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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

James Brooks,

Debtor.

JAMES BROOKS,

Plaintiff,

v.

**DITECH FINANCIAL LLC fka GREEN
TREE SERVICING LLC,**

Defendant.

Case No. 14-35998-pcm13

Adv. Proc. No.

COMPLAINT

Willful Automatic Stay Violation
(11 U.S.C. § 362(k))

1.

JURISDICTION

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 1334 because plaintiff's automatic stay claim arises under Title 11.

COMPLAINT - Page 1 of 6

Olsen Daines PC
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2.

The United States Bankruptcy Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 157 and LR 2100-1 because plaintiff's claim arises in his bankruptcy case number 14-35998-pcm13, filed under Chapter 13 of Title 11 in this United States Bankruptcy Court for the District of Oregon.

3.

NATURE OF CLAIMS

Plaintiff's automatic stay claim is a core proceeding under 28 U.S.C. § 157(b)(2) (*see Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081 (9th Cir. 2000); *Johnston Env'tl Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 617 (9th Cir. 1993)) and plaintiff consents to entry of final orders and judgments by the bankruptcy judge in this adversary proceeding.

4.

THE PARTIES

James Brooks ("plaintiff") is an individual living in his residence in Sherwood, Oregon who filed for bankruptcy protection under Chapter 13 of Title 11 on October 29, 2014.

5.

Ditech Financial LLC fka Green Tree Servicing LLC ("defendant") was listed in plaintiff's bankruptcy and received actual notice of the automatic stay in his case.

6.

Venue is proper in this district because plaintiff resides here, defendant conducts mortgage servicing and debt collection activities here, and a substantial part of the acts, events, and/or omissions giving rise to this controversy took place here.

COMPLAINT - Page 2 of 6

Olsen Daines PC
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7.

This complaint's allegations are based on personal knowledge as to plaintiff's own conduct and are made on information and belief as to the acts of others.

8.

FACTUAL ALLEGATIONS

On October 29, 2014, plaintiff filed for bankruptcy protection under Chapter 13 of Title 11 in case number 14-35998-pcm13.

9.

Upon filing bankruptcy, plaintiff's legal, equitable, and occupancy interests in his residence became property of the estate.

10.

Upon filing bankruptcy, 11 U.S.C. § 362(a)(6) protected plaintiff from any act by defendant to collect its pre-petition claim filed January 22, 2015, except as allowed by the order confirming plaintiff's Chapter 13 plan.

11.

Upon confirmation of plaintiff's Chapter 13 plan on March 30, 2015, plaintiff's legal, equitable, and occupancy interests in his residence vested as plaintiff's property, protected by 11 U.S.C. § 362(a)(5) against any attempt by defendant to enforce its lien securing its claim filed January 22, 2015.

12.

Defendant was an active participant in plaintiff's bankruptcy case and defendant had actual knowledge of the automatic stay at all times material.

13.

The notice of automatic stay received by defendant warned defendant that violating the automatic stay may result in penalties.

14.

After receiving actual notice of the automatic stay, in a demand letter dated March 16, 2016, defendant attempted to collect payment on its debt from plaintiff in an excessive amount not allowed by the order confirming plaintiff's Chapter 13 plan, under threat that if plaintiff did not pay, defendant would enforce its lien against plaintiff's residence, in willful violation of the automatic stay.

15.

As a direct and proximate result of defendant's willful automatic stay violation as described above, plaintiff suffered severe ongoing emotional harm consistent with the fear of wrongfully losing his home and dying on the street with his dogs.

16.

CAUSE OF ACTION

CLAIM ONE

(Willful Violation of the Automatic Stay – Damages)

Plaintiff incorporates the above allegations by reference.

17.

Defendant's conduct as alleged in this complaint willfully violated the automatic stay in plaintiff's bankruptcy case, including and not limited to 11 U.S.C. § 362(a)(5) and (6), because defendant knew of the automatic stay, and its intentional conduct as alleged above violated the automatic stay.

18.

Defendant's violation of the automatic stay as alleged above was "willful" as that term is defined in the Ninth Circuit because defendant's conduct was intentional, defendant had prior actual knowledge of the automatic stay, defendant's conduct was unreasonable, and any alleged mistake of law was not a defense.

19.

Plaintiff was injured as a result of defendant's willful violation, and so is entitled to compensation for actual damages, pursuant to 11 U.S.C. § 362(k).

20.

CLAIM TWO

(Willful Violation of the Automatic Stay – Attorney Fees and Costs)

Plaintiff incorporates the above allegations by reference.

COMPLAINT - Page 5 of 6

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21.

As a direct result of defendant's willful automatic stay violation, the law firm of Olsen Daines PC is entitled to an award reimbursing it for its reasonable attorney fees and costs, pursuant to 11 U.S.C. § 362(k).

WHEREFORE, after a stipulation or determination that defendant's conduct as alleged in this complaint willfully violated the automatic stay, plaintiff prays for relief as follows:

- A. An award of compensation for actual damages in favor of plaintiff against defendant;
- B. An award of reasonable attorney fees and costs directly to Olsen Daines PC against defendant; and
- C. For other equitable relief this Court may determine is fair and just.

DATED: March 25, 2016

RESPECTFULLY FILED,

/s/ Michael Fuller

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COMPLAINT - Page 6 of 6

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