

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Bankruptcy No. 10 B 04352
)	
WILLIE J. AND PEGGY A. JONES,)	Chapter 13
)	
Debtors.)	Judge Pamela S. Hollis

MEMORANDUM OPINION

This matter comes before the court on a Motion for Damages pursuant to 11 U.S.C. § 362(k) filed by Willie J. and Peggy A. Jones (“Debtors”). For the reasons stated below, Debtors’ Motion for Damages is granted.

JURISDICTION AND PROCEDURE

The court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. It is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O).

FACTS AND BACKGROUND

Debtors filed a voluntary petition for Chapter 13 bankruptcy on February 4, 2010. Debtors’ Schedule D listed a debt owed to State Jewelers & Loan (“State”) in the amount of \$1000 secured by certain jewelry pawned by Debtors. Debtors also filed a copy of their Chapter 13 plan on February 4, 2010, which provided that State would be paid \$25 per month at an annual percentage rate of 4%, for a total of \$1,100. Notice of the bankruptcy filing, the plan, and the 11 U.S.C. § 341 meeting of creditors was sent to all creditors listed on Debtors’ schedules by the Office of the Clerk of the Court.

The notice contained the following language:

You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

The Certificate of Notice listed State's address as 9 North Wabash in Chicago, Illinois.

Debtors' plan was subsequently amended on March 30, 2010, and April 2, 2010, but the provision relating to State's claim was not changed. Debtors' plan filed April 2, 2010 ("Plan") was confirmed by order of this court on April 5, 2010 ("Confirmation Order"). On April 16, 2010, the Chapter 13 trustee assigned to Debtors' case, Marilyn Marshall ("Trustee"), sent State its first plan payment. On May 21, 2010, the Trustee sent State its second plan payment.

In June 2010, State advised the Trustee that it no longer had a claim against Debtors and returned the checks to the Trustee. Mrs. Jones then went to State and was told that State still had the pawned property and it could be repurchased for current market value, but that State would not accept plan payments. Prior to confirmation, State did not object to the Plan nor was an appearance filed by an attorney on State's behalf.

On December 21, 2010, Debtors filed this Motion for Damages pursuant to 11 U.S.C. § 362(k). State's response was due January 31, 2011, but no response was filed. On December 28, 2010, State filed a Motion to Amend Plan and Certain Limited Relief from Order Confirming Plan, which sought leave to amend the Plan and sought relief from the Confirmation Order.

DISCUSSION

Debtors request that State be required to comply with the terms of the confirmed plan, or alternatively, if it is unwilling to do so, that State be required to pay Debtors \$5,000 in actual and punitive damages as well as Debtors' legal fees.

Since State has not responded to Debtors' Motion for Damages, there is no reason for the court to believe that State is not bound by the terms of the confirmed Chapter 13 Plan and the automatic stay. State may have claimed in a separate motion that it had a basis for relief from the Confirmation Order, but that motion has been denied in a separate Memorandum Opinion of this same date. As such, State is required to comply with the terms of the Plan.

CONCLUSION

For the foregoing reasons, Debtors' Motion for Damages is granted and State must comply with the Plan or potentially face a hearing on damages in the future.

ENTERED:

DATE: _____

PAMELA S. HOLLIS
United States Bankruptcy Judge