

Dated: September 13, 2022
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
ODESSA RICHARDSON, JR.,
PATRICIA ANN RICHARDSON,
Debtors.

Case No. 20-20626
Chapter 13

ORDER GRANTING IN PART
DEBTORS' MOTION TO SURRENDER PERSONAL PROPERTY

This case came before the Court for a hearing on May 10, 2022, on Odessa Richardson, Jr. and Patricia Ann Richardson's ("Debtors'") Motion to Surrender Personal Property and Reduce Plan Payments¹ and Memphis Municipal Employees Federal Credit Union's ("Creditor's") Response, titled Objection to Debtors' Motion to Surrender ("Creditor's Response").²

¹ ECF No. 80.

² ECF No. 84.

Case History and Treatment of Secured Creditor

On January 24, 2020, Debtors filed their Chapter 13 petition. Creditor is a secured creditor by virtue of a Retail Installment Sale Contract that Debtor Patricia Richardson executed on December 8, 2014, for the purchase of a 2011 Land Rover. Mrs. Richardson financed the vehicle for \$50,519.99, at a sixteen percent (16%) interest rate, with bi-weekly payments of \$519.00.³

On April 23, 2020, Creditor filed its secured claim in the amount of \$21,569.60, with an interest rate of sixteen percent (16%).⁴

On May 20, 2020, the Court entered Order Confirming Debtors' Chapter 13 Plan, treating Creditor's claim as secured in the amount of \$21,000, at five percent (5%) interest amortized over the term of the Debtors' Chapter 13 plan, with a monthly payment of \$450.00.⁵

On August 7, 2020, the Court entered Administrative Order Allowing Claims, in which Creditor's claim would be treated as a secured claim in the amount of \$21,569.60.⁶

On February 1, 2022, Debtors filed a motion to surrender the 2011 Land Rover and to reduce plan payments accordingly.⁷ Debtors stated that the vehicle is no longer operable and awaiting repairs at Range Rover of Memphis.⁸ Further, Debtors seek to surrender the vehicle to Creditor, and to transfer the deficiency balance after the sale to general unsecured status.⁹

On February 4, 2022, Creditor filed its response to Debtors' motion to surrender, opposing the transfer of the deficiency balance to general unsecured status, relying on the Sixth

³ Claim 13-1.

⁴ Claim 13-1.

⁵ ECF No. 33.

⁶ ECF No. 48.

⁷ ECF No. 80.

⁸ *Id.*

⁹ *Id.*

Circuit's decision *In re Nolan*.¹⁰

Hearing on Debtors' Motion, Creditor's Response, and Conclusion

At the hearing on Debtors' Motion to Surrender Personal Property and Reduce Plan Payment, Debtors' attorney proffered that the vehicle is not operable and needs a new engine, and repairs would cost approximately \$5,000. Debtors' attorney explained that the vehicle is being held at the Land Rover dealership. Debtors' attorney further stated that they cannot afford the current plan payments, as they would need to pay for new transportation and this vehicle, which is not financially feasible. Debtors, therefore, seek to surrender the vehicle to Creditor and have any of the remaining balance owed to Creditor (after liquidation of the surrendered vehicle) be treated as an unsecured claim on the existing confirmed Chapter 13 plan.

The Chapter 13 Trustee stated that the remaining principal balance as of the date of the hearing is \$15,113.92.

Creditor contends that the status of the claim must remain as secured, and any remaining balance owed to the Creditor (after the surrendered vehicle is liquidated) must continue to be paid as a secured claim under Debtors' confirmed Chapter 13 Plan. Debtors, in their motion, specifically requested that Creditor's claim should be reclassified as a general unsecured claim after the vehicle is surrendered and liquidated. However, at the hearing, Debtors offered no legal authority against the status of the claim remaining as a secured claim.

Accordingly, it is **ORDERED**:¹¹

1. The Debtors' Motion to Surrender Personal Property is GRANTED in part,

¹⁰ *Chrysler Fin. Corp. v. Nolan (In re Nolan)*, 232 F.3d 528 (6th Cir. 2000).

¹¹ This ruling is limited to the facts and circumstances of this case.

allowing Debtors to surrender the 2011 Range Rover to Memphis Municipal Employees Federal Credit Union.

2. Memphis Municipal Employees Federal Credit Union shall take possession of the 2011 Range Rover and liquidate the vehicle within twenty-one (21) days from the entry of this Order.
3. Within seven (7) days from liquidation of the 2011 Range Rover, Memphis Municipal Employees Federal Credit Union shall file an amended proof of claim.
4. Debtors shall have the right to object to Memphis Municipal Employees Federal Credit Union's amended proof of claim within thirty (30) days after filing of the amended proof of claim.
5. This ruling does not modify Debtors' confirmed Chapter 13 plan.

cc: Debtors
Herbert D. Hurst, Attorney for Debtors
Creditor Memphis Municipal Employees Credit Union
David E. Drexler, Attorney for Creditor
Chapter 13 Trustee