UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Goldie A. Brown, Debtor.

C/A No. 01-12506-B

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court grants Fairlane Credit LLC ("Fairlane") relief from the automatic stay pursuant to §362(d)(1). Fairlane may pursue its state law remedies as to the 1997 Pontiac Bonneville in Goldie A. Brown's ("Debtor") bankruptcy case.

John E. Waites

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
June 3, 2002.

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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

JUN 4 [redacted]

L. Johnson

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KAREN P. DOUGLASS

Deputy Clerk

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 01-12506-B
Goldie A. Brown, Debtor.	**ORDER**
	Chapter 13

THIS MATTER comes before the Court upon Fairlane Credit, LLC's ("Fairlane") Motion to Modify Stay or for Determination of Stay Inapplicability (the "Motion") pursuant to 11 U.S.C. §362(d)(1).[1] In the Motion, Fairlane alleges that it has a claim against Lillie R. Aiken ("Aiken"), the sister of Goldie A. Brown ("Debtor"), secured by a 1997 Pontiac Bonneville (the "Vehicle") in Debtor's possession. According to Fairlane, Debtor has no ownership interest or equity in the Vehicle, the Vehicle is not part of Debtor's estate, and Fairlane has twice obtained relief from the automatic stay to foreclose its security interest in the Vehicle in Aiken's two bankruptcy cases. Debtor disputes Fairlane's characterization of events and argues that she has an equitable interest in the Vehicle. Debtor claims that Aiken purchased the Vehicle for Debtor because Debtor was unable to obtain adequate credit and that, since the purchase date, Debtor has made payments for the Vehicle as well as insured and possessed it. After considering the pleadings in the matter and counsel's arguments at the hearing on the Motion, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.[2]

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[1] Further references to the Bankruptcy Code shall be by section number only.

[2] The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law

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FINDINGS OF FACT

1. On January 17, 2001, Debtor filed her first petition for Chapter 13 bankruptcy, C/A No. 01-00492-B ("Debtor's First Case"). A. Chavis Vanias represented Debtor in Debtor's First Case.

2. In her Schedules and Statement of Financial Affairs filed on January 26, 2001, Debtor does not list the Vehicle as part of her personal property, and Debtor lists no creditors having a claim secured by the Vehicle. In response to Statement of Financial Affairs Paragraph 14, Debtor indicates that she holds or controls the Vehicle owned by Aiken.

3. In Debtor's First Case, her Notice, Chapter 13 Plan, and Related Motions does not provide for any treatment of a debt owed based upon the purchase of the Vehicle.

4. On May 24, 2001, the Court confirmed Debtor's Plan in Debtor's First Case.

5. On October 16, 2001, the Court dismissed Debtor's First Case for Debtor's failure to make payments as required by her Plan.

6. Meanwhile, nearly simultaneously with Debtor's First Case, on January 25, 2001, Aiken filed her first petition for Chapter 13 bankruptcy, C/A No. 01-00745-B ("Aiken's First Case"). A. Chavis Vanias represented Aiken in Aiken's First Case.

7. In her Schedules and Statement of Financial Affairs filed on February 5, 2001, Aiken lists the Vehicle as her personal property and indicates that CPS, Inc. is the creditor for the debt owed on the Vehicle.

8. In her Amended Notice, Chapter 13 Plan, and Related Motions filed on April 13, 2001, Aiken indicates that CPS, Inc. will be paid its debt outside of the Plan "by party in interest in

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constitute Findings of Fact, they are so adopted.

possession of collateral, a 1997 Pontiac Bonneville." On April 20, 2001, the Court confirmed Aiken's Plan in Aiken's First Case.

9. On October 26, 2001, Fairlane filed a motion seeking relief from the automatic stay or adequate protection in Aiken's First Case. In its motion, Fairlane asserts that it has a claim against Aiken in the amount of $11,657.52 that is secured by the Vehicle. Aiken filed an objection to the motion but later withdrew her objection.

10. On November 19, 2001, the Court entered an order that granted Fairlane relief from the automatic stay.

11. On November 20, 2001, Debtor filed her second Chapter 13 bankruptcy petition, C/A No. 01-12506-B ("Debtor's Second Case"). A. Chavis Vanias represents Debtor in Debtor's Second Case.

12. In Debtor's Schedules and Statement of Financial Affairs filed on December 6, 2001, Debtor includes the Vehicle as part of her personal property, and she lists Fairlane as a secured creditor having a security interest in the Vehicle. In response to Statement of Financial Affairs Paragraph 14 "Property held for another person," Debtor indicates that she holds or controls the Vehicle owned by Aiken.

13. In her Notice, Chapter 13 Plan, and Motions filed on December 6, 2001 as well as in her Modified Notice, Chapter 13 Plan, and Motions filed on February 8, 2002, Debtor proposes to value Fairlane's claim at $8,500.00 and to pay Fairlane $175.00 per month plus 8.5% interest. The Court confirmed the Plan in Debtor's Second Case on February 22, 2002.

14. On December 31, 2001, the Court dismissed Aiken's First Case.

15. On January 22, 2002, Aiken filed her second Chapter 13 bankruptcy petition, C/A No.

02-00683-B ("Aiken's Second Case"). Monique T. Bennett represents Aiken in Aiken's Second Case.

16. In Aiken's Schedules and Statement of Financial Affairs filed on January 22, 2002 in Aiken's Second Case, Aiken includes the Vehicle as part of her personal property, and she indicates that the Vehicle is in her possession. She lists Fairlane as a secured creditor having a security interest in the Vehicle. She also lists Debtor as a co-debtor on the debt owed to Fairlane.

17. In Aiken's Notice, Chapter 13 Plan, and Related Motions filed on January 22, 2002 in Aiken's Second Case, Aiken proposes to value Fairlane's claim at $0.00.

18. On February 11, 2002 and in Aiken's Second Case, Fairlane moved to modify the automatic stay or to receive adequate protection from Aiken based upon its claim totaling $12,833.05 that is secured by the Vehicle. Aiken objected to Fairlane's motion but later withdrew her objection.

19. On March 13, 2002, the Court entered an order granting Fairlane relief from the automatic stay in Aiken's Second Case.

20. On March 13, 2002, Aiken filed her First Modified Notice, Chapter 13 Plan, and Related Motions and proposes to treat Fairlane's claim outside of the Plan with payments provided by "the co-debtor."

21. In her Second, Third, and Fourth Modified Notice, Chapter 13 Plan, and Related Motions (filed on April 16, 2002, May 6, 2002, and May 28, 2002), Aiken proposes to surrender her interest in the Vehicle to Fairlane.

22. On April 26, 2002, Fairlane filed the Motion currently before the Court.

23. On April 30, 2002, Debtor filed her Objection to the Motion.

24. The Vehicle's title indicates that Aiken is the owner.

25. As of the date of this Order's entry, the Court has not confirmed a plan in Aiken's Second Case.

CONCLUSIONS OF LAW

As the Findings of Fact illustrate, the matter before the Court involves an intricate fact situation where neither Debtor nor Aiken clearly or completely describe the ownership of the Vehicle. Boiling the facts down to their simplest, the Court concludes that Debtor has represented her interest in the Vehicle inconsistently. On January 26, 2001, she indicated that she did not own the Vehicle but that Aiken owned it. Later, Debtor's position shifted dramatically as on December 6, 2001 and after the Court granted Fairlane relief from the automatic stay, Debtor indicated both that she owned the Vehicle (in her Schedules) and that Aiken owned it (in her Statement of Financial Affairs). Finally, at the hearing held on May 16, 2002, Debtor indicated that she owned the Vehicle as she has made payments on it as well as insured and possessed it and that Aiken was an owner in name only because of a disguised purchase. In contrast, Aiken, on February 5, 2001 and on January 22, 2002, represented that the Vehicle was part of her personal property. Also on January 22, 2002, Aiken disclosed that Debtor was a co-debtor to Fairlane for the Vehicle.

Because of the inconsistencies in Debtor's two bankruptcy cases, the Court believes it must invoke the doctrine of judicial estoppel and overrule Debtor's Objection to the Motion. Judicial estoppel prevents parties from adopting inconsistent positions in successive litigation. See Charles A. Wright et al.. Federal Practice and Procedure §4477 (2d ed. 2002). The Fourth Circuit has reasoned that the purpose of the doctrine is "to prevent a party from 'playing fast and

loose with the courts' . . . or from attempting 'to mislead the [courts] to gain an unfair advantage.'" King v. Herbert J. Thomas Memorial Hospital, 159 F.3d 192, 196 (4th Cir. 1998) (citing Lowery v. Stovall, 92 F.3d 219, 223-225 (4th Cir. 1996)). Further, the Fourth Circuit noted that a lower court's use of this doctrine is based upon the court's discretion and that each application must be decided upon the specific facts and circumstances of each case. See id. (citing McNemar v. Disney Store, Inc., 91 F.3d 610, 617 (3d Cir. 1996)).

To apply judicial estoppel, the Court must find the following three elements: (1) the party to be estopped must be asserting a position that is factually incompatible with a position taken in a prior judicial or administrative proceeding; (2) the prior inconsistent position must have been accepted by the tribunal; and (3) the party to be estopped must have taken inconsistent positions intentionally for the purpose of gaining unfair advantage. See id. An example of a court's application of these elements is King where the court found that a plaintiff took inconsistent positions where she first argued to the Social Security Administration that she was physically unable to do her job and, based on these representations, she received disability benefits.[3] See id. at 197. Subsequently, the plaintiff sued her employer for age discrimination and asserted that she was able and competent to perform her previous work at the time she was discharged. See id. at 198. The Fourth Circuit upheld the District Court's application of judicial estoppel because

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[3] Another example where the Fourth Circuit applied judicial estoppel is Lowery v. Stovall, 92 F.3d 219, 224-225 (4th Cir. 1996). In Lowery, the court found that the plaintiff asserted inconsistent positions where, at his guilty plea hearing, he admitted to attacking a police officer; however, later, the plaintiff brought an action pursuant to 42 U.S.C. §§1983 and 1985 and asserted that he did not attack the officer. The court further ruled that a court accepted the plaintiff's prior inconsistent position when it accepted the plaintiff's guilty plea. Finally, the court concluded that the plaintiff was seeking an unfair advantage by seeking both the fruits of a reduced sentence by entering a plea agreement as well as a §1983 action where he argued that he did not attack the officer.

allowing the plaintiff to obtain benefits from two sources based on two incompatible positions "would reduce truth to a mere financial convenience and would undermine the integrity of the judicial process." Id.

The Court believes that the elements of judicial estoppel are satisfied in this case. As stated previously, Debtor has changed her position dramatically regarding her interest in the Vehicle from asserting no ownership interest in Debtor's First Case to arguing that she is the Vehicle's true owner in Debtor's Second Case. These positions are polar opposites of each other. Moreover, this Court previously adopted Debtor's first position when, in Debtor's First Case, it confirmed her Chapter 13 Plan, which provided for no treatment of the debt related to the Vehicle. Finally, the Court concludes that Debtor's inconsistent positions were designed to receive an unfair advantage. After the stay was lifted in Aiken's First Case, Debtor suddenly claimed the Vehicle was hers, and now she attempts to retain the protection of the automatic stay as to the Vehicle in Debtor's Second Case. Indeed, it seems that Debtor seeks an unfair advantage by using her second filing, at least in part, as a means to shield the Vehicle from Fairlane's collection attempts and to delay Fairlane's collection efforts as it must obtain relief from the stay for the third time. Accordingly, the Court believes it should invoke the doctrine of judicial estoppel and estop Debtor from arguing that she owns an interest in the Vehicle. Because Debtor is precluded from arguing that she has an interest in the Vehicle, the Court grants Fairlane's Motion and rules that Fairlane is entitled to relief from the automatic stay in Debtor's Second Case to pursue its state law remedies as to the Vehicle pursuant to §362(d)(1).

The Court also believes an additional ground exists entitling Fairlane to relief from the stay pursuant to §362(d)(1). Previously, this Court has considered concurrent bankruptcy filings

by closely related persons (e.g., husband and wife) and ruled that these separate filings could be viewed as involving the same single entity and, as such, could be indicia of bad faith. See In re Hartley, 187 B.R. 506, 507 (Bankr. D. S.C. 1995). Factors suggesting a single entity filing are closely related persons who are in a position to coordinate their efforts and who file their cases to protect a common asset. See id. (dismissing a wife's bankruptcy case pursuant to §1307(c) as being filed in bad faith where her husband had previously filed his second bankruptcy case on the eve of foreclosure and the wife later filed her first case on the eve of foreclosure and during the period when the husband was prohibited from filing a bankruptcy petition).

Applying this principle to the facts before it, the Court believes that Debtor and Aiken's bankruptcy cases should be considered filings by a single entity. Having a sibling relationship, Debtor and Aiken are closely related persons. In addition, it appears that these sisters coordinated their efforts to protect this Vehicle.[4] Indeed, at different times, each sister took decidedly different approaches to treating the debt related to the purchase of the Vehicle as Debtor first declared no ownership interest and Aiken initially listed only herself as the owner. After Fairlane obtained relief from the automatic stay on November 19, 2001 in Aiken's First Case, Debtor filed her second case one day later on November 20, 2001 and completely changed her position from having no ownership interest in the Vehicle to being its owner. The Court notes the extreme changes in position as well as the timing of these shifts and believes these factors indicate that the sisters coordinated their efforts to protect someone's interest in the

[4] It is noteworthy that the same attorney represented Aiken in Aiken's First Case and has represented Debtor in both of Debtor's bankruptcy cases. The Court notes that the attorney must have known of Fairlane receiving relief from the automatic stay in Aiken's First Case when she filed Debtor's Second Case the day after Fairlane received relief.

Vehicle. Accordingly, the Court concludes that Debtor's Second Case was filed in bad faith and, as such, provides sufficient cause for the Court to grant Fairlane relief from the automatic stay pursuant to §362(d)(1).

IT IS THEREFORE ORDERED that Fairlane is granted relief from the automatic stay pursuant to §362(d)(1) and that Fairlane may pursue its state law remedies as to the Vehicle.

AND IT IS SO ORDERED.

John E. Waites

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
June 3, 2002.