

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

In re,

Ashley Leigh Ann Altman,

Debtor(s).

Ashley Leigh Ann Altman,

Plaintiff(s),

v.

Nations Auto,

Defendant(s).

C/A No. 22-03237-EG

Adv. Pro. No. 22-80048-EG

Chapter 13

Order Granting Motion for Turnover

THIS MATTER is before the Court on the Motion for Immediate Turnover filed by Ashley Leigh Ann Altman (“Debtor”).¹ Debtor filed a motion for an emergency hearing on the motion, which the Court granted by an order entered on December 7, 2022 (ECF No. 6). At the hearing on the Motion, Debtor appeared *pro se* and Chase Strickland, owner of Nations Auto, appeared on behalf of Nations Auto. During the hearing, Mr. Strickland raised concerns regarding the existence of insurance on the Vehicle.

FINDINGS OF FACT

On August 12, 2022, Debtor purchased a vehicle from Nations Auto—a 2007 Subaru Outback (“Vehicle”). Due to Debtor’s failure to timely make payment, Nations Auto repossessed the Vehicle prepetition on November 21, 2022. Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on November 28, 2022. On November 30, 2022, Debtor sent a demand letter to Nations Auto, notifying it that she had filed bankruptcy and demanding turnover

¹ ECF No. 7, filed December 7, 2022.

of the vehicle. Nations Auto refused to return the vehicle to Debtor. On December 5, 2022, Debtor commenced this adversary proceeding by filing a complaint seeking turnover of the vehicle.

Debtor asserts that she has no other transportation and has immediate medical needs that require the use of the Vehicle to allow her to receive necessary medical care and treatments. She asserts that the return of the Vehicle is necessary to ensure her ability to comply with her plan in the underlying Chapter 13 bankruptcy case.² Debtor further asserts that she did not receive notice of her right to cure the default prior to the repossession and she did not receive her notice of right to redeem the collateral, as required by state law, and has indicated that she intends to exercise her right of redemption by making payments to Nations Auto through her chapter 13 plan.

During the hearing, Mr. Strickland reported to the Court that Nations Auto had not yet sold the Vehicle. Debtor presented into evidence proof of insurance. Mr. Strickland raised concerns about whether Nations Auto, as lienholder, was named as loss payee on the policy, since the proof of insurance presented into evidence did not provide this information. Debtor stated that Nations Auto was listed as loss payee and that she would provide a copy of the insurance policy to Nations Auto.

CONCLUSIONS OF LAW

Pursuant to 11 U.S.C. § 542(a), the Court may order a third party to turnover to a debtor's bankruptcy estate any property in the third party's possession which qualifies as "property of the estate" under 11 U.S.C. § 541. Section 541 of the Bankruptcy Code provides that property of the estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "Although federal law defines what property

² Debtor filed her chapter 13 plan on December 12, 2022 (ECF No. 24, C/A No. 22-03237-EG). In the plan, Debtor proposes to maintain current contractual installment payments to Nations Auto and to repay the arrearage owed to Nations Auto by making monthly payments to the Chapter 13 Trustee.

interests are included within the bankruptcy estate, state law determines the nature and existence of a debtor's property interests." *In re Katzburg*, 326 B.R. 606, 609 (Bankr. D.S.C. 2004) (citing *Moffett*, 356 F.3d at 521); *see, e.g., Butner v. United States*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law.") According to legal precedent from the Fourth Circuit and in this district, a debtor's right of redemption under state law is property of the estate, which can be exercised through payment of the amount due under the contract over the life of the plan. *Tidewater Finance Company v. Moffet (In re Moffett)*, 356 F.3d 518 (4th Cir. 2004); *In re Keisler*, C/A No. 17-03304-DD, 2017 WL 4685000, at *3 (Bankr. D.S.C. Oct. 16, 2017) (holding that a debtor's right of redemption becomes property of his bankruptcy estate upon the filing of his chapter 13 case, which may be exercised through payment of the creditor's claim in full, with interest, over the life of the plan).

Under S.C. Code Ann. § 36-9-623(c), a debtor may redeem collateral at any time before a secured party has collected, disposed of, contracted for the disposition of, or accepted the collateral. The evidence indicates that Nations Auto has not sold, contracted for sale, or accepted the collateral in full satisfaction of the debt. Therefore, Debtor's right of redemption may still be exercised under state law and is property of the estate. *See Keisler*, 2017 WL 4685000, at *3.

Under § 542(a), the following elements must be demonstrated to require an entity to turnover property of the estate or its value: (1) during the case, (2) an entity other than a custodian, (3) was in possession, custody or control of property that a trustee could use, sell, or lease under 11 U.S.C. § 363 or that a debtor may exempt under 11 U.S.C. § 522, and (4) that such property is not of inconsequential value or benefit to the estate. *In re Milledge*, 639 B.R. 334, 343-44 (Bankr. D.S.C. 2022). The Court finds that these elements for turnover are satisfied because Debtor has a

pending bankruptcy case, there is no evidence that Nations Auto is a custodian of the Vehicle,³ 11 U.S.C. § 522 allows Debtor to claim an exemption in the Vehicle under state law,⁴ and it appears that the property is essential to Debtor's health and the success of her Chapter 13 reorganization, as she has no other transportation.

Mr. Strickland objected to the turnover due to the absence of proof of insurance covering Nations Auto's interest in the Vehicle. Debtor has made assurances to the Court that the insurance policy on the Vehicle provides that Nations Auto is the loss payee on the policy and has offered to immediately provide further documentation in support of this assertion to Nations Auto. Under these circumstances, it appears that Nations Auto's interest is adequately protected. *See Jennings v. R & R Cars and Trucks (In re Jennings)*, C/A No. 01-02330-W, Adv. Pro. No. 01-80044, 2001 WL 1806980 (Bankr. D.S.C. Sept. 17, 2001) (finding that a creditor's duty to turnover property of the estate is triggered when debtor initiates the turnover request and offers the most essential means of adequately protecting the creditor's interest, insurance, while leaving an affirmative burden on the creditor to respond immediately to the turnover demand, either on debtors' terms or accompanied by an expedited request to the Court for adequate protection or other relief.). Nations Auto has not requested additional adequate protection or other relief.

Based on the foregoing,

IT IS HEREBY ORDERED:

1. Nations Auto shall turnover the Vehicle to the Debtor by delivering the Vehicle to her residence **on or before 5:00 PM on Friday, December 16, 2022;**

³ In fact, the evidence indicates that Nations Auto was attempting to sell the Vehicle.

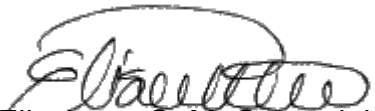
⁴ Debtor has claimed an exemption for the Vehicle pursuant to S.C. Code Ann. § 15-41-30(A)(2) on Schedule C, filed on December 12, 2022 (ECF No. 20, C/A No. 22-03237).

2. Prior to or at the time of turnover, Debtor shall provide proof of insurance showing Nations Auto as loss payee to Nations Auto.
3. To the extent that Nations Auto intends to file a responsive pleading in this adversary proceeding or in the main bankruptcy case, it must retain counsel pursuant to SC LBR 9011-2(c).

AND IT IS SO ORDERED.

**FILED BY THE COURT
12/15/2022**




Elisabetta G. M. Gasparini
US Bankruptcy Judge
District of South Carolina

Entered: 12/15/2022