

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

GLENN HUNTER BROWN SR,

Plaintiff,

vs.

REGIONS BANK ,

Defendant

Case No. 6:08-bk-03082-KSJ

Chapter 7

**MOTION FOR VIOLATION OF AUTOMATIC STAY AND CREDITOR
MISCONDUCT**

Plaintiff, GLENN HUNTER BROWN SR., by and through his undersigned counsel, hereby moves the court for an award of damages against Defendant, REGIONS BANK, for a violation of automatic stay and alleges the following:

- 1) Plaintiff filed for an Order of Relief under Chapter 7 of Title 11 on April 19, 2008.
- 2) The aforementioned case is currently pending before this court.
- 3) The gravamen of this motion is that despite Plaintiff's filing of bankruptcy, Defendant has willfully collected a debt from Plaintiff's personal bank account without his prior consent.

FACTS

- 1) On or about October 2006, Plaintiff opened a revolving line of credit account with Defendant.
- 2) On July 25, 2008, Plaintiff's personal bank account was debited in the amount of \$921.00 for a "Bank Debit" (Exhibit "A").

- 3) Plaintiff was confused as to this charge as it was unbeknownst to him who authorized it for it was not something he had previously given prior consent to.
- 4) Upon realization of this charge, Plaintiff sent a message to Defendant requesting the amount be returned and credited to his account (Exhibit "B").
- 5) Defendant responded by requesting that Plaintiff call customer service (Exhibit "C") for further assistance.
- 6) Plaintiff promptly called the Defendant whereupon he was informed that his account was debited for a past due interest and late fees that had been acquired through his Flexline revolving credit account.
- 7) Defendant also informed Plaintiff that his account was debited as they had not received notice of Plaintiffs pending bankruptcy.
- 8) Plaintiff kindly informed them that he had filed bankruptcy and his case was pending with the court.
- 9) On August 20, 2008, Plaintiff sent a letter to Defendant once again reminding them of the current pending bankruptcy (Exhibit "D").
- 10) Defendant has refused to return Plaintiff the amount collected.

COUNT I: AUTOMATIC STAY APPLIES TO THE DEFENDANT

- 11) Section 362 stays action to collect a debt. Specifically, § 362(a)(6) protects Defendant from creditors that are acting in any capacity to collect, assess, or recover a claim against him that arose before the commencement of the bankruptcy proceedings.

- 12) Defendant is enjoined by the automatic stay from creditor attempts to collect a debt, including having his account debited without any prior authorization.
- 13) The filing of a petition bankruptcy effectuates automatic of all proceedings against debtor effective the date the petition is filed and actions taken in violation of stay are void, even if there is no actual notice of the stay. (*Personalized Air Conditioning, Inc. v. C.M. Systems of Pinellas*, 522 So.2d. 465 Fla.App. 4 Dist, 1988).

COUNT II: THE COLLECTION OF A DEBT BY DEFENDANT VIOLATES

AUTOMATIC STAY

- 14) Once a creditor receives notice of a Chapter 7 bankruptcy filing, creditor has an affirmative duty to undo its violations of automatic stay. (*In re Keen*, 301 B.R. 749 Bkrcty. S.D. Fla. 2003).
- 15) There can be no doubt that the Defendant had knowledge of the Plaintiffs pending bankruptcy case.
- 16) Defendant is listed as a creditor in Plaintiffs bankruptcy petition under Schedule F.
- 17) Defendant originally violated the automatic stay when, with knowledge of debtor's Chapter 7 bankruptcy filing, charged defendant \$921 for late fees and interest on his revolving credit account.
- 18) Plaintiff has made several good-faith attempts to have the \$921 returned to him.
- 19) Defendant's actions of charging his account and further refusing to return the fees are in direct violation of the automatic stay.

COUNT III: VIOLATION OF THE STAY WAS WILLFULL

- 20) Plaintiff has acted with blatant disregard to court rules and procedures.
- 21) Plaintiff was listed as a creditor on Defendants bankruptcy petition filing and had been advised on his pending bankruptcy.
- 22) Based on Defendants actions of deliberately charging Plaintiff's account and violating what is supposed to be a private personal bank account, Defendant has willfully violated the automatic stay in place for the Plaintiff.
- 23) A willful violation of the automatic stay occurs when the creditor knew that the stay had been invoked and deliberately intended the action that violated the stay (*In re Hedetneimi* 297 B.R. 837 Bkrcty. M.D. Fla. 2003).

COUNT IV: PLAINTIFF WAS INJURED BY DEFENDANTS CREDITOR

MISCONDUCT

- 24) Defendant deliberately charged Plaintiff's account with the willful intent to injure Plaintiff.
- 25) Plaintiff filed for bankruptcy and believed he was relieved from the pressure and harassment from creditors seeking to collect their claims.
- 26) However, Defendant has failed to abide by the automatic stay and has collected a debt and has left Plaintiff suffering from emotional distress.
- 27) Plaintiff has been injured by Defendants actions to collect the debt.

DAMAGES

WHEREFORE, Section 362(k)(1) provides that the court shall award an individual his costs and attorneys fees, in addition to actual damages. The debtor's damages include:

- a) Plaintiff's out-of-pocket expenses to cover the filing fee.
- b) The \$921 charged to Plaintiff by the Defendant.
- c) Plaintiff's reasonable Attorney's Fees.
- d) Additionally, the debtor has lost precious time from his personal and professional life while attempting to recuperate his funds taken from him by the Defendant.
- e) Lastly, the debtor has suffered interruption, annoyance, and continuing anxiety as he proceeds with his Chapter7 bankruptcy filing.

Since actions taken in violation of the automatic stay are void, the court is urged to find Regions bank in violation of the automatic stay and damages should be awarded to the Plaintiff.

Dated this 22 day of August, 20008.

By: /s/ Richard Nazareth

RICHARD M. NAZARETH, ESQ.
FL BAR #35006
The Nazareth Law Firm, P.A.
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Orlando, Fl. 32803
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Fax: (866) 449-8042



Regions Bank

Winter Park Office
517 W Morse Blvd
Winter Park, FL 32789

00075056 01 FP 0.394 001
GLENN H BROWN SR
89 QUAIL TRL
GREENVILLE VA 24440-1504

ACCOUNT # 3720083815

Cycle 092
Enclosures 17
Page 2
1 of 3

50+ FREE CHECKING
June 27, 2008 through July 29, 2008

SUMMARY

Beginning Balance	\$2,187.71		Minimum Balance	\$2
Deposits & Credits	\$1,233.00	+	Average Balance	\$1,712
Withdrawals	\$3,168.46	-		
Fees	\$0.00	-		
Automatic Transfers	\$0.00	+		
Checks	\$250.00	-		
Ending Balance	\$2.25			

DEPOSITS & CREDITS

07/09	US Treasury 303 Soc Sec Glenn H Brown	1,233.00
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WITHDRAWALS

06/27	ATM Withdrawal Hess 09267 Hess 09267 Kissimmee FL23696701 3437	18.00
06/30	ATM Withdrawal Publix 2925 IN Publix 2925 I Kissimmee FLIN3082 3437	80.07
07/01	Kissimmee Utilit UT Bill Glenn H Brown 017691400448320	25.00
07/01	ATM Withdrawal Wal-Mart #5420 Wal-Mart #542 Kissimmee FL24542001 3437	23.06
07/03	Equity Lifestyle Dir Debit Glenn H Brown	488.20
07/03	ATM Withdrawal Albertsons Albertsons Kissimmee FLIN3092 3437	44.92
07/07	ATM Withdrawal Publix 2925 IN Publix 2925 I Kissimmee FLIN3101 3437	59.78
07/07	ATM Withdrawal Hess 09267 Hess 09267 Kissimmee FL23696701 3437	19.00
07/08	ATM Withdrawal Regions Celebration B Celebration FLF3350 3437	100.00
07/08	CheckCard Purchase Prescription Hm Salt Lake CI UT 3437	25.00
07/14	ATM Withdrawal Wal-Mart #5420 Wal-Mart #542 Kissimmee FL24542001 3437	52.14
07/14	ATM Withdrawal Wal-Mart #5420 Wal-Mart #542 Kissimmee FL24542001 3437	42.01
07/14	ATM Withdrawal Hess 09267 Hess 09267 Kissimmee FL23696701 3437	15.60
07/16	ATM Withdrawal Wal-Mart #5420 Wal-Mart #542 Kissimmee FL24542001 3437	259.52
07/16	ATM Withdrawal Regions Celebration B Celebration FLF3350 3437	100.00
07/16	ATM Withdrawal Hess 09267 Hess 09267 Kissimmee FL23696701 3437	20.00
07/17	CheckCard Purchase Dexters Winter Winter Park FL 3437	42.92
07/23	ATM Withdrawal Wal-Mart #5420 Wal-Mart #542 Kissimmee FL24542001 3437	48.32
07/24	ATM Withdrawal Publix 2925 IN Publix 2925 I Kissimmee FLIN3087 3437	62.72
07/24	ATM Withdrawal RACETRAC137 RACETRAC137 Kissimmee FL55955002 3437	21.20
07/25	Bank Debit	921.00
07/28	ATM Withdrawal Regions Celebration B Celebration FLF3350 3437	400.00
07/28	ATM Withdrawal Regions Celebration B Celebration FLF3350 3437	300.00
	Total Withdrawals	\$3,168.46



Regions Bank

Winter Park Office
517 W Morse Blvd
Winter Park, FL 32789

GLENN H BROWN SR
89 QUAIL TRL
GREENVILLE VA 24440-1504

ACCOUNT # 3720083815

Page 3 of 3

GLENN H BROWN SR
517 W Morse Blvd
Winter Park, FL 32789

1059

7/15/08 Date

Pay To The Order of KENNETH E. NELSON \$250.00

Two Hundred Fifty and no/100

Regions Bank
THE RELATIONSHIP PEOPLE

Glenn H. Brown

00631045681 3720083815 1059 0000015000

Regions CHECKING DEBIT

Account # 3720083815

Branch FL

City C. Davis

Address 89 Quail Trl
Greenville VA 24440

Check # 0

Date 07/25/08

Amount 921.00

445300-0306 3720083815 98 0000015000

Check# 1059 07/15/2008 \$250.00

Check# 0 07/25/2008 \$921.00

PL	100.00	PL	100.00	PL	100.00
TR	50.00	TR	50.00	TR	50.00
BL	25.00	BL	25.00	BL	25.00
PS	12.50	PS	12.50	PS	12.50
OT	6.25	OT	6.25	OT	6.25



- ACCOUNTS ▾
- TRANSFERS ▾
- PAYMENTS ▾
- E-SERVICES ▾
- E-STATEMENTS
- CUSTO

Message Detail from Regions

Date: 7/30/2008 9:07:00 AM

Subject: unauthorized debit

Message:

please credit unauthorized debit of my checking account on 7/25 in the amount of \$921.

This credit has been discharged through my bankruptcy

Glenn H. Brown

Flexline account #0000-2120-0021-1251

[Return](#)
[Delete Message](#)

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- Equal Housing Lender [Member FDIC](#) 2008 Regions Financial Corporation 1-80

EXHIBIT "B"



- ACCOUNTS ▾
- TRANSFERS ▾
- PAYMENTS ▾
- E-SERVICES ▾
- E-STATEMENTS
- CUSTO

Message Detail from Regions

To reply to this message, select Reply. To delete this message, select Delete Message.

Date: 7/30/2008 7:14:38 PM
Subject: Support Case #3655267
From: Customer Care
Message:

Mr. Brown,

Thank you for your email. Please contact the Regions Bankruptcy department at 800-675-4471 to discuss this issue with a Regions Bank specialist. Representatives are available to assist you Monday through Friday from 8:00 AM to 4:30 PM (CT).

- ACCOUNTS
- TRANSFERS
- PAYMENTS
- E-SERVICES
- E-STATEMENTS
- CUSTOMER SER

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Equal Housing Lender
 Member FDIC
 2008 Regions Financial Corporation
 1-80

EXHIBIT "C"

Bartlett & Nazareth, P.A.
Attorneys at Law
625 East Colonial Drive
Orlando, FL 32803
(321)319-0587 ph
(866)449-8042 fax

FACSIMILE TRANSMISSION

To:	Attn: Bankruptcy Department	From:	Philip Bartlett, Esq.
Fax:	205-560-4809	Pages:	2
Phone:		Date:	08-20-08
Re:	Brown, Glenn Hunter Sr. Account #3720083815	CC:	

Urgent
 For Review
 Please Comment
 Please Reply
 Please Recycle

Comments:



Bartlett & Nazareth, P.A.

Attorneys at Law

625 E. Colonial Drive
Orlando, FL 32803
PH: (321) 319-0587
FAX: (407) 770-6066

Shareholders:
Philip D. Bartlett III
Richard M. Nazareth II

August 20, 2008

Regions Bank
PO Box 2224
Birmingham, AL 35246-0009

Re: Brown, Glenn Hunter Sr.
Account #3720083815

To Whom It May Concern:

On April 19, 2008, the above-named debtor filed a voluntary petition under Chapter 7 of the U.S. Bankruptcy Code. The case number is 6:08-bk-03082.

On July 25, 2008, his checking account was debited by your company for the amount \$921. This letter formally requests that this amount be returned and credited to his account.

I am enclosing a copy of the file-stamped Automatic Stay verifying the filing of the Petition.

Under 11 U.S.C. Section 362 (a), you may not:

- take any action against the debtor(s) or the debtor(s)'s property to collect any debt;
- enforce any lien on debtor(s)'s real or personal property;
- repossess any property in debtor(s)'s possession;
- discontinue any service or benefit currently being provided to the debtor(s) by you;
- take any action to evict the debtor(s) from his/her residential dwelling.

A violation of these prohibitions may be considered contempt of court and be punished accordingly.

Sincerely,

RICHARD MARTIN NAZARETH, ESQ.
The Nazareth Law Firm, P.A.
Florida Bar No. 35006
625 E. Colonial Drive
Orlando, Fl. 32803
Ph: (321) 319-0587
Facsimile: (866) 449-8042

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	0370
RECIPIENT ADDRESS	12055604809
DESTINATION ID	
ST. TIME	08/20 10:38
TIME USE	00'21
PAGES SENT	2
RESULT	OK