

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

VALERIE ISOM,

BKY 97-45212

Debtor.

VALERIE ISOM,

ADV 97-4179

Plaintiff,

vs.

WON TAE YOON, individually and
d/b/a Won's Auto Sales,

ADDITIONAL FINDINGS OF
FACT, CONCLUSIONS OF
LAW, AND ORDER FOR
JUDGMENT

Defendant.

At Minneapolis, Minnesota, June 18, 1998.

The above-entitled adversary proceeding came on for trial before the undersigned on the Plaintiff's complaint seeking damages for willful violation of the automatic stay under 11 U.S.C. § 362(h). On April 8, 1998, this Court found in favor of the Plaintiff, and ordered the Defendant to pay the actual damages incurred by the Plaintiff as a result of the violation, including costs and attorneys' fees. In accordance with the Court's instructions, the Plaintiff and Plaintiff's counsel later filed with the Court affidavits stating the amount of the actual damages stemming from the violation and the amount of the attorneys' fees incurred by the Plaintiff in bringing this adversary proceeding. On April 24, 1998, the Defendant filed a responsive affidavit objecting to the amounts contained in the Plaintiff's affidavits. After carefully considering the objections posed by the Defendant,

I make the following Additional Findings of Fact, Conclusions of Law and Order for Judgment:

1. The Defendant argues that the Plaintiff should not be allowed to collect attorneys' fees and costs in this case because the Plaintiff rejected a Rule 68 (presumably defendant means Bankruptcy Rule 7068) Offer of Judgment which was more favorable to the Plaintiff than the damages actually incurred by the Plaintiff. However, the term "costs" under Bankruptcy Rule 7068 refer only to particular types of costs incurred after the making of the offer and does not include attorneys' fees unless the underlying statute in the case defines "costs" to include attorneys' fees. Marek v. Chesny, 473 U.S. 1, 5 (1985); United States v. American Commercial Barge Line Co., 988 F.2d 860, 864 (8th Cir. 1993); Thomas v. Caudill, 150 F.R.D. 147, 149 (N.D. Ind. 1993); 12 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3006, at 121 (2d ed. 1997) The Court finds that the Defendant's argument under Bankruptcy Rule 7068 is without merit. The expenses contained in Plaintiff's affidavit are not the particular types of costs incurred after the making of the offer and attorneys' fees are not considered "costs" under 11 U.S.C. § 362(h). Thus, Bankruptcy Rule 7068 is inapplicable to this case.

2. As for the Defendant's remaining objections to the Plaintiff's affidavits, the Court concludes as follows: (1) Plaintiff shall not be allowed to collect attorneys' fees in

conjunction with bringing its unsuccessful motion for an injunction because the Court has already denied Plaintiff's request for attorney fees in connection with that motion; (2) Plaintiff shall be awarded fees for time spent preparing the affidavits of attorneys' fees and damages in this case because such was done in accordance with this Court's order; (3) Plaintiff's copy expenses are not excessive or unreasonable; (4) Billing time spent by Plaintiff's counsel shall be reduced by ten percent for failing to bill in increments of one-tenth of an hour; and (5) any remaining arguments of the Defendant are without merit.

Applying a lodestar analysis in accordance with the above conclusions, the Court calculates the Plaintiff's entitlement to actual damages, including costs and attorneys' fees, as follows:

\$60.00	Plaintiff's bus fare expended for herself and three children for four days
\$76.22	Plaintiff's expenses incurred in bringing adversary proceeding minus expenses associated with bringing unsuccessful motion for injunction
16.75 hrs	Time expended by Plaintiff's counsel in bringing adversary proceeding minus time associated with bringing unsuccessful motion for injunction
-1.67 hrs	Ten percent reduction in billing time

15.08 hrs	Total number of hours spent by Plaintiff's counsel in bringing adversary proceeding (16.75 - 1.67)
\$150.00/hr	hourly billing rate
<u>\$2,262.00</u>	Total attorneys' fees (\$150 x 15.08)
\$2,398.22	Total amount of Plaintiff's damages

ACCORDINGLY, IT IS HEREBY ORDERED that the Defendant, Won Tae Yoon, shall pay the Plaintiff the sum of \$2,398.22 as damages for willfully violating the automatic stay under 11 U.S.C. § 362(h).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Nancy C. Dreher
United States Bankruptcy Judge