Dated: September 19, 2017
The following is SO ORDERED:

David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re	**Case No. 17-20334-K**
Heather Patrice Hogrobrooks Harris,	**Chapter 7**
Debtor.	
SSN: xxx – xx – 6557	

MEMORANDUM AND ORDER RE PRO SE DEBTOR'S "MOTION TO ESTABLISH REDEMPTION VALUE OF VEHICLE"; BMW BANK OF NORTH AMERICA'S "MOTION FOR RELIEF FROM THE AUTOMATIC STAY" AND ALSO ITS "MOTION FOR SANCTIONS AGAINST DEBTOR FOR VIOLATION OF COURT'S ORDER"; AND PRO SE DEBTOR'S "DISCHARGE HEARING" COMBINED WITH RELATED ORDERS AND NOTICE OF THE ENTRY THEREOF

INTRODUCTION

The instant core proceedings under 28 U.S.C. § 157(b)(2)(A), (G), and (O) arise out of various pending matters before this court. The above-named pro se Chapter 7 debtor, Ms. Heather Patrice Hogrobrooks Harris ("Debtor" or "Ms. Harris"), filed a "Motion to Establish Redemption

Value of Vehicle." Thomas W. Lawless, Esquire, attorney of record for the creditor, BMW Bank of North America ("BMW"), filed a written objection/response thereto. Ms. Harris then filed a "Reply" to BMW's objection. In addition, Mr. Lawless, acting on behalf of BMW, filed a § 362(d) "Motion for Relief From the Automatic Stay" and also a "Motion for Sanctions Against Debtor for Violation of Court's Order." Ms. Harris filed an original and supplemental response to BMW's § 362(d) motion for relief from the automatic stay, and also filed a response to BMW's motion seeking sanctions against her. It also should be noted that Ms. Harris did file a "Response to Court's Order Requiring Inspection of Vehicle" before BMW's motion for sanctions was filed. Lastly, the Chapter 7 discharge of Ms. Harris is ripe for entry and will be discussed more fully later in this Memorandum. (It is noted here that no § 727(a) objection to Ms. Harris' discharge has been filed.)

On September 7, 2017, this court held combined/consolidated hearings on all of the parties' various pending proceedings for and against each other. Both Ms. Harris and BMW, among others, were present at these hearings and provided oral statements, adduced sworn testimony, and introduced exhibits regarding certain of their respective legal positions.

These core proceedings essentially center and primarily focus around one vehicle, namely Ms. Harris' 2014 BMW X12 (hereinafter, "the vehicle"), which Ms. Harris listed in her Chapter 7 bankruptcy Schedules B and D. BMW has an undisputed valid lien on the vehicle. The ultimate questions for judicial adjudication here are: (1) what should be the amount of the § 722 redemption value of the vehicle and how much time should Ms. Harris have to pay BMW the allowed secured claim in order to redeem the vehicle; (2) whether BMW should be granted relief from the § 362(d) automatic stay (and related matters); (3) whether Ms. Harris willfully violated this court's order

requiring the court to impose sanctions against her; and (4) whether Ms. Harris should be granted a Chapter 7 discharge at this time under § 727(a).

As noted earlier, these are core proceedings under 28 U.S.C. § 157(b)(2). The following shall constitute this court's findings of fact and conclusions of law in accordance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND FACTS AND PROCEDURAL HISTORY

The relevant background facts and procedural history may be summarized as follows. Prior to Ms. Harris filing this Chapter 7 case, she initially leased the vehicle from BMW with the term of the lease beginning in 2014 with a contractual option to purchase. On October 21, 2016, Ms. Harris exercised this option and concomitantly executed a retail installment contract with BMW Financial Services for the purchase of the vehicle calling for a contractual monthly payment of $497.34. Approximately three months later, on January 12, 2017, Ms. Harris filed this Chapter 7 bankruptcy case. Ms. Harris included the vehicle in her bankruptcy schedules reflecting that BMW holds a properly perfected purchase money security interest in the vehicle. (Docket No. 1). More specifically, in her original Schedule D, Ms. Harris listed the vehicle as having a claim against it in the amount of $26,000.00, a current market value of $25,000.00, and an undersecured portion of $1,000.00. In addition, in her original bankruptcy Statement of Intention, Ms. Harris indicated that she intended to "retain the property [the vehicle] and enter into a reaffirmation agreement," or alternatively, to "retain the property [the vehicle] and file a Chapter 13 to modify the debt to its value."

Ms. Harris has since filed two postpetition amendments pursuant to Rule 1009 of the Federal Rule of Bankruptcy Procedure to her bankruptcy Schedules regarding this vehicle. On April 4, 2017, Ms. Harris filed an amended Summary of Assets and Liabilities, Schedule A/B,

Schedule C, Schedule D, and Schedule E/F. (Docket No. 27). In the first amended Schedule D, Ms. Harris listed the vehicle as having a claim amount of $25,129.00, a current market value of $22,825.00, and an undersecured portion of $2,304.00. No amendment was made to Ms. Harris' Statement of Intention at that time. Subsequently, on June 28, 2017, Ms. Harris further amended Schedule D and also amended the Statement of Intention. In her second amended Schedule D, Ms. Harris listed the vehicle as having a claim amount of $26,000.00, and the vehicle having a current market value of $13,000.00, with an undersecured portion of "$0.00 [*sic*]." (Docket No. 36). Ms. Harris also amended the Statement of Intention to allow for a redemption of the vehicle rather than a reaffirmation. (Docket No. 35).

On June 28, 2017, Ms. Harris filed a "Motion to Establish Redemption Value of Vehicle." (Docket No. 34); *see* 11 U.S.C. § 722 and FED. R. BANKR. P. 6008. In that motion, Ms. Harris asserted that the actual value of the vehicle was between $11,522.00 and $13,000.00. As support for these stated values, Ms. Harris attached a *CarMax* Appraisal Offer and a *Kelley Blue Book* Instant Cash Offer. Ms. Harris also asserted approximately $1,500.00 in services/repairs that would need to be made to the vehicle before it could be resold for its true value, and also stated that it would be for her "60 thousand mile service that is 4 thousand miles past due and repair of [her] center arm rest/console." (Docket No. 34, Ex. A).

On July 9, 2017, BMW filed an "Objection to Debtor's Motion to Establish Redemption Value of Vehicle." (Docket No. 39). BMW's objection sought to have the redemption value of the vehicle established at $20,250.00, which it stated as the fair market value of the vehicle in accordance with the *National Automobile Dealers Association* ("*NADA*") *Official Used Car Guide Vehicle Valuation*. (Docket No. 39, Ex. 1). On July 18, 2017, Ms. Harris filed a reply to BMW's objection to her motion for redemption. (Docket No. 44). The reply re-stated her need for the

vehicle and also included an asserted additional actual value of the vehicle as being between $8,505.00 and $9,847.00, which she received from *Edmunds.com*.

On July 11, 2017, BMW filed a § 362(a) "Motion for Relief From the Automatic Stay" seeking a termination of the automatic stay regarding the vehicle to allow for a repossession. (Docket No. 40). In that motion, BMW cited a default in payments, a failure to provide proof of insurance naming BMW as an insured party, lack of adequate protection, and lack of equity as statutory grounds for its motion. A "Response to the Motion for Relief" was filed by Ms. Harris on July 20, 2017, (Docket No. 46), and a "Supplemental Response" was filed by her on September 5, 2017. (Docket No. 63). Ms. Harris testified, *inter alia*, at the September 7, 2017 combined/consolidated hearings that the vehicle is insured and that admittedly she has made no contractual payments to BMW regarding the vehicle since she sought relief under the Bankruptcy Code on January 12, 2017.

Between July 18, 2017, and July 21, 2017, and up to the August 1, 2017 hearing, it appears that Mr. Lawless, on behalf of BMW, and Ms. Harris, acting pro se, conferred informally about scheduling a convenient time and place to have the vehicle formally appraised because Ms. Harris preferred that the vehicle not be appraised at her home. However, Ms. Harris and BMW apparently were ultimately unable to successfully agree upon how, under what terms and conditions, and exactly when the vehicle would be appraised (discussed more fully, *infra*). In addition, it is noted (and the court appreciates) that Mr. Lawless and Ms. Harris indeed have attempted to negotiate these matters to bring about a consensual resolution, but such a result could not be accomplished.

By way of further background information, it is observed that on August 1, 2017, this court also held a hearing on Ms. Harris' motion to establish redemption value of vehicle. At the hearing, BMW requested that the vehicle be appraised by *PDA Appraisal Services* ("PDA"), and Ms. Harris

initially objected. Mr. Lawless and Ms. Harris discussed this matter in open court and finally reached an agreement regarding the appraisal to be approved by this court. The agreement between the BMW and Ms. Harris was that the vehicle would be appraised by PDA at Chuck Hutton Chevrolet, which is located at 2471 Mt. Moriah Road, Memphis, Tennessee, at 10:00 a.m. on August 15, 2017. It is believed by the court that Ms. Harris and the appraiser for PDA who would perform the appraisal discussed the upcoming "meet-up," and Ms. Harris was provided with the appraiser's business card.

Thereafter, on August 10, 2017, this court entered an order requiring Ms. Harris "…to make the Vehicle available for the complete inspection of the Vehicle by the appraiser of the Creditor on August 15, 2017 at 10:00 a.m. at Chuck Hutton Chevrolet, 2471 Mt. Moriah Road, Memphis, TN 38115…" and continuing the matters to a special court hearing date for Thursday, September 7, 2017, at 10:00 a.m. to address the above-mentioned appraisal and resolve all related matters. (Docket No. 52).

On August 15, 2017, Ms. Harris and the PDA appraiser were apparently both physically present at the Memphis Chuck Hutton Chevrolet dealership in accordance with this court's prior Order, but for whatever reason they were unable to find/locate each other. As a result, unfortunately no appraisal was made. It perhaps should be noted that evidently the Chuck Hutton Chevrolet dealership had no knowledge or information that the appraisal of the vehicle would be taking place at its place of business, and accordingly could not offer meaningful assistance to the parties. The rest of the facts relating to the events of the August 15, 2017 seemingly unintended mishap are somewhat disputed. It appears that Ms. Harris, the appraiser, and Mr. Lawless nonetheless were inconvenienced as a result of this apparent miscommunication.

On August 18, 2017, Ms. Harris filed a "Response to Court's Order Requiring Inspection of Vehicle." (Docket No. 56). Additionally, on August 27, 2017, BMW filed a "Motion for Sanctions Against Debtor for Violation of Court's Order." (Docket No. 59). Lastly, Ms. Harris filed "Debtor's Response to Creditor's Motion for Sanctions" on September 7, 2017. (Docket No. 66).

All of the aforementioned combined/consolidated matters were tried and heard before this court on September 7, 2017, and oral testimony was adduced by each party and exhibits were introduced. No oral appraisal testimony, however, was adduced regarding the value of the vehicle. All of these proceedings were taken under submission by the court for further deliberation and consideration.

This court will now discuss and address each specific issue below.

DISCUSSION

I. Ms. Harris' Motion to Establish Redemption Value of Vehicle

Section 722 of the Bankruptcy Code addresses an individual debtor's right of redemption to redeem certain personal property (e.g., the vehicle) and specifically provides as follows:

> An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

11 U.S.C. § 722. BMW does not contest that the vehicle is property of the § 541(a) estate eligible for redemption under § 722. Instead, the primary and threshold issues to be addressed by the court here are the valuation of BMW's "allowed secured claim" to be paid by Ms. Harris at the time of

the lump sum redemption and the allowed time period in which Ms. Harris may have to redeem the vehicle.

A. *Redemption Amount*

The "allowed secured claim" that an individual debtor must pay to redeem a vehicle from a lienholder is defined in § 506(a) of the Bankruptcy Code. Section 506(a)(1) provides as follows:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use on a plan affecting such creditor's interest.

11 U.S.C. § 506(a)(1). Prior to the enactment of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), courts were not statutorily provided a specific valuation standard. Instead, section 506(a) of the Code allowed each court to determine which valuation standard it deemed appropriate under the circumstances to specific provisions of and issues under the Bankruptcy Code. However, under BAPCPA, Congress specifically added statutory valuation standards in § 506(a)(2) that applies to redemption of personal property collateral from liens under § 722, thereby going beyond the valuation standards described by the United States Supreme Court in *Associates Commercial Corp. v. Rash*, 520 U.S. 953 (1997) (finding the proper valuation standard to be the cost the debtor would incur to obtain a like asset for same or similar proposed use). Section 506(a)(2) states:

> If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the

> price a retail merchant would charge for property of that kind considering the age and condition of the property at the time the value is determined.

11 U.S.C. § 506(a)(2). Accordingly, under § 506(a)(2), this court must determine in this case "the price a retail merchant would charge for property of that kind [a 2014 BMW X12] considering the age and condition of the property at the time value is determined."

Although more than a decade has passed since the effective date of BAPCPA, no consensus has emerged in the case law interpreting § 506(a)(2) as to how replacement value for motor vehicles should be determined. However, "it is common practice among bankruptcy courts to use the *KBB* [*Kelley Blue Book*] or *National Automobile Dealers Association* ("*N.A.D.A.*") values as a starting point for valuation of vehicles," subject to adjustment if the value does not accurately show the vehicle's true value. *Midwest Reg'l Credit Union v. Juan Carlos De—Anda Ramirez* (*In re De Anda—Ramirez*), 359 B.R. 794, 796 (B.A.P. 10th Cir. 2007). In addition, in a case involving a pre-BAPCPA vehicle valuation, the Sixth Circuit Bankruptcy Appellate Panel stated: "[t]he Panel holds that the bankruptcy court's use of the average of *NADA* wholesale and retail values as a starting point is consistent with [*Rash*] and that the value determined by the bankruptcy court is not clearly erroneous." *First Merit N.A. v. Getz* (*In re Getz*), 242 B.R. 916, 918 (B.A.P. 6th Cir. 2000). Here, this court accepts BMW's *NADA* valuation as an appropriate starting point for valuation of the vehicle. *See In re Getz, supra*.

Among the courts who utilize the *NADA* Guide in determining the retail value of a vehicle under § 506(a)(2), four basic approaches have been used. Under the first approach, courts establish a presumptive retail value for the vehicle by deducting a certain percentage from the *NADA* Clean Retail value. *See*, for example, *In re Mayland*, 2006 WL 1476927 at *2 (Bankr. M.D.N.C. May 26, 2006) (holding that "the value of the Vehicle [under § 506(a)(2)] is ninety percent (90%) of its

NADA retail value as of the petition date," and explaining that adjustments may still need to be made to the prices printed in the *NADA* Guide, such as for reconditioning costs incurred to put a vehicle into saleable condition). Under the second approach, courts set the presumptive value of the vehicle at the full *NADA* Clean Retail value. *See*, for example, *In re Eddins*, 355 B.R. 849, 852 (Bankr. W.D. Okla. 2006) ("[T]he *NADA* retail value is established as a guide for debtors, creditors and their counsel, as a starting point for valuation of vehicles under § 506(a)(2)."); *see also In re Morales*, 387 B.R. 36 (Bankr. C.D. Cal. 2008) (replacement value should be calculated as of the petition date by adjusting *Kelley Blue Book* or *NADA* Guide retail values for a like vehicle); *In re Scott*, 437 B.R. 168 (Bankr. D.N.J. 2010) (holding that the *NADA* Guide is the appropriate starting point, less reconditioning and repair costs). Under the third approach, courts use the *NADA* (or *Kelley Blue Book*) values as starting points but hold that the facts of each case determine which value (Clean Retail, Private–Party, etc.) should be used. *See*, for example, *In re Gonch*, 435 B.R. 857, 865 (Bankr. N.D.N.Y. 2010) (in choosing appropriate starting point for valuation of vehicle, the court would consider the "retail values" specified in industry blue books, but also the "private party" value in light of the vehicle's condition). Finally, under the fourth approach, courts average the *NADA* Clean Retail and Clean Trade–In values. *See*, for example, *In re Nance*, 477 B.R. 638 (Bankr. E.D. La. 2012) (holding that the court is to average the "Clean Trade-In" and "Clean Retail" values listed in the *NADA* for a vehicle of the same make, model, and year as the vehicle in question); *see also In re Nice*, 355 B.R. 554, 557 (Bankr. N.D.W.Va. 2006) (finding that the replacement value standard is based on an average between the *NADA* retail and trade-in values).

Notwithstanding the original values set forth in her Schedule, Ms. Harris testified at the hearing that she believed the value of the vehicle was approximately $10,000.00, even though she

had originally scheduled the value of the vehicle to be $13,000.00 to $25,000.00, depending on which version is referenced. *See* (Trial Court Record: 10:33 a.m.); *see also* (Docket No. 1, Sch. D; No. 27, Sch. D; No. 36). Ms. Harris also stated that making necessary repairs to the vehicle would cost "about $1,500.00." (Docket No. 34). Further, Ms. Harris testified she has filed claims with her insurance company regarding the vehicle's damage, and the insurance proceeds were used to repair the vehicle each time. Ms. Harris stated that she did not personally alert the lienholder of the incidents and that reports of the incidents have not been made to the Chapter 7 trustee. Ms. Harris submitted reports from *Kelley Blue Book*, *CarMax*, and *Edmunds.com*. *Kelly Blue Book* showed that a like vehicle with 63,835 miles has an "instant cash offer" of $11,522.00. (Docket No. 34, p. 4). *CarMax* showed that a similar vehicle with 63,835 miles and in good condition has an "appraisal offer" of $13,000.00. (Docket No. 34, p. 5). Lastly, the report from *Edmunds.com* submitted by Ms. Harris reflected a like car, with 67,000 miles and in rough condition, has a dealer retail value of $12,408.00, a private party value of $10,581.00, and a trade-in value of $8,505.00. (Docket No. 44, p. 3-6). In contrast, BMW introduced at the trial the *NADA* values of the vehicle showing that, at base retail, the value was $22,725.00, while base trade-in value was $18,450.00. The *NADA* adjusted retail value was listed as $20,625.00, and the adjusted retail average value was listed as $18,487.50. The *NADA* valuation was made on the information that the vehicle had a mileage of 74,250 miles. *See* (Docket No. 1, Sch. B). However, the mileage seems to differ in the valuations above and with Ms. Harris' testimony. Ms. Harris testified that the current mileage of the vehicle is 66,730. (Trial Court Record: 10:29 a.m.). Such should be noted as the mileage may impact the valuation by increasing or decreasing the total value. As noted earlier, no appraiser testified at the hearing to provide expert testimony regarding the value of the vehicle, so this court

must rely on the various book valuation guides and a totality of the particular facts and circumstances.

"The valuation of property is an inexact science and whatever method is used will be only an approximation and variance of opinion by two individuals does not establish a mistake in either." *Boyle v. Wells* (*In re Gustav Schaefer Co.*), 103 F.2d 237, 242 (6th Cir. 1939) (emphasis added). Here, the *NADA* adjusted retail average value for this vehicle is $18,487.50. In accordance with FED. R. BANKR. P. 3012, this court concludes under the particular facts and circumstances that the *NADA* adjusted retail value seems reasonable, but that the cost of repairing the vehicle also must be subtracted from the adjusted retail average value. *See* FED. R. BANKR. P. 3012 and 11 U.S.C. § 506(a)(2). Based on Ms. Harris' sworn testimony, this court finds the cost of repairing the vehicle or bringing it to good condition is approximately $1,500.00. Ms. Harris testified at the hearing that there were about $1,500.00 worth of services and/or repairs that needed to be done to the vehicle, and after hearing testimony of such, this court finds it is a reasonable amount under the undisputed circumstances existing here. This brings the retail value of the vehicle to exactly $16,987.50 based on the *NADA* value and the existing circumstances. Based on all of the foregoing, this court therefore finds and concludes under § 722 that the redemption value of the vehicle here is $16,987.50 (noting that valuation indeed is not an exact science).

B. *Time*

Section 722 states that redemption is to be accomplished by paying the lienholder the amount of the allowed secured claim in full at the time of redemption. *See* 11 U.S.C. § 722. However, § 521(a)(2)(B) gives the court some discretion to provide the individual debtor more time to pay by stating that a debtor may file the assets and liabilities "[W]ithin such additional time as the court, for cause, within such 30-day period fixes, perform his [or her] intention with respect

to such property . . . ." 11 U.S.C. § 521(a)(2)(B). These two provisions can be reconciled by recognizing that the court may give the debtor additional time to accumulate the redemption amount, but it must ultimately be paid in one full/lump sum payment to the creditor. *See Gen. Motors Acceptance Corp. v. Bell* (*In re Bell*), 700 F.2d 1053, 1058 (6th Cir. 1983) (concluding that "[t]he sole method of redemption available to a chapter 7 debtor under § 722 is a lump-sum redemption.").

As a practical aid to enable individual debtors to exercise their rights of redemption, a court may allow an individual debtor **up to 30 days** to make full payment from date that amount of allowed secured claim against property to be redeemed is set, which period will usually be short enough to avoid practical problems of providing creditor with adequate protection, and yet be long enough to allow debtor to obtain refinancing. *See,* for example, In *re Cruseturner,* 8 B.R. 581 (Bankr. D. Utah 1981).

Here, Ms. Harris originally sought sixty (60) days to redeem the vehicle, but BMW understandably objected. During the hearing before the court, the parties seemingly agreed here that thirty (30) days would be a reasonable amount of time to redeem, and this court agrees. Therefore, Ms. Harris shall have thirty (30) days from the entry of this Order to pay $16,987.50 to BMW in order to redeem her vehicle under § 722. (The adequate protection postpetition payments referenced above and discussed below are separate and apart from the redemption value.)

II. BMW's Motion for Relief From the Automatic Stay

Section 362 of the Bankruptcy Code provides for an automatic stay to operate upon the filing of a bankruptcy petition to enjoin a broad range of statutorily enumerated civil actions. *See* 11 U.S.C. § 362(a). For example, § 362(a)(5) grants the debtor time to enforce rights in property of the debtor. In addition, § 362(a)(5) provides for a debtor's continued protection against creditor

actions on a prepetition claim against property of the debtor and the estate; and such protection continues until the earliest of the time the case is closed, dismissed, or a discharge is entered. *See* 11 U.S.C. § 362(c)(2). However, a creditor (as BMW did here) may seek to obtain earlier relief from the automatic stay by filing a motion under 11 U.S.C. § 362(d) and FED. R. BANKR. P. 4001(a)(1)-(2).

Section 362(d) provides:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
>
> > (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
> >
> > (2) with respect to a stay of an act against property under subsection (a) of this section, if—
> >
> > > (A) the debtor does not have an equity in such property; . . . .

11 U.S.C. § 362(d)(1)-(2) (emphasis added). The party requesting relief from the automatic stay "has the burden of proof on the issue of the debtor's equity in property; and the party opposing such relief has the burden of proof on all other issues." 11 U.S.C. § 362(g).

BMW seeks relief "for cause" under § 362(d)(1) because there is no equity in the property under § 362(d)(2), and this being a Chapter 7 case, the creditor is entitled to relief from the stay. "Cause" is not statutorily defined under the Bankruptcy Code. *See*, for example, *Spencer v. Bogdanovich* (*In re Bogdanovich*), 292 F.3d 104, 110 (2d Cir. 2002). It may include lack of adequate protection as set forth in the statute, but that is not the only basis for finding cause to grant relief from stay. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (16th ed. 2013). Accordingly, courts determine what constitutes "cause" by looking at the totality of the circumstances on a case by case basis. *Trident*

Assocs. Ltd. P'ship v. Metro. Life Ins. Co. (*In re Trident Assocs. Ltd. P'ship*), 52 F.3d 127, 131 (6th Cir. 1995).

As noted earlier, it is undisputed that BMW has a validly perfected security interest in the vehicle, a 2014 BMW. Equally undisputed is the fact that the automatic stay of § 362(a)(5) will ultimately be terminated as to this vehicle, if not by specific order of this court then by operation of law upon the granting of the debtor's discharge. *See* 11 U.S.C. § 362(c)(2)(C). This court has withheld granting Ms. Harris' discharge pending resolution and determination of the issues raised in this Rule 9014(a) contested matter, but will address such in this Order below. *See* FED. R. BANKR. P. 9014(a).

In this Chapter 7 case, Ms. Harris testified at the hearing that although she has proper insurance in effect, she has not made a contractual payment on the vehicle to BMW since January 1, 2017, yet she has continued to drive the vehicle since the filing of the petition commencing this case. In addition, Ms. Harris testified that she believes the value of the vehicle to be less than half of the claim of BMW, which would show there is no equity in the vehicle, although, as noted, she has proper automobile insurance in effect. Therefore, this court finds that there is sufficient cause to conditionally grant BMW relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). Ms. Harris will be allowed the 30-day redemptive time granted above before such granting of automatic stay relief takes effect. Accordingly, if Ms. Harris is unable to tender payment in full (i.e., $16,987.50) within thirty (30) days from the entry of this Order, the automatic stay shall be terminated in accordance with BMW's § 362(d) motion filed concurrently in this case, without further notice and hearing, and BMW will be free to pursue its possessory/in rem rights to the vehicle under applicable Tennessee State law.

Regarding the concept of adequate protection under § 361(1) and § 362(d)(1), the court notes that BMW's § 362(d) motion was filed on July 11, 2017, and that Ms. Harris has made no

postpetition adequate protection payments. *See In re Roberts*, 63 B.R. 372, 381 (Bankr. E.D. Mich. 1986) (holding that adequate protection payments should begin at the time the undersecured creditor moves for relief from the automatic stay). The United States Supreme Court has held that it is fundamental that a secured creditor be compensated for postpetition economic depreciation of its collateral. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assoc.*, 484 U.S. 365, 370 (1988). "Because vehicles depreciate in value relatively quickly through use, cash payments, in addition to insurance, are typically required to adequately protect the creditor." *Gess v. Randolph Brooks Fed. Credit Union* (*In re Gess*), 526 B.R. 798, 801-02 (B.A.P. 8th Cir. 2015). There being no proof in this record concerning the economic depreciation as a result of Ms. Harris' continued use of the vehicle, the court adopts the contractual monthly payment as a reasonable, presumptive adequate protection payment under § 361(a) since the filing of BMW's § 362(d) motion. *See*, for example, *In re Gregg*, 199 B.R. 404, 409 (Bankr. W.D. Mo. 1996) (finding the monthly contract payment to be a reasonable adequate protection payment to be paid to the creditor); *see also* 11 U.S.C. § 105(a).

III. BMW's Motion for Sanctions Against Ms. Harris for Violation of Court's Order

Federal Rule of Bankruptcy Procedure 9011 governs sanctions in bankruptcy cases and is the counterpart of Rule 11 of the Federal Rules of Civil Procedure. *See* FED. R. BANKR. P. 9011. The purpose of Rule 9011 is to deter conduct that is injurious to the judicial system and to compensate parties aggrieved by that conduct. *See*, for example and among others, *In re Thompson*, 322 B.R. 769, 773 (Bankr. N.D. Ohio 2004). An inquiry under this Rule may be initiated either by a party in interest or the court *sua sponte*. FED. R. BANKR. P. 9011(c)(1).

Although a court's inherent authority may be limited by statute or rule, such rules do not "displace[] the inherent authority to impose sanctions for . . . bad-faith conduct . . . ." *Chambers*

v. NASCO, Inc., 501 U.S. 32, 46 (1991). Accordingly, the court is granted the inherent power to sanction misconduct and abuse of the legal system by parties appearing before them. *See* 11 U.S.C. § 105(a). As the Second Circuit has observed:

> Even though the subject of sanctions is a distasteful one for any court, increasing tensions in and occasional abuses of the judicial system have prompted both judges and legislators to turn toward sanctions as a means of improving the litigation process. . . . [T]he sources of judges' sanctioning power are diverse, and the standards invoked have not always been either clear or consistently applied.

Oliveri v. Thompson, 803 F.2d 1265, 1271 (2d Cir. 1986), *cert. denied*, 480 U.S. 918 (1987). "[T]he test for imposing Rule 9011 sanctions is whether the individual's conduct was reasonable under the circumstances." *Mapother & Mapother, P.S.C. v. Cooper* (*In re Downs*), 103 F.3d 472, 481 (6th Cir. 1996). "Rule 11 sanctions are only to be granted sparingly, and should not be imposed lightly." *Lefkovitz v. Wagner*, 219 F.R.D. 592, 592-93 (N.D. Ill. 2004) (citations omitted), *aff'd*, 395 F.3d 773 (7th Cir. 2005).

In this case, BMW requests that sanctions be assessed against Ms. Harris and asserts that she "willfully and deliberately violated the Court's Order and clearly and unambiguously frustrated the attempts by [BMW] to have the Collateral appraised." (Docket No. 59, p. 2). However, the record as a whole, on its face, does not sufficiently reflect any willful or deliberate conduct on behalf of Ms. Harris with regard to this court's prior Order. As shown above, Ms. Harris went to the car dealership as directed by the court's prior Order, but there was an apparent miscommunication between Ms. Harris and the appraiser. *See* (Docket No. 56). The appraiser, Ms. Harris, and Mr. Lawless all were inconvenienced and understandably unhappy with the outcome of that day. Considering a totality of the particular facts and circumstances, such conduct, or specific incident, does not support the imposition of sanctions being assessed against Ms. Harris

at this time. Therefore, this court finds that sanctions should not be imposed against Ms. Harris. BMW's motion under the facts and circumstances should be denied.

IV. Ms. Harris' Discharge Hearing

"The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (citing *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991)). Chapter 7 of the Bankruptcy Code strives to provide this fresh start by "allow[ing] discharge in exchange for liquidation of the debtor's assets for the benefit of his [or her] creditors . . . ." *In re Krohn*, 886 F.2d 123, 125 (6th Cir. 1989). Section 727(b) of the Code states that:

> (b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter . . . .

11 U.S.C. § 727(b). Although § 727(b) defines the scope of an individual debtor's discharge, it is § 524 of the Code which governs the effect of the discharge. *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 52 (5th Cir. 1993). Section 524(a)(2), otherwise known as the "discharge injunction," provides:

> (a) A discharge in a case under this title–
>
> . . .
>
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a *personal liability* of the debtor, whether or not discharge of such debt is waived . . . .

11 U.S.C. § 524(a)(2) (emphasis added). "A discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt." *In re Castle*, 289 B.R. 882, 886 (Bankr. E.D. Tenn. 2003) (citation omitted). Pursuant to 11 U.S.C. § 524(a)(2), "any

creditor holding a discharged prepetition claim may not attempt to hold the debtor personally liable for that claim." *See*, for example, *In re Patterson*, 297 B.R. 110, 112 (Bankr. E.D. Tenn. 2003).

Here, Ms. Harris is procedurally ready for the entry of her sought for Chapter 7 discharge. She has paid all the prescribed filing fees; fully complied with the statutory requirements of a debtor under § 521; and no § 727(a) objections to her discharge have been filed. It also is observed that Ms. Harris testified that the granting of her discharge will help facilitate her opportunity to obtain financing in order to redeem her vehicle as well as relieve her of her unsecured dischargeable debt. This court finds that Ms. Harris' discharge should be granted, effective immediately, with the reservation of the pending dischargeability complaint under 11 U.S.C. § 523(a)(8) (student loan obligations) involving ECMC and CBE Group, Inc. *See* Adv. Proc. No. 17-00180.[1] The referenced student loan dischargeability adversary proceeding shall be reserved at this time for determination by the court at a later date. The § 523(a)(8) student loan adversary proceeding is scheduled for a pre-trial conference on October 24, 2017, at 10:00 a.m. The automatic stay pursuant to 11 U.S.C. 362(a) will remain in effect at this time regarding the student loan obligation. *Compare* 11 U.S.C. § 362(c)(2)(C).

It should expressly be noted that BMW has agreed to voluntarily maintain a status quo in Ms. Harris's case pending the court's rulings here. (Docket No. 69). In addition, Mr. Lawless, acting on behalf of BMW, orally stated at the hearing that BMW agreed to allow the automatic stay to remain in effect for a period of time as specified by this court after entry of the discharge if this court were to grant Ms. Harris' discharge and allow her a specific time certain to redeem the vehicle under § 722.

[1] The court notes that there is another pending adversary proceeding seeking sanctions filed by Ms. Harris against BMW Financial Services, which is set for pre-trial conference on October 10, 2017, but that matter does not relate to any § 523(a) dischargeability or § 727(a) issues herein.

CONCLUSIONS

Accordingly, based on the foregoing and consideration of the entire Chapter 7 case record as a whole, **IT IS ORDERED AND NOTICE IS HEREBY GIVEN** that:

1. Ms. Harris' "Motion to Establish Redemption Value of Vehicle" is **GRANTED** and she shall have thirty (30) days from the entry of this Order to redeem the vehicle under § 722 for a redemptive value of $16,987.50 in accordance with the foregoing;
2. BMW's "Motion for Relief From the Automatic Stay" is **CONDITIONALLY GRANTED** in accordance with the foregoing;
3. BMW's "Motion for Sanctions Against Debtor for Violation of Court's Order" is **DENIED**; and
4. Ms. Harris' § 727(a) "Discharge" is **GRANTED** with the reservation of Adversary Proceeding No. 17-00180 which is reserved at this time regarding the student loan obligations.[2]
5. The Bankruptcy Court Clerk shall cause a copy of this Memorandum, Order, and Notice of the entry thereof to be sent to the following interested parties:

Ms. Heather Patrice Hogrobrooks Harris
Pro Se Debtor
579 Byron Drive
Memphis, TN 38109

[2] Since the § 361(1) adequate protection payments regarding the vehicle are essentially akin to BMW's postpetition claims against Ms. Harris, such payments shall not be subject to her Chapter 7 discharge. Thomas W. Lawless, Esquire, is directed to file an informational statement with the court setting out the asserted unpaid postpetition § 362(d) motion adequate protection payments (using prorated monthly amounts where appropriate), and serve copies of same on all recipients listed by this court to receive a copy of this Order. It is expressly noted that this Order and the Statement of BMW to be filed regarding the unpaid adequate protection payments do not rise to the level of a money judgment and cannot support the issuance of a writ of execution. *Cf. In re Trigee Foundation, Inc.*, 2017 WL 3190737 (Bankr. D.D.C. July 26, 2017) (Judge S. Martin Teel, Jr.) (discussed in the AMERICAN BANKRUPTCY INSTITUTE, Rochelle's Daily Wire, "An Allowance of Compensation is Not a Money Judgment, Judge Teel Holds" (September 19, 2017)). A separate State court money judgment against Ms. Harris will be required to support a writ of execution against her.

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