



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
January 24, 2023

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 13-12466-MKN
	)	Chapter 13
WILLIE N. MOON and ADNETTE M.	)	
GUNNELS-MOON,	)	
	)	Date: August 3, 2022
Debtors.	)	Time: 2:30 p.m.
	)	

**ORDER ON MOTION FOR ATTORNEY FEES AND COSTS<sup>1</sup>**

On August 3, 2022, the court heard the Motion for Attorney Fees and Costs (“Third Fee Motion”) filed in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On February 25, 2020, the court entered its Memorandum Decision After Evidentiary Hearing (“Contempt Decision”) along with its Order After Evidentiary Hearing (“Contempt Order”).<sup>2</sup> (ECF Nos. 157 and 158). That Contempt Decision set forth the court’s findings of fact and conclusions of law on the Motion to Hold Creditor, Rushmore Loan Management in Contempt for Violation of the Automatic Stay Under §362(a) and for Violation of the Discharge Injunction Under 11 U.S.C. §524(a)(2) and to Hold Creditor SN Servicing Corporation in

<sup>1</sup> In this Order, all references to “ECF No.” are to the documents entered on the case docket maintained by the Clerk of the Court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

<sup>2</sup> The Contempt Decision is reported at 613 B.R. 317 (Bankr. D. Nev. 2020). The Contempt Decision is incorporated in the instant order by reference.

1 Contempt for Violating the Discharge Injunction Under 11 U.S.C. §524(a)(2) and for Actual  
2 Damages, Emotional Distress Damages, Punitive Damages and Attorney Fees, and Sanctions  
3 Against Both Creditors, Rushmore Loan Management and SN Servicing Corporation  
4 (“Contempt Motion”). The Contempt Order awarded damages under Section 362(k)(1) in favor  
5 of Willie N. Moon (“Willie Moon”) and Adnette M. Gunnels-Moon (“Adnette Moon”) (jointly  
6 “Debtors”) against creditor Rushmore Loan Management Services, LLC (“Rushmore”). Debtors  
7 had commenced the above-captioned Chapter 13 proceeding on March 26, 2013, and received  
8 their Chapter 13 discharge on September 28, 2016.

9 On July 21, 2020, the court entered its Final Order on Motion for Contempt Against  
10 Rushmore Loan Management Services for Violation of the Courts Order Confirming Plan #2  
11 Against Creditor, Rushmore Loan Management Services, LLC and for its Continuing Violation  
12 of the Stay and Damages for Both and to Confirm Avoidance of Rushmore’s Second Mortgage  
13 under FRBP 5009(d) (“Second Contempt Decision”). (ECF No. 295). The Contempt Decision,  
14 Contempt Order, Second Contempt Decision, and several related orders with respect to Debtors’  
15 two separate requests for attorney’s fees and expenses were appealed to the Bankruptcy  
16 Appellate Panel of the Ninth Circuit (“BAP”).

17 On January 7, 2021, the BAP entered a memorandum decision affirming in part,  
18 reversing in part, and vacating in part the Contempt Decision and Contempt Order (“BAP  
19 Contempt Memorandum Decision”). (ECF Nos. 369 and 372). The matters were remanded to  
20 the bankruptcy court for further proceedings.

21 On January 7, 2021, the BAP also entered a memorandum decision affirming in part,  
22 vacating in part, and remanding in part the bankruptcy court’s orders with respect to the Debtors’  
23 request for attorney’s fees and reimbursement of expenses (“BAP First Fee Memorandum  
24 Decision”). (ECF Nos. 375 and 378). The BAP affirmed the bankruptcy court’s awards of  
25 attorney’s fees for the automatic stay violation, but remanded for an explanation of the amount  
26 awarded for the automatic stay violation rather than a discharge violation.<sup>3</sup>

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27 <sup>3</sup> The BAP First Fee Memorandum Decision was one of several decisions by the BAP  
28 addressing the Debtors’ requests for an award of attorney’s fees against Rushmore. See Remand  
Order, infra, 5:11 to 7:19.

1           Thereafter, certain additional appeals to the Ninth Circuit Court of Appeals (“Ninth  
2 Circuit”) were dismissed for lack of jurisdiction. To address the matters required by the  
3 appellate mandates, status hearings were held by the bankruptcy court.

4           On November 1, 2021, an order was entered scheduling oral argument on remand. (ECF  
5 No. 413). The order established a briefing schedule and set oral argument to be held on January  
6 13, 2022.

7           On January 13, 2022, oral arguments were presented on all remanded matters and the  
8 matters were taken under submission.

9           On June 13, 2022, the court entered its Memorandum Decision on Remand (“Remand  
10 Decision”) along with an Order After Remand (“Remand Order”).<sup>4</sup> (ECF Nos. 423 and 424).<sup>5</sup>  
11 The Remand Decision and Remand Order addressed the Debtors two prior requests for recovery  
12 of attorney’s fees and expenses as actual damages under Section 362(k)(1).

13           On June 24, 2022, an appeal of the Remand Decision and the Remand Order was filed on  
14 behalf of Rushmore. (ECF No. 430).<sup>6</sup>

15           On June 27, 2022, Debtors filed the instant Third Fee Motion<sup>7</sup> that was noticed to be  
16 heard on August 3, 2022. (ECF Nos. 432 and 433).<sup>8</sup>

17           On July 20, 2022, Rushmore filed its objection to the Third Fee Motion (“Objection”).  
18 (ECF No. 467).

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19           <sup>4</sup> The Remand Decision and Remand Order are incorporated in the instant order by  
20 reference.

21           <sup>5</sup> No request to stay the Remand Order was made to the bankruptcy court nor does it  
22 appear that a stay was obtained on appeal.

23           <sup>6</sup> On July 6, 2022, a cross-appeal of the Remand Decision and the Remand Order was  
24 filed on behalf of Debtors. (ECF No. 448).

25           <sup>7</sup> Attached as Exhibit “A” to the Remand Fee Motion is the declaration of Christopher P.  
26 Burke, Esq. (“Remand Burke Declaration”). Attached as Exhibit “B” is a document entitled  
27 “Attorney Services Rendered” (“Billing Statement”) setting forth time entries from June 14,  
2021 through August 3, 2022.

28           <sup>8</sup> On June 28, 2022, Debtors filed an amendment to the Remand Fee Motion to address an  
electronic filing error. (ECF No. 441).

1 On July 27, 2022, Debtors filed their reply (“Reply”). (ECF No. 471).

2 **DISCUSSION**

3 As discussed in the Remand Decision, the Contempt Decision was affirmed in part,  
4 reversed in part, and remanded in part by the BAP.<sup>9</sup> As required by the mandates of the BAP,  
5 the Remand Decision addressed various related appeals with respect to the attorney’s fees and  
6 costs sought by the Debtors under Section 362(k)(1). The Remand Order specifically awarded  
7 the following amounts, *inter alia*, in favor of the Debtors:

- 8 • actual damages in the amount of \$71,250.04 representing out of pocket  
9 expenses of \$742.10 as well as attorney’s fees and costs of \$70,507.94 in  
10 presenting the Contempt Motion pursuant to Section 362(k)(1).
- 11 • actual damages of \$14,827.00 representing attorney’s fees and costs  
12 incurred in responding to Adversary Proceeding No. 19-01090-MKN  
13 pursuant to Section 362(k)(1).<sup>10</sup>
- 14 • appellate attorney’s fees and costs in the total amount of \$115,651.77  
15 pursuant to Section 362(k)(1).

16 See Remand Order at 2:1-20.

17 By the instant Third Fee Motion, Debtors now seek additional attorney’s fees incurred  
18 from June 7, 2021 through August 3, 2022, i.e., after the matters were remanded to this court.

19 See Third Fee Motion at 1:18 to 3:2. The total amount sought is \$21,360.50. That amount  
20 represents 35.9 hours of services provided by Debtors’ bankruptcy counsel, Christopher Burke

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21 <sup>9</sup> “As the BAP observed, Rushmore did not appeal this court’s ‘ruling that it willfully  
22 violated the automatic stay with its collection efforts or the award of compensatory damages of  
23 \$742.50.’...Rushmore did appeal the award of emotional distress damages to Willie Moon, the  
24 award of punitive damages to Willie Moon, and the admission of testimony of the Debtors’  
25 expert. The BAP concluded that Rushmore did not violate the automatic stay with respect to  
26 Willie Moon because only Adnette Moon was the borrower...The BAP affirmed as to the  
27 admission of the expert testimony. Debtors cross-appealed the court’s ruling denying any award  
28 of damages for Rushmore’s violation of the discharge injunction. The BAP affirmed the court’s  
denial of damages with respect to the discharge violation. The BAP therefore reversed and  
vacated the award of any damages as to Willie Moon, but remanded for a reconsideration of  
punitive damages as to Adnette Moon.” See Remand Order at 4:14 to 5:5, footnotes omitted.

<sup>10</sup> In addition to filing opposition to the Contempt Motion, Rushmore commenced a  
separate proceeding (“Adversary Proceeding”) against the Debtors that objected to the relief  
sought by the Contempt Motion. Attorney Burke represented the Debtors in responding to  
Rushmore’s adversary complaint.

1 (“Attorney Burke”) at a \$595.00 hourly rate. See Remand Burke Declaration at ¶¶ 7-10 and  
2 attached Billing Statement.<sup>11</sup> No reimbursement of costs is requested.

3 In response, Rushmore primarily maintains<sup>12</sup> that because the Contempt Motion sought  
4 sanctions for violation of the discharge injunction as well as the automatic stay, the Third Fee  
5 Motion does not sufficiently identify the fees available under Section 362(k)(1). See Objection  
6 at 3-6. Rushmore also argues that Adnette Moon is not entitled to actual damages in the form of  
7 attorney’s fees because she is not an individual injured by a willful violation of the automatic  
8 stay. Id. at 6-8. See 11 U.S.C. § 362(k)(1) (Except as provided in Paragraph (2), an individual  
9 injured by any willful violation of a stay...shall recover actual damages, including costs and  
10 attorney’s fees...”)

11 In reply, Debtors argue that the discharge and automatic stay violations were inextricably  
12 intertwined, thereby permitting the entire amount requested by the Third Fee Motion to be  
13 awarded. See Reply at 2:11-19. Moreover, Debtors maintain that Rushmore has never disputed  
14 the pecuniary losses sustained by Adnette Moon, has raised a new argument, and has waived any  
15 claim of lack of injury. Id. at 2:20-26.

16 The court having considered the written and oral argument of counsel, along with the  
17 extensive record in these proceedings, finds that the attorney’s fees requested by the Debtors are  
18 reasonable, and concludes that the amount should be awarded under Section 362(k)(1). The  
19 objections presented by Rushmore are overruled and the Third Fee Motion will be granted for  
20 three primary reasons.

21 First, the bankruptcy court remains bound by the rule of mandate. See Remand Decision  
22 at 8:8-19. After the BAP Contempt Memorandum Decision was entered on January 7, 2021, as  
23 well as the BAP First Fee Memorandum Decision, the appellate mandate to the bankruptcy court  
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25 <sup>11</sup> According to the Billing Statement, the 35.9 hours encompass attorney’s fees  
26 commencing on June 14, 2021 (after remand) through June 13, 2022 (entry of the Remand  
27 Order), and through August 3, 2022 (preparation and presentation of the Third Fee Motion).

28 <sup>12</sup> For some reason, Rushmore reiterates arguments it previously lost for purposes of  
preserving issues on its appeal of the BAP’s prior memorandum decisions. See Objection at  
8:16-21. Reiteration on those arguments is unnecessary but are still rejected by this court.

1 was confined to Adnette Moon’s claim for actual damages, including attorney’s fees, under  
2 Section 362(k)(1). As Rushmore never appealed this court’s prior finding that it willfully  
3 violated the automatic stay under Section 362(k) and never appealed the award of compensatory  
4 damages of \$742.10, see Remand Decision at 4:14-16, Rushmore’s violation of the discharge  
5 injunction<sup>13</sup> is immaterial to the merits of the Third Fee Motion. In other words, the  
6 determinations required by the Third Fee Motion are not, and need not be inextricably  
7 intertwined<sup>14</sup> with the substance of the discharge violation.

8 Second, the bankruptcy court previously found that Adnette Moon suffered economic  
9 injury from Rushmore’s willful violation of the automatic stay, see Contempt Decision at 30-43,  
10 and awarded actual damages. Id. at 46-55. Rushmore’s decision not to appeal that finding or the  
11 damage award effectively waived any contrary contention on remand.<sup>15</sup> The court’s uncontested  
12 prior legal conclusion that Adnette Moon is an individual injured by a willful violation of the  
13 automatic stay is the law of the case. See United States v. Lummi Indian Tribe, 235 F.3d 443, 52  
14 (9th Cir. 2000); Marina Dist. Dev. Co., LLC v. AC Ocean Walk, LLC, 2021 WL 107201, at \*2  
15 (D. Nev. Jan 11, 2021).

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17  
18 <sup>13</sup> The court found that Rushmore violated the discharge injunction but did not impose  
19 contempt sanctions due to lack of evidence establishing when Rushmore received notice of the  
20 discharge. See Contempt Decision at 45-46 & n.59. The BAP affirmed that determination, see  
21 BAP Contempt Memorandum Decision at 28, thereby limiting the mandate on remand to  
22 determinations under Section 362(k)(1).

23 <sup>14</sup> The court found that Attorney Burke’s services in connection with both the violation of  
24 the discharge injunction and the automatic stay were “inextricably linked” and that the evidence  
25 offered by both the Debtors and Rushmore overlapped. See Remand Order at 10:8-10. The  
26 comparable term “inextricably intertwined” has a variety of contexts. See, e.g., Bowerman v.  
27 Field Asset Services, 39 F.4th 652, 672-73 (9th Cir. 2022) (assertion of pendant appellate  
28 jurisdiction over interim attorney fee award that was inextricably intertwined with other issues  
on appeal); United States v. Sims, 550 F.Supp.3d 907, 913-15 (D. Nev. 2021)(admission of  
testimony in criminal proceedings inextricably intertwined with charged offenses). Neither term  
is necessary to address matters presented on remand.

<sup>15</sup> The Contempt Decision was entered on February 25, 2020, after a trial that took place  
on September 18 and 19, 2019. Rushmore offers no authority or evidentiary basis on which to  
seek or obtain relief from those determinations.

1 Third, no evidence has been presented disputing the reasonableness of the time expended  
2 by Attorney Burke nor the necessity and accuracy of the services described in the Billing  
3 Statement. No evidence has been presented contesting the experience and qualifications of  
4 Attorney Burke in representing the Debtors in pursuing the Contempt Motion. No evidence has  
5 been presented, nor has a suggestion been made, that the hourly rates charged by Attorney Burke  
6 are unwarranted. Having reviewed the services provided and the amount requested, the court  
7 concludes that the expenditure of 35.9 hours at a \$595.00 hourly rate is reasonable. Compare  
8 Remand Order at 22:15 to 23:10 (awarding fees to Attorney Burke in responding to Rushmore's  
9 separate Adversary Proceeding).

10 Under these circumstances, the court concludes that the Third Fee Motion is appropriate  
11 under Section 362(k)(1).

12 **IT IS THEREFORE ORDERED** that the Motion for Attorney's Fees and Costs,  
13 Docket No. 432, be, and the same hereby is, **GRANTED**.

14 **IT IS FURTHER ORDERED** that additional attorney's fees in the total amount of  
15 \$21,360.50 are awarded in favor of Adnette Gunnels-Moon and against Rushmore Loan  
16 Management Services, LLC, pursuant to 11 U.S.C. §362(k)(1).

17 **IT IS FURTHER ORDERED** that Rushmore Loan Management Services, LLC, shall  
18 pay the amount specified in this Order no later than thirty (30) days after entry hereof. The total  
19 amount shall be paid to the Law Offices of Christopher P. Burke in trust for the above-captioned  
20 Debtors.

21  
22 Copies sent via CM/ECF ELECTRONIC FILING

23 Copies sent via BNC to:  
24 WILLIE N. MOON  
25 ADNETTE M. GUNNELS-MOON  
26 3391 EAGLE BEND STREET  
27 LAS VEGAS, NV 89122

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