



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
April 17, 2015

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 14-16997-MKN
)	Chapter 13
CURTIS BRYANT and ROBIN BRYANT,)	
)	
Debtors.)	Date: March 4, 2015
)	Time: 2:30 p.m.

**ORDER ON MOTION TO DETERMINE WILLFUL VIOLATION OF THE
AUTOMATIC STAY AND REQUEST FOR ACTUAL DAMAGES, PUNITIVE
DAMAGES, ATTORNEY’S FEES AND OTHER SANCTIONS¹**

On March 4, 2015, the court heard the Motion to Determine Willful Violation of the Automatic Stay and Request for Actual Damages, Punitive Damages, Attorney’s Fees and Other Sanctions (“Motion”). The appearances of counsel and parties were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On October 17, 2014, Curtis Bryant (“Mr. Bryant”) and Robin Bryant (“Mrs. Bryant”) (collectively, “Debtors”) filed a voluntary Chapter 13 petition (“Petition”). (ECF No. 1). The Petition shows a street address of 1533 Dusty Canyon Street, Henderson, Nevada 89052 (“Dusty Canyon Property”). The case initially was assigned for administration to Chapter 13 trustee, Rick Yarnall, but on November 6, 2014, the case was reassigned to Chapter 13 trustee Kathleen Leavitt (“Trustee”).

Debtors declared under penalty of perjury on their Petition that they have not sought

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.

1 bankruptcy protection within the last eight years. See Petition at 2. The court's records reflect,
2 however, that on April 8, 2014, the Debtors commenced a previous Chapter 13 bankruptcy
3 proceeding, denominated Case No. 14-12383-MKN. On September 3, 2014, that prior Chapter
4 13 proceeding was dismissed due to the Debtors' failure to make plan payments and failure to
5 file certain amendments and statements.

6 On November 10, 2014, Debtors filed a Motion to Continue the Stay, admitting that they
7 had commenced a previous Chapter 13 bankruptcy proceeding that was dismissed within a year
8 of filing their current Petition.² (ECF No. 16). On November 14, 2014, that motion was heard
9 on shortened time. (ECF No. 19).

10 On November 14, 2014, Debtors also filed their schedules of assets and liabilities
11 ("Schedules") as well as their statement of financial affairs ("SOFA"). (ECF No. 23). Debtors'
12 real property Schedule "A" does not list an interest in the Dusty Canyon Property. Debtors'
13 executory contract and unexpired lease Schedule "G" listed a "House Lease" but not the Dusty
14 Canyon Property address and also listed "Wes Smith" at 3775 W. Tezo Avenue, #10, Las Vegas,
15 Nevada, as the other party to the House Lease. Included with the Schedules and SOFA is the
16 Debtors' mailing matrix listing the names and addresses of parties in interest, including Wes
17 Smith ("Smith") at the same address listed in Schedule "G."

18 On November 14, 2014, Debtors also filed their proposed Chapter 13 Plan (ECF No. 24),
19 accompanied by their statement of current monthly income and disposable income. (ECF No.
20 25). On the same date, Debtors filed an amended Chapter 13 plan. (ECF No. 26). There were
21 no leases assumed or rejected in either of their proposed plans.

22 On November 24, 2014, Debtors filed another amendment to their Chapter 13 plan ("Plan
23 #3"). (ECF No. 32). Debtors indicated in Plan #3 of their intent to assume a lease with Smith
24 identified as the lessor. Presumably, this was meant to be the House Lease for the Dusty Canyon
25 Property because there are no other leases listed in the Schedules. On the same date, the Court
26 entered an order continuing the stay as to all creditors. (ECF No. 33).

27
28 ² The prior Chapter 13 proceeding dismissed on September 3, 2014.

1 On December 8, 2014, Debtors filed their third amendment to their Chapter 13 plan
2 (“Plan #4”), but still maintained their intent to assume their lease with Smith. (ECF No. 45).

3 On January 7, 2015, Debtors filed the instant Motion (ECF No.57), which included
4 declarations of one of the debtors, Mrs. Bryant (“Bryant Declaration”), and of Debtors’ counsel,
5 Troy Fox (“Attorney Fox”). Attorney Fox attests in his declaration (“Fox Declaration”) that on
6 November 24, 2014, he informed Smith that the Debtors had filed for bankruptcy protection, that
7 the automatic stay was in place, and that the Debtors intend to assume the House Lease. See Fox
8 Declaration at ¶¶ 3, 4, 5, 6. He also states that he called Smith on December 31, 2014, and
9 advised him that he needed to obtain relief from stay if he intended to go forward with the
10 eviction. Id. at ¶¶ 7, 8. Attorney Fox also attests that on January 5, 2015, his clients first
11 advised him of the lockout and that they were working with the Henderson court and the
12 Constable to regain possession. Id. at ¶ 9. Finally, Attorney Fox attests that on January 6, 2015,
13 he was preparing the instant Motion when he was informed that the Debtors had regained
14 possession of the home and their dog. Id. at ¶ 10.

15 Mrs. Bryant attests that the Debtors had fallen behind on their rent, and that on December
16 18, 2014, they were served with a five day notice to pay or quit. See Bryant Declaration at p. 2.
17 Mrs. Bryant also attests that on December 24, 2014, they were served with a 24 hour eviction
18 notice, after which they contacted the Henderson civil court and were assured that they could not
19 be evicted. Id. She attests that during the week of December 29, 2014, she heard someone
20 walking around outside of her house in the morning but did not know who it was. Id. Mrs.
21 Bryant also attests that on January 5, 2015, her husband called her at work to inform her that her
22 family had been locked out of the house and that the family dog was missing. She attests that
23 she was visibly upset at her work and urgently departed for home. Id. She states that after she
24 got home, she and her husband called the Henderson court and the Constable’s office, and that
25 after two hours, new keys were delivered by the deputy marshal. Id. Until the keys were
26 delivered, she testified that she called her elderly parents to arrange for another place for the
27 family to spend the night. Id. Mrs. Bryant attests that upon reentering the home, she and her
28 family discovered that someone had gone through the cabinets and closets, and even used the

1 master bathroom toilet. Id. at p. 3. Due to the late hour, the family also could not retrieve their
2 dog from the animal shelter. Id. Mrs. Bryant attests that she had to take time off work the
3 following day, January 6, 2015, to get the dog from the animal shelter. Id. She attests that the
4 family was deeply distraught and worried the entire night about their safety and the status of
5 their family dog. Id.

6 Debtors assert that despite knowing there is a stay in place, Smith directed the
7 Henderson Constable's Office ("Constable's Office") to enter the Debtors' residence, seize the
8 Debtors' dog, and changed the locks of the property, all in violation of the stay. See Motion at
9 3:3-5. Debtors represent that they spent hours contacting the Constable's Office to undo the
10 eviction and worrying over the whereabouts of their dog. Id. at 3:6-10. As a result of Smith's
11 intentional violation of the automatic stay, Debtors assert that they suffered significant emotional
12 distress. They seek recovery from Smith for their attorney's fees incurred in bringing the
13 Motion, their actual damages, and punitive damages.

14 On February 4, 2015, Smith filed an Opposition to the Motion ("Opposition") with
15 attached exhibits, including what he identifies as his own affidavit ("Smith Affidavit").³ (ECF
16 No. 64). In his affidavit, Smith admits that in mid-November 2014 he received correspondence
17 from Attorney Fox regarding a bankruptcy case associated with the Debtors, but also asserts that
18 the correspondence was sent to the wrong address⁴ and was illegible. See Smith Affidavit at p.1.

19 Smith also admits that he contacted the Mr. Bryant on November 21, 2014, and then
20 called Attorney Fox later in November to confirm whether the Debtors have filed for bankruptcy.

21
22 ³ Attached as Exhibit "A" to the Opposition is a document dated January 3, 2015, entitled
23 "Affidavit of Wesley Smith." The document is notarized, but includes no indication that Smith
24 was sworn under oath or that the statements contained in the document are made under penalty
25 of perjury. Thus, it is not an affidavit, nor would it constitute a declaration within the meaning of
26 28 U.S.C. section 1746.

27 ⁴ As previously indicated, the Debtors used an address for Smith showing a street named
28 "Tezo" Avenue. While admonishing the Debtors for mailing correspondence to the wrong
address, Exhibit "L" to the Opposition filed by Smith includes emails where the street name for
Smith at an entity known as Valley Floors Corporation is shown to be either "Teco Avenue" or
"Taco Avenue." The face page of the Opposition itself shows Smith as having a street address
of "Teco Avenue."

1 Smith contends that both Mr. Bryant and Attorney Fox assured him that the bankruptcy filing
2 was unrelated to the lease. Id.

3 Smith represents that on December 16, 2014, the Constable's Office posted on the Dusty
4 Canyon Property an Affidavit of Service ("Five-Day Notice") directed to "Curtis Bryant and all
5 Occupants at 1533 Dusty Canyon" and that despite being given five days to contact or file an
6 answer with the Constable's Office, the Debtors and Attorney Fox did not respond. Id. at p.2.

7 Smith further states that he did not receive any other information regarding the
8 bankruptcy proceeding or of a violation of the automatic stay despite multiple attempts to contact
9 the Debtors and Attorney Fox regarding unpaid rent. He alleges that it was not until December
10 31, 2014, that he received a phone call around 9:00 p.m. from Attorney Fox. Id.

11 Smith admits that he, with an officer from Constable's Office, completed the lock out on
12 January 5, 2014 at 1:00 p.m. He states that he had received a call from the Constable at 8:00
13 a.m. and was instructed to meet the Constable at the Dusty Canyon Property at noon.⁵ Id. He
14 further acknowledges that at 2:30 p.m. on the same date, he was informed that the eviction was
15 improper due to the automatic stay being in place and that within minutes he provided the new
16 keys to the Constable's Office. Smith insists that his actions were not an intentional⁶ violation of
17

18 ⁵ It is not entirely clear why the Constable instructed Smith to appear at a residential
19 property at noon on a Monday to conduct a lockout. It would seem highly likely that any adults
20 would be at work at such an hour and any minors would be in school. It raises the real prospect
21 that adults and minors would return later in the day to find themselves locked out of their home
22 and unable to access their personal belongings. In non-bankruptcy circumstances, such an
23 approach obviously might make the eviction process initially less confrontational. However, it is
24 particularly problematic where the tenants are in bankruptcy and their personal belongings
25 constitute property of their bankruptcy estate. When a landlord locks a bankrupt tenant out of a
26 rental property, the landlord necessarily takes possession of and exercises control over property
27 of the bankruptcy estate in violation of Section 362(a)(3). Violations of the automatic stay are
28 sanctionable under Section 362(k). Thus, once a landlord becomes aware that a tenant is in
bankruptcy, relief from the automatic stay ordinarily must be sought under Section 362(d) before
proceeding further.

⁶ In Smith's Affidavit, he expressed his apologies but for some reason claimed that he too
had emotional harm and had incurred costs in connection with the botched eviction. Smith also
asserts that the speculations made by Mrs. Bryant in her declaration accusing Smith of harassing
the Debtors by showing up at the property unannounced is a false and harmful statement.

1 the stay and attributes the faulty eviction process to lack of communication between the parties.
2 Id. at p.3.

3 On February 12, 2015, Debtors filed a Reply to the Opposition (“Reply”). (ECF No. 66).
4 Debtors argue that by Smith admittedly was aware of their bankruptcy as early as November
5 2014 irrespective of any alleged wrong address. See Reply at 2:10-15. Debtors represent that
6 they informed Smith of their intention to assume the House Lease and deny making any
7 representation that their proposed plan “had nothing to do with the lease.” Id. at 2:16-20.
8 Debtors argue that Smith’s affidavit clearly establishes an intentional violation of the stay when
9 he proceeded with the eviction process without first obtaining a relief from stay.

10 On February 17, 2015, Smith filed a Proof of Claim in the amount of \$7,110 for unpaid
11 rent from the period of December 2014 through February 2015. (Proof of Claim 10-1).

12 On February 25, 2015, Smith filed a response to the Debtor’s Reply (“Response”). (ECF
13 No. 72). Smith restates several arguments from his Opposition, and reiterates that Attorney Fox
14 told him on November 21, 2014,⁷ that “the bankruptcy proceeding has nothing to do with the
15 lease.” See Response at 1. In his Response, Smith acknowledges that on November 10, 2014,
16 he attempted to collect on unpaid lease payments from the Debtors and that he retained an
17 attorney to proceed with the eviction of the Debtor’s from the property on February 28, 2015.
18 Id. at 2-3. On March 4, 2015, a continued hearing was conducted on the instant Motion after
19 which the matter was taken under submission.⁸

20 DISCUSSION

21 The filing of a bankruptcy petition creates an estate. When a Chapter 13 petition is filed,
22 property of the bankruptcy estate includes all property described in Section 541(a) as well as all
23 property acquired and all earnings from services of the debtor after the petition is filed. 11
24 U.S.C. § 1306(a). Under Section 1306(b), a Chapter 13 bankruptcy debtor shall remain in

26 ⁷ In the Motion, Debtors assert that the initial correspondence and conversation providing
27 Smith notice of the bankruptcy occurred on November 24, 2014. See Fox Declaration at ¶ 3.

28 ⁸ At the time of the hearing, the Debtors were no longer living in the Dusty Canyon
Property. Debtors filed a notice of change of address on February 18, 2015. (ECF No. 68).

1 possession of all property of the estate, unless otherwise ordered by the court or provided in the
2 Chapter 13 plan.

3 Under Section 362(a), the automatic stay generally arises as soon as a bankruptcy petition
4 is filed. The automatic stay applies to “any act to obtain possession of property of the estate... or
5 to exercise control over the property of the estate.” 11 U.S.C. § 362(a)(3). Under Section
6 362(c)(1), the automatic stay of acts against property of the estate continues until the property is
7 no longer property of the estate.

8 Because it arises “automatically” upon the filing of a bankruptcy petition, the stay applies
9 regardless of whether a party has actual knowledge or even notice that the bankruptcy
10 proceeding was commenced. See generally 3 COLLIER ON BANKRUPTCY, ¶ 362.02 (Alan. N.
11 Resnick and Henry J. Sommer, eds., 16th ed. 2014).

12 The automatic stay remains in effect until and unless the debtor abandons property of the
13 estate or a creditor seeks a relief from stay. See Turbowind, Inc. v. Post St. Mgmt., Inc., 42 B.R.
14 579, 585 (S.D. Cal. 1984). Without abandonment or relief from the court, the automatic stay
15 continues until the earlier of the date the bankruptcy case is closed, the case is dismissed, or the
16 date the debtor is granted or denied a discharge. 11 U.S.C. § 362(c)(2)(A, B, and C).

17 In the instant case, the automatic stay was in effect as of October 17, 2014, when the
18 Debtors filed their Chapter 13 Petition. This Chapter 13 proceeding is not closed or dismissed,
19 and the Debtors have not received a discharge through completion of a confirmed plan.
20 Therefore, the automatic stay remains in effect.

21 **A. Smith was on notice of the bankruptcy proceeding and intentionally violated**
22 **the automatic stay.**

23 Under Section 362(k)(1), “an individual injured by any willful violation” of the automatic
24 stay “shall recover actual damages, including costs and attorney’s fees. A violation of the
25 automatic stay is deemed willful if the party violating is aware of the bankruptcy filing and takes
26 any deliberate actions violating the stay. See Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210,
27
28

1 1215 (9th Cir. 2002),⁹ Pinkstaff v. United States (In re Pinkstaff), 974 F.2d 113, 115 (9th Cir.
2 1992). “Knowledge of the bankruptcy filing is the legal equivalent of knowledge of the automatic
3 stay.” See Ozenne v. Brendon (In re Ozenne), 337 B.R. 214, 220 (B.A.P. 9th Cir. 2006).

4 No specific intent to violate the automatic stay is required, and thus, a good faith mistake
5 of law or a legitimate dispute as to legal rights is irrelevant and does not relieve a willful violator
6 of the consequences of his act. See Morris v. Peralta (In re Peralta), 317 B.R. 381, 389 (B.A.P.
7 9th Cir. 2004); Ramirez v. Fuselier (In re Ramirez), 183 B.R. 583, 589 (B.A.P. 9th Cir. 1995);
8 Johnston v. Parker (In re Johnston), 321 B.R. 262, 281 (Bankr. D. Ariz. 2005).

9 Here, Smith admittedly made several attempts to collect unpaid rent from the Debtors
10 during the period the automatic stay was in place. He also caused a Five-Day Notice to be posted
11 on the Dusty Canyon Property on December 16, 2014, without first obtaining a relief of stay.
12 More important, on January 5, 2015, Smith and the Constable entered the Dusty Canyon Property,
13 seized the Debtors’ dog, and changed the locks without first obtaining a relief of stay. All of
14 these actions violated the automatic stay.

15 Smith admittedly had notice of the Debtors’ bankruptcy filing well before the Five-Day
16 Notice was posted on December 16, 2014 and before the eviction took place on January 5, 2015.
17 Whether this knowledge was obtained through materials Smith claims was sent to the wrong
18 address or that he claims were illegible, or through conversations he had with Attorney Fox, is
19 immaterial: Smith had notice of the Debtors’ bankruptcy proceeding and did not seek relief from
20 the automatic stay before pursuing collection from the Debtors and possession of Dusty Canyon
21 Property. More important, Smith admits that he spoke with Attorney Fox on Wednesday,
22 December 31, 2014, and was warned that proceeding with an eviction would be a violation of the
23 automatic stay. There is no hint in the court’s record that Smith ever attempted to file a motion
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26 ⁹ Section 362(k) was designated Section 362(h) prior to the enactment of the Bankruptcy
27 Abuse and Prevention and Consumer Protection Act (“BAPCPA”) in 2005. The case law
28 interpreting Section 362(h) is equally applicable to Section 362(k) after the BAPCPA
amendments. See America’s Servicing Co. v. Schwartz-Tallard, 438 B.R. 313, 321 & n.3 (D.
Nev. 2010), citing In re Dawson, 390 F.3d 1139, 1146 (9th Cir. 2004).

1 seeking relief from the automatic stay on Friday, January 2, 2015, before he proceeded with the
2 eviction on Monday, January 5, 2015.

3 Despite being aware of a bankruptcy proceeding, Smith still proceeded with the eviction
4 process without first obtaining relief from the court. Though Smith claims that the parties,
5 including the Constable, failed to properly communicate, his attempt to collect unpaid rent and to
6 proceed with the eviction with knowledge that the Debtors were in bankruptcy violated the
7 automatic stay. Thus, Debtors have established a willful violation of the automatic stay within
8 the meaning of Section 362(k).

9 **B. Debtors are entitled to actual damages for their emotional distress award.**

10 An individual injured by a violation of the automatic stay may recover actual damages
11 caused by the violation. See Bertuccio v. Cal. State Contrs. License Bd. (In re Bertuccio), 414
12 B.R. 604, 621 (Bankr. N.D. Cal. 2008). The actual damages may include reasonable attorney's
13 fees, which is generally limited to those incurred up until the time the violation of the automatic
14 stay ceases. See Sternberg v. Johnston (In re Sternberg), 595 F.3d 937, 947 (9th Cir. 2010).
15 Allowable attorney's fees are those incurred correcting the violation, but not for bringing suit to
16 recover damages arising from the violation of the automatic stay. Id. at 947-48.

17 For purposes of this Motion, the court treats November 21, 2014, as the relevant date
18 Smith was put on notice of the bankruptcy filing. The court also treats December 16, 2014, as the
19 relevant date that Smith commenced the eviction process without obtaining relief from stay. The
20 court also treats January 5, 2015 as the relevant cessation date of the violation of automatic stay
21 because at approximately 2:30 p.m., Smith returned the new keys to the Constable's Office,
22 allowing the Debtors access to the Dusty Canyon Property shortly thereafter.

23 Here, Debtors are requesting actual damages, including attorney's fees incurred in
24 bringing the Motion. In Mrs. Bryant's declaration, she attests that she missed work as a result of
25 Smith's attempt to lock the Debtors out of the property on January 5, 2015. However, the
26 Debtors have provided no evidence that Mrs. Bryant lost any income as an escrow officer as a
27 result of the eviction, nor that Mr. Bryant suffered any loss of income as a cement truck driver.
28 Nor have the Debtors provided evidence of any out of pocket expenses incurred during the

1 limited duration they were displaced from the Dusty Canyon Property. Thus, there is no evidence
2 of any special damages that may be awarded.

3 There also is little basis to support the Debtors' request for attorney's fees. Debtors may
4 recover attorney's fees incurred for legal services to stop an automatic stay violation, but not for
5 any attorney's fees incurred seeking sanctions under Section 362(k). There is virtually no
6 evidence as to the legal fees and costs incurred by the Debtors from November 21, 2014 through
7 January 5, 2015. Both Attorney Fox and Smith acknowledge that they had a phone conversation
8 on either November 21, 2014 or November 24, 2014, but there is no evidence that Attorney Fox
9 was attempting to address an automatic stay violation at that time. After the Five-Day Notice was
10 posted on December 16, 2014, there is no evidence or even a suggestion that Attorney Fox
11 provided any legal services to remedy that violation. Both Attorney Fox and Smith refer to a
12 telephone conversation that occurred late on the night of December 31, 2014, i.e., New Year's
13 Eve, but there is no indication that Attorney Fox even billed the Debtors for that conversation or
14 the amount of time that it encompassed. Finally, there is little evidence that Attorney Fox
15 provided any legal services on January 5, 2015, other than being informed by his clients of the
16 lockout that day. Apparently, Attorney Fox started drafting the instant Motion on January 6,
17 2015, but by that time the Debtors already had been restored to possession of the Dusty Canyon
18 Property as well as their dog. In short, the record provides no basis on which to award attorney's
19 fees as part of any actual damages resulting from any stay violation.

20 In addition to special damages for lost wages, out-of-pocket expenses and attorney's fees,
21 actual damages for violation of the automatic stay may include general damages such as pain,
22 suffering, and emotional distress. See Schwartz-Tallard, 438 B.R. at 321. To award damages for
23 emotional distress resulting from a violation of the automatic stay, "the injured individual must
24 (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal
25 connection between that significant harm and the violation of the automatic stay (as distinct, for
26 instance, from the anxiety and pressures inherent in the bankruptcy process)." Id. "Emotional
27 harm may be proved by: (1) medical evidence; (2) non-experts, such as family members, friends,
28 or coworkers; or (3) 'even without corroborative evidence' where 'significant emotional distress

1 [is] readily apparent.’ The last category includes cases where the violator’s conduct is
2 ‘egregious’ or where the conduct is not egregious but the circumstances ‘make it obvious that a
3 reasonable person would suffer significant emotional harm.’ ‘Fleeting or trivial anxiety or
4 distress does not suffice. . . .’” Id. at 321-22.

5 The amount of emotional distress damages, if any, awarded for an automatic stay
6 violation is determined on a case-by-case basis. In Schwartz-Tallard, the bankruptcy court
7 awarded and the district court affirmed the amount of \$40,000 in emotional distress damages to a
8 debtor who suffered severe panic attacks, lost sleep, missed work, and was medically treated and
9 prescribed anxiety and sleep medication as result of the creditor’s violation of the automatic stay.
10 438 B.R. at 316, 321-23. The debtor’s testimony was corroborated by the testimony of her
11 physician and her family members. Id. at 315-16.

12 In Pages Ventures, LLC v. Ventura-Linenko (In re Ventura-Linenko), 2011 WL 1304464
13 (D. Nev. Apr. 1, 2011), the amount of \$3,500 in emotional distress damages was awarded to the
14 debtor whose physician testified that the debtor was treated for serious medical conditions, and
15 had suffered acute stress, manifested in sleep difficulties and lack of energy after the creditor
16 violated the automatic stay. Id. at *9-10.

17 More recently, in In re Kristin Michelle Trueman, Case No. 14-15648-MKN, the amount
18 of \$25,000 in emotional distress damages were awarded where an individual debtor, her children,
19 and her extended family were wrongfully evicted by their landlord who did not obtain relief from
20 stay, and who were kept out of their home for a period of 24 days against the advice of the
21 landlord’s bankruptcy counsel. See Memorandum Decision on Emergency Motion to Set Aside
22 Order under FRCP 60(b)(3) and for Order Directing Randy Le to Appear and Show Just Cause
23 Why They Should Not Be Held in Contempt of Court, entered February 12, 2015, as Docket No.
24 57 (“Trueman Decision”). The debtor’s testimony was corroborated by testimony of her fiancé
25 and her future mother-in-law who also were evicted from the residence. Id. at 17-18.

26 As summarized above, Mrs. Bryant attests that she experienced emotional distress as a
27 result of Smith’s effort to evict the Debtors from the Dusty Canyon Property. While she refers to
28 an early-morning incident that occurred the week before the eviction, Mrs. Bryant did not observe

1 who might have been walking outside of her home and Smith denies ever having done so. That
2 incident, if any, cannot be attributed to Smith. Mrs. Bryant also recounts, however, her emotional
3 reaction at work to Mr. Bryant's phone call on January 5, 2015, the anxiety of having to call her
4 parents for possible housing, the uncomfortable discovery that someone had gone through her
5 home, the sleepless night, and the fear for her dog's safety until it was retrieved the following
6 day. While there is no medical evidence or testimony from family members or coworkers to
7 corroborate Mrs. Bryant's testimony,¹⁰ the court concludes that a reasonable person would suffer
8 significant emotional harm under the circumstances. In this instance, the emotional distress
9 suffered is mitigated due to the limited duration in which the Debtors were displaced from the
10 residence as well as their ability to retrieve the family dog without apparent incident the following
11 day.

12 Under these circumstances, the court concludes that an award of \$1,500.00 is appropriate
13 as actual damages for the emotional distress suffered by the Debtors.

14 **C. Smith's conduct does not support an award of punitive damages.**

15 Under Section 362(k)(1), *in appropriate circumstances*, an individual injured by a
16 violation of the automatic stay also may recover punitive damages. Generally, it is permissible
17 for an award of punitive damages to far exceed the amount of actual damages awarded. *See, e.g.,*
18 *State of Arizona v. ASARCO LLC*, 773 F.3d 1050 (9th Cir. 2014)(affirming award of \$300,000
19 in punitive damages with \$1 in nominal damages); *Mathias v. Accor Economy Lodging, Inc.*, 347
20 F.3d 672 (7th Cir. 2003)(affirming award of \$186,000 in punitive damages with \$5,000 in
21 compensatory damages). The ultimate objective of punitive damages is to deter and punish
22 reprehensible conduct, and thus, courts require "some showing of reckless or callous disregard for
23 the law or rights of others." *See Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 228 (9th Cir.
24 1989). The recovery of punitive damages for violation of automatic stay is appropriate where the
25 violator has engaged in egregious, intentional misconduct. *See McHenry v. Key Bank (In re*

26
27 ¹⁰ Attorney Fox attests that he communicated with his clients on January 5, 2015, who
28 were worried about what happened to their dog, but counsel does not identify who he actually
spoke to about the dog and he did not personally observe the Debtors' distress.

1 McHenry), 179 B.R. 165, 168 (B.A.P. 9th Cir. 1995).

2 In Schwartz-Tallard, the bankruptcy court awarded \$20,000 in punitive damages when the
3 creditor initially obtained relief from stay by misrepresenting that the debtor was in default on
4 mortgage payments, and then proceeded to foreclose after the automatic stay was reinstated. 438
5 B.R. at 320.

6 In Ventura-Linenko, the bankruptcy court awarded \$3,500 in punitive damages when the
7 creditor continuously pursued eviction of the debtors from their residence despite receiving notice
8 of the debtor's bankruptcy. 2011 WL 1304464 at *10-11.

9 In Trueman, this court awarded \$15,000 in punitive damages where the landlord's
10 bankruptcy counsel specifically advised the landlord that an eviction would violate the automatic
11 stay, but the landlord still evicted the debtor and her extended family, and did not restore
12 possession of the family residence for 24 days. See Trueman Decision at 22-26.

13 In all three cases, the creditor violated the automatic stay with reckless and callous
14 disregard for the law or the rights of the debtors.

15 Here, the evidence and representations indicate that although Smith willfully violated the
16 automatic stay by temporarily evicting the Debtors from their home, his actions do not rise to the
17 level of "reckless or callous disregard for law or rights of the others." The record indicates that
18 Smith did not proceed with the eviction on January 5, 2015, until he was called by the Constable
19 and was instructed to appear at noon at the Dusty Canyon Property. The lockout was completed
20 by 1:00 p.m. pursuant to the instructions from the Constable. Smith represents, without dispute,
21 that within minutes of being informed by the Constable that the eviction had been completed by
22 mistake, he provided the new keys to the Constable's Office to allow the Debtors access back to
23 their residence. Mrs. Bryant attests, without dispute, that the Debtors were restored to the
24 premises two hours after they first called the Henderson court. While it is clear that a violation of
25 the automatic stay occurred, Smith immediately took steps to restore possession once the
26 Constable reported the mistake, and therefore his actions do not rise to the level of "reckless or
27 callous behavior" requiring punishment. Thus, the court concludes that an award of punitive
28 damages would not be appropriate.

