

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
CASSAUNDR A LEE ANNA HOLLENDERSKY,) CASE NO. 11-33713 HCD
) CHAPTER 7
)
DEBTOR.)

DECISION and ORDER

At South Bend, Indiana, on December 7, 2011.

Before the court is the Demand for Jury Trial filed by creditor Jerome Ivacic on December 5, 2011. He seeks a jury trial on the damages claim raised by the chapter 7 debtor Cassandra Lee Anna Hollendersky. For the reasons that follow, the court denies the creditor's Demand.

The debtor filed her voluntary chapter 7 petition on September 23, 2011. On November 2, 2011, she filed a "Motion for Emergency Hearing for Sanctions and Damages for Violation of the Automatic Stay Order of this Court."¹ R. 24. After a hearing, the court issued its Order of November 22, 2011. *See* R. 35. In it, the court found that the debtor successfully proved, by a preponderance of the evidence, that the postpetition actions of the creditor Jerome Ivacic, her landlord, were a clear and willful violation of the automatic stay pursuant to 11 U.S.C. § 362(a)(3). It ordered a separate evidentiary hearing on the debtor's claim of entitlement to damages under § 362(k)(1), which provides that a debtor injured by any willful violation of the automatic stay may recover actual and, where appropriate, punitive damages and attorney's fees. The continued evidentiary hearing on the debtor's motion for sanctions and damages for violation of the automatic stay is scheduled for January 10, 2012.

On December 5, 2011, the creditor filed a Demand for Jury Trial and Memorandum in support of the demand. The creditor asserted, in his Memorandum, that he was entitled to a jury trial pursuant to the Seventh Amendment and *Granfinanciera, S.A. v. Norberg*, 492 U.S. 33, 41 (1989). According to him, the

¹ The debtor filed an Amended Motion on November 14, 2011. *See* R. 33.

claim for damages, which stemmed from the determination that the automatic stay was violated, sought a monetary recovery from the creditor and thus was a private right which did not involve the government or a public right. For those reasons, the creditor insisted, he has a right to a jury trial on the damages issue.

The court finds that the creditor is not entitled to a jury trial for several reasons. First, the Seventh Circuit has held that bankruptcy judges are not authorized to conduct jury trials. *See Matter of Grabill Corp.*, 967 F.2d 1152, 1158 (7th Cir. 1992). Under the local rules of the district court for the Northern District of Indiana, however, a procedure was established for providing a jury trial:

Where jury trials are not permitted before a bankruptcy judge, the party demanding a jury trial shall file a motion to withdraw the proceeding to the district court, in accordance with paragraph (b)(1) of this rule. The motion shall be filed at the same time as the demand for a jury trial. Unless excused by the district judge, the failure to file a timely motion to withdraw the proceeding shall constitute a waiver of any right to a trial by jury.

N.D. Ind. L.R. 200.1(c)(2)(A); *see Means v. Ameriquest Mortg. Co.*, 2009 WL 4427696 (N.D. Ind. Nov. 24, 2009) (noting that procedures for bankruptcy judge to conduct jury trials are set forth in N.D. Ind. L.R. 200.1(c) and 28 U.S.C. § 157(e)). In this case, however, the defendant made his jury demand without filing, at the same time, a motion to withdraw the reference. He therefore has waived any right to a trial by jury. *See Consolidated Industries Corp. v. Welbilt Holding Co.*, 254 B.R. 237, 240 (N.D. Ind. 2000); *see also Good v. Kvaerner U.S., Inc.*, 2003 WL 21755782 at *3 (S.D. Ind. July 25, 2003) (concluding that a party must file a motion to withdraw reference in order to be able to assert Seventh Amendment right to jury trial during a bankruptcy proceeding) (citing *In re Schwinn Bicycle Co.*, 184 B.R. 945, 949 (Bankr. N.D. Ill. 1995)).

Secondly, the damages being claimed are sanctions for the creditor's violation of the automatic stay in bankruptcy. It is true that the Seventh Amendment provides a right to a jury trial in civil cases in which the suit is brought to determine legal rights rather than equitable ones. *See Curtis v. Loether*, 415 U.S. 189, 193, 94 S. Ct. 1005, 39 L.Ed.2d 260 (1974). However, in *Curtis* the Supreme Court recognized "that bankruptcy courts, traditionally viewed as courts of equity, were validly entrusted by Congress to enforce

statutory bankruptcy rights without the strictures of jury trials.” *Gould v. Clippard*, 340 B.R. 861, 880 (M.D. Tenn. 2006) (citing *Curtis*, 415 U.S. at 195). The automatic stay, central to the Bankruptcy Code, is a unique bankruptcy right. The court finds that the damages award sought by the plaintiff is an integral element of the determination of violation of the automatic stay. Courts have held that “the rights created by section 362(k)(1) are so fundamental to our bankruptcy system that they are appropriately resolved by a bankruptcy judge sitting without a jury and that they should, therefore, be viewed as ‘public rights’ as that term is used in *Granfinanciera*.” *In re Glenn*, 359 B.R. 200, 204 (Bankr. N.D. Ill. 2006) (discussing cases); *see also In re Gonzalez*, 2010 WL 3395677 at *2-*3 (Bankr. D.P.R.. Aug. 23, 2010).

The court finds, therefore, that the creditor does not have a right to a jury trial on the claims brought against him in this proceeding. Consequently, the creditor’s Demand for Jury Trial is denied.

SO ORDERED.

/s/ HARRY C. DEES, JR.

HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT