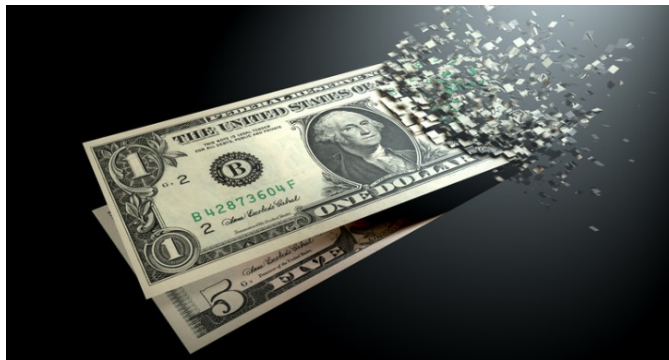


Harley-Davidson Dealer Violates Automatic Stay, Goes from Creditor to Judgment Debtor

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If you lend money, you know – or should know – it is a cardinal sin to collect a debt or repossess collateral after a borrower files bankruptcy.

Bankruptcy triggers the automatic stay – a command, not a suggestion, that collection activity ceases. This is common knowledge, but every once in a while a case comes along that merits sharing as a reminder of what happens when lenders ignore the Bankruptcy Code.

In May 2018, Jenny Lynn Edwards bought a 2003 Harley-Davidson from B&E Transport for \$10,000. She put \$2,500 down and financed the balance. The motorcycle was her only source of transportation. On Halloween 2018, she filed a Chapter 13 bankruptcy petition. When she filed, she was current on her payments to B&E. She listed B&E as a creditor in her schedules, and her plan proposed to pay B&E in full with interest.

No lender likes to see their borrower file bankruptcy, but this should have appeared like a reasonable way for B&E to get repaid. Fast forward one year, and B&E now owes Ms. Edwards almost \$40,000. How did B&E go from a secured creditor with a current loan and a path to repayment to a judgment debtor? By engaging in a spectacular array of stay violations and disregard for the Code and the Court. Let us count the ways:

- B&E repossessed the motorcycle on November 2, 2018 – two days *after* the bankruptcy filing, and even though Ms. Edwards was current on her payments. B&E then accelerated the note and demanded full payment.
- B&E never sought relief from the automatic stay.
- Counsel for Ms. Edwards and Ms. Edwards' husband communicated with B&E, told B&E about the bankruptcy and the stay violation, and demanded B&E return the motorcycle. B&E refused, doubling down on their improper behavior and, as the Court stated, making "a bad situation worse."
- Edwards then sued B&E for damages for the automatic stay violation. B&E ignored the lawsuit and kept the motorcycle, apparently deciding they would ignore the Bankruptcy Code and the Bankruptcy Court.

Section 362 of the Bankruptcy Code allows a debtor to recover actual damages incurred because of a "willful" violation of the automatic stay, including costs, attorneys' fees, and, in appropriate circumstances, punitive damages. A good-faith mistake is not a valid defense. It is enough to establish the "willfulness" element of a violation if the Court finds that the creditor has committed an intentional act with knowledge of the automatic stay. Here, there was no good faith. B&E showed disdain for the Code, telling Edwards they intended to

violate the automatic stay.

The Court found that B&E deliberately repossessed and kept the motorcycle, even though it had actual notice - from multiple sources - of the bankruptcy. The kicker was that Edwards was current on her loan, meaning on the petition date, B&E had no reason to repossess the motorcycle. The only possible basis for a loan default was the bankruptcy filing, but repossession because of a filing is precisely what the Code prohibits.

After considering testimony and evidence from Ms. Edwards, her husband, and her attorney, the Court entered a judgment against B&E for actual damages of \$10,000. The Court based this amount on the value of the loss of use and enjoyment of the motorcycle, insurance, registration renewal, and lost time from work due to lack of transportation. The Court also awarded attorneys' fees of \$3,125.65. Finally, because B&E was dismissive of the Court's authority and refused to correct its violations after multiple opportunities to do so, the Court awarded punitive damages of \$25,000.

For lenders, the lesson should be clear. Don't thumb your nose at the automatic stay or the bankruptcy courts. If you want to repossess collateral after a bankruptcy filing, consult with an attorney about requesting stay relief. And if you are accused of violating the automatic stay by repossessing property, try to mitigate any damages by immediately returning it to the debtor.

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