UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE: William Raymond Caleb Bishop and Makaela Alexis Bishop, Debtor(s).	C/A No. 24-04005-HB Chapter 13 **ORDER DENYING MOTION FOR RELIEF FROM STAY**

THIS MATTER came before the Court for a hearing on December 5, 2024, to consider the Motion for Relief from Stay (the "Motion") filed by Sharonview Federal Credit Union ("Creditor"), and the Objection of Debtors William Raymond Caleb Bishop and Makaela Alexis Bishop.[1]

The facts are not in dispute and are found in the pleadings and other documents in the Court's records. This Chapter 13 case was filed on November 5, 2024. The petition was signed and filed by Jason T. Moss ("Moss") of Moss & Associates, Attorneys, P.A. (the "Firm"). Pre-petition, on October 29, 2024, Creditor repossessed a 2021 Ford Bronco (the "Vehicle") titled in Debtor Alexis Bishop's name, with a lien noted on the title in favor of Creditor resulting from a note and security agreement dated September 2, 2022. The documents indicate monthly scheduled payments of approximately $610.00 for seventy-two (72) months, with an interest rate of 5.49%. Creditor asserts in its claim that the value of the Vehicle is $22,725.00 and the amount owed at filing was $30,047.76.[2] As of the date the Motion was filed, the arrearage on the loan was $2,441.75.

The day after the case was filed, the Firm (the specific attorney is not in this record) contacted Creditor's regular bankruptcy counsel in Raleigh, NC, providing notice that

[1] ECF Nos. 10 and 18.
[2] Claim No. 5-1.

Debtors had filed this bankruptcy case and requesting turnover of the Vehicle pursuant to 11 U.S.C. § 542.[3] Shortly thereafter, counsel in this case, Lucas S. Fautua, was engaged by Creditor to handle this matter. On November 8, 2024, Fautua attempted to contact the Firm without success in connection with the turnover request. On November 11, 2024, Fautua contacted the attorney designated by the Firm to handle this matter to relay adequate protection requests. On November 12, 2024, the Firm sent a demand letter for immediate turnover with proof of insurance directly to Creditor, with a copy to Fautua.

On November 14, 2024, Fautua responded to the letter advising that proof of insurance provided with the letter did not include Creditor as loss payee, and at a minimum, Creditor would need the Debtors' schedules and statements and a proposed Chapter 13 plan to be filed to determine whether or not the Debtors were or were not making appropriate provision for redemption of the Vehicle under applicable non-bankruptcy law through their Chapter 13 case. Fautua proposed a turnover of the Vehicle upon Debtors (1) providing proof of current comprehensive and collision insurance on the Vehicle naming Creditor as loss payee, (2) filing all required schedules and statements, and (3) filing a proposed Chapter 13 plan that "appropriately" provides for Creditor to be allowed a fully secured claim relative to the Vehicle, including pre-petition repossession costs, applicable storage fees, and reasonable attorney fees. Debtors did not comply with Creditor's demands and the Motion was filed and scheduled for hearing on December 5, 2024.[4]

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[3] 11 U.S.C. § 542(a) provides: "…an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, **shall** deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." (emphasis added). 11 U.S.C. § 1303 grants the "trustee" rights referenced in this section to a Chapter 13 debtor.

[4] Creditor requested that the hearing be expedited, but the Court denied that request as Creditor was adequately protected by possession of the Vehicle and had failed to show why relief from stay was urgent.

Creditor's Motion, filed on November 18, 2024, seeks relief from stay to allow Creditor to liquidate its interest in the Vehicle pursuant to applicable non-bankruptcy law. Creditor argues cause for relief from stay exists including failure to provide proof of adequate insurance coverage on the Vehicle, failure to file necessary schedules and statements and proposed Chapter 13 plan "to get their pending case out of potential dismissal status", and failure to provide Creditor with appropriate adequate protection of its interest in the Vehicle. Creditor did not request payments to address any depreciation of the Vehicle's value pending plan confirmation nor assert any decline in value of the Vehicle during that time period.

On November 20, 2024, Debtors filed schedules, statements, and a Chapter 13 plan. The schedules listed two vehicles as assets and claimed an exemption in the Vehicle, and the plan proposed to pay Creditor's claim secured by the Vehicle in full at the contract interest rate. The schedules indicate that Debtors both work outside the home and there does not appear to be any dispute that two vehicles are necessary for an effective reorganization. A hearing to consider confirmation of that plan is scheduled for January 23, 2024, with objections to confirmation due seven (7) days before.

On November 27, 2024, Moss filed a response to the Motion asserting that Debtors have provided adequate proof of insurance coverage for the Vehicle, noting the filing of a plan that pays the claim in full, requesting that Fautua amend the proof of claim to include the additional fees, and stating that Debtors would agree to a consent order that includes "drop-dead language for adequate protection." At the hearing, Fautua acknowledged that Creditor had received proof that it was named as a loss payee on the insurance policy as of November 19, 2024.

A hearing on the Motion was held on December 5, 2024. Although Creditor still has the right to timely object to the plan, Creditor did not appear to assert at this point that this case was filed in bad faith or that the Debtors will not be able to fund or confirm a plan.[5] Rather, through adequate protection demands, Creditor has leveraged its possession of the Vehicle and Debtors' need for its return to make demands regarding Chapter 13 plan terms and reimbursement of pre- and post-petition fees and costs. Creditor's Motion demanded that, as an alternative to relief from stay and as a condition of any turnover, Debtors must: provide proof of current comprehensive and collision insurance on the Vehicle naming Creditor as loss payee (completed November 19, 2024) and file all required schedules and statements and a proposed Chapter 13 plan that allows Creditor a fully secured claim on the Vehicle (filed November 20, 2024), including the pre-petition repossession costs and storage fees incurred (additional condition accepted November 27, 2024, *see* paragraph 6, ECF No. 18).[6] At least by November 27, 2024, it appears that Debtors accepted all of Creditor's adequate protection demands asserted in the Motion as conditions for turnover. However, as of the date of the hearing, Creditor was still in

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[5] Despite the assertion in the Motion that "this case has the realistic potential to be a 'grab and go' by the Debtors to obtain a quick 'no cost' turnover of the Vehicle", there is no evidence of such.

[6] Although Debtors' proposed plan meets Creditor's demands to pay the claim in full, this is not necessarily required when a repossession occurs pre-petition. Creditor cites *Altman v. Nations Auto (In re Altman)*, C/A No. 22-03237-EG, Adv. Pro. No. 22-80048-EG, slip op. (Bankr. D.S.C. Dec. 15, 2022) for the proposition that a Debtor's right of redemption is appropriately "exercised through payment of the amount due under the contract over the life of the plan." *But see In re Keisler*, C/A No. 17-03304-dd, slip op. (Bankr. D.S.C. Nov. 21, 2017), which the undersigned has previously followed, wherein Judge David R. Duncan stated "The Court notes that although the debtor in [*In re*] *Moffett*[, 356 F.3d 518 (4th Cir. 2004)] proposed to cure her default and maintain regular installment payments on the contract, this is not the only permissible option under section 1325(a)(5). Section 1325(a)(5) allows a chapter 13 debtor three options in treating a secured claim: (1) pay the debt in full; (2) pay the value of the property securing the claim; or (3) surrender the property. Thus, under the Bankruptcy Code, any of these options is available to Debtors in exercising their right of redemption under their chapter 13 plan. Most frequently, debtors retaining collateral will cure deficiencies and continue installment payments directly to the creditor, as was the case in *Moffett*, or will pay the present value of the claim over time through the plan. . . ."

possession of the Vehicle.[7] Given this fact, it is unclear why Debtors have not filed a pleading requesting an order from the Court compelling turnover of the Vehicle.[8]

The filing of a bankruptcy petition "operates as a stay, applicable to all entities, of" a number of actions, including "the commencement or continuation, including the issuance or employment of process, 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" and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]" 11 U.S.C. § 362(a). 11 U.S.C. § 362(d) provides that the Court shall grant relief from the stay (1) "for cause, including the lack of adequate protection of an interest in property of such party in interest….", or (2) if "the debtor does not have an equity in such property" and "such property is not necessary to an effective reorganization[.]" "The party requesting relief has the initial burden of proving cause exists for relief from the automatic stay, including lack of adequate protection, and lack of equity in the property." *In re Morgan*, 630 B.R. 476, 479 (Bankr. D.S.C. 2021) (citing 11 U.S.C. § 362(g); *In re Toomer*, No. 10-07273-JW, 2011 WL 8899488, at *2 (Bankr. D.S.C. Oct. 5, 2011)). To establish a *prima facie* case for relief, Movant must demonstrate that Debtor owes a debt to it, that it possesses a valid security interest securing the debt, and that the collateral securing the debt

[7] Apparently relying in part on *City of Chicago, Ill. v. Fulton*, 592 U.S. 154, 156-58 (2021), wherein the Supreme Court decided that 11 U.S.C. § 362(a)(3) prohibits only "affirmative acts that would disturb the status quo" which do not include the "mere retention of property."

[8] Note also that Fed. R. Bankr. P. 7001 was amended, applicable to all proceedings commenced on or after December 1, 2024, and all proceedings then pending insofar as just and practicable, to provide "The following are adversary proceedings: (a) a proceeding to recover money or property—**except a proceeding to compel the debtor to deliver property to the trustee,** a proceeding by an individual debtor to recover tangible personal property under §542(a), …" (emphasis added).

is declining in value. *In re Jeff Benfield Nursery, Inc.*, 565 B.R. 603, 610 (Bankr. W.D.N.C. 2017). "Once the creditor makes a *prima facie* case, the burden shifts to the debtor on all other issues." *Morgan*, 630 B.R. at 479 (quoting *In re Garcia*, 584 B.R. 483, 488-89 (Bankr. S.D.N.Y. 2018)).

The Court determines whether a creditor's interest in the property is adequately protected on a case-by-case basis. *R&J Contractor Servs., LLC v. Vancamp*, No. RDB-22-2101, 2023 WL 2811570, at *3 (D. Md. Apr. 6, 2023) (citing *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992)). "The absence of a definition of adequate protection in the Code coupled with the 'flexibility' of § 361(3) suggests that adequate protection may be shown in a variety of ways." *Suntrust Bank v. Den-Mark Constr., Inc.*, 406 B.R. 683, 696 (E.D.N.C. 2009) (quoting *In re Reading Tube Indus.*, 72 B.R. 329, 333 (Bankr. E.D. Pa. 1987)). "[A] judicial determination" of adequate protection "is a question of fact rooted in measurements of value and the credibility of witnesses." *Vancamp*, 2023 WL 2811570, at *5 (quoting *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986)).

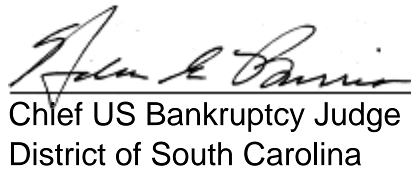
After considering the record and applicable law, the Court finds that relief from stay to sell the Vehicle must be and is hereby denied. The Vehicle is property of the estate, it is necessary for an effective reorganization, it is property that Debtors can utilize under 11 U.S.C. § 363, and as of November 27, 2024, Debtors have met Creditor's adequate protection demands listed in the Motion, imposed by Creditor as a condition of compliance with 11 U.S.C. § 542. There is no lack of adequate protection under applicable law or Creditor's own standard, whether the Vehicle is in Creditor's possession or returned to Debtors. As it appears a hearing could have been avoided as of November 27, 2024, or shortly thereafter, the Court makes no finding at this point regarding Creditor's demands

for reasonable attorney fees and costs expended with this motion. Creditor may assert such fees and costs through an amended proof of claim, subject to the right of any party in interest to object.

AND IT IS SO ORDERED.

FILED BY THE COURT
12/09/2024

Entered: 12/09/2024



Chief US Bankruptcy Judge
District of South Carolina