*, 600 B.R. 697, 709 (Bankr. S.D. Fla. 2019); *Valez v. EZ Rent a Car, Inc.* (*In re Valez*), 601 B.R. 351, 361 (Bankr. M.D. Pa. 2019); *In re Arthur B. Adler & Assocs., Ltd.,* 588 B.R. 864, 872 (Bankr. N.D. Ill. 2018); *In re Stringer*, 586 B.R. 435, 443 (Bankr. S.D. Ohio 2018). In addition, even if a creditor violates the automatic stay without knowledge of the stay, the violation nevertheless "can

become willful for purposes of [§ 362(k)] if the creditor fails to remedy the situation after receiving notice of the automatic stay." *Kline v. Tiedemann (In re Kline)*, 424 B.R. 516, 524 (Bankr. D.N.M. 2010) (citations omitted); *accord Gordon Properties, LLC v. First Owners' Assoc. of Forty Six Hundred Condominium, Inc., (In re Gordon Properties, LLC*), 435 B.R. 326, 332 (Bankr. E.D. Va. 2010). "A party's good faith belief that it has a right to the property at issue is not relevant to a determination of whether the act was 'willful' or whether compensation must be awarded." *In re Baetz*, 493 B.R. 228, 234 (Bankr. D. Colo. 2013).

Custom Craft's violation of the stay was willful. Custom Craft received actual notice of Debtor's bankruptcy case. *See Utah State Credit Union v. Skinner* (*In re Skinner*), 90 B.R. 470, 479-80 (D. Utah 1988) (holding that "actual knowledge of the automatic stay can be constructively attributed to the [creditor]" where "an employee of the [creditor had received the bankruptcy notice but had not] read [its] contents"). Despite receiving the notice of the bankruptcy, Custom Craft intentionally took action that violated the stay by enforcing its mechanics' lien and taking title to the Vehicle without leave of the Court. Moreover, after an email exchange in which Debtor's stepfather mentioned the bankruptcy case and raised concerns about the status of the Vehicle's title, Custom Craft did not seek to remedy its stay violation, but instead sold the Vehicle to a wholesaler, again without seeking leave of the Court. *Id.; see Kline*, 424 B.R. at 524 (stating that a violation can become willful if a creditor fails to remedy the violation after learning of the stay).

D. The Bank is Entitled to Compensatory Damages

Having concluded that Custom Craft willfully violated the stay, the Court turns to the question of damages. In addition to the amount it would have received had Debtor redeemed the Vehicle ($7,000), the Bank seeks an award of its attorneys' fees and costs in the amount of $ 37,309.01. Bank Exh. 13-1, 18-1, 21-1. In its Motion for Sanctions, the Bank argues that it is entitled to damages, including punitive damages, pursuant to § 362(k)(1). Docket No. 43.

However, § 362(k)(1) provides that "individuals" may recover damages for automatic stay violations. *Id.* ("[A]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."). "The term 'individual' in § 362(k) means natural persons rather than corporations and partnerships." *Siegfried v. Board* (*In re Seigfried*), No. 14-12381-TA13, 2014 WL 7240071, at *4 (Bankr. D.N.M. Dec. 19, 2014) (citing *Rafter Seven Ranches L.P. v. WNL Investments L.L.C., et al*. (*In re Rafter Seven Ranches L.P.*), 414 B.R. 722, 733 (10th Cir. BAP 2009)). The Bank is not entitled to damages under § 362(k)(1).

In apparent recognition that § 362(k)(1) is unavailing, the Bank also argues that it is entitled to damages under § 105(a). Docket No. 55 (The Bank's Motion to Consider Alternative Basis for Damages for Violation of Automatic Stay (the "Alternative Basis Motion")). This Court does have authority to award damages to a non-individual for violation of the automatic stay pursuant to § 105(a). Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The Tenth Circuit has held that a bankruptcy court has civil contempt power under § 105(a) that includes the authority to impose sanctions in the form of compensatory damages, including attorneys' fees and costs. *Mountain America Credit Union v. Skinner* (*In re Skinner*), 917 F.2d 444, 446, 448-49 (10th Cir. 1990); *accord Rafter Seven Ranches L.P.*, 414 B.R. at 733 (citing *Skinner*). In *Skinner*, the bankruptcy court found that a credit union was in civil contempt for violating the automatic stay and awarded compensatory damages to a non-individual , including attorneys' fees, where the credit union "had notice of the automatic stay before it sold [debtors'] car and . . . failed to restore [the debtors'] to the status quo after it learned the sale was in violation of the automatic stay."

Under § 362(k), if the court finds that an individual is injured by a willful violation of the stay, an award of compensatory damages ordinarily is mandatory. *In re Baetz*, 493 B.R. 228, 234 (Bankr. D. Colo. 2013). However, an award of damages under the court's civil contempt powers pursuant to § 105(a) is within the discretion of the Court. *Rafter Seven Ranches L.P.*, 414 B.R. at 733–34 ("Even if a willful violation is shown, however, the award of damages under § 105 is discretionary."). "Bankruptcy courts frequently invoke § 105(a) powers to award damages in situations involving non-individual debtors which are not covered by § 362(h)." *Id.* at 733 (referring to § 362(h), now codified as § 362(k)).

In this case, it is appropriate to award compensatory damages against Custom Craft for its willful violation of the stay, including at least some of the Bank's attorneys' fees. Upon learning of the Debtor's bankruptcy case, Custom Craft should have stopped its efforts to enforce its mechanics' lien until it assured itself that doing so would not violate the stay. There is no evidence that Custom Craft contacted counsel or made any effort to determine whether enforcement of its lien would run afoul of the bankruptcy law before the Bank filed its motion for sanctions for violation of the stay. Custom Craft proceeded to sell the vehicle to a wholesaler even after Debtor's stepfather contacted Custom Craft about the pendency of the bankruptcy case.

As a result of Custom Craft's violation of the stay, the Bank suffered a loss of the redemption price for the Vehicle from the Debtor. Therefore, the Court will award the Bank $7,000 to compensate for that loss.

The Bank also suffered a loss in the form of attorneys' fees incurred to file and prosecute the Motion for Sanctions. In determining the amount of reasonable attorneys' fees incurred by the Bank, the Court considers whether the attorneys' fees were "reasonable in light of the complexity of the case, the number of strategies pursued, and the responses necessitated by the other party's

maneuvering." *Auto-Owners Ins. Co. v. Summit Park Townhome Ass'n*, 886 F.3d 863, 873 (10th Cir. 2018). The Court also considers the "*Johnson* guidelines," which include, as relevant here, "the time and labor involved; . . . the novelty and difficulty of the questions; . . . the skill requisite to perform the legal service properly; . . . the preclusion of other employment by the attorney due to acceptance of the case; . . . [and] the amount involved and the results obtained." *Peyrano v. Sotelo* (*In re Peyrano*), No. 14-80402-TRC, 2016 WL 6081031, at *1-2 (Bankr. E.D. Okla. Oct. 17, 2016) (quoting *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)), *aff'd,* No. AP 15-08011, 2017 WL 2731299 (10th Cir. BAP June 26, 2017). As to the last factor, the amount involved and the results obtained, the Court has the authority to reduce fee award attorneys' fees when the fees are disproportionate to the benefit obtained or potential benefit. *In re Charity*, No. 16-31974-KLP, 2017 WL 3580173, at *30 (Bankr. E.D. Va. Aug. 15, 2017)[7].

"This Court is accorded wide discretion in determining the amount of attorney fees to be awarded," *Peyrano*, 2016 WL 6081031 at *1, and is not "require[d] . . . to identify and justify every hour allowed or disallowed." *Auto-Owners Ins. Co*., 886 F.3d at 873; *see Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1187 (2017) (stating that courts "need not, and indeed should not, become green-eyeshade accountants" (or whatever the contemporary equivalent is)") (citation omitted). Instead, "[t]he essential goal in shifting fees is to do rough justice, not to achieve auditing perfection" and the Court "may take into account its overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Goodyear Tire & Rubber Co*., 137 S.Ct. at 1187 (citation omitted).

The Bank presented evidence of its attorneys' fees and costs in the form of "transactions listing reports" (the "Reports") showing that the Bank's counsel devoted 240.1 hours to the

[7] *See also In re Seaton*, 462 B.R. 582, 605 (Bankr. E.D. Va. 2011); *In re Schneider*, No. 06-50441-MM, 2008 WL 4447092, at *6 (Bankr. N.D. Cal. Sept. 26, 2008)

bankruptcy case between August 1, 2019 and October 31, 2019, with hourly rates of $112.50, $144.00, and $247.50 for what appear to be a paralegal and two attorneys. The Reports also reflect a small amount of time spent by one or more other supervising attorneys. Bank's Exh. 13-1, 18-1, 21-1. After subtracting the attorneys' fees and costs related to Custom Craft's failure to respond to discovery requests that were addressed in a previous order, the total amount requested for attorneys' fees and costs is $35,446.46. *Id.*; Docket No. 93.

The Court finds that the hourly rates shown in the Reports are reasonable because they are commensurate with the customary rates charged by attorneys in this district. *See Bee v. Greaves*, 910 F.2d 686, 689 n.4 (10th Cir. 1990) (stating that "a district judge may turn to [his] own knowledge of prevailing market rates as well as other indicia of a reasonable market rate"). However, although some attorneys' fees and costs were necessarily incurred to remedy the stay violation, the Bank incurred fees that are the equivalent of over four weeks of full-time work to remedy a $7,000 loss. Considering the nature and complexity of the legal and factual issues, the motions filed, the discovery taken and the amount at issue, the Court has determined that the $35,446.46 of attorneys' fees and costs the Bank incurred are so disproportionate to the potential $7,000 benefit that a downward adjustment to the fee request is warranted.

After careful review, the Court concludes that $20,000 for attorneys' fees and costs[8] is reasonable, in addition to $7,000 based on the Vehicle redemption value.

E. The Court Declines to Award Punitive Damages

Courts are divided regarding whether a bankruptcy court has the authority under § 105(a) to award punitive damages as a contempt sanction. Three approaches have emerged. First, some

[8] The Bank also filed a Motion to Reconvene Rule 30(b)(6) Deposition of Custom Craft (Docket No. 71) and requested its attorneys' fees and costs related to that motion and the reconvened deposition. The Court has considered this request in its analysis. The amount awarded includes fees and costs associated with the reconvened deposition.

courts hold that the broad equitable powers granted under § 105(a) for the court to "issue *any* order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code" authorizes the imposition of punitive damages if necessary or appropriate to carry out the provisions of the Bankruptcy Code.[9] Second, some courts hold that § 105(a) does not grant authority to award punitive damages for civil contempt because civil contempt damages, unlike criminal contempt damages, must not be designed to punish.[10] Finally, other courts hold that § 105(a) grants authority to award "mild" or "relatively mild" punitive damages for civil contempt if necessary or appropriate to carry out the provisions of the Bankruptcy Code.[11]

This Court need not decide whether it has authority under § 105(a) to award punitive damages as a contempt sanction for violation of the automatic stay.[12] Under the circumstances of this case, and considering the amount of compensatory damages awarded, the Court has determined that no punitive damages are warranted.

III. Conclusion

For the foregoing reasons, the Court finds that Custom Craft willfully violated the automatic stay and that the Bank is entitled to compensatory damages under § 105(a) in the amount of $27,000.00, consisting of $7,000.00 to compensate it for loss of the redemption price and

[9] *See, e.g., Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 445 (1st Cir. 2000), *amended on denial of reh'g* (Dec. 15, 2000); *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1554 (11th Cir. 1996); *In re Renfrow*, No. 17-10385-R, 2019 WL 1782625, at *20 (Bankr. N.D. Okla. Apr. 23, 2019).

[10] *See, e.g., In re Wilson*, No. 18-40107-ELM-13, 2019 WL 6460491, at *15 (Bankr. N.D. Tex. Dec. 2, 2019); *In re Humbert*, 567 B.R. 512, 521 (Bankr. N.D. Ohio 2017).

[11] *See, e.g., In re John Richards Homes Bldg. Co.*, 552 F. App'x 401, 415 (6th Cir. 2013); *In re Dyer*, 322 F.3d 1178, 1193 (9th Cir. 2003); *In re Jones*, 603 B.R. 325, 334 (Bankr. E.D. Ky. 2019); *In re Marino*, 577 B.R. 772, 788–89 (9th Cir. BAP 2017. The Tenth Circuit, in a decision upholding an award of civil contempt compensatory damages for violation of the automatic stay, has observed that civil contempt sanctions must serve the purposes of (a) compelling or coercing a party to obey a court order and/or (b) compensating for losses resulting from the party's non-compliance. *See Skinner*, 917 F.2d at 447 n. 2; *see also Rushton*, 477 B.R. at 194 (10th Cir. BAP 2012), *aff'd*, 749 F.3d 895 (10th Cir. 2014).

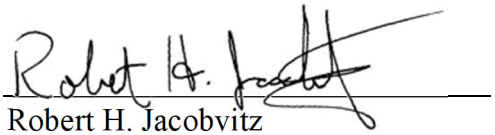
[12] By contrast, if the Debtor, who is an individual, had prosecuted a motion for sanctions under § 363(k) based on a willful violation of the stay, the Court would have had express statutory authority to award civil punitive damages.

$20,000 of attorneys' fees and costs incurred to file and prosecute the Motion for Sanctions. The Bank's request for punitive damages will be denied.

IT IS HEREBY ORDERED that the Bank is awarded $27,000 in compensatory damages against Custom Craft to be paid within 30 days of entry of this Order.

ORDERED FURTHER that if Custom Craft fails to timely pay such award in full, upon the Bank's request the Court will enter a judgment against Custom Craft for the unpaid balance of the award.

ORDERED FURTHER that Debtor and the Bank are relieved of their respective obligations under the Stipulated Order Granting Debtor's Motion to Redeem.



Robert H. Jacobvitz
United States Bankruptcy Judge

Date Entered on Docket: January 9, 2020

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