

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

In re	§	
	§	
CAROL DIANE BURKE and	§	Case No. 07-40535
CALVERT RICHARD HOWARD, SR.,	§	(Chapter 13)
	§	
Debtors.	§	

**ORDER RETAINING JURISDICTION OVER  
DEBTORS' MOTION FOR SANCTIONS  
AGAINST 24 HOUR AUTO REPAIR AND LARRY DUNCAN**

The debtors, Carol Diane Burke and Calvert Richard Howard, initiated this bankruptcy case by filing a petition for relief under chapter 13 of title 11 of the United States Code (the "Bankruptcy Code") on March 15, 2007. At the time they filed for bankruptcy relief, the debtors owned a 2002 Ford F-150 pickup truck. Prior to bankruptcy, the debtors took the truck to a company doing business as 24 Hour Auto Repair ("24 Hour") to obtain an estimate and to have certain repairs performed. A dispute arose regarding 24 Hour's charges, and 24 Hour asserted a possessory lien on the truck to secure repayment under Texas law.

On March 26, 2007, the debtors filed and served upon 24 Hour a "Motion to Compel Turnover of Pickup Truck by 24 Hour Auto Repair." 24 Hour did not oppose the turnover motion. Accordingly, on April 27, 2007, the Court entered an "Order for Turnover of Truck" (the "Turnover Order").

On October 4, 2007, the debtors filed a "Motion for Sanctions against 24 Hour Auto Repair for Violation of the Automatic Stay." In the motion, the debtors

requested that the Court impose sanctions upon 24 Hour and its manager, Larry Duncan, for noncompliance with the Turnover Order as well as alleged violations of the automatic stay pursuant to 11 U.S.C. §362(k). However, on October 5, 2007, the Court entered an “Order Denying Confirmation of Chapter 13 Plan and Dismissing Chapter 13 Case with Prejudice to Refiling for 120 Days” (the “Dismissal Order”). The Dismissal Order did not expressly retain jurisdiction over the debtors’ pending request for sanctions.

This matter is now before the Court on the “Motion to Retain Jurisdiction over their Motion for Sanctions Against 24 Hour Auto Repair and Larry Duncan for Violation of Automatic Stay” filed by the debtors on October 15, 2007. The debtors filed the motion in response to an entry by the Clerk of the Court on the docket sheet for this case, which states that the pending sanctions motion is moot based on the dismissal of the bankruptcy case. The debtors argue that a motion for sanctions is a collateral matter that should survive the dismissal of the bankruptcy case to which it relates.

### **LEGAL ANALYSIS**

A district court's jurisdiction over civil proceedings arising under the Bankruptcy Code is original but not exclusive. *See* 28 U.S.C. § 1334(b). A district court that has jurisdiction over matters arising under the Bankruptcy Code may refer those matters to the appropriate bankruptcy court. *See* 28 U.S.C. § 157(a). The “Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc” entered on August 6, 1984 by the United States District Court for the

Eastern District of Texas therefore provides that all cases under title 11 or proceedings arising under title 11 or arising in or related to cases under title 11 are to be referred to the United States Bankruptcy Court for the Eastern District of Texas for consideration and resolution. Upon referral, the bankruptcy court “may hear and determine,” among other matters, “all core proceedings arising under title 11.” 28 U.S.C. § 157(b)(1). Although the non-exhaustive list of “core proceedings” in § 157(b)(2) does not include violations of an automatic stay, courts generally agree that claims under 11 U.S.C. § 362(k) and its predecessor (§ 362(h)) qualify as “core proceedings.” *See, e.g., MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2<sup>nd</sup> Cir. 2006); *Price v. Rochford*, 947 F.2d 829, 832 (7<sup>th</sup> Cir. 1991); *Budget Serv. Co. v. Better Homes of Va., Inc.*, 804 F.2d 289, 292 (4<sup>th</sup> Cir. 1986).

For the foregoing reasons, the Court finds and concludes that it has authority to adjudicate the debtors’ motion for sanctions. *See* 28 U.S.C. §§ 157(b)(1) and 158(a). Moreover, the dismissal of the debtors’ bankruptcy case did not moot the stay violation and sanctions issues. An action under § 362(k) for damages for willful violation of the automatic stay is a private right of action that survives the dismissal of the bankruptcy case. *See Pettitt v. Baker*, 876 F.2d 456, 457 (5<sup>th</sup> Cir. 1989); *see also, e.g., Price*, 947 F.2d at 831-32; *Javens v. City of Hazel Park (In re Javens)*, 107 F.3d 359, 364 n. 2 (6<sup>th</sup> Cir. 1997); *In re Carroll*, 903 F.2d 1266 (9<sup>th</sup> Cir. 1990); *In re Jones*, 369 B.R. 745, 748 (1<sup>st</sup> Cir. BAP 2007).

**IT IS THEREFORE ORDERED** that the “Motion to Retain Jurisdiction over their Motion for Sanctions Against 24 Hour Auto Repair and Larry Duncan for Violation of Automatic Stay” shall be, and it is hereby, **GRANTED**.

**IT IS FURTHER ORDERED** that, notwithstanding the dismissal of the debtors’ bankruptcy case, the Court retains jurisdiction over the “Motion for Sanctions Against 24 Hour Auto Repair and Larry Duncan,” as that motion may be amended or supplemented by the debtors, and all related matters.

**IT IS FURTHER ORDERED** that the date by which 24 Hour Auto Repair and Larry Duncan are to file any response to the Motion for Sanctions (or to any amended Motion for Sanctions) is hereby extended to Monday, December 3, 2007.

Signed on 10/22/2007

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HONORABLE BRENDA T. RHOADES,  
UNITED STATES BANKRUPTCY JUDGE