

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Michael Thad Kennedy and Tasha  
Faehnrich Kennedy,

Debtor(s).

C/A No. 18-01534-HB

Chapter 13

**ORDER FINDING SANTANDER  
CONSUMER USA, INC. D/B/A  
CHRYSLER CAPITAL IN  
CONTEMPT**

**THIS MATTER** is before the Court on the Motion for Contempt filed by Debtors Michael Thad Kennedy and Tasha Faehnrich Kennedy pursuant to 11 U.S.C. § 105(a).<sup>1</sup> The Motion asks the Court to hold Santander Consumer USA, Inc. d/b/a Chrysler Capital (“Santander”) in contempt for failing to comply with a Court order, require Santander to immediately comply, and award the Kennedys damages for Santander’s failure to comply. Edward L. Bailey represents the Kennedys.

**UNDISPUTED FACTS**

The Kennedys filed a voluntary petition for Chapter 13 relief, schedules, and statements on March 28, 2018. They listed Santander in Schedule D as a creditor with a debt secured by a 2015 Jeep Wrangler Sport, which is listed in Schedule A/B. Santander’s noticing address on the proof of claim later filed (“Noticing Address”) and a supplemental address are listed on the creditor matrix attached to the schedules and statements. The next day, the Kennedys filed a Chapter 13 plan and served it on all creditors, including Santander at the Noticing Address and a supplemental address. The plan provides for payment of Santander’s claim in full without valuation or lien avoidance. Section 3.3 of the plan states “[s]ecured creditors paid the full secured claim provided for by this plan shall satisfy any liens within a reasonable time.”<sup>2</sup> The plan was confirmed on July

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<sup>1</sup> ECF No. 48, filed July 26, 2021.

<sup>2</sup> The plan was later amended without any change in the treatment of Santander’s claim, served at Santander’s Noticing Address and a supplemental address.

20, 2018. On April 30, 2018, Santander filed a proof of claim in the amount of \$30,574.84, indicating it is secured by the Jeep.<sup>3</sup>

On December 3, 2020, Tasha Kennedy was in a car accident that totaled the Jeep. According to the Chapter 13 trustee's records, Santander was paid \$13,880.79 toward principal and \$4,070.47 in interest, leaving a claim balance of \$16,694.05 as of December 4, 2020. The insurance carrier, Progressive Group of Insurance Companies ("Progressive") paid an insurance claim in the amount of \$21,182.73 ("insurance proceeds"). The difference between the insurance proceeds and Santander's claim balance is \$4,488.68.

On January 4, 2021, the Kennedys filed a Motion to Use Cash Collateral seeking to use the insurance proceeds to pay off Santander's claim balance and any remainder to purchase another vehicle or pay for living expenses. The notice, motion, and proposed order were served on Santander at its Noticing Address and three other addresses. Santander did not file an objection and the Court issued an order granting the motion on January 25, 2021 ("Cash Collateral Order").<sup>4</sup> The Cash Collateral Order required Progressive to forward the insurance proceeds to Bailey to deposit into his trust account for disbursement and required Santander to forward the certificate of title with its lien noted thereon as satisfied to Bailey within ten days of entry of the order, or by February 4, 2021.

The Court's record does not include proof of service of the Cash Collateral Order on Santander at that time.<sup>5</sup> However, the next day, Bailey mailed a letter with a copy of the Cash Collateral Order to Santander requesting a copy of the certificate of title with the lien satisfaction within ten days. This correspondence was mailed to Santander's Noticing Address and three other

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<sup>3</sup> Claim No. 1-1.

<sup>4</sup> ECF No. 41.

<sup>5</sup> See SC LBR 9013-3 and 9013-4.

addresses. After Santander did not respond, Bailey sent a letter to Santander on February 10, 2021, with a copy of the Cash Collateral Order again requesting a copy of the certificate of title. Santander did not respond and on February 12 and March 9, 2021, Bailey's legal assistant called Santander and spoke with several representatives to try to induce compliance with the Cash Collateral Order. However, the conversations proved unproductive. On March 10, 2021, Bailey called Santander but ended the call after being placed on hold for approximately 15 minutes. He then emailed Santander at the email address listed on its proof of claim but received no response. On June 10, 2021, after speaking with a representative for Santander, Bailey faxed a demand letter and a draft of a motion for contempt, both of which referenced section 3.3 of the plan requiring secured creditors whose claims have been paid to timely satisfy their liens. There has been no response from Santander. Bailey currently holds in his trust account the insurance proceeds, which were promptly sent to him by Progressive after receiving correspondence from Bailey and a copy of the Cash Collateral Order in February 2021.

On July 26, 2021, the Kennedys filed this Motion for Contempt with supporting Affidavits and exhibits and served the same on Santander at the Noticing Address. The Court issued a notice scheduling a hearing for August 26, 2021, and requiring any response be filed by August 16, 2021,<sup>6</sup> and gave due notice thereof.<sup>7</sup> Santander did not respond or participate in the hearing. Santander still has not forwarded to Bailey or any other relevant party the certificate of title with its lien noted as satisfied. Bailey still holds all insurance proceeds, awaiting Santander's compliance with the Cash Collateral Order.

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<sup>6</sup> ECF No. 51, filed July 26, 2021.

<sup>7</sup> ECF No. 52, filed July 28, 2021.

The Affidavits state Bailey's hourly rate for non-routine bankruptcy matters like this is \$250.00. He spent more than 10 hours on this matter prior to attending the hearing. Attending the hearing and waiting for the case to be called easily raise the time commitment to 11 hours.

#### **APPLICABLE LAW**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and the Court may enter a final order.

Section 105(a) of the Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

“This Court and other courts have recognized that the authority provided to bankruptcy courts under § 105 to issue the necessary or appropriate orders to carry out the Bankruptcy Code includes the power to sanction litigants and their counsel.” *In re Gillespie*, C/A No. 11-07910-JW, 2017 WL 7660641, at \*3 (Bankr. D.S.C. Oct. 18, 2017) (citing *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997); *In re A.H. Robins Co., Inc.*, 133 F.3d 913 (4th Cir. 1998); *In re Ulmer*, 363 B.R. 777, 781 (Bankr. D.S.C. 2000)). While not every error or omission should serve as a basis for sanctions, sanctions are more likely for “instances of intentional misconduct, blatant disregard for clear orders and rules, [and] repeated and substantial errors which cause prejudice[.]” *Id.* (quoting *In re Thomas-Wright*, C/A No. 16-03950-JW, slip op. at 5 (Bankr. D.S.C. Sept. 27, 2017)).

“It is clear from the very terms of [§ 105(a)] that Congress gave the Bankruptcy Court broad inherent discretionary powers to ensure that the motions made and issues raised before it are managed efficiently and justly[.] including the authority to award attorney's fees.” *In re Simmons*,

623 B.R. 288, 293 (Bankr. D.S.C. 2021) (quotation marks and citation omitted) (awarding attorney’s fees and costs incurred in bringing a motion for contempt against a creditor that failed to abide by an order requiring it release its lien on a manufactured home and deliver title to the debtors). Additionally, the Court has the power to issue per diem fines for failing to comply with an order to induce compliance. *Id.* at 292 (collecting cases and enforcing provision of prior order that provided \$100.00 per diem sanction for failure to comply). “A per diem fine imposed for each day a contemnor fails to comply with an affirmative order . . . exerts a constant coercive pressure such that once the judicial command is obeyed, the future, indefinite, daily fines are purged.” *Id.* (quoting *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994)).

### **CONCLUSION**

Santander received adequate notice of all filings having a potential impact on its interest in the Jeep and the insurance proceeds, including the Cash Collateral Order and Motion for Contempt, yet failed to comply or respond. Meanwhile, the Kennedys are unable to clear the Jeep title and access the net insurance proceeds. This conduct is the sort of “blatant disregard for clear orders and rules” that warrants sanctions. *Gillespie*, C/A No. 11-07910-JW, 2017 WL 7660641, at \*3 (quoting *Thomas-Wright*, C/A No. 16-03950-JW, slip op. at 5).

Santander is in contempt of this Court for failing to abide by the Cash Collateral Order and sanctions pursuant to § 105(a) are due for failure to comply thus far. The Court finds it appropriate for Santander to pay the attorney’s fees incurred by the Kennedys in bringing the Motion for Contempt. To induce compliance with this Order, the Court will assess a \$100.00 per diem sanction against Santander if full compliance is not immediate.

**IT IS, THEREFORE, ORDERED, THAT:**

1. Santander Consumer USA, Inc. d/b/a Chrysler Capital is in contempt of this Court for failing to abide by the Cash Collateral Order entered on January 25, 2021.
2. Santander Consumer USA, Inc. d/b/a Chrysler Capital shall reimburse Edward L. Bailey the attorney's fees incurred as a result of its contempt in the amount of \$2,750.00, which represents 11 hours of work at \$250.00 per hour.
3. Bailey is authorized to immediately disburse from the insurance proceeds held in his escrow account \$2,750.00 to himself and \$4,488.68 to the Kennedys.
4. **Within ten (10) days of entry of this Order**, Santander Consumer USA, Inc. d/b/a Chrysler Capital shall satisfy its lien on the title to the Kennedys' 2015 Jeep Wrangler Sport and send the certificate of title with the lien noted as satisfied to Bailey, as previously required in the Cash Collateral Order.
5. Upon receipt of proof of timely satisfaction of the lien, Bailey shall promptly forward \$13,944.05 to this creditor, the amount that was due on its claim when the Cash Collateral Order was entered minus the amounts set forth above (\$16,694.05 less \$2,750.00 in attorney's fees).
6. Should this creditor fail to timely comply, Bailey may disburse from the insurance proceeds remaining in his escrow account to the Kennedys a sum equal to \$100.00 per day, beginning on the 11<sup>th</sup> day after entry of this Order and continuing until such time as the creditor has fully complied or the funds are exhausted, whichever occurs first.<sup>8</sup> Any amounts disbursed to the Kennedys shall be deducted from any amount due to this creditor from the insurance proceeds.

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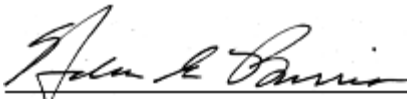
<sup>8</sup> These amounts may be disbursed to the Kennedys on a monthly basis or less often as Bailey and the Kennedys agree.

7. This creditor shall not be entitled to any further interest nor any other charges, fees, or amounts. Upon payment by Bailey as set forth in this Order, this creditor's claim is deemed fully satisfied and creditor shall report that fact to any credit reporting agency it utilizes within ten (10) days of receipt of payment pursuant to this Order.

**FILED BY THE COURT**  
**09/09/2021**



Entered: 09/09/2021

  
Chief US Bankruptcy Judge  
District of South Carolina