

In re: ABRAHAM RADI KARMI, Chapter 13, Debtor.
ABRAHAM RADI KARMI and ALI RADI SADEQ ELKARMI, Plaintiffs,
v.
NUHA ATALLAH and HESHAM NASR, Defendants.

Case No. 19-21507, Adv. No. 20-6030.

United States Bankruptcy Court, D. Kansas.

March 2, 2022.

MEMORANDUM AND ORDER

ROBERT D. BERGER, Bankruptcy Judge.

Plaintiff Abraham Karmi filed for bankruptcy under Chapter 13 in 2019. In this adversary proceeding, he seeks damages under 11 U.S.C. § 362(k) from his ex-wife, defendant Nuha Atallah, and her current husband, defendant Hesham Nasr, arguing that Atallah and Nasr violated the automatic stay provided under § 362(a)(1) in their post-petition efforts to collect a "deferred dowry." Karmi's brother, plaintiff Ali ElKarmi, also seeks damages from Atallah, arguing that she violated the co-debtor stay provided by § 1301(a). This Court held a trial via Zoom on May 25 and 26, 2021. This memorandum and order represents the Court's findings of fact and conclusions of law under Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a).

I. FINDINGS OF FACT

Plaintiff Abraham Karmi and defendant Nuha Atallah are naturalized U.S. citizens from Jordan. In 2009, they entered into an Islamic marriage contract providing that Karmi would pay Atallah a "deferred dowry" of \$25,000.

Unlike a Western dowry, a Sharia dowry is paid by a husband to his wife. The amount of the dowry is agreed upon by the couple at the time of marriage and paid in two parts. The first part of the dowry is paid when the couple enters into the marriage contract. The second part is deferred to the end of the marriage—hence the term "deferred dowry." At trial, Jordanian attorneys Amany Jabari and Tareq Masadeh (who represent Karmi and Atallah, respectively, in Jordan) each described Sharia dowry as a "right from God." Masadeh added that Sharia law "doesn't care about bankruptcy."

Sometime after they were married, Karmi and Atallah agreed to reduce the deferred dowry to \$15,000. They registered their marriage in Jordan in 2013.

Two years later, Atallah filed for divorce in Johnson County, Kansas. (Although she and Karmi had never registered their marriage with American civil authorities, Kansas recognizes common-law marriage.) The Kansas court entered a decree of divorce on January 10, 2018, awarding Atallah judgments against Karmi for \$4,000 in unpaid spousal support and maintenance and \$72,094 for the equitable division of marital assets and debts. Neither Karmi nor Atallah raised the issue of the deferred dowry in the Kansas court prior to the decree.

Atallah married defendant Hesham Nasr in March 2018 and traveled to Jordan the following year to register her new marriage. She discovered then that Karmi had already obtained a one-sided, or "arbitrary," divorce against her in 2015 from a Jordanian Sharia court. In light of that discovery, Atallah asked the Sharia court to enforce the deferred dowry.^[1]

On July 17, 2019, the Jordanian Sharia court issued a judgment against Karmi of 10,620 Jordanian dinars, or approximately \$15,000, for Atallah's deferred dowry. The following day, and at Atallah's request, the Sharia court issued a "travel ban" against Karmi, who was in the United States at the time. The travel ban did not prevent Karmi from entering Jordan, but did prevent him from leaving Jordan (once there) until the deferred dowry was paid or otherwise resolved.

Five days after Atallah obtained the Jordanian judgment, on July 22, 2019, Karmi filed for bankruptcy under Chapter 13 in the District of Kansas. He listed Atallah's \$72,094 judgment from the Kansas court, but not the deferred dowry, as an unsecured debt on his Schedule E/F. Attorney Stephen Bolton (who, the Court notes, office-shared with Atallah's divorce attorney, Lou Wexler) filed a proof of claim, an amended proof of claim, and an objection to plan confirmation early in Karmi's Chapter 13 case, all on Atallah's behalf^[2] and apparently at Wexler's request. However, Atallah testified at trial that she had never met Bolton, did not hire him, and was unaware of his actions. In any event, Bolton subsequently withdrew the filings,^[3] and Karmi's Chapter 13 plan—which does not provide for any payments to Atallah—was confirmed in December 2019.

On February 17, 2020, Karmi traveled to Jordan for a funeral. He learned about the travel ban when he was delayed at airport customs. (Karmi testified that he waited "two to three hours" for Jordanian officials to "come up with a number to give [him]" while they held his passport.) Two days later, Karmi's brother, plaintiff Ali ElKarmi, guaranteed payment of the Jordanian judgment so that Karmi would be permitted to return to the United States. With the guarantee, the Sharia court lifted the travel ban from Karmi, but placed a new travel ban on ElKarmi. ElKarmi, who lives in Jordan, testified at trial that he has been unable to leave Jordan since that time and that he has missed several business trips as a result.

During his February 2020 trip to Jordan, Karmi met with law professor Mamoon Alabady, Atallah's former classmate. Alabady, a former prosecutor, was not previously acquainted with Karmi; he left his phone number with the Sharia court after hearing that Karmi wanted to discuss the deferred-dowry case. After Karmi called Alabady, Alabady returned his call; the two then met together with ElKarmi in the lobby of the Grand Hyatt and discussed the deferred dowry over juice. (Karmi attempted to call Nasr during the meeting, but Nasr didn't answer his phone.) Karmi and Alabady both testified that Alabady did not attempt to "coerce" or "force" Karmi to pay the deferred dowry to Atallah during their conversation; rather, they discussed the case and Alabady offered his opinion that if Karmi owed the deferred dowry, he should pay it. Karmi told Alabady that he would write Atallah a check immediately if he thought he owed her anything, but that he didn't think he did in light of what he had already paid to Atallah in their Kansas divorce. They have not met in person since that conversation, but Alabady testified that Karmi sometimes called him afterwards "to say hi."

After Karmi returned to the United States in February 2020, he called Nasr to discuss the deferred dowry. (Karmi believes Nasr to be the "mastermind" behind Atallah's collection efforts.) During that conversation, Karmi told Nasr that he (Karmi) would "take everyone to court" and asked Nasr what he (Karmi) needed to do to resolve the issue.^[4] Nasr responded, "You owe her money. You either pay her or you don't." Following that conversation, Nasr sent Karmi a text in Arabic that, translated, says: "just remember Abraham that we talked today and you refused to pay what you owe, because after this moment words will not do you good

and I'm sorry when the situation escalades [sic] then speech will not matter."^[5] Karmi viewed the text as a "direct threat." Nasr, on the other hand, viewed it as neither a threat nor a demand for payment, but rather as an observation that talking about the issue would make no difference if Karmi was going to take everyone to court anyway.

Atallah testified that she learned about the automatic stay imposed by Karmi's bankruptcy in "late February or beginning of March 2020," after Karmi returned from Jordan.

On March 9, 2020, Atallah filed a new lawsuit against Karmi in Jordan seeking "compensation" for the "arbitrary divorce" Karmi had obtained there in 2015.^[6] Two weeks later, Karmi filed suit against Atallah in Jordan seeking to "prevent payment" of the deferred dowry based on the judgments Atallah had already been awarded against him in their Kansas divorce.

In addition to the prevent-payment lawsuit, Karmi challenged the deferred-dowry judgment by filing reports with the Olathe police, the State Department, and the FBI. He also filed a "Motion to Determine Property Rights" before the Kansas court that had issued the divorce decree. However, on June 10, 2020, the Kansas court found:

As to [Karmi's] Motion to Determine Property Rights, [Atallah] acknowledges that she is attempting to collect a judgment obtained in the Country of Jordan against [Karmi] for deferred dowry and other sums due to her from [Karmi]. The Court acknowledges these issues were not brought before the Court in the instant case at trial. Thus the Court finds that it lacks subject matter jurisdiction over this issue and [Karmi's] Motion is denied.^[7]

The next day, on June 11, 2020, Karmi filed a motion for contempt against Atallah and Nasr in his Chapter 13 bankruptcy case.^[8] The motion argued:

Atallah has violated the automatic stay of the United States Bankruptcy Code in her attempts to collect the [deferred-dowry judgment] through the enforcement and encouragement of the travel ban in the foreign country of Jordan, by forcing Debtor's brother to sign a personal guaranty for Debtor to be able to leave Jordan, and also through by [sic] filing certain motions in the Jordanian court seeking to collect the alleged debt during this active Chapter 13 Bankruptcy.^[9]

At the July 21, 2020 hearing on the contempt motion, this Court instructed the parties' attorneys that "the automatic stay is in place" and that Atallah and Nasr proceeded with collection efforts "at their own risk." The matter was set for pretrial conference in October to allow the parties time for limited discovery and settlement negotiations.

However, on October 4, 2020, the Jordanian Sharia court issued a collection notice to Karmi:

We would like to inform you that the grace period has expired and you should pay an amount of Fifteen thousand American Dollar which equals to Ten Thousand and [Six] hundred and Twenty Jordanian Dinars to the Prevailing Party (Nuha) from the date of your notification.

You have to pay that amount within seven days from the date of receiving this notice.

...

If this period expires and you don't pay this amount or offer the legal settlement; the enforcement department will start to execute the enforcement transactions against you legally.

[10]

Jabari testified that the Sharia court would not have issued the collection notice without having been requested to do so by Atallah or her attorney. Atallah testified that she knew about the automatic stay when the collection notice was issued.

Motivated by the collection notice, on October 8, 2020, Karmi and ElKarmi filed this adversary proceeding against Atallah and Nasr along with a motion for a temporary restraining order. This Court denied the motion for TRO without prejudice, reasoning that (1) Karmi had not demonstrated a threat of irreparable injury absent a TRO because he was in the United States with no immediate intent to travel to Jordan; (2) Karmi had not demonstrated a substantial likelihood of success on the merits because it was unclear whether the deferred-dowry case might fall within 11 U.S.C. § 362(b); (3) ElKarmi had not demonstrated a substantial likelihood of success on the merits because there was no evidence that the deferred dowry was a "consumer debt" as defined in 11 U.S.C. § 101(8); and (4) the Court was not prepared to hold, without more, that the automatic stay applies outside the United States.^[11] However, in light of ElKarmi's allegations that he was in immediate jeopardy of losing his house and/or being arrested, the Court set the matter for hearing the following day.

The first hearing in this adversary proceeding thus took place on October 9, 2020. The Court heard argument from Karmi's counsel and statements from Karmi, Atallah, and Nasr personally. Based on the parties' statements at that hearing, the Court ordered:

By operation of 11 U.S.C. §§ 362(a)(1) and 1301(a), defendant Nuha Atallah is currently stayed from "continuing" an action against plaintiff Abraham Radi Karmi and/or his brother, plaintiff Ali Radi Sadeq ElKarmi, to collect on the July 17, 2019, Jordanian judgment awarding her a "deferred dowry." Sections 362(a)(1) and 1301(a) therefore require Ms. Atallah, who is currently in the United States and subject to the personal jurisdiction of this Court, to prevent the Jordanian action from continuing (i.e., to instruct her Jordanian lawyer, or any other person acting on her behalf, to request that execution of the judgment against the plaintiffs be stayed) until further order of this Court. If Ms. Atallah fails to do so, she may be liable to Mr. Karmi for damages under 11 U.S.C. § 362(k)(1) and/or held in contempt of court under 11 U.S.C. § 105.

[12]

Attorney Tariq Masadeh, who represents Atallah in Jordan, testified that following entry of that order, Atallah asked him to stop the Jordanian proceedings. However, on February 21, 2021, the Sharia court sent requests for information to the Jordanian Drivers and Vehicles License Department and the Department of Lands and Survey, asking whether ElKarmi owned any vehicles or real property in Jordan.^[13] Masadeh testified that he had asked the Sharia court to do so and that such requests for information are normal procedure in a deferred-dowry case, adding that Atallah had not asked him to take that action.

Attorney Amany Jabari, who represents Karmi in Jordan, testified that in total, there have been nine pleadings filed and nine hearings held in the Jordanian deferred-dowry case; thirteen pleadings filed and thirteen hearings held in the Jordanian compensation-for-arbitrary-divorce case; and one pleading filed and five hearings held in the Jordanian prevent-payment case. She explained that the Sharia court holds monthly hearings in these cases and could take legal action against Karmi and ElKarmi if their counsel does not attend them.

Karmi and ElKarmi seek the following damages arising out of Atallah and Nasr's alleged violations of the automatic stay:

- (1) \$5,304 in Jordanian legal fees and costs (representing \$3,304 to Jabari and \$2,000 to attorney Ibrahim al-Jazaz);
- (2) \$2,000 for the American legal fees Karmi incurred in his Motion to Determine Property Rights before the Kansas court;
- (3) \$52,036.08 for the American legal fees Karmi incurred in this adversary proceeding and the motion for contempt; and
- (4) \$350 in court costs for this adversary proceeding.^[14]

II. CONCLUSIONS OF LAW

A. Presumption Against Extraterritorial Application of U.S. Law

When this Court denied the plaintiffs' motion for TRO on October 8, 2020, one of its stated grounds for doing so was uncertainty as to whether the automatic stay would apply outside the United States. See *supra* p. 9; see also *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) ("When a statute gives no clear indication of an extraterritorial effect, it has none."). However, the evidence now before the Court is that while the deferred-dowry case itself is in Jordan, the acts (and, in Atallah's case, failures to act) that Plaintiffs argue violated the automatic stay all occurred in the United States. The presumption against extraterritoriality therefore does not apply here. However, the Court expresses no opinion as to whether the presumption would apply in any other proceeding.

B. Damages for Willful Violation of the Automatic Stay

Under § 362(a)(1) of the Bankruptcy Code, the filing of a bankruptcy petition "operates as a stay, applicable to all entities," of:

the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

Section 362(a)(1) does not require a creditor to dismiss an existing pre-petition action.^[15] See *Perryman v. Dal Poggetto (In re Perryman)*, B.A.P. No. NC-21-1036-BFS, Bk. No. 19-10253, 2021 WL 4742673, at *1, *3 (B.A.P. 9th Cir. Oct. 8, 2021) (holding that creditor did not violate § 362(a)(1) by requesting continuances and attending status conferences in pre-petition action). Nor does it prevent a party from defending him- or herself in an action brought by the debtor. See *Riviera Drilling & Exploration Co. v. Gunnison Energy Corp.*, 412 F. App'x 89, 95 (10th Cir. 2011) (unpublished); *Bryner v. LeBaron (In re Bryner)*, 425 B.R. 601, 608 (B.A.P. 10th Cir. 2010). Whether a party's actions violate the automatic stay is a question of law. *Scroggin v. Lawrence Athletic Club (In re Scroggin)*, 364 B.R. 772, 778 (B.A.P. 10th Cir. 2007) (citing *Diviney v. NationsBank of Tex., N.A. (In re Diviney)*, 225 B.R. 762, 769 (B.A.P. 10th Cir. 1998)).

Section 362(k) provides (with an exception not relevant here) 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). The plaintiff must demonstrate, by a preponderance of the evidence, that (1) a stay violation occurred; (2) the violation was committed willfully; and (3) the violation caused actual damages. See *Kline v. Deutsche Bank Nat. Trust Co. (In re Kline)*, 472 B.R. 98, 103 (B.A.P. 10th Cir. 2012).^[16] To establish willfulness, the plaintiff must show that "the creditor knew of the automatic stay and intended the actions that constituted the violation; no specific intent is required." *Johnson v. Smith (In re Johnson)*, 501 F.3d 1163, 1172 (10th Cir. 2007).

1. Karmi — Atallah

Karmi argues that Atallah violated § 362(a)(1) by (1) filing the Jordanian compensation-for-arbitrary-divorce case in March 2020; (2) filing pleadings and scheduling hearings in the Jordanian cases; (3) requesting that the Jordanian court issue the collection notice in October 2020; (4) requesting that the Jordanian court seek information about ElKarmi's assets in February 2021; and (5) failing to request that the Jordanian court lift the travel ban.^[17] Atallah's claims in both the deferred-dowry and compensation-for-arbitrary-divorce cases arose before Karmi filed his Chapter 13 petition. Thus, to the extent Atallah "commence[d] or continu[ed]" those cases after Karmi filed his Chapter 13 petition on July 22, 2019, she violated § 362(a)(1).

However, Karmi can recover damages under § 362(k) only to the extent such violations were "willful." According to Karmi, Atallah's willfulness is established by her "knowledge of the bankruptcy proceeding."^[18] The relevant question under *In re Johnson*, though, is not whether Atallah was aware of the bankruptcy—it is whether she was aware of the *automatic stay*. For sophisticated creditors like the car dealership in *Johnson* and the banks in *Kline* and *Diviney*, these two concepts are equivalent; sophisticated creditors already know that bankruptcy imposes a stay. But there is no evidence that Atallah is a sophisticated creditor^[19] or that she actually knew about the automatic stay until after Karmi returned from Jordan in "late February or beginning of March 2020."^[20] Thus, only the stay violations that occurred after that time are willful under § 362(k). Karmi is therefore entitled to recover actual damages from Atallah under § 362(k), including costs and attorneys' fees, for the violations of § 362(a)(1) that occurred after Karmi returned to the United States in 2020.

Section 362(k) allows a plaintiff to recover not only fees incurred to remedy a stay violation, but also fees incurred in prosecuting the § 362(k) action itself. See, e.g., *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1097 (9th Cir. 2015) (en banc) (overruling *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir. 2010)); see also 3 *Collier on Bankruptcy* ¶ 362.12[3] (Richard Levin & Henry J. Sommer eds., 16th ed.). However, "[o]nly an award of fees *reasonably incurred* is mandated by the statute." *In re Schwartz-Tallard*, 803 F.3d at 1101 (emphasis added); see *id.* (noting that courts "retain the discretion to eliminate unnecessary or plainly excessive fees").

Here, after Karmi returned to the United States in 2020, he incurred \$1,736 in Jordanian attorney fees and costs for the deferred-dowry and compensation-for-arbitrary-divorce cases, and \$850 in Jordanian fees and costs in connection with this adversary proceeding.^[21] He also incurred \$350 in American court costs to file this proceeding. Those amounts are reasonable, and Karmi may recover them under § 362(k). As to Karmi's American legal fees of \$52,036.08,^[22] the Court will analyze the reasonableness of that amount in

a separate order. The Court's analysis will be guided by the "adjusted lodestar approach" used in the Tenth Circuit to calculate reasonable attorney fees under § 330.^[23]

While Karmi will thus recover some of his legal fees under § 362(k), he is not entitled to damages arising out of the Jordanian travel ban. When Karmi filed his Chapter 13 bankruptcy case, he had already lost the right to travel freely in and out of Jordan. Atallah did not learn about the automatic stay until *after* Jordanian authorities had lifted Karmi's travel ban (and placed a new one on EIKarmi). Thus, even assuming Atallah's failure to request that the travel ban be lifted from Karmi did violate § 362(a)(1), such violation was never willful for purposes of § 362(k)—by the time Atallah learned about the automatic stay, there was no travel ban on Karmi to lift. Because Atallah's failure to release Karmi's travel ban was never "willful" for purposes of § 362(k), such failure does not entitle Karmi to damages under that subsection.^[24]

As to Karmi's request for punitive damages, such damages may be "appropriate" under § 362(k) when the defendant acted with actual knowledge that he was violating a federally protected right or with reckless disregard of whether he was doing so. See *In re Diviney*, 225 B.R. at 776. Such damages may also be appropriate under § 362(k) upon consideration of (1) the nature of the defendant's conduct, (2) the defendant's ability to pay, (3) the defendant's motives, and (4) any provocation by the debtor. See *id.* at 777. "[I]t is clear that imposition of punitive damages requires proof of something more than a willful violation of the automatic stay." *Escobedo v. Davis (In re Escobedo)*, 513 B.R. 605, 613 (Bankr. D.N.M. 2014).

Here, the Court finds that (1) the October 4, 2020 Jordanian collection notice represents reckless disregard for the automatic stay on Atallah's part, but that (2) Atallah instructed her Jordanian attorney to cease all collection activities following the Court's October 9, 2020 order that directed her to do so. Under these circumstances, the Court finds that an award of \$500 in punitive damages is appropriate under § 362(k).

2. Karmi — Nasr

Karmi argues that Nasr violated § 362(a)(1) "by calling and texting Plaintiff Karmi in efforts to have him pay the Dowry Judgment, and sending his friend Mamoon Alabady to demand payment of the Dowry Judgment by Plaintiff Karmi."^[25] The record before this Court shows a single conversation between Karmi and Nasr regarding the deferred dowry that began on the phone and concluded with a text message. Because the conversation was initiated by Karmi, it did not violate § 362(a)(1). Cf. *Riviera Drilling*, 412 F. App'x at 95. And even if Nasr did violate § 362(a)(1) by engaging Karmi in that conversation, there is no evidence that Nasr knew about the automatic stay when it occurred, and therefore no evidence that such violation was willful under § 362(k). Cf. *Johnson*, 501 F.3d at 1172. As to Karmi's meeting with Alabady, that meeting was likewise initiated by Karmi; moreover, there is no evidence that Nasr was involved in setting it up or that Nasr knew about the automatic stay when the meeting occurred. For these reasons, Karmi is not entitled to damages from Nasr under § 362(k).

3. EIKarmi — Atallah

Section 1301(a) of the Bankruptcy Code provides (with exceptions not relevant here):

[A]fter the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual

that is liable on such debt with the debtor, or that secured such debt.

Here, ElKarmi argues that he is entitled to damages under § 362(k) arising out of Atallah's alleged violations of § 1301(a). This argument is flawed in four ways.

First, section 362(k) only authorizes damages for violations "of a stay *provided by this section*" (emphasis added). In other words, § 362(k) authorizes damages for violations of § 362, not § 1301. Thus, even assuming that Atallah's continued pursuit of the deferred-dowry judgment violated § 1301(a) vis-à-vis ElKarmi, he cannot recover damages under § 362(k) as a result.

Second, while ElKarmi argues that his guarantee of the deferred-dowry judgment is a "consumer debt" for purposes of § 1301 because he "gained no profit" in entering into the guarantee and because ElKarmi's "primary purpose [in doing so] was to help a family member in need,"^[26] section 1301 applies to a consumer debt *of the debtor*. This means that the relevant question under § 1301 is not ElKarmi's motive for guaranteeing Karmi's deferred-dowry debt, but rather Karmi's motive for incurring it in the first place. ElKarmi presents no argument and points to no evidence as to Karmi's motives for entering into the deferred-dowry agreement with Atallah.^[27]

Third, even if the deferred dowry is a consumer debt vis-à-vis Karmi, ElKarmi is not "liable on such debt." The only parties to the deferred-dowry agreement were Karmi and Atallah. While ElKarmi is liable on his post-petition guarantee of the Jordanian judgment, he is not liable on the deferred dowry *itself*. Because ElKarmi is not liable on the deferred dowry itself, section 1301 does not apply.

Fourth, even if ElKarmi were liable on the deferred dowry itself, section 1301(a) exists to protect the debtor, not the codebtor. See, e.g., *In re Burkey* No. 09-12371, 2012 WL 5959991, at *3 (Bankr. N.D.N.Y. Nov. 28, 2012).^[28] In other words, § 1301 is meant to protect *Karmi*, not ElKarmi. Here, ElKarmi does not explain how his voluntary post-petition guarantee brings him under the aegis of a statute that was not meant to protect him. Thus, even if Atallah's actions did violate § 1301, ElKarmi has provided the Court with no reason to award *ElKarmi* damages as a result.

For those reasons, the Court holds that ElKarmi is not entitled to damages for Atallah's alleged violations of § 1301(a).

Nor is ElKarmi entitled to damages arising out of Atallah's violations of § 362(a)(1). ElKarmi, who is neither a debtor nor a creditor, is not within the "zone of interests" protected by § 362(k). Cf. *Lee v. McCardle (In re Peoples)*, 880 F.3d 1207, 1216 (10th Cir. 2018) (reasoning that the "specific purposes" of the automatic stay "are to protect the debtor from collection efforts and to protect creditors from inequitable treatment," and that "§ 362(k)'s zone of interests extends to debtors and creditors when they allege those types of harms"). While ElKarmi points out that § 362(a)(1) may protect a nondebtor in "'unusual situations' as 'when there is such identity between the debtor and the third-party defendant . . . that a judgment against the third-party defendant will in effect be in a judgment or finding against the debtor,'" *Okla. Fed. Gold & Numismatics, Inc. v. Blodgett*, 24 F.3d 136, 141 (10th Cir. 1994) (citation omitted), he neither points to any evidence nor offers any explanation as to how that "narrow exception," *id.*, exists here.

Because § 362(k) does not authorize damages for violations of § 1301(a), and because ElKarmi is not within the zone of interests protected by § 362(k), ElKarmi is not entitled to damages under § 362(k).

C. Permanent Injunction/Scope of the Automatic Stay

In addition to damages, Karmi and ElKarmi also seek a "permanent injunction" against Atallah, namely:

a permanent injunction against Defendant Atallah requiring her to dismiss the Jordanian lawsuits; to immediately take all necessary actions to have the travel bans against Plaintiff Karmi and Plaintiff ElKarmi released/extinguished; to immediately take all necessary actions to have Plaintiff ElKarmi's guarantee released/extinguished, including having his house and vehicles released as security; and to immediately take all necessary actions to make sure that no arrest warrants are issued against Plaintiffs, and that they are not arrested.^[29]

"For a party to obtain a permanent injunction, it must prove: (1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007) (quoting *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1180 (10th Cir. 2003)). Here, Karmi and ElKarmi argue that they have established actual success on the merits because they have demonstrated that Atallah violated the automatic stay under §§ 362(a)(1) and 1301(a). The problem with this argument is that the stay is not permanent; its length is specified by §§ 362(c) and 1301(a)(2). And the stay is already in place; to add an injunction under the same provisions of the Bankruptcy Code would accomplish nothing. To the extent that the plaintiffs are requesting express direction as to the requirements of the automatic stay, though, the Court hereby holds:

- Section 362(a)(1) does not require Atallah to dismiss the Jordanian deferred-dowry case, which she filed pre-petition, but does stay her from taking substantive action against Karmi in that case so long as the automatic stay remains in effect under § 362(c). *Cf. In re Perryman*, 2021 WL 4742673, at *1.
- Section 362(a)(1) requires Atallah to dismiss the Jordanian compensation-for arbitrary-divorce case, which she filed against Karmi post-petition. *Cf. In re Diviney*, 225 B.R. at 776.
- Section 362(a)(1) does not require Karmi to dismiss the Jordanian prevent-payment case. *Cf. Riviera Drilling*, 412 F. App'x at 95. However, if Karmi elects not to dismiss, the Court hereby grants stay relief under § 362(d) to the extent necessary for Atallah to participate in the case.
- Section 1301(a)(1) does not require Atallah to release ElKarmi from the travel ban or guarantee; but
- Pursuant to its authority under § 105(a), the Court will order Atallah to release ElKarmi from the travel ban, and to cease any efforts to collect from ElKarmi on the guarantee, so long as the automatic stay remains in effect under §§ 362(a)(1) and (c).

The Court expresses no opinion as to the scope of the Chapter 13 discharge under § 1328 or the scope of the discharge injunction under § 524(a).

III. CONCLUSION

Section 362(k) entitles Karmi to actual damages of \$2,586 in Jordanian attorney fees and costs, plus \$350 in American court costs, plus a reasonable American attorney fee. He is also entitled to \$500 in punitive

damages. The Court will analyze the reasonableness of the \$52,036.08 in American attorney fees requested by Karmi in a separate order.

Section 362(k) does not entitle ElKarmi to damages. However, Atallah is hereby ordered, pursuant to the Court's authority under § 105(a), to release ElKarmi from the travel ban and to cease any efforts to collect from ElKarmi on the guarantee so long as the automatic stay remains in effect under §§ 362(a)(1) and (c).

This order will become final upon entry of judgment pursuant to Fed. R. Bankr. P. 7058 and Fed. R. Civ. P. 58. The Court will enter judgment concurrent with its separate order on the reasonableness of Karmi's American attorney fees.

IT IS SO ORDERED.

[1] Atallah's right to the deferred dowry may have depended on the manner in which the Islamic divorce was obtained. See, e.g., Chelsea A. Sizemore, Comment, *Enforcing Islamic Mahr Agreements: The American Judge's Interpretational Dilemma*, 18 Geo. Mason L. Rev. 1085, 1088 (2011).

[2] See Case No. 19-21507, Claims 16-1 and 18-1 and ECF 22.

[3] See Case No. 19-21507, ECF 35 and ECF 37.

[4] According to Karmi, Nasr also told him that he (Nasr) and Atallah brought the deferred-dowry case against him in Jordan because he had filed for bankruptcy. The Court gives no weight to this allegation because Atallah's deferred-dowry case was filed five days before (and therefore could not have been caused by the filing of) Karmi's bankruptcy petition.

[5] See Pls.' Ex. 9 (text); Pls.' Proposed Findings of Fact and Conclusions of Law ¶ 77 (translation). This translation is consistent with Karmi and Nasr's testimony about the message at trial.

[6] See Pls.' Ex. 5. The English translation of the court document is undated, but Jabari and Atallah testified that it was filed on March 9, 2020. Jabari testified that Atallah had also filed an action against Karmi for alimony in Jordan sometime during 2019, and that the case was subsequently dismissed. However, there is no evidence that the alimony case was filed post-petition or that Karmi incurred any post-petition expenses defending it.

[7] Pls.' Ex. 7 ¶ 3.

[8] See Case No. 19-21507, ECF 43.

[9] See Case No. 19-21507, ECF 43 at 1.

[10] Pls.' Ex. 6.

[11] ECF 11 (citing *Wechmann v. Ritter*, 44 F. App'x 346, 347 (10th Cir. 2002) (unpublished); *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 977 (10th Cir. 2004) (en banc); Shlomo Maza, Yes, No, or Maybe: *The Presumption Against Extraterritoriality in the Bankruptcy Context*, 23 Am. Bankr. Inst. L. Rev. 601 (Summer 2015); and David P. Stromes, Note, *The Extraterritorial Reach of the Bankruptcy Code's Automatic Stay: Theory vs. Practice*, 33 Brook. J. Int'l L. 277 (2007)).

[12] ECF 12 at 2.

[13] Pls.' Ex. 7 at 000001-2.

[14] Pls.' Proposed Findings of Fact & Conclusions of Law ¶ 79 (citations omitted).

[15] In other words, section 362(a)(1) uses "continuation" in the sense of "going forward or proceeding with," not "requesting the postponement of."

[16] See also *Kline v. Deutsche Bank Nat. Trust Co. (In re Kline)*, Bankr. No. XX-XX-XXXXX MS, Adv. No. 90-1035 J, 2011 WL 3879485 (Bankr. D.N.M. Sept. 2, 2011), *aff'd*, *Kline v. Deutsche Bank Nat. Trust Co. (In re Kline)*, 514 F. App'x 810 (10th Cir. 2013) (unpublished).

[17] Pls.' Proposed Findings of Fact & Conclusions of Law ¶ 83 (citations omitted).

[18] *Id.* at 9.

[19] The Court uses "sophisticated" here to mean "familiar with the applicable requirements of American bankruptcy law."

[20] See Partial Trial Tr. vol. 1, 12, 30-31, May 26, 2021, ECF 80. While the Notice of Bankruptcy Case Filing sent to Atallah at the outset of Karmi's bankruptcy does mention the automatic stay, Karmi's counsel neither offered it into evidence nor asked Atallah if she had read it.

[21] See Pls.' Ex. 14 (invoice from Amany Jabari, whose work for Karmi occurred in 2021). Section 362(a)(1) does not apply to the Jordanian prevent-payment case because that case was brought by Karmi, not against him. See *Riviera Drilling*, 412 F. App'x at 95 (emphasizing that § 362(a)(1) stays actions *against* the debtor). Section 362(a)(1) likewise does not apply to Karmi's Motion to Determine Property Rights before the Kansas state court.

As to the \$2,000 paid by ElKarmi to attorney Ibrahim al-Jazaz, there is no evidence as to which portion of that amount was (1) to represent Karmi (as opposed to ElKarmi), (2) in the deferred-dowry and compensation-for-arbitrary-divorce cases (as opposed to the prevent-payment case), (3) after Atallah found out about the automatic stay (as opposed to while Karmi was still in Jordan). Without such evidence, the Court is unable to award any part of al-Jazaz's \$2,000 fee to Karmi under § 362(k).

[22] See Pls.' Exs. 15, 15a.

[23] To determine whether attorney fees were reasonably incurred for purposes of § 362(k), bankruptcy courts frequently apply the standards used to calculate reasonable attorney fees under § 330. See, e.g., *In re Voll*, 512 B.R. 132, 141 (Bankr. E.D.N.Y. 2014) (citations omitted). Courts in the Tenth Circuit use an "adjusted lodestar approach" to calculate such fees. See *Mkt. Ctr. E. Retail Prop., Inc. v. Lurie (In re Mkt. Ctr. E. Retail Prop., Inc.)*, 730 F.3d 1239, 1246 (10th Cir. 2013).

[24] Nor is it clear, given Supreme Court and Tenth Circuit cases interpreting § 362(a)(3), that § 362(a)(1) imposed an affirmative duty on Atallah to change the status quo that existed legally pre-petition. Cf. *City of Chicago v. Fulton*, 141 S. Ct. 585, 590 (2021) ("The term 'stay' is commonly used to describe an order that 'suspend[s] judicial alteration of the status quo.'" (second alteration in original) (quoting *Nken v. Holder*, 556 U.S. 418, 429 (2009)); *WD Equip., LLC v. Cowen (In re Cowen)*, 849 F.3d 943, 949 (10th Cir. 2017) ("Stay means stay, not go."). While the Tenth Circuit held in *Johnson* (and the B.A.P. held in *Diviney*) that a creditor's failure to act violated § 362(a)(3), both of those cases addressed a creditor's failure to remedy a *post-petition* stay violation. See *Johnson*, 501 F.3d at 1167 (describing post-petition repossession of pickup truck); *Diviney*, 225 B.R. at 766 (describing repossession and sale of car that occurred after reinstatement of bankruptcy case).

[25] Pls.' Proposed Findings of Fact & Conclusions of Law ¶ 84 (citation omitted).

[26] The Bankruptcy Code defines "consumer debt" as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). In the Tenth Circuit, a debt is *not* a consumer debt under § 101(8) if it was incurred with a "profit motive." See *Stewart v. U.S. Trustee (In re Stewart)*, 175 F.3d 796, 806 (10th Cir. 1999). However, the contrapositive of this statement may not be true; some debts, such as income tax debt and tort liability, are not considered consumer debts even though they lack a profit motive. See *In re Grillot*, 578 B.R. 651, 659 & n.53 (Bankr. D. Kan. 2017).

[27] Although this Court stated in its October 9, 2020 order that § 1301(a) stayed Atallah from continuing her efforts to collect the deferred-dowry judgment from ElKarmi, "district courts generally remain free to reconsider their earlier interlocutory orders." *Rimbert v. Eli Lilly & Co.*, 647 F.3d 1247, 1251 (10th Cir. 2011) (citations omitted).

[28] *In re Burkey* continues:

This position is consistent with the legislative history of § 1301 that provides, "It is not relief for an individual that is not a debtor under the bankruptcy laws. It is designed only to protect the principal debtor, not the codebtor. Any protection of the codebtor is incidental."

In re Burkey, 2012 WL 5959991, at *3 (quoting H.R. Rep. No. 95-595, at 123 (1977)).

[29] Pls.' Proposed Findings of Fact & Conclusions of Law ¶ 137.

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