NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In the Matter of	:	Case No. 10-34399/JHW
Louis Sartori, Jr.	:	**OPINION**
Debtor	:	

APPEARANCES: David A. Huber, Esq.
Seymour Wasserstrum & Associates
205 W. Landis Avenue
Vineland, New Jersey 08360
Counsel for the Debtor

R.A. Lebron, Esq.
Fein, Such, Kahn & Shepard, PC
7 Century Drive – Suite 201
Parsippany, New Jersey 07504
Counsel for JP Morgan Chase Bank

The debtor's objection to the proof of claim filed by the mortgagee, JP Morgan Chase Bank, was previously resolved by an order entered on March 9, 2011. Remaining to be resolved is the question of whether attorneys' fees may be awarded to the debtor for the mortgagee's actions in posting inaccurate and unauthorized escrow charges, attorneys' fees and other miscellaneous charges against the debtor's account post-petition. The debtor's quest for attorneys' fees on the ground that the automatic stay was violated by the creditor's actions is granted.

The debtor's assertions that the mortgagee continually mishandled his mortgage account post-petition and improperly sought to collect certain fees from him require a detailed review of the debtor's post-petition payment history.

FACTS AND PROCEDURAL HISTORY

On or about August 22, 2003, Louis D. Sartori, Jr. and Kelley L. McCarthy executed a mortgage and note in the amount of $144,000.00 in favor of Washington Mutual Bank for the purchase of property located at 35 Hoffman Drive, Cape May Court House, New Jersey. The note required the borrowers to make monthly mortgage payments on the first day of each month toward their outstanding principal and interest. In addition, the mortgagors were required to make payments toward escrow to cover their real property taxes and any other assessments made against the property, until the note was paid in full.

Approximately seven years later, on August 9, 2010, Louis Sartori, Jr., filed an individual voluntary petition for bankruptcy under Chapter 13 of the Bankruptcy Code. The debtor listed the Cape May Court House property as his principal residence, scheduling the current value of the property as $165,510.00 and listing Chase Home Finance as the holder of a secured lien on

the property in the amount of $121,090.01.[1] The debtor made several references in his bankruptcy schedules to the current status of his mortgage. In Schedule A, next to the property description, the debtor included a comment that all "payments are up to date," and in Schedule D, he added a notation that: "Payments are up to date and will continue outside of the plan." The debtor's proposed Chapter 13 plan likewise indicated that there were no arrearages and that payments were up to date.[2] It is undisputed that at the time of the debtor's bankruptcy filing on August 9, 2010, the debtor's August 2010 mortgage payment, due August 1, 2010, had not yet been made. Both parties agree that the debtor did not make his August monthly mortgage payment until August 16, 2010, seven days after his bankruptcy filing, when payment was made by telephone in the amount of $1,241.41. The payment was posted by the mortgagee on the following day.[3]

The debtor draws our attention to and challenges the mortgagee's subsequent handling of the debtor's post-petition payments. A review and comparison of the debtor's loan history with the account ledgers provided by Chase is at best confusing. The movement of funds between the various

[1] The chain of title leading from the original lender on the note, Washington Mutual Bank, to Chase Home Finance and/or JP Morgan Chase Bank has not been explained or challenged on this record.

[2] The debtor's Chapter 13 plan was confirmed on October 13, 2010, and by order dated October 14, 2010, at $326 a month for 60 months. The plan provides a pro rata dividend to general unsecured creditors.

[3] This payment included a $20.00 convenience fee assessed on payments made by telephone.

accounts associated with the debtor's mortgage after each post-petition payment tendered by the debtor can be readily traced, although the rationale for the movement cannot always be satisfactorily explained.

After receiving the debtor's August 2010 payment and approximately ten days after the debtor's bankruptcy filing, on August 19, 2010, JP Morgan Chase Bank ("Chase") sent the debtor an "Annual Escrow Account Statement," which indicated that, effective September 1, 2010, the debtor's escrow payments would be increased by approximately $12.03 a month, from $369.08 to $381.11, to cover an anticipated escrow shortage in October 2010 of $144.38. This adjustment raised the amount of the debtor's total monthly mortgage payment to $1,233.44. According to the debtor, after he received the statement, he contacted Chase and received permission to pay the full amount of the projected escrow increase at once, instead of monthly over a 12 month period. On August 31, 2010, the debtor issued a check to Chase in the amount of $144.38, reflecting the total amount of the escrow increase, with a notation in the Memo portion of the check that the monies were intended "For Escrow Account Shortage Loan #[redacted]4370." According to Chase's records, the debtor's check was received on September 8, 2010. The funds were placed into a suspense account rather than applied to the debtor's escrow account.

On September 10th, the debtor tendered what he considered to be his regular mortgage payment for September, $1,221.41, which was credited by

Chase on September 15th. Chase's records reflect that the mortgagee then transferred $12.03 from the suspense account to make up the difference between the debtor's actual payment amount of $1,221.41 and the previously asserted new mortgage amount due of $1,233.44.

In the interim, on or about August 24, 2010, Chase referred the debtor's file to the law firm of Fein, Such, Kahn & Shepard, P.C. to file a proof of claim on the mortgagee's behalf. Approximately one month later, on September 27, 2010, counsel for Chase filed a proof of claim in the amount of $120,877.12. In addition to listing the outstanding amounts for principal, interest, and fees, the proof of claim reflected that the "Total Arrearages" owed by the debtor were $1,365.79, comprised of an "Escrow Shortage" of $144.38 and the delinquent August 2010 mortgage payment in the amount of $1,221.41, described as the "Payments for 8/1/10 through 8/9/10". It is not disputed that at the time that the proof of claim was filed, both components that made up the arrearages portion of the mortgagee's claim had already been paid by the debtor.

The record next indicates that Chase received the debtor's October monthly payment on September 30, 2010, and placed it directly into the suspense account. On that same day, the mortgagee transferred monies from the suspense account back to the debtor's mortgage account to cover the October mortgage payment of $1,233.44. In addition, the mortgagee also removed an additional $120.32 (presumably the amount that was left over from

the debtor's $144.38 payment that was intended for escrow, minus two months of escrow payments) and applied that amount toward the debtor's principal. On October 1, 2010, Chase reversed these transactions, taking both the payment of $120.32 made towards principal and the debtor's last two mortgage payments of $1,233.44 each (the debtor's September and October 2010 mortgage payments plus the increased escrow amount that was added) and placed the entire amount back into the suspense account. Three days later, on October 4, 2010, Chase withdrew $1,233.44 from the suspense account and applied that toward the debtor's September mortgage payment. Chase also removed an additional $144.38 from the suspense account and placed that money into the escrow account.[4]

In addition, the record reflects that the mortgagee assessed several miscellaneous charges against the debtor in October 2010. On October 5, two charges were levied, one for $95 and the other for $150, labeled "MTGR REC CORP ADV BA" and "3RD REC CORP ADV," respectively. The $150 charge was included on the October statement sent to the debtor and described as an "ATTY ADV DISBURSEMENT." An additional charge of $150 for "ATTORNEY ADVANCES" appears on Chase's ledger on October 12, 2010, labeled "3RD REC CORP ADV."

[4] Chase submitted an updated ledger, prepared on February 8, 2011, that attempts to clarify to which accounts, and in which months, payments from the debtor and from the suspense account were applied. However, some of the October 1st dates listed on the ledger do not match up with the dates from what appears to be screen shots from Chase's internal ledger that were filed as an exhibit on December 30, 2010.

On November 1, 2010, Chase withdrew the balance in the suspense account, $1,209.38, which appears to be the amount remaining from the debtor's payment from September 30, 2010 (the October 1st mortgage payment), minus $12.03, and placed those funds into the escrow account. Chase then processed the debtor's November 1, 2010 payment of $1,221.41 and applied that toward the debtor's October 1st mortgage payment. Subsequent mortgage payments, received on or about the first of each month, through February 2011, were then used to pay the amount due for the previous month.

On January 13, 2011, the debtor was sent another "Annual Escrow Account Statement," covering the period of September 2010 to December 2010. This new statement continued to reflect the charge of $12.03 (one twelfth of the $144.38 anticipated escrow shortage that had been paid by the debtor in August), added to the current monthly escrow charge. The January statement reiterated that the escrow payment going forward, effective January 1, 2011, would be increased from $369.09 to $381.11. The mortgagee's post-petition shuffling of money between the debtor's various accounts ultimately resulted in a misleading "surplus" of $1,173.32 in the debtor's escrow account, which Chase returned to the debtor in the form of an escrow refund check. Pl.'s Counsel's Suppl. Certif., Exh. H. This amount appears to be comprised of the October 2010 payment, which was first placed into the debtor's suspense account and then rolled over into escrow, minus four months of the escrow

adjustment payments ($12.03 each). Chase's failure to properly credit this amount toward the debtor's October 2010 mortgage payment caused the debtor to appear to be one month behind on his mortgage payments.

The various discrepancies in the handling of the debtor's post-petition mortgage account were first brought to the court's attention on October 28, 2010, when the debtor filed a formal objection to Chase's proof of claim. The debtor initially argued that the mortgagee's proof of claim was incorrect as filed, to the extent that it failed to credit the debtor for his August mortgage payment. In response, Chase correctly pointed out that at the time that the debtor filed his bankruptcy petition, the August payment was in fact in arrears.

As the record developed through the subsequent submissions of the parties and in court appearances made on January 24, 2011 and February 22, 2011, the following accounting errors committed by Chase on the debtor's account were established:

> (1) Shortly after the debtor's bankruptcy filing, Chase continued its post-petition attempts to collect the $144.38 escrow increase by including the monthly portion of that increase in each post-petition mortgage statement sent to the debtor, notwithstanding the fact that it was included in the mortgagee's proof of claim as a prepetition debt, and notwithstanding the fact that the escrow had actually been already paid by the debtor shortly after his petition was filed and a month before the proof of claim was filed.
>
> (2) Chase improperly charged the debtor's account post-petition with attorneys' fees and miscellaneous charges that were not authorized by the court.

(3) Chase improperly applied a portion of the debtor's regular monthly mortgage payment first to the debtor's suspense account and then to the debtor's escrow account, then returned the monies misapplied to the debtor as an escrow overage, artificially forcing the debtor into a default status, notwithstanding the fact that he actually had made each of the monthly mortgage payments due in the proper amount.

At the last hearing held in this matter on February 22, 2011, it was determined that the debtor was current on his post-petition mortgage obligations through February 2011. The debtor was instructed to return the $1,173.32 escrow refund check to Chase. Chase was directed to credit the debtor's account with the $144.38 payment previously made by the debtor and to adjust its fees, interest and proof of claim accordingly. The mortgagee was directed to vacate the miscellaneous attorneys' fees and charges assessed post-petition against the debtor's account. Any charges against the debtor for attorneys' fees for the defense of the current motion were proscribed. The issue of attorneys' fees to be awarded in favor of the debtor was reserved. An order was issued on March 9, 2011 reflecting these rulings.

DISCUSSION

To redress the actions of Chase in this matter, the debtor seeks an award of counsel fees in the amount of $1,500.00 for the prosecution of this motion. The debtor invokes the opportunity to impose damages, including costs and attorneys' fees, available for a willful violation of the automatic stay under 11

U.S.C. § 362(k). I conclude that section 362(k) supports an award of attorneys' fees under these circumstances.

11 U.S.C. § 362(k), formerly designated as section 362(h), provides that "an 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, may recover punitive damages." 11 U.S.C. § 362(k)(1). A "willful" violation of the automatic stay is said to occur when the defendant intentionally takes certain actions in violation of the stay notwithstanding his/her prior knowledge of the debtor's bankruptcy filing and the imposition of the automatic stay. In re University Medical Center, 973 F.2d 1065, 1088 (3d Cir. 1992). See also In re Landsdale Family Restaurants, Inc., 977 F.2d 826, 829 (3d Cir. 1992). The debtor need not show that the creditor had a specific intent to violate the stay, only that the acts taken were intentional. Id. See also In re Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp., 337 F.3d 314, 320 n.8 (3d Cir. 2003). The creditor's "good faith" belief at the time that it was not violating the automatic stay is not determinative of "willfulness" for purposes of section 362(k). Id. See also University Medical Center, 973 F.2d at 1088; In re Atlantic Bus. & Cmty Corp., 901 F.2d 325, 329 (3d Cir. 1990) ("'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.'") (quoting In re Bloom, 875 F.2d 224, 227 (9th Cir. 1989)).

Here, there can be little question that Chase's actions were "willful" for purposes of section 362(k), meaning that the mortgagee adjusted the debtor's suspense and escrow accounts intentionally and purposefully with the knowledge that the debtor had filed for bankruptcy protection. However, it is less clear whether the mortgagee's actions actually violated the automatic stay.[5] Our focus here is on whether violation of 11 U.S.C. § 362(a)(3) occurred. Section 362(a)(3) imposes a stay on "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." In the Chapter 13 context, the debtor's post-petition earnings constitute property of the bankruptcy estate. 11 U.S.C. § 1306(a)(2). The courts are divided on whether a creditor's satisfaction of post-petition charges through the reallocation of post-petition mortgage payments, made from property of the estate, constitutes a violation of the automatic stay as provided for under section 362(a)(3). Compare In re Myles, 395 B.R. 599, 606-07 (Bankr. M.D.La. 2008) (if the mortgagee "actually billed for and collected from the debtors amounts that it was not owed as a result of its misapplication of the debtors' plan payments," the automatic stay has been violated); In re

[5] The only other provision of section 362(a) which might seem to be implicated here is section 362(a)(6), which stays "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(6). But the statute makes clear that the automatic stay applies only to efforts to collect, assess, or recover prepetition claims, and not those that arise post-petition. See In re Rodriguez, 629 F.3d 136, 138 (3d Cir. 2010); In re Griffin, 313 B.R. 757, 770 (Bankr. N.D.Ill. 2004) (a claim arising post-petition falls "outside the scope of § 362(a)(6)"); In re Weinstock, No. 96–31147DWS, 1998 WL 401521, *5 (Bankr. E.D.Pa. July 16, 1998) ("Claims arising post-petition are not subject to the automatic stay."). See also H.R. Rep. No. 595, 95th Cong., 1st Sess. 342 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 5051 (1978) ("Paragraph (6) prevents creditors from attempting in any way to collect a prepetition debt.").

Sanchez, 372 B.R. 289, 313-15 (Bankr. S.D.Tex. 2007) (using the post-petition mortgage payment to satisfy post-petition charges without court approval violates the automatic stay) with In re Cano, 410 B.R. 506, 525 (Bankr. S.D.Tex. 2009) ("the posting of an item from one internal account to another is not an act to obtain possession of estate property" or a violation of the automatic stay); In re Padilla, 379 B.R. 643, 664 (Bankr. S.D.Tex. 2007) (once a mortgage payment has been deposited, it is no longer property of the estate and thus not subject to the automatic stay). The courts do recognize a distinction between actions taken by a creditor which amount to mere bookkeeping entries as opposed to overt or even undisclosed attempts to take control or possession of estate property. See, e.g., In re Price, 403 B.R. 775, 789-90 (Bankr. E.D.Ark. 2009) (the mere assessment of post-petition charges does not violate the automatic stay until they are collected); In re Padilla, 379 B.R. at 665 ("The improper allocation of payments may violate the confirmed plans, but does not violate the automatic stay.").

The rationale of those courts which conclude that the automatic stay is not violated by a mortgagee's post-petition manipulation of internal accounts is best illustrated by the decision in In re Cano, 410 B.R. 506 (Bankr. S.D.Tex. 2009). In Cano, the plaintiffs were a class of former Chapter 13 debtors who alleged that GMAC, their mortgagee, mismanaged their mortgage accounts by improperly allocating the payments made through their Chapter 13 plan toward current amounts due, arrearages, prepetition liabilities, and other

undisclosed charges and fees in contravention of their plan provisions. As a result of the mortgagee's post-petition actions, the plaintiffs found themselves subject to foreclosure at the conclusion of their Chapter 13 cases because of unsupported and unauthorized fees and charges levied against their mortgage accounts. The plaintiffs alleged that GMAC's actions violated the automatic stay by "charging the disputed fees and costs to Plaintiffs' accounts, misallocating payments among principal, arrearages, and fees and costs, and sending Plaintiffs default notices while their plans remained pending." Id. at 523.

Focusing on sections 362(a)(3) and 1306(a)(2), the court recognized that a creditor could violate the automatic stay if it attempts to collect post-petition debts from property of the estate, which in the Chapter 13 context includes post-petition earnings typically used to satisfy post-petition mortgage and plan obligations. However, the court concluded that the misallocation of payments and improper charging of fees and costs did not constitute an "act to obtain possession" of property of the estate. Id. Instead, the court reasoned that:

> The conduct in question involved two separate acts: an initial deposit within a general account, and a latter allocation from the general account to individual accounts. The first act involved "property of the estate," the second did not. Only the second act, involving non-estate property, was allegedly wrongful.

Id. See also In re Padilla, 379 B.R. at 664. By depositing the debtors' payments into its own account, the funds became the mortgagee's property and no longer constituted property of the bankruptcy estate. The court explained

that "the posting of an item from one internal account to another [was] not an act to obtain possession of estate property"; "GMAC already had possession when they received the payment." Id. at 525. See also In re Rodriguez, 421 B.R. 356, 367-69 (Bankr. S.D.Tex. 2009). "The mere posting of a charge . . . without more, is not 'an act to obtain possession." Id. (quoting Mann v. Chase Manhattan Mortgage Corp., 316 F.3d 1, 3 (1st Cir. 2003))[6]; In re Padilla, 379 B.R. at 664. The court disagreed with those decisions which found that misallocation equates with a violation of the automatic stay. The court stated that "[a]pplying § 362(a)(3) to a situation where a debtor makes a voluntary payment (although one that is improperly applied) expands the scope of § 362(a)(3) beyond its apparent purpose." Id. at 526.

A second line of cases, based on the Jones decision, has concluded that a creditor's post-petition actions may constitute a violation of the automatic stay where the lender exercised control over property of the estate. In re Jones, 366 B.R. 584 (Bankr. E.D.La. 2007), aff'd, 391 B.R. 577 (E.D.La. 2008). See, e.g., In re Price, 403 B.R. at 789 ("If regular mortgage payments were applied to late fees or other charges post-petition, the automatic stay was violated as the

[6] The First Circuit in Mann concluded that bookkeeping entries recording post-petition assessed attorneys' fees did not violate § 362(a)(3) even though they were not disclosed to the debtors because the fees were authorized in the underlying security agreement and added to the loan balance with no separate attempt to collect them. 316 F.3d at 4. See also In re Jacks, 642 F.3d 1323 (11th Cir. 2011) ("mere recordation of fees" without any attempt to collect them was not an "act" in violation of § 362(a)(3)). The instant case here is distinguishable because the escrow fees and attorneys' fees were disclosed to the debtor and the mortgagee did seek to collect at least the escrow amounts.

lender took action 'to obtain possession of property of the estate or . . . to exercise control over property of the estate.'") (quoting § 362(a)(3)); In re Myles, 395 B.R. at 607 (the automatic stay was violated when the mortgagee "actually billed for and collected from the debtors amounts that it was not owed as a result of its misapplication of the debtors' plan payments"); In re Sanchez, 372 B.R. at 313. See also In re Payne, 387 B.R. 614, 638 (Bankr. D.Kan. 2008) ("Actions taken post-petition such as improperly applying trustee payments, refusing to remove disallowed fees, attempting to collect disallowed fees from debtors via a payoff letter, and assessing and collecting post-petition fees without notice to debtors can violate the stay.").

In Jones, after refinancing an obligation owed to Wells Fargo, the debtor challenged the inclusion of certain post-petition inspection fees, attorneys' fees and other expenses in the mortgagee's payoff statement. The accounting presented by the creditor revealed that the mortgagee had been applying the debtor's post-petition payments made outside of the plan toward prepetition charges and fees which were to be paid through the plan, which resulted in an increased interest expense accrual on the loan. Id. at 589. The court noted that the creditor "applied any amounts received, regardless of source or intended application, to pre and postpetition charges, interest and noninterest bearing debt," which "resulted in such a tangled mess" that no one could fully decipher or explain. Id. at 590-91. Although the debtor regularly made his required post-petition payments, the creditor unilaterally elected to apply

"them to prepetition installments, prepetition costs or fees, and postpetition charges not authorized or disclosed to Debtor, the Court, or the Trustee." Id. at 593. For example, the creditor applied one of the debtor's post-petition double payments to cover two earlier installments that were past due. Because the earlier installments were billed at a higher rate, the allocation was insufficient to cover both amounts. The creditor applied part of the funds to cover one installment and placed the remaining funds into a suspense account, causing the debtor to fall into default on his post-petition payments and artificially raise his outstanding principal balance. Id. at 594. Subsequent allocations in the same manner caused the debtor to remain in default for each month going forward. In addition, the creditor otherwise diverted the trustee's and the debtor's post-petition payments to satisfy undisclosed attorneys' fees, inspection charges and other expenses. Id. at 595. These diversions resulted in a deficiency in the debtor's plan and in his post-petition principal balance.

> The bankruptcy court concluded that:
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> > Because Wells Fargo has not only charged Debtor's account with undisclosed post confirmation charges, but satisfied those charges with estate funds delivered to it to pay other debt, there can be no doubt that Wells Fargo's assessment of post confirmation attorney's fees and expenses directly relates to Debtor's estate. This is because any amounts charged will "correspondingly enlarge the debt of the estate, make reorganization more difficult for the debtor, and adversely impact upon the claims of the remaining creditors."

Id. at 595 (quoting In re Hudson Shipbuilders, Inc., 794 F.2d 1051, 1055 (5th Cir. 1986)). The court determined that the mortgagee's "satisfaction of these

heretofore undisclosed fees and charges was from property of the estate and directly impacted the status of Debtor's plan." Id. The court stressed that the creditor not only assessed improper post-petition charges, but that it also paid itself, without notice or court approval, from payments designated for other purposes. Id. at 600. In conclusion, the court determined that:

> Bankruptcy courts cannot function if secured lenders are allowed to assess postpetition fees without disclosure and then divert estate funds to their satisfaction without court approval. Plans of reorganization and confirmation orders are based on court approved schedules to repay debts disclosed at confirmation and sworn by the creditor to be owed under penalty of perjury. It is unconscionable that a lender would represent a certain debt was due, allow debtor to base his repayment plan on that sum, and then arbitrarily and without notice change the amounts owed without disclosure or amendment to its proof of claim. It is equally disturbing that in clear derogation of the Bankruptcy Code, lenders would add additional attorney's fees and charges to a loan without court approval, and again without disclosure to any interested party.

Id. at 602-03. Moreover, if a mortgagee is allowed to collect on post-petition assessments without recourse,

> the Court could never be certain that implementation of a plan would be in accordance with its terms. Depending on how much and how often the lender syphoned off funds, payable under a confirmed plan for other purposes, a debtor might or might not satisfy the obligations contemplated by his or her plan. To allow such a practice is to eviscerate the provisions of the automatic stay and this Court's power to protect Debtor and property of the estate.

Id. at 603.

The rationale espoused by Judge Magner in In re Jones is persuasive. Where the creditor's actions result in a misapplication of the debtor's

payments, the debtor suffers serious post-petition consequences, such as being improperly designated as being in default or being forced to defend an improper motion for relief from the automatic stay. See In re Payne, 387 B.R. at 638. Here, the automatic stay was violated because the creditor not only assessed additional attorneys' fees and charges, but it also collected those charges by reallocating the debtor's post-petition payments as it saw fit. As well, the creditor's movement of funds between suspense and escrow accounts incorrectly caused the debtor to be in a default status post-petition. Instead of reflecting in its records that the debtor was current post-petition, the creditor took the debtor's payment, tendered from property of the estate, and redirected it in a manner not intended by the debtor or the debtor's plan.

The Cano line of cases parse the acts of the mortgagee into two parts, the first being the deposit of the mortgage payment into a general account and the second being the allocation of the payment from the general account into individual accounts. The theory is that any wrongful allocation does not constitute a stay violation because upon the deposit into the mortgagee's general account, the payment loses its status as property of the debtor's estate, and becomes the mortgagee's property. Such an approach elevates form over substance. The purpose of the automatic stay is to protect the debtor and the debtor's property from the impermissible reach of creditors. During a Chapter 13 case, that protection is paramount to enable the debtor to satisfy the obligations undertaken by the Chapter 13 plan. To allow a creditor to

misdirect funds received from the debtor under a confirmed Chapter 13 plan "is to eviscerate the provisions of the automatic stay and this Court's power to protect Debtor and property of the estate." In re Jones, 366 B.R. at 603.

To recap, the automatic stay comes into play in this case because the creditor improperly sought to obtain possession of or exercise control over property of the bankruptcy estate, i.e. the debtor's post-petition payments made from the debtor's post-petition earnings which constitute property of the estate under section 1306. The creditor's actions in this case violated the automatic stay in two respects. By assessing and attempting to collect additional charges post-petition from the debtor's regular post-petition mortgage payments, for which the creditor had no court approval, the creditor was acting to "to obtain possession of property of the estate" to which it was not entitled, in violation of § 362(a)(3). By reallocating, redirecting or misallocating the debtor's post-petition payments to various other accounts and ultimately causing the debtor to improperly fall into a default status, the creditor also exercised control over property of the estate in violation of § 362(a)(3).

The debtor's modest request for attorneys' fees in the amount of $1,500 as damages for the creditor's willful violations of the automatic stay is granted. Debtor's counsel is directed to submit an order in conformance with the above opinion.

Dated: August 19, 2011

JUDITH H. WIZMUR
CHIEF JUDGE
U.S. BANKRUPTCY COURT