UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: NANCY J. MARTIN **CASE NO. 08-50871-KMS**

DEBTOR **CHAPTER 13**

MEMORANDUM OPINION AND ORDER
GRANTING MOTION FOR CONTEMPT

A hearing was held in this matter on Thursday, June 9, 2011, (the "Hearing") on the Motion for Citation for Contempt for Violation of Automatic Stay and Confirmation Order and for Turnover of Funds (the "Motion") (Dkt. No. 54) filed by the Debtor, Nancy J. Martin ("Martin"), and the Response filed by Creditor Celestine Stanton ("Stanton") (Dkt. No. 57). At the Hearing, Martin was represented by Rickey Hemba and Stanton was represented by Robert Wolford; both parties presented arguments before the Court. Martin and Alice Feliciano ("Feliciano") were called as witnesses for the Debtor; Stanton and Ross Crawford ("Crawford") testified on behalf of the respondent.[1]

The request for turnover of funds should have been presented in the form of an adversary complaint rather than by motion. See Fed. R. Bankr. P. 7001(1). Therefore, to the extent the Motion is a motion for turnover of funds, it was denied by an order of this Court dated June 9, 2011. (Dkt. No. 60).

[1]Crawford testified that during the pertinent time period he worked for the Mississippi Department of Human Services ("DHS") as a regional director of child support enforcement in North Mississippi. In short, he held a job that was identical to Stanton's former position except for the geographical focus. See infra p.3. He said that he is a friend of Stanton and he knows Martin. Crawford stated that he believed Stanton was a very good regional director for the child support enforcement division of DHS. However, he admitted that he had not observed, for any appreciable length of time, Stanton as she managed subordinates. He stated that he was not aware of any conflict between Martin and Stanton. He also stated that the accusation that Stanton threatened Martin seems out of character for Stanton.

To the extent the Motion was a motion for contempt, it was taken under advisement. At her request, Stanton was given until Thursday, June 23, 2011, to file a brief on any issues she felt were pertinent to the proper adjudication of the Motion, and Martin was given the opportunity to respond. Neither party filed a brief.

In sum, Martin asserts that Stanton willfully violated both the stay imposed by 11 U.S.C. § 362 and this Court's order confirming Martin's Chapter 13 plan. Specifically, Martin alleges that Stanton, her supervisor once-removed, forced her to continue making payments on an outstanding debt that was not scheduled to be paid under the terms of her confirmed Chapter 13 plan by threatening to terminate Martin's employment. After considering the pleadings, the testimony of the four witnesses, the arguments of counsel, the Hearing exhibits and the relevant legal authorities, and for the reasons discussed below, the Court finds that Martin's Motion for Contempt should be **GRANTED**.

I. JURISDICTION

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A). Since the automatic stay established by 11 U.S.C. § 362(a) is created by and unique to Title 11 of the United States Code, civil contempt proceedings designed to enforce the stay are core proceedings. See Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987) ("a proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case"); Mountain America Credit Union v. Skinner (In re Skinner), 917 F.2d 444, 448 (10th Cir. 1990) ("Civil contempt proceedings arising out of core matters are themselves core matters."). For

similar reasons, courts have found that the interpretation and enforcement of confirmation orders in Chapter 13 cases are core proceedings. See Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez), 396 B.R. 436, 451-452 (Bankr. S.D. Tex. 2008); Williams v. Citifinancial Mortgage Co., 256 B.R. 885, 892 (B.A.P. 8th Cir. 2001). Moreover, there are numerous cases that establish the general proposition that "[a] bankruptcy court always retains jurisdiction to review and interpret its own orders." Rodriguez v. EMC Mortgage Corp. (In re Rodriquez), 252 F.3d 435, 2001 WL 360713, at *2 (5th Cir. 2001) (quoting In re Terracor, 86 B.R. 671, 677 (D. Utah 1988)); In re Cano, 410 B.R. 506, 546 (Bankr. S.D. Tex 2009) (quoting Travelers Indem. Co. v. Bailey, -- U.S. --, 129 S.Ct. 2195, 2205 (2009)). Finally, as is noted below, 11 U.S.C. § 362(k) is implicated in the instant matter and proceedings under Section 362(k) are core proceedings. See Rushing v. Green Tree Servicing, LLC (In re Rushing), 443 B.R. 85, 96 (Bankr. E.D. Tex. 2010).

II. BACKGROUND

Martin is a child support enforcement officer at the Jackson County office of the Mississippi Department of Human Services ("DHS") in Pascagoula, Mississippi. Martin also has a second job cleaning office buildings.

Until her retirement in May of 2011, Stanton served as regional director of child support services and, like Martin, she also worked at the Pascagoula DHS office. According to Stanton, Martin reported to an intermediate supervisor who, in turn, reported to Stanton.

In 2007, Stanton and her husband built a home for Martin at 4125 Earl Boulevard, Moss Point, Mississippi. According to Martin, after she secured a mortgage to pay off the construction costs for the Moss Point home, she still owed Stanton over $30,000. Thus, beginning in October

of 2007, Martin testified that she paid Stanton $292.46 every two weeks in repayment of the debt.

On April 4, 2008, Martin filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. See In re Martin, No. 08-50618-ERG (Bankr. S.D. Miss. filed April 4, 2008) (hereinafter cited as "First Bankr."). Stanton was listed on the matrix of creditors and on the schedules as an unsecured creditor holding a claim for $32,000. (First Bankr. Dkt. Nos. 2 and 4). Martin's plan treated Stanton as an unsecured creditor and proposed to pay Stanton $0. (First Bankr. Dkt. No. 6). On April 13, 2008, Stanton was sent a notice of Martin's bankruptcy which contained the date for the meeting of creditors, advised that creditors were generally prohibited from taking any actions to collect money or obtain property from Martin and set August 7, 2008, as the deadline for filing proofs of claim. (First Bankr. Dkt. No. 12). On May 2, 2008, Stanton filed a proof of claim asserting that Martin owed her $30,044, and that the debt was secured by a mortgage on Martin's residence.[2] The April 4, 2008, bankruptcy was dismissed at the request of the debtor on May 14, 2008. (First Bankr. Dkt. No. 24).

The instant bankruptcy case was filed on May 20, 2008. (Dkt. No. 1). Once again, Stanton was listed on the matrix of creditors and on the schedules as an unsecured creditor holding a claim for $32,000. (Dkt. Nos. 2 and 5). Martin again filed a plan that treated Stanton as an unsecured creditor and proposed to pay Stanton $0. (Dkt. No. 7). On June 1, 2008, Stanton was mailed notice of Martin's present bankruptcy, containing, among other things, a September 25, 2008, deadline for filing proofs of claim. (Dkt. No. 11). On July 2, 2008, Stanton filed a new

[2]Stanton attached a document entitled "Mortgage Deed" to her proof of claim. The document is signed by Martin and her ex-husband. There is no indication on the face of the document that it was recorded in the land records.

proof of claim again asserting that Martin owed her $30,044, and that this debt was secured by a mortgage on Martin's residence. The "Mortgage Deed" was attached as an exhibit.

On July 15, 2008, Martin filed an objection to Stanton's proof of claim, stating, in pertinent part, that:

> The Debtor would show that Celestine Stanton's secured proof of claim in the amount of $30,044.10 filed on July 2, 2008 is not a valid secured claim. Debtor would further show that Celestine Stanton's claim is an unsecured claim and should be treated accordingly. [The] Debtors [sic] request that the Court disallow said proof of claim and that it be paid as a non-priority unsecured debt in the amount of $30,044.10.
>
> Debtor requests that the Court sustain its Objection and disallow the secured proof of claim of Celestine Stanton in the amount of $30,144.10 filed on July 2, 2008 and that it be paid as a non-priority unsecured debt in the amount of $30,144.10 which includes interest and upon payment of same eliminate **any** lien.

(Dkt. No. 17). On the same day she filed her objection to Stanton's proof of claim, Martin mailed Stanton a copy of the objection and a notice that stated:

> YOU ARE HEREBY NOTIFIED that a written response to the attached Objection to Proof of Claim, etc., must be filed with: Clerk, U.S. Bankruptcy Court Dan M. Russell, Jr. U.S. Courthouse 2012 15th Street, Suite 244 Gulfport, MS 39501 with a copy served on the undersigned Debtor(s) Attorney and the Chapter 13 Trustee, on or before thirty (30) days from the date of this notice, or the Court will enter a Confirmation Order, which shall set the value of each affected secured creditor's lien, and which shall sustain this Objection to Proof of Claim, etc., granting the relief requested therein. In the event a written response is filed, the Court will notify you of the date, time, and place of the hearing thereon.

(Dkt. No. 18). Stanton did not file a response to Martin's objection to her claim. Thus, on August 19, 2008, the Court entered an order granting the objection to Stanton's proof of claim. (Dkt. No. 19). On August 26, 2008, the Court entered an order confirming Martin's Chapter 13 plan as

originally proposed, i.e., in a form that classified Stanton's claim as an unsecured claim to be paid $0. (Dkt. No. 22).

On May 12, 2011, Martin filed the instant Motion for Contempt. Stanton filed a response on June 2, 2011; and the Hearing was held on June 9, 2011.

At the Hearing, Martin testified that when she filed bankruptcy she told Stanton that she would have to be paid through the Chapter 13 bankruptcy process. According to Martin, Stanton told Martin that she still needed her money despite the bankruptcy filing. Martin testified that Stanton suggested that Martin retire so that Martin could pay Stanton out of her retirement funds. Martin refused to retire and told Stanton that she could get Stanton fired for threatening her. In response, Stanton allegedly stated that she could ensure Martin would be fired if Martin didn't pay her.

Without objection, Martin submitted several exhibits (A-D) into the record. Collectively, the exhibits illustrate that Martin paid Stanton $16,126.00 in 65 installments from August 29, 2008, to April 12, 2011. The first four installment payments alternated between $292.00 and $146.00. Beginning on October 15, 2008, Martin made payments of $250.00 to Stanton every two weeks. Martin stated that Stanton agreed to lower the bi-monthly payment from $292.00 to $250.00 after Martin made multiple requests for a reduction because she was in the process of getting a divorce and was generally having financial difficulties. According to Martin, both before and after the bankruptcy was filed, Stanton provided her with a deposit slip for each payment and Martin would use the deposit slip to deposit a check in the amount of the payment due into Stanton's bank account. Martin stated that she did not tell her bankruptcy attorney that she was making post-petition payments to Stanton until after Stanton retired because she was

afraid that Stanton would follow through with her threat and ensure that Martin would be fired if Martin did not continue to pay her.

Martin's counsel noted that the Stanton payments were not included in the expenses identified on Martin's Chapter 13 Schedules, and inquired what Martin had sacrificed to afford the payments to Stanton. Martin replied that sometimes she did not buy her medications, she occasionally purchased fewer groceries and that her next door neighbor, Feliciano, occasionally provided her with some funds to help cover her expenses. Feliciano testified that she had occasionally provided funds to Martin to help her with expenses.

Martin testified that Stanton retired in May of 2011. According to Martin, upon her retirement, Stanton allegedly informed Martin that she expected Martin's payments to continue. Given the hardship the payments imposed on her and the fact that Stanton was no longer her superior at work, Martin informed her bankruptcy attorney of the situation regarding the payments to Stanton. The instant Motion was filed shortly thereafter on May 12, 2011.

Stanton testified that she never harassed or coerced Martin into repaying the debt. According to Stanton, Martin has been continuously paying on the construction debt since 2007. Stanton stated that after she became aware of Martin's bankruptcy, she told Martin that Martin could wait until the end of the bankruptcy before continuing to pay her. However, according to Stanton, Martin insisted she could continue to pay Stanton during the bankruptcy process given the extra money she was making cleaning office buildings.[3] Stanton recalled that Martin asked

[3]Stanton testified that at some point after she became aware of Martin's bankruptcy, she talked with a DHS attorney about the case and was advised that she would not get paid through the bankruptcy. However, Stanton also stated that she asked Martin about the bankruptcy and claimed that Martin explained that she had consulted another DHS attorney who had advised her that it was permissible for her to pay Stanton directly, outside of the bankruptcy.

for permission to pay Stanton $250.00 twice a month instead of $291.00 twice a month. Stanton stated that she agreed to the reduced payment because she understood that Martin was experiencing financial difficulties and that Martin was getting a divorce. Stanton stated that she told Martin that if she wanted to pay each month Martin could deposit funds directly into Stanton's account. Stanton stated that she never called Martin to see if payments were made, and that she never knew whether money was going to be deposited each month until she went to the bank.

Stanton testified that she learned of Martin's first bankruptcy case in April or May of 2008, and that she became aware of the second bankruptcy case in June or July of 2008 when she received notice of Martin's objection to her proof of claim. Stanton acknowledged that she received notice that the Court had deemed her claim unsecured, but she believed her receipt of payments from Martin was appropriate based on Martin's alleged assurances that it was permissible for Martin to pay Stanton outside of the bankruptcy.

Stanton testified that she did not have any authority over Martin, direct or otherwise, but did acknowledge that Martin's direct supervisor reported to her. Stanton asserted that as regional director she could not harass or approach Martin to demand payment of Martin's debt to her and her husband.

III. DISCUSSION

A. Standards Governing Section 362(k), Civil Contempt and Section 105(a).

Martin argues that Stanton's actions violated the automatic stay imposed by 11 U.S.C. § 362. The Court notes that 11 U.S.C. § 362(k) provides:

> [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[4], may recover punitive damages.

11 U.S.C. § 362(k)(1). A willful violation

> does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

Brown v. Chesnut (In re Chesnut), 422 F.3d 298, 302 (5th Cir. 2005); see also Henkel v. Lickman (In re Lickman), 297 B.R. 162, 191 (Bankr. M.D. Fla. 2003) ("willfulness is established by the intentional commission of the violative act, regardless of whether the violator specifically intended to violate the stay") (internal quotations and citation omitted).

The Fifth Circuit has established three elements for a claim under Section 362(k): (1) the offending party must have known of the existence of the stay,[5] (2) the offending party's acts must have been intentional, and (3) the offending party's acts must have violated the stay imposed by Section 362(a). See Young v. Repine (In re Repine), 536 F.3d 512, 519 (5th Cir. 2008). Once these elements are established, an award of actual damages, costs and attorney's fees is mandatory. See Clayton v. Old Kent Mortgage Co. (In re Clayton), Adversary No. 09-

[4]The Fifth Circuit has held that under 11 U.S.C. § 362(k) "appropriate circumstances" exists that merit punitive damages when the Court finds "egregious, intentional misconduct on the violator's part." Young v. Repine (In re Repine), 536 F.3d 512, 521 (5th Cir. 2008) (internal quotations and citation omitted).

[5]"Knowledge of the bankruptcy petition has been held to be the legal equivalent of knowledge of the automatic stay." In re Lickman, 297 B.R. at 190 (citing In re Lile, 103 B.R. 830, 837 (Bankr. S.D. Tex. 1989)); see also In re Repine, 536 F.3d at 519 (implicitly recognizing the validity of the above stated principle); In re Chesnut, 422 F.3d at 302 (same). A party with notice of a bankruptcy has a duty to seek further information which should reveal the applicability and scope of the automatic stay. In re Lile, 103 B.R. at 837.

03024, 2010 WL 4482810, at *2 (Bankr. S.D. Tex. Oct. 29, 2010). The debtor has the burden to prove actual damages. See id.; Taylor v. Freeman's Furniture, Inc. (In re Taylor), Adversary No. 08-3115, 2009 WL 981916, at *5 (Bankr. E.D. Tenn. April 9, 2009) (satisfaction of the Section 362(k) elements creates strict liability and there is nothing left to prove except damages).

In addition to utilizing Section 362(k), a court may address violations of the automatic stay by exercising civil contempt powers under 11 U.S.C. § 105(a). See Sanchez v. Ameriquest Mortgage Co. (In re Sanchez), 372 B.R. 289, 311 (Bankr. S.D. Tex. 2007); In re Reyes, No. 10-52366, 2011 WL 1522337, at *8 (Bankr. W.D. Tex. April 20, 2011); Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1189-1190 (9th Cir. 2003); Standard Industries, Inc. v. Aquila, Inc. (In re C.W. Mining Co.), 625 F.3d 1240, 1246 (10th Cir. 2010); In re Crum, 55 B.R. 455, 458-59 (Bankr. M.D. Fla. 1985); 3 Collier on Bankruptcy ¶ 362.12[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011). Section 362(k) "supplements but does not replace" civil contempt as a remedy for stay violations. In re Lile, 103 B.R. at 837 n.4.

Finally, without specifically exercising civil contempt powers, this Court has general authority under 11 U.S.C. § 105(a) "to fashion such orders as are necessary to further the substantive provisions of the Bankruptcy Code." Perkins Coie v. Sadkin (In re Sadkin), 36 F.3d 473, 478 (5th Cir. 1994).

B. Standards for Determining Witness Credibility.

The testimony provided by the two primary witnesses at the Hearing, Martin and Stanton, was contradictory on several points, and each of these points has some connection to the central, critical question in this matter: whether, after this bankruptcy case was filed, Stanton took any action to coerce Martin to continue paying the prepetition construction debt Martin owed to

Stanton or whether, instead, Martin voluntarily[6] paid Stanton outside of the bankruptcy process. The discrepancies in the testimony necessitate findings regarding witness credibility. See Anderson v. Houston (In re Houston), Adv. No. 08-00014, 2008 WL 5971043, at *16 (Bankr. D. Mont. Nov. 18, 2008); Mark v. Kubiesa (In re Richardson), No. 98-C-2362, 2004 WL 2583958, at *3 (N.D. Ill. Nov. 10, 2004); Hanrahan v. Wilson (In re Wilson), Adv. No. 04-9016, 2004 WL 2671678, at *1 (N.D. Iowa Nov. 12, 2004) ("Where two permissible views of the evidence exists, it is the responsibility of the Court to weigh the evidence presented including the credibility of the witnesses and make a choice between them.").

When determining the credibility of a witness, the Court may consider the variations in "demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said." Anderson v. Bessemer City, 470 U.S. 564, 575, 105 S.Ct. 1504,1512 (1985); accord In re Wilson, 2004 WL 2671678, at *1 ("The Court can assess credibility based upon the content of the testimony as well as the Court's own experience with the way people act."). The Court may also take into account whether documents or other objective evidence submitted at the hearing or trial support or contradict the testimony given. Id.; see also Luhr Bros. Inc. v. Shepp (In re Luhr Bros. Inc.), 157 F.3d 333, 339 (5th Cir. 1998) (citing Anderson, 470 U.S. at 575, 105 S.Ct. at 1512). Additionally, the Court may consider whether a witness's version of the pertinent

[6]Without citation to any authority, Stanton asserts it was permissible to accept voluntary payments from Martin outside of the bankruptcy process. As explained in the body of this opinion, the Court finds that Martin's post-petition payments to Stanton were not voluntary. Accordingly, the proposed voluntary payment defense does not need to be further addressed at this time. However, the Court notes that there is case law that calls into question whether the voluntary payment defense is valid in the context of a Chapter 13 case where, under 11 U.S.C. § 1306, all property that a debtor acquires after commencement of a Chapter 13 case and all earnings from services performed by the debtor after commencement of the case are property of the estate. See In re Stamper, No. 03-49235NLW, 2008 WL 724237, at *3 (Bankr. D.N.J. March 17, 2008).

events is plausible on its face and/or whether the witness's testimony is internally inconsistent. Anderson, 470 U.S. at 574, 105 S.Ct. at 1512; Luhr Bros. Inc., 157 F.3d at 339.

C. Analysis of Witness Credibility.

Applying the foregoing principles to the present case, the Court finds that Martin was a credible witness. She testified that she felt compelled to continue making payments to Stanton because Stanton had threatened to have her fired if she didn't. Her testimony established that her post-petition payments to Stanton caused personal hardship. After making thousands of dollars in payments outside of the bankruptcy and the Chapter 13 plan to Stanton over the course of more than two years, Martin reported Stanton's alleged coercion to her bankruptcy attorney and stopped making payments to Stanton almost immediately after Stanton retired. The timing of Martin's disclosure and the cessation of her payments strongly indicate that Stanton's former position of authority over Martin had an undue influence on Martin's post-petition payments to Stanton.

Based on several observations, the Court believes Stanton's testimony was not credible. First and foremost, Stanton's version of the pertinent events is simply implausible on its face. It is illogical to think that Martin, free of all undue influence, insisted on paying Stanton after filing bankruptcy. Stanton does not suggest any particular motive for this allegedly purely voluntary, continuation of payments; for instance neither Stanton nor Martin ever stated that the two have or had a friendly, personal relationship. Moreover, Stanton did not attempt to explain why Martin would give her special treatment in comparison to the sixteen other unsecured creditors who have not received and will not receive any payment under the confirmed Chapter 13 plan in this

case. The primary difference between Stanton and the other unsecured creditors in this case is Stanton's former position of authority in the organization where Martin works.

The Court also notes that Stanton's account was often confusing, internally inconsistent and at odds with the record. For instance, Stanton boldly testified that she did not have any authority over Martin, direct or otherwise. She asserted that as regional director she could not harass or approach Martin to demand payment of Martin's debt to her and her husband. Yet, Stanton stated that Martin's direct supervisor answered directly to her. In light of the close proximity between Stanton and Martin within the DHS staff hierarchy and given the fact that Martin and Stanton were both working out of the same physical office, Stanton's assertion that she had no direct or indirect authority over Martin during the relevant time frame and that there was no way she could possibly coerce Martin into repaying the construction debt is not credible.

Additionally, Martin and Stanton's testimony regarding their agreement concerning the reduction in the amount of Martin's post-petition payments to Stanton is at odds with Stanton's testimony that Martin's payments were purely voluntary. Both parties acknowledge, and the Hearing exhibits illustrate, that after Martin filed the instant bankruptcy, Martin's payments to Stanton initially continued at their pre-bankruptcy rate, but a few months later Martin's bi-monthly payments were reduced from $292.00 to $250.00. See Hearing Exs. A-D. According to Stanton, this reduction occurred after Martin approached her and asked for permission to pay her $250.00 twice a month instead of $292.00 twice a month. Stanton testified that she agreed to this reduction because she understood that Martin was experiencing financial difficulties and that Martin was getting a divorce. Martin recalls that events unfolded slightly differently, stating that the reduced payments were the result of her multiple pleas to Stanton for relief. Even accepting

Stanton's version of these events, her testimony that Martin sought her permission to pay at a specific, lower rate, twice a month, conflicts with Stanton's argument that Martin's payments were completely voluntary and free from all coercion. Why would Martin need to seek Stanton's permission to reduce the payment amount if Martin felt free not to pay Stanton at all? Furthermore, Martin's consistent maintenance of the bi-monthly payments to Stanton, even when such payments caused her to go without food and medicine and/or compelled her to seek monetary assistance from her neighbor, strongly indicates that Martin was compelled to pay Stanton by more than simply an internal sense of honor and/or duty.[7]

Stanton testified that, based on Martin's assurances, she believed it was totally appropriate for her to continue to accept payments from Martin during the bankruptcy. However, Stanton also testified that after negotiating a new payment rate with Martin, as described above, she told Martin that she could have no further contact with Martin regarding the payments Martin made to her during the bankruptcy. The Court questions why Stanton would make such a statement to Martin if she truly believed Martin's payments to her were completely appropriate.

At one point during direct examination, Stanton stated that she did not file a proof of claim in the present bankruptcy case, and she offered a lengthy explanation as to why she did not file this document. In sum, Stanton stated that she did not file a proof of claim because Martin told her it was unnecessary. However, Stanton later acknowledged that she had filed a proof of

[7]In Taylor v. Freeman's Furniture, Inc. (In re Taylor), Adversary Case No. 08-3115, 2009 WL 981916, at *6 (Bankr. E.D. Tenn. April 9, 2009), the court found the plaintiff's testimony that he believed he would be fired from his job if he did not make payments on his pre-petition account balance lost credibility when the sporadic timing and payment amounts were considered. In this case, the opposite is true. The perceived credibility of the movant's claim, which is similar to the *In re Taylor* plaintiff's claim, is enhanced when the consistent timing and payment amounts are considered.

claim in this case and confirmed that she knew that her proof of claim was deemed unsecured by the Court. Moreover, Stanton stated that upon learning of the Court's decision in this regard, she talked with a DHS attorney who allegedly informed her that the Court's finding that her claim was unsecured meant that Stanton would not receive any payment on the debt. On cross-examination, when Martin's counsel asked Stanton why she continued to accept payments, Stanton became defensive and stated that she "didn't know about the money," that she didn't understand bankruptcy and that she had accepted Martin's payments based on Martin's assurances that the payments were permissible.

D. Findings of Fact.

In accord with the credibility analysis above, this Court finds that Stanton had notice of Martin's bankruptcy case and the Court's order declaring her claim to be unsecured. Furthermore, with full knowledge that Martin had filed the instant bankruptcy case, Stanton coerced Martin into continuing to pay bi-monthly installments on the pre-bankruptcy construction debt by threatening to have Martin fired if Martin did not continue the payments.[8] As a result of Stanton's coercion, Martin made $16,126.00 in payments to Stanton post-petition.

E. Conclusions of Law.

Based on the above facts, the Court finds that the evidence clearly establishes that Stanton violated the automatic stay imposed by 11 U.S.C. § 362(a). Property of the Chapter 13 estate includes, among other things, post-petition earnings of the debtor. 11 U.S.C. § 1306(a). "Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in

[8]"[I]f a payment is made as a result of pressure or coercion, it is not made voluntarily in the sense of section 524(f)," which is the provision which addresses voluntary payments. 4 Collier on Bankruptcy ¶ 524.06 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011).

possession of all property of the estate." 11 U.S.C. 1306(b). Martin's confirmed Chapter 13 plan provided that Stanton would not receive any post-petition payments on her claim. Despite the provisions of the plan, Stanton successfully obtained a share of Martin's post-petition earnings for more than two years by threatening Martin's employment. Stanton's actions violated 11 U.S.C. § 362(a)(3), i.e, they constituted impermissible acts "to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Stanton's actions also violated 11 U.S.C. § 362(a)(6), since they constituted impermissible actions "to collect, assess, or recover a claim against the debtor that arose before the commencement of" this bankruptcy case.

Therefore, in accord with 11 U.S.C. § 362(k), supplemented by this Court's general, equitable authority under 11 U.S.C. § 105(a) and this Court's civil contempt powers, the Court finds that Martin is entitled to recover from Stanton her actual damages in the amount of $16,126.00, and the costs and attorneys' fees incurred in bringing the instant Motion.

IV. CONCLUSION

To the extent that Martin's Motion (Dkt. No. 54) is a motion for contempt for violation of the automatic stay, the Motion is **GRANTED**.[9] Martin should submit to the Court an itemization of costs and attorneys' fees incurred in bringing the instant Motion within fourteen (14) days from the entry of this opinion and order so that a final order may be entered by the Court.

SO ORDERED.

Katharine M. Samson
United States Bankruptcy Judge
Dated: September 30, 2011

[9]The Court herein finds that Stanton has violated the automatic stay and is awarding appropriate relief. Accordingly, Martin's argument that Stanton's actions also specifically constitute contempt of the Court's Confirmation Order is duplicative and, therefore, **MOOT**.