



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
July 05, 2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No.: 14-16997-MKN
)	Chapter 13
CURTIS BRYANT and ROBIN BRYANT,)	
)	
Debtors.)	Date: June 22, 2016
)	Time: 2:30 p.m.

**ORDER ON MOTION TO COMPEL COMPLIANCE WITH COURT ORDER, FOR
ADDITIONAL SANCTIONS, AND TO REDUCE TO JUDGMENT¹**

On June 22, 2016, the court heard the Motion to Compel Compliance with Court Order, for Additional Sanctions, and to Reduce to Judgment (“Motion”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On October 17, 2014, Curtis Bryant and Robin Bryant (“Debtors”) filed a voluntary Chapter 13 petition. (ECF No. 1).

On April 17, 2015, the court entered its Order on Motion to Determine Willful Violation of the Automatic Stay and Request for Actual Damages, Punitive Damages, Attorney’s Fees and

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 Other Sanctions (“Sanction Order”). (ECF No. 86).² In the Sanction Order, the order awarded
2 actual damages for emotional distress in the amount of \$1,500 pursuant to Section 362(k)(1) in
3 favor of the Debtors and against creditor Wes Smith (“Smith”).³

4 On March 28, 2016, an order was entered confirming the Debtors’ Chapter 13 plan⁴
5 (“Plan Confirmation Order”). (ECF No. 135).⁵

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7 ² The Sanction Order was entered on April 17, 2015. Under FRBP 8002(a)(1), the
8 deadline to appeal the Sanction Order expired on May 2, 2015.

9 ³ Smith was listed as a creditor in the Debtors’ schedules as well as the lessor of a house
10 located at 1533 Dusty Canyon Street in Henderson, Nevada (“Dusty Canyon Property”) in which
11 the Debtors resided. Smith also was included in the mailing matrix of parties to receive notice of
12 the bankruptcy proceeding. Despite his knowledge of the Debtors’ bankruptcy, Smith had
13 proceeded to evict the Debtors from the Dusty Canyon Property without obtaining relief from the
14 automatic stay. On February 17, 2015, Smith filed a proof of claim in the amount of \$7,110.00.
15 The breakdown attached to the claim appears to include amounts Smith incurred in violating the
16 automatic stay, e.g., court costs and fees, as well as attorney’s fees for the eviction proceeding,
17 and charges by a locksmith. On the proof of claim, Smith asserted the \$7,110.00 amount as
18 entitled to priority under some subsection of Section 507(a), other than subsections (1, 4, 5, 7 or
19 8). It appears that subsection (3) cannot apply because this is not an involuntary bankruptcy
20 proceeding, subsection (6) cannot apply because Smith is not a grain producer or fisherman,
21 subsection (9) cannot apply because the claim does not involve an insured depository institution,
22 and subsection (10) cannot apply because the claim does not involve death or personal injury.
23 That leaves only subsection (2) that encompasses administrative expenses allowed under Section
24 503(b). It is clear from the record, however, that Smith has never taken steps to seek or obtain
25 allowance of his claim as an administrative expense in this Chapter 13 proceeding.

26 ⁴ Section 1.08 of the plan requires the Debtors to make monthly payments of \$2,400 for
27 46 months, totaling \$110,400.00 over the life of the plan. After payment of administrative
28 expenses, secured claims, and priority creditors, Section 2.19 estimates that \$17,844.95 will be
available to pay non-priority, unsecured claims, on a pro rata basis.

⁵ The hearing on confirmation of the Debtors’ Chapter 13 plan was noticed to all
creditors, including Smith. (ECF No. 125). Section 2.08 of the confirmed plan addresses the
payment of allowed administrative expenses other than trustee’s fees or the fees of the Debtor’s
attorney. Because Smith never sought allowance of his proof of claim as a priority under Section
507(a)(2) of the Bankruptcy Code, his claim is not entitled to administrative payment priority
ahead of other creditors under Section 2.08 of the confirmed plan. Section 2.16 of the confirmed
plan addresses post-petition claims under Section 1305(a) of the Bankruptcy Code that ordinarily
are to be paid in full by trustee, “such as . . . delinquent post-petition mortgage payments.”
Because Smith never objected to confirmation of the plan, Section 2.16 provides that no
postpetition claims encompassed by Section 1305 of the Bankruptcy Code will be paid in full by
the trustee. Section 3.01 of the confirmed plan provides for the Debtors to reject the lease of the
Dusty Canyon Property. Under Section 365(g)(1) of the Bankruptcy Code, the rejection

1 On May 2, 2016, Debtors filed the instant Motion. (ECF No. 138). Debtors allege that
2 Smith has made one payment of \$100.00 towards the Sanction Order, but refuses to pay the
3 remaining balance of \$1,400.00. In addition to requiring Smith to pay that balance, Debtors seek
4 \$1,615.00 in legal fees for having to bring their Motion. Whatever additional amount is awarded
5 pursuant to the Motion, Debtors further request that the total amount be reduced to a judgment so
6 that the Debtors may pursue post-judgment collection remedies, such as subjecting Smith to a
7 judgment debtor's examination, issuance of writs of execution on his assets, and the like. See
8 Motion at 5:6-11.

9 Having been warned in advance that the Debtors' would be seeking further relief from
10 the court to enforce the Sanction Order, on April 27, 2016, Smith had written a letter to the court
11 that was received the following day. (ECF No. 137). In that missive, Smith acknowledged that
12 he had paid only \$100.00 of the amount ordered, but asserted that payment of the balance would
13 be an undue hardship. He asserted that his only sources of income are rental proceeds from the
14 Dusty Canyon Property and Social Security payments.⁶

15 On June 8, 2016, Debtors' Motion came on for duly noticed hearing, but Smith never
16 appeared. The court continued the hearing to June 22, 2016, in order to allow Smith another
17 chance to appear and to allow Debtors' counsel to submit a billing statement for the professional
18 fees incurred in bringing the Motion. On June 13, 2016, that billing statement was filed. (ECF
19 No. 143).

20 On June 22, 2016, the continued hearing on the Motion was conducted. Debtors' counsel
21 appeared and Smith appeared as well. Other than the letter he submitted before the Motion was

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23 constitutes a breach of the lease as of the date immediately before the bankruptcy was filed. As a
24 result, Smith has an unsecured, prepetition claim for lease rejection damages, subject to Section
25 502(b)(6), that is not entitled to priority under Section 507(a) of the Bankruptcy Code. The Plan
Confirmation Order was entered on March 28, 2016. Under FRBP 8002(a)(1), the deadline to
appeal that order expired on April 11, 2016.

26 ⁶ In their Motion, Debtors assert that Smith "runs a flooring business called Valley Floors
27 Corporation, LLC." See Motion at 3:26. Based on information available on "various web sites,"
28 Debtors also suggest that the business has potential gross sales of up to \$1 million annually. Id.
at 4:1-4. Debtors admit, however, that none of this information constitutes proof of Smith's
actual income or financial status. Id. at 4-6.

1 filed, Smith filed no other opposition to the Motion. He did, however, orally repeat the matters
2 contained in his letter and also apparently asserted that he no longer receives any income from
3 the business referred to in the Motion.⁷ Smith did not dispute the amount of professional fees
4 incurred by the Debtor in prosecuting the Motion. After arguments were presented, the Motion
5 was taken under submission.

6 DISCUSSION

7 The court has considered the record in this case as well as the written and oral arguments
8 presented. Based on that consideration, the Motion will be granted under the terms provided
9 below.

10 Smith did not comply with the Sanction Order. Debtors were protected by the automatic
11 stay under Section 362(a)(3) and Smith violated the statute. The factual circumstances
12 establishing the violation were addressed in the Sanction Order. Damages were awarded by the
13 Sanction Order and Smith never appealed the order. He is bound by that order.

14 Smith's proof of claim is subject to payment under the terms of the Debtors' confirmed
15 Chapter 13 plan. Debtors are not walking away from their creditors, but have committed their
16 future income for 46 months. Only if they complete their Chapter 13 plan will they receive a
17 discharge of their personal liability on the debts encompassed by the confirmed plan. See 11
18 U.S.C. § 1328(a). Smith could have taken various steps to possibly increase the distribution on
19 his claim, but he did nothing. Like the Sanction Order, Smith never appealed the Plan
20 Confirmation Order. Like the Sanction Order, Smith also is bound by the Plan Confirmation
21 Order.

22 Instead of heeding the admonitions of Debtors' counsel, or even seeking the advice of
23 bankruptcy counsel of his own, Smith violated the automatic stay and has now violated the
24 Sanction Order. He claims that he cannot afford to pay what he owes, which sounds strangely
25 similar to the Debtors' claim that they cannot pay their debts, except that the Debtors sought the
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27 ⁷ On his proof of claim, Smith includes an email address beginning with "vfc" which may
28 refer to Valley Flooring Corporation. That an email address may still be in use, of course, also
would not establish that the originating entity remains active.

1 relief provided by Congress through the Bankruptcy Code. In this case, Smith chose not to listen
2 to Debtors' counsel or to the court, and has no one to blame but himself.⁸ The court will enforce
3 the automatic stay as well as the Sanction Order. The balance of the Sanction Order (\$1,400.00)
4 as well as the amount of attorneys fees incurred by the Debtors in bringing this Motion
5 (\$1,615.00), totaling \$3,015.00, will be awarded.

6 The court will, however, credit Smith for his representation that his means of satisfying
7 the award are limited. The court accepts his representation primarily because Debtors' counsel
8 did not request an evidentiary hearing where Smith would be required to testify under oath. An
9 evidentiary hearing would be limited to a determination of Smith's financial resources and
10 would merely generate further legal expenses to the Debtors. The court therefore will structure
11 the payment of the award to allow Smith to pay a discounted amount by a date certain. In the
12 event Smith fails to pay the discounted amount by that date, he will be required to pay the full
13 amount of the award under a judgment to be entered by the court.

14 **IT IS THEREFORE ORDERED** that the Motion to Compel Compliance with Court
15 Order, for Additional Sanctions, and to Reduce to Judgment brought by Curtis Bryant and Robin
16 Bryant, Docket No. 138, be, and the same hereby is, **GRANTED**.

17 **IT IS FURTHER ORDERED** that the amount of \$3,015.00 is awarded under this order
18 in favor of Curtis Bryant and Robin Bryant, and against creditor Wes Smith, as sanctions
19 pursuant to 11 U.S.C. § 362(k)(1) and as compensatory damages under 11 U.S.C. § 105(a) for
20 violation of the Order on Motion to Determine Willful Violation of the Automatic Stay and
21 Request for Actual Damages, Punitive Damages, Attorney's Fees and Other Sanctions, Docket
22 No. 86, previously entered on April 17, 2015.

23 **IT IS FURTHER ORDERED** that the amount awarded under this Order is payable by
24 Wes Smith as follows:

- 25 1. In the event Smith pays Debtors' counsel the sum of \$2,500 on or before August
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27 ⁸ That Smith actually included in his proof of claim against the Debtors some of the costs
28 he incurred in violating the automatic stay, see note 3, supra, is merely consistent with his
unwillingness to accept responsibility for his violation of the Bankruptcy Code.

1 18, 2016, the remaining balance of \$515.00 will be deemed satisfied. In that
2 event, Debtors' counsel must file with the court a notice certifying that the
3 sanction issued by the court has been satisfied.

4 2. In the event Smith fails to pay \$2,500 to Debtors' counsel on or before August 18,
5 2016, the full amount of \$3,015.00 will be immediately due and payable. In that
6 event, Debtors' counsel may submit a form of judgment for any balance
7 remaining, upon submission of an ex parte application for entry of judgment to
8 this court.

9 **IT IS SO ORDERED.**

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11 Copies sent to all parties via BNC and via CM/ECF ELECTRONIC FILING

12 Copies sent via BNC to:

13 CURTIS BRYANT
14 ROBIN BRYANT
15 507 CHESTNUT VIEW PLACE
16 HENDERSON, NV 89052

17 WESLEY SMITH
18 3775 W. TECO AVE. SUITE 10
19 LAS VEGAS, NV

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