

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In re: Marta Rinaldi Carlson,)	
Debtor)	
)	Case No. 18-CH7-XXXX
)	
)	Chapter 7
)	

ORDER ON MOTION FOR CONTEMPT OF AUTOMATIC STAY
AND FOR DAMAGES

This matter came on for hearing on July 11, 2018 on the motion of debtor, Marta Rinaldi Carlson, pursuant to 11 U.S.C. §362, for a finding of contempt of automatic stay against creditor Pine Ridge Nursing Home (the Nursing Home) in contempt of the automatic stay of §362 and to award debtor her actual damages including her attorney fees and costs of this motion and punitive damages for the willful violation of the automatic stay pursuant to §362(k).

The court having considered the testimony, the briefs of the parties and the record as a whole finds that the Nursing Home violated the automatic stay of §362 by filing a motion for summary judgment in civil action CV-65111 on June 20, 2018 when the automatic stay was in effect as to that civil action. The court further finds that the violation of the stay was willful on the part of the Nursing Home notwithstanding that the motion for summary judgment was filed as a result of a miscommunication between the Nursing Home and its counsel in the civil action. Nursing Home failed to have appropriate policies and procedures in place to avoid such miscommunications and therefore cannot avoid responsibility for a willful violation since it acknowledges, as it must, that the action was taken after it had received notice of the bankruptcy filing. The court further finds that debtor has incurred actual damages as a proximate result of the stay violation by Nursing Home in the form of liability for \$250 in attorney's fees incurred when attorney Carolyn A. Thomas filed a suggestion of bankruptcy for filing in the civil action appeared before the trial court to hear the formal withdrawal of the motion for summary judgment by counsel for Nursing Home. However, the court further

finds that the circumstances of this willful violation of the automatic stay are not appropriate for the imposition of punitive damages. Debtor has failed to prove that any malice or bad faith motivated Nursing Home. Accordingly, it is

ORDERED that Pine Ridge Nursing Home be found in willful contempt of the automatic stay provision of 11 U.S.C. 362(a) and that said party pay to debtor \$250 in actual damages and an additional \$350 as debtor's attorney's fee and costs in connection with this motion totaling \$600 within 30 days of the entry of this Order; and it is further

ORDERED that Pine Ridge Nursing Home is not liable to debtor for punitive damages in connection with its violation of the automatic stay.

ENTER: July 11, 2018.

/s/ Cynthia H. Parks
United States Bankruptcy Judge