

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

IN RE:

PETER ROBINSON

Debtor.

Case No. 98-21393-K
Chapter 13

PETER ROBINSON

Plaintiff,

v.

GOLDEN TITLE LOANS,
LLC

Defendant.

Adversary Proceeding
No. 98-0113

**MEMORANDUM OPINION AND ORDER ON PLAINTIFF'S COMPLAINT TO COMPEL
TURNOVER OF CERTAIN PROPERTY**

Pending before the Court is the Plaintiff/Debtor's Complaint to Compel Turnover of a 1987 Ford F150 pick-up truck from Golden Title Loans (hereinafter "Golden"). At issue is whether the vehicle is part of the bankruptcy estate and, therefore, subject to turnover. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Based on the analysis below, the Debtor is not entitled to turnover of the vehicle at issue, and his complaint will be denied. The following constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

FACTUAL SUMMARY

The following facts are undisputed. On November 6 1997, the Debtor entered into a Tennessee Title Pledge Agreement (hereinafter the "Agreement") with Golden. Under the Agreement, which incorporated

and recited provisions of the Tennessee Title Pledge Act, Sections 45-15-101, *et seq.*, (hereinafter, the “Title Pledge Act”), the Debtor signed over title of his 1987 Ford F150 pick-up truck as collateral for a loan. Pursuant to the Agreement and the Title Pledge Act, the Debtor kept possession of his vehicle while Golden kept possession of the certificate of title. The term of the loan was for 30 days. Technically, the Debtor was in default of the Agreement on December 6, 1997, but at hearing Golden’s attorney stated there had been an oral agreement that the Debtor would sign a new agreement which he, however, did not do. In any case, Golden sent demand letters regarding his delinquent status to the Debtor on December 18 and 22, 1997. Pursuant to the Agreement and Section 45-15-114(b) of the Title Pledge Act, on December 23, 1997, Golden repossessed the pledged vehicle and sent Debtor written notice that he had 20 days to redeem his vehicle or it would be sold. The Debtor failed to redeem his vehicle by the expiration date of January 12, 1998. On January 29, 1998, the Debtor filed for bankruptcy under Chapter 13, listing the Ford F150 as Personal Property. The Debtor filed his Complaint for Turnover of the vehicle on February 2, 1998.

DISCUSSION

A bankruptcy estate consists of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C.A. Section 541(a)(1). A debtor's interest in property for purposes of determining property of a bankruptcy estate is determined by state law. *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979). In the instant case, the Debtor's interest in the truck is governed by the Agreement which must be construed under the Title Pledge Act. Said Act states in pertinent part:

(a) Upon expiration of a property pledge agreement and the final renewal of the agreement, if any, the title pledge lender shall retain possession of the titled personal property and the certificate of title for at least twenty (20) days. If the pledgor fails to redeem the titled personal property and the certificate of title before the lapse of the twenty-day holding period, the pledgor shall thereby forfeit all right, title and interest in and to the titled personal property to the title pledge lender, who shall

thereby acquire an *absolute right of title* to the titled personal property, and the title pledge lender shall have the right and authority to sell or dispose of the unredeemed pledged property (emphasis added).

T.C.A. Sec. 45-15-114(a).

The U.S. District Court in *In re Dunlap*, 158 B.R. 724 (M.D. TN 1993) looked at an analogous situation under TCA Sec. 45-6-211 (the “Pawnbrokers Act of 1988”). Similar to the 20 day “holding period” of Section 45-15-114(a), this section of the Pawnbrokers Act held that if a pledgor failed to redeem the pledged goods within 50 days of the maturity date and after ten days written notice thereafter he “shall thereby forfeit all right, title and interest of, in and to the pledged property to the pawnbroker” who obtained absolute title to said goods. In *Dunlap*, the Court, in finding that pledged property not redeemed within the statutory period prior to the filing of bankruptcy was not property of the estate, held that “unredeemed, pawned property cannot be treated as part of the bankruptcy estate.” *Id.* at 276. Once the statutory redemption period has run, the statutory notice requirements have been met, and the pawned goods are not redeemed, the debtor has lost all right, title, and interest of, in, and to the goods. *Id.* As noted above, under Sec. 541(a) of the Code, only property in which a debtor has legal or equitable interest may be property of the estate. The Court in *Dunlap* held that “Tennessee law extinguishes all rights of the debtor in pawned property once the statutory redemption requirements have been met and the period has passed. Once redemption is no longer possible, the debtor loses any legal or equitable interest in a pawned good and thus this good cannot be considered part of the bankruptcy estate.” *Id.*

Here, as in *Dunlap*, the Debtor failed to redeem the pledged property within the statutory redemption period before filing bankruptcy. The applicable state law states explicitly that if the pledgor fails to redeem within the designated twenty day holding period, “the pledgor shall thereby forfeit all right, title and interest in and to the titled personal property to the title pledge lender, who shall thereby acquire an *absolute right*

of title and ownership to the titled personal property. The title pledge lender shall then have the sole right and authority to sell or dispose of the unredeemed titled personal property”(emphasis added). T.C.A Sec. 45-15-112(a)(2).

According to its testimony and exhibits, Golden followed the provisions of the Title Pledge Act in its dealings with the Debtor, even going beyond the the letter of the law, by giving him twenty days written notice. Accepting Golden’s generous assertion that the statutory twenty day holding period began to run on December 23, 1997, the date of its “20 day Notice” letter, the expiration date of this period would be January 12, 1998. As of that date, by law, title and ownership of the pledged Ford truck vested in Golden, well before the Debtor’s filing Chapter 13 on January 29, 1998. The Debtor under the applicable law, had no property interest in the vehicle at issue when he filed bankruptcy and, therefore, it could not be part of the bankruptcy estate. Debtor is not entitled to turnover, and the Complaint should be denied.

CONCLUSION

Based on the analysis above, the Plaintiff’s Complaint to Compel Turnover of Certain Property From Defendant will be denied.

It is therefore **ORDERED** that the Debtor Peter Robinson’s Complaint to Compel Turnover of Certain Property From Defendant is denied.

IT IS SO ORDERED.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: February 25, 1998