

Dated: March 10, 2025
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

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

In re:

MATTHEW RICHARD MCKEAN,
Debtor.

Case No.: 25-20591
Chapter 13

MATTHEW RICHARD MCKEAN,
Plaintiff.

v.

Adv. Proc. No.: 25-00009

WHITNEY HARGRAVE,
Defendant.

OPINION AND ORDER COMPELLING TURNOVER OF PROPERTY

This adversary proceeding came before the Court on February 26, 2025, at 1:30 p.m., on Michael Richard McKean's ("Debtor's," "Plaintiff's," or "Mr. McKean's") *Complaint to Compel Turnover of Certain Property from Defendant* ("Complaint"), Whitney Hargrave's¹ ("Creditor's," or "Defendant's," or "Ms. Hargrave's") *Response to Plaintiff's Complaint to Compel Turnover* ("Response"), and *Creditor's Supplemental Response to Debtor's Motion*

¹ Also (or formerly) known as Whitney Nicole McKean.

for Turnover (“Supplemental Response”).² Plaintiff sought to recover a 2002 Cadillac Escalade, a 2016 Chevrolet Colorado, a 2009 Harley-Davidson Fatboy, a utility trailer, and three firearms from Defendant. Upon review of the record, filed documents, consideration of the parties’ arguments, and relevant law, the Court grants Plaintiff’s request for order directing turnover of the described property.

I. PROCEDURAL AND FACTUAL BACKGROUND³

On February 4, 2025 (“Petition Date”), Mr. McKean filed a petition commencing a case under Chapter 13 of the Bankruptcy Code.⁴ On the Petition Date, Mr. McKean filed his Chapter 13 Plan, and the initial confirmation date is scheduled for April 15, 2025, at 9:00 a.m.⁵ On February 5, 2025, Mr. McKean filed his Complaint seeking turnover of his properties.⁶ On February 13, 2025, Creditor filed its Response, objecting to Debtor’s Complaint.⁷

On February 25, 2025, at 9:30 a.m., the Court held a preliminary hearing on Plaintiff’s Complaint and Defendant’s Response. At the hearing, the Court learned that Absolute Towing and Recovery, LLC (“Absolute Towing”), took possession and stored Mr. McKean’s items, and Mr. McKean’s former spouse, Ms. Hargrave, (who holds a judgment against Mr. McKean) ordered Absolute Towing to take possession of Mr. McKean’s property and store them in its

² Adv. Proc. ECF Nos. 1, 6, and 10

³ This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This Opinion and Order shall constitute the court’s findings of fact and conclusions of law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

⁴ ECF No. 1.

⁵ ECF No. 2.

⁶ Adv. Proc. ECF No. 1.

⁷ Adv. Proc. ECF No. 6.

facility.⁸ Defendant's attorney stated that he also represents Absolute Towing. The Court continued the hearing to February 26, 2025, at 1:30 p.m. to allow Plaintiff and Defendant present evidence and argue their respective positions.⁹

On February 25, 2025, Creditor filed its Supplemental Response, claiming that the execution of a levy on Mr. McKean's personal properties resulted in a divestiture of both Mr. McKean's possession and title to his properties.¹⁰

On February 26, 2025, the Court held an evidentiary hearing where attorneys made a factual proffer on behalf of their respective clients, Mr. McKean credibly testified, and a copy of an Affidavit regarding the levy execution was provided to the Court. The information presented to the Court outlined, with more specificity, the events that lead to the filing of this complaint for turnover.¹¹ Prior to the Petition Date, Defendant obtained a judgment in the amount of \$33,216.00 (for work done on Mr. McKean's home), which was entered on October 8, 2024.¹² The levy was issued on November 26, 2024, and executed on December 4, 2024.¹³ On December 4, 2024, at the direction of Ms. Hargrave (and her counsel), Absolute Towing took possession of the following items: (1) 2002 Cadillac Escalade, (2) 2016 Chevrolet Colorado, (3) 2009 Harley-Davidson Fatboy, (4) a utility trailer, and (5) three firearms. As of the Petition Date and hearing date (February 26, 2025), these items remain in the possession of Absolute Towing.

⁸ Hearing on the Plaintiff's Complaint to Compel Turnover of Certain Property from Defendant on February 25, 2025 ("Hearing on Feb. 25, 2025"), at 10:00 a.m. and 10:01 a.m.

⁹ Hearing on Feb. 25, 2025, at 10:13 a.m.

¹⁰ Adv. Proc. ECF No. 10.

¹¹ Hearing on the Plaintiff's Complaint to Compel Turnover of Certain Property from Defendant on February 26, 2025 ("Hearing on Feb. 26, 2025"), at 1:37 p.m.

¹² Hearing on Feb. 26, 2025, at 1:39 p.m. The judgment was for work completed on Mr. McKean's home. The judgment was entered for \$33,216, plus interest of \$95.55 as of November 18, 2024, with daily interest of \$9.55.

¹³ Hearing on Feb. 26, 2025, at 1:42 p.m. and 1:43 p.m.

Mr. McKean used the 2002 Cadillac Escalade and utility trailer in his business “every single day,”¹⁴ which generated an estimated \$1,000.00 to \$2,000.00 monthly.¹⁵ Mr. McKean stated that the value of the utility trailer was estimated at \$5,000.00 or \$6,000.00.¹⁶ For the 2016 Chevrolet Colorado, Mr. McKean rented out this vehicle on the Turo Car Rental Marketplace Application (“Turo Application”) and made an estimated \$500.00 to \$1,500.00 monthly.¹⁷ The 2002 Cadillac Escalade and 2016 Chevrolet Colorado are “free and clear of all liens.”¹⁸ Mr. McKean explained that he was in possession of a Chevrolet Suburban, which does not “run very well.”¹⁹ Mr. McKean stated that the 2009 Harley-Davidson Fatboy motorcycle had about 30,000 to 40,000 miles, and was valued at least \$7,500.00.²⁰ The three firearms belonged to Mr. McKean’s grandfather who passed away, and now belongs to his grandmother.²¹ Mr. McKean testified that the firearms were “the only thing that [he had] left of [his] grandfather” and that he kept the firearms “in [his] bedroom.”²² Mr. McKean testified that all items were insured and that the insurance premiums were being paid.²³

At the conclusion of the evidentiary hearing, the Court took the matters under advisement and invited the parties to submit post-hearing memoranda in support of their respective

¹⁴ Hearing on Feb. 26, 2025, at 1:49 p.m.

¹⁵ Hearing on Feb. 26, 2025, at 1:50 p.m.

¹⁶ Hearing on Feb. 26, 2025, at 2:06 p.m.

¹⁷ Hearing on Feb. 26, 2025, at 1:50 p.m. Plaintiff added that he does not drive the 2016 Chevrolet Colorado often, because he needed to “keep it clean and ready for when the next person rent[ed] it out.”

¹⁸ Hearing on Feb. 26, 2025, at 2:06 p.m. and 2:07 p.m.

¹⁹ Hearing on Feb. 26, 2025, at 1:54 p.m.

²⁰ Hearing on Feb. 26, 2025, at 1:51 p.m.

²¹ Hearing on Feb. 26, 2025, at 1:53 p.m.

²² Hearing on Feb. 26, 2025, at 1:53 p.m. and 2:01 p.m.

²³ Hearing on Feb. 26, 2025, at 2:07 p.m.

positions.²⁴ On February 27, 2025, Defendant filed her *Supplemental Memorandum of Creditor* (“Supplemental Memorandum”), in which Defendant argued: (1) if the Court grants Plaintiff’s request for turnover, Plaintiff should pay reasonable costs and expenses incurred in connection with the levy, tow, and storage; and (2) all items in Absolute Towing’s possession are not necessary for an effective reorganization.²⁵ On February 28, 2025, Plaintiff filed his *Memorandum in Support of Debtor’s Complaint for Turnover* (“Memorandum”), which is supplemented with copies of various sections of the National Consumer Law Center’s treatise on Consumer Bankruptcy Law and Practice.²⁶

II. LEGAL DISCUSSION

The principal issue before the Court is whether Mr. McKean is entitled to turnover of the items of personal property in the possession of Absolute Towing. Defendant contends that “the levy of execution on personal property results in actual divestiture of judgment debtors[’] title.”²⁷ Consequently, to determine whether Mr. McKean’s items of personal property are subject to turnover, the Court must also address the narrow issue of whether the levy of execution on Mr. McKean’s personal property resulted in the divestiture of his interests in the items that were seized and are being held in storage. The Court concludes that, under Tennessee law, Mr. McKean was not divested of his title to the items of personal property that are in the possession of Absolute Towing, and Mr. McKean is entitled to turnover of all items of personal property pursuant to 11 U.S.C. § 542(a).

²⁴ Hearing on Feb. 26, 2025, at 2:17 p.m.

²⁵ Adv. Proc. ECF No. 12.

²⁶ Adv. Proc. ECF No. 14.

²⁷ Adv. Proc. ECF No. 10, at 1.

Mr. McKean seeks turnover of personal properties pursuant to subsection 542(a) of the Code, which provides that:

Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.²⁸

Turnover of property under subsection 542(a) is appropriate upon a showing that: (1) the property is or was in the possession, custody or control of an entity during the pendency of the case; (2) that the property may be used by the trustee in accordance with 11 U.S.C. § 363 or exempted by the debtor under 11 U.S.C. § 522; and (3) that the property has more than inconsequential value or benefit to the estate.²⁹ The burden of proof rests with “the party seeking turnover of property of the estate” by a preponderance of the evidence.³⁰

In chapter 13 cases, property of the estate is outlined in 11 U.S.C. § 1306, and includes property specified in section 541 of the Code.³¹ Property of the estate is defined in 11 U.S.C. §

²⁸ 11 U.S.C. § 542(a) (2025).

²⁹ *Jackson v. Paintmaster Premiere, LLC (In re Jackson)*, No. 24-50407, 2024 WL 4806395, at *6 (Bankr. E.D. Ky. Nov. 15, 2024) (citing *Bailey v. Suhar (In re Bailey)*), 380 B.R. 486, 490 (B.A.P. 6th Cir. 2008) (concluding that debtor plaintiff established all three elements of this test compelling turnover of property).

³⁰ *See, e.g., Alofs Mfg. Co. vs. Toyota Mfg. et al. (In re Target Components, Inc). Co.*, 209 B.R. 83, 89-90 (Bankr. W.D. Mich. 1997) (holding that the debtor seeking turnover had the burden of proving that the properties at issue were properties of the estate).

³¹ 11 U.S.C. § 1306 provides in relevant part that:

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

11 U.S.C. § 1306 (2025).

541(a)(1) and (3) to include all legal and equity interests of the debtor in property as of the petition date and any interest in property recovered.³² Generally, property seized pre-petition constitutes property of the estate unless the property is sold or ownership is otherwise transferred.³³

State law governs whether the execution of a levy divests a judgment debtor's interests in personal property.³⁴ Under Tennessee law, the mere entry of a judgment does not create a lien on real or personal property. The judgment creditor (the person or entity who obtained a judgment) may obtain a "judgment lien" where the judgment attaches to real property and/or an "execution lien" where the judgment attaches to the debtor's personal property.³⁵ A judgment lien is created when a certified copy of the judgment is recorded in the register's office in county in where the

³² Subsection 541(a) provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

...

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

11 U.S.C. § 541(a) (2025).

³³ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211, 103 S. Ct. 2309, 2317 (1983) (discussing when property seized pre-petition constitute property of the estate).

³⁴ See *Hoggarth v. Kaler (In re Midwest Agri Dev. Corp.)*, 387 B.R. 580, 585 (B.A.P. 8th Cir. 2008) (holding that under North Dakota law, the sheriff "need not physically possess property in order to subject it to a judicial lien" and that the debtor's lien "did not vanish as a result of the turnover of the debtor's property to the trustee."); see also *In re Stanley's Asphalt Paving, Inc.*, 353 B.R. 63, 65 (Bankr. D. Del. 2006) (holding that judgment creditors obtained a perfected non-consensual lien on the debtor's truck when the sheriff levied the truck prepetition, under Delaware law).

³⁵ *Keep Fresh Filters, Inc. v. Reguli*, 888 S.W.2d 437, 443 (Tenn. Ct. App. 1994) (discussing, generally, a judgment creditor's creation of a lien on realty and personalty).

real property is located.³⁶ An “execution lien” on a debtor’s interest “in stock, choses in action, and other personal property” is obtained by registering an abstract or memorandum of judgment in the county where the debtor resides within sixty (60) days from entry of the judgment,³⁷ and the execution lien becomes effective the date the writ of execution is issued.³⁸ The writ of execution directs the personal property described in the writ to be levied on and sold (unless statutorily exempt).³⁹ A levy on personal property is the legal seizure of the property to which the execution lien attaches and ultimately may be sold to satisfy the debt that arises from the

³⁶ Tenn. Code Ann. § 25-5-101(b) (2024). Regarding a judgment debtor’s equitable interest in real estate or other property, section 25-5-101 of the Tennessee Code reads: “A judgment or decree shall not bind the equitable interest of the debtor in real estate or other property until a memorandum or abstract of the judgment or decree, stating the amount and date thereof, with the names of the parties is certified by the clerk and registered in the register’s office of the county where the real estate is situated.” Tenn. Code Ann. § 25-5-102 (2024).

³⁷ Section 25-5-103 of the Tennessee Code reads: “An execution thereon shall not bind the debtor’s legal or equitable interest in stock, choses in action, or other personal property, not liable at law, unless a similar abstract or memorandum is registered within sixty (60) days from rendition of the judgment or decree, in the county where the debtor resides, if the debtor lives in this state, or, if not, then in the county in which the property is located.” Tenn. Code Ann. § 25-5-103 (2024).

³⁸ *Keep Fresh Filters*, 888 S.W.2d at 443 (explaining that the execution lien “requires the registration of the judgment lien within sixty days after it is rendered and issuance and levy of a writ of execution.”).

³⁹ “A description of the property levied on, with the date of the levy, shall be endorsed upon or appended to the execution.” Tenn. Code Ann. § 26-3-108 (2024).

Also, subsection 26-2-103(a) reads:

Personal property to the aggregate value of ten thousand dollars (\$10,000) debtor’s equity interest shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to the debtor’s vocation or pursuit or to the ownership of the debtor’s abode. Such person may select for exemption the items of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution, up to the aggregate value of ten thousand dollars (\$10,000) debtor’s equity interest.

Tenn. Code Ann. § 26-2-103 (2024).

judgment.⁴⁰ A lien of levy in favor of the judgment creditor attaches to the personal property seized, and the “lien of levy remains effective until the property is sold or otherwise released[.]”⁴¹ As one court explained, “the levy . . . *does not divest the debtor of the title to the property*, but simply creates a lien upon it.”⁴²

Here, subject to the lien of levy in Defendant’s favor, Mr. McKean holds an ownership interest in the items of personal property seized on December 4, 2024. At the February 26, 2025, hearing, Defendant explained that “court officers went and seized [Mr. McKean’s] vehicles and guns.”⁴³ Absolute Towing took possession of Mr. McKean’s items of personal property on December 4, 2024, and all items remained in the possession of Absolute Towing up through the date of the evidentiary hearing. At the February 26, 2025, hearing, Defendant’s attorney informed the Court that Mr. McKean’s 2002 Cadillac Escalade, 2016 Chevrolet Colorado, 2009 Harley-Davidson Fatboy, utility trailer, and three firearms were all currently “stored at

⁴⁰ Rule 69.06 of the Tennessee Rules of Civil Procedure reads:

(1) **Levy.** A levy is effective when the sheriff with a writ of execution exercises control over the judgment debtor's personalty.

(2) **Lien of Levy.** A lien of levy in the judgment creditor's favor is effective when the sheriff levies on the judgment debtor's personalty. The first judgment creditor to deliver a writ of execution to the sheriff, as shown by record in the clerk's office, has priority over other judgment creditors as to the property levied upon. *A lien of levy remains effective until the property is sold or otherwise released from the sheriff's control.*

(3) **Sale.** The sheriff shall sell personalty by auction. At least ten days before the sale a notice generally describing the personalty and stating the time, place, and terms shall be published in a newspaper of general circulation at the judgment creditor's expense, taxable as court costs. If the personalty is perishable no notice of sale is required.

Proceeds of the sale shall be applied first to the sheriff's statutory fees and reasonable expenses, then to court costs, then to the judgment creditor, and then any remaining balance to the judgment debtor.

Tenn. R. Civ. P. 69.06 (emphasis added).

⁴¹ Tenn. R. Civ. P. 69.06.

⁴² *Herman v. Katz*, 47 S.W. 86, 88 (Tenn. 1897) (emphasis added) (clarifying that “the title . . . acquired by the sheriff [or levying officer] was not absolute, but only for the purpose of satisfying the execution debt.”).

⁴³ Hearing on Feb. 26, 2025, at 1:41 p.m.

Absolute Towing and Recovery” located in Shelby County.⁴⁴ Because the assets have not been sold, or otherwise, disposed of, Mr. McKean is entitled to recover all the assets.

This Court disagrees with Defendant’s reliance on *Keep Fresh Filters, Inc. v. Reguli*⁴⁵ to support her position that Mr. McKean no longer held an ownership interest in the personal property after they were levied upon. *Keep Fresh Filters* is factually and legally distinguishable from the case at bar. *Keep Fresh Filter* provides an excellent discussion of how judgment creditors may obtain a lien on real and personal property under Tennessee law, but did not address the issue at bar, that is whether the execution of a levy divested Mr. McKean of his interests in the items of personal property that were seized by and are in Absolute Towing’s possession since December 2024, and have not been sold, or otherwise, disposed of.⁴⁶ In *Keep Fresh Filters*, the debtor purchased a vehicle using money that she borrowed from her daughter.⁴⁷ The debtor’s daughter was not listed on the title to the vehicle as a lienholder.⁴⁸ Keep Fresh Filter subsequently obtained a judgment against the debtor, and at the time, the debtor’s daughter sought to assert a purchase money security interest lien in the vehicle.⁴⁹ *Keep Fresh Filters* addressed the priority of the daughter’s lien interest in the vehicle over that of the judgment creditor, Keep Fresh Filters.⁵⁰ Whether a levy on personal property divested a judgment debtor of title in personal property was not the focus of *Keep Fresh Filter*.

⁴⁴ Hearing on Feb. 26, 2025, at 1:45 p.m. and 2:14 p.m.

⁴⁵ *Keep Fresh Filters, Inc. v. Reguli*, 888 S.W.2d 437, 443-44 (Tenn. Ct. App. 1994).

⁴⁶ Hearing on Feb. 26, 2025, at 1:45 p.m.

⁴⁷ *Id.* at 441.

⁴⁸ *Id.*

⁴⁹ *Id.* at 441-42.

⁵⁰ *Id.* at 443.

Focusing on the main issue at hand, whether Mr. McKean is entitled to turnover of the items of personal property pursuant to subsection 542(a) of the Code, the Court finds and concludes that Mr. McKean has met his burden of proving that he is entitled to recover his personal property. By preponderance of the evidence, Mr. McKean has shown that his request for turnover should be granted because: (1) the items of personal property were in the possession, custody or control of Absolute Towing (on Defendant's behalf) during the pendency of this chapter 13 case; (2) the items of personal property may be used by him pursuant to 11 U.S.C. § 363 or the items may be exempted under 11 U.S.C. § 522; and (3) the items of property have more than inconsequential value or benefit to the estate. Mr. McKean's 2002 Cadillac Escalade, 2016 Chevrolet Colorado, a 2009 Harley-Davidson Fatboy, and utility trailer constitute property of Debtor and the Chapter 13 estate, subject to Debtor's exemption rights under Tennessee law. The Court finds Mr. McKean's testimony about the three (3) firearms credible and finds and concludes that the firearms belong to Mr. McKean's grandmother (regardless of her current health condition).⁵¹ In sum, the items of personal property that were seized and that are in Absolute Towing's possession must be turned over to Mr. McKean, consistent with 11 U.S.C. § 542(a). The Court's findings and conclusions in this proceeding do not impact Defendant's rights as a judgment creditor and her lien rights under applicable law, and likewise, have no impact on the nature of any claim that Defendant and Absolute Towing may respectively assert in the chapter 13 case.

⁵¹ Additionally, Debtor has a significant need of his items. At the hearing, Debtor testified that he used the 2002 Cadillac Escalade and the utility trailer for his cleaning business "every single day." Debtor testified he rented his 2016 Chevrolet Colorado through the Turo Application and made about \$500.00 to \$1,500.00 monthly. Debtor added he used the 2009 Harley-Davidson Fatboy when "the truck [was] not available." For his firearms, Defendant testified that the firearms were an inheritance, that they were "the only thing that [he had] left of [his deceased] grandfather," and that he kept the guns "in [his] bedroom." Hearing on Feb. 26, 2025, at 1:49 p.m. - 2:01 p.m.

III. CONCLUSION AND ORDER DIRECTING TURNOVER OF PROPERTY

For the foregoing reasons, the Court finds and concludes that Mr. McKean's request for turnover should be granted because the execution of a levy on Mr. McKean's personal property did not divest him of his interests in the personal properties. Accordingly, it is **ORDERED**:

1. Plaintiff Matthew Richard McKean's request for turnover is **GRANTED**.
2. No later than seven (7) from the entry of the Order, Defendant Whitney Hargrave (f/k/a Whitney Nicole McKean), directly or through her counsel, shall direct Absolute Towing and Recovery, LLC, to make items available for recovery or to turn over all items to Plaintiff Matthew Richard McKean.
3. Defendant Whitney Hargrave (f/k/a Whitney Nicole McKean) and Absolute Towing and Recovery, LLC, may file their respective proofs of claim, as appropriate, consistent with the Bankruptcy Code and Rules.

Copy of Opinion and Order to be served on:

Bruce A. Ralston, Esq. Hurst Law Firm, P.A. P.O. Box 41497 Memphis, TN 38174-1497	Joseph D. Barton, Esq. The Law Office of J.D. Barton 6565 Highway 51 North Millington, TN 38053
Whitney Hargrave C/O Joseph D. Barton 6565 Highway 51 North Millington, TN 38053	Absolute Towing & Recovery C/O Joseph D. Barton 6565 Highway 51 North Millington, TN 38053
Sylvia F. Brown Chapter 13 Trustee 200 Jefferson Ave. Suite #1113 Memphis, TN 38103	All creditors on the Matrix