

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

---

**In re**

**Shirley Hallom Tucker,  
Debtor.**

**Ch. 13 Case No. 16-31170**

---

**Shirley Hallom Tucker,  
Plaintiff,**

**v.**

**Adv. Pro. No. 16-00321**

**Title Max #26,  
Defendant.**

---

**MEMORANDUM OPINION AND ORDER DENYING TURNOVER BUT GRANTING  
OTHER RELIEF**

---

This matter came on for hearing on January 31, 2016, (the “Hearing”) on the Complaint to Compel Turnover of Certain Property from Defendant (the “Complaint”) filed by debtor Shirley Hallom Tucker (the “Debtor”) against Title Max #26. At the hearing, Joe Fox represented the Debtor, and Paul Royal appeared on behalf of TitleMax of Tennessee, LLC d/b/a/ TitleMax (the “Creditor”). Counsel for both parties stipulated to the fact that the vehicle in question, a 2008 Saturn Vue XR 2WD V6 (the “Vehicle”), had been sold one day after the Chapter 13 case was filed. Counsel for both parties presented arguments regarding whether the Debtor still retained the right to redeem the vehicle on the date that the Chapter 13 petition was filed. At the conclusion of the Hearing, the court took the matter under advisement. In sum, the Adversary requires the court to determine whether the Debtor still had an interest in the Vehicle and/or the right to redeem the Vehicle on the date that she filed this Chapter 13 case. For the reasons set forth below, the court finds that the Debtor possessed an ownership interest as well as the right to redeem the Vehicle, when she filed the Chapter 13 petition. The ownership interest and the right to redeem are property of the estate, and are subject to the automatic stay.

## **I. JURISDICTION**

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E).

## **II. FINDINGS OF FACT**

On March 16, 2016, the Debtor executed a Tennessee Title Pledge Agreement (“Agreement”) in favor of the Creditor, pledging the Vehicle as collateral for a loan in the amount of \$2,500.00. The parties stipulated that the facts stated in an undated Notification of Recovery,

which was mailed to the Debtor by the Creditor, were accurate. The Notification of Recovery provides that the Debtor defaulted on the Agreement, the Vehicle was recovered on November 14, 2016, the Debtor had twenty days to redeem the Vehicle, and that the failure to do so would give the Creditor the right to sell the Vehicle. The Notice of Recovery provides the redemption amount due, and gave the date by which the redemption amount must be paid as December 4, 2016. December 4, 2016 fell on a Sunday. The Debtor went to the Creditor's place of business with the full redemption amount on December 4, 2016, but it was closed.

On December 5, 2016, the Debtor filed this Chapter 13 case. On December 6, 2016, the Creditor sold the Vehicle. On December 9, 2016, the Debtor filed the instant Adversary Proceeding seeking turnover of the Vehicle, along with notice of expedited hearing.

### **III. CONCLUSIONS OF LAW**

Turnover under § 542 requires that the property at issue be property of the bankruptcy estate, and requires the Debtor to demonstrate either that the repossessed property may be used, sold, or leased by the debtor, or that the Debtor may exempt the property under § 522. Even if the secured creditor repossessed the property prepetition, the property may still be included in the estate. *Mitchell v. BankIllinois*, 316 B.R.891, 895 (S.D. Tex. 2004)(citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05, 103 S. Ct. 2309, 2313-14 (1983)). The issue presented is whether the Vehicle was property of the estate pursuant to 11 U.S.C. § 541 when the Debtor filed this Chapter 13 case on December 5, 2016. Section 541(a) of the Bankruptcy Code provides:

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.

11 U.S.C. § 541(a)(1). Property of the estate has been broadly defined to include all tangible and intangible interests of the debtor, including property to which the debtor has no right of possession. *Whiting Pools, Inc.*, 462 U.S. at 204-05. This Court must look to state law to determine the scope of property of the estate. *Butner v. United States*, 440 U.S. 48, 54 - 5 (1979).

The Tennessee Title Pledge Act provides 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.

(b) The title pledge lender has, upon default by the pledgor of any obligation pursuant to the title pledge agreement, the right to take possession of the titled personal property. In taking possession, the title pledge lender or the lender's agent may proceed without judicial process if this can be done without breach of the peace; or, if necessary, may proceed by action to obtain judicial process. After taking possession of the titled personal property, the title pledge lender shall retain possession of the titled personal property and the certificate of title for a twenty-day holding period. There shall be no further interest or other fees charged to the pledgor from the commencement of the twenty-day holding period.

(1) If, during the twenty-day holding period, the pledgor pays the repossession charge, and redeems the titled personal property and certificate of title, by paying all outstanding principal, interest and fees authorized by this chapter owed by the pledgor to the title pledge lender, the pledgor shall be given possession of the titled personal property and the certificate of title without further charge.

(2) If the pledgor fails to redeem the titled personal property and certificate of title during the twenty-day holding period, then the title pledge lender shall have a period of sixty (60) days in which to sell the titled personal property in a commercially reasonable manner. For

purposes of this section, “commercially reasonable” is a sale that would be commercially reasonable under title 47, chapter 9, part 6. The proceeds of the commercially reasonable sale shall be applied to the principal, interest and all fees authorized by this chapter owed by the pledgor to the title pledge lender, including the actual direct costs of the sale. Any surplus from the sale of the titled personal property shall be remitted to the pledgor after the sale, and shall not be retained by the title pledge lender. The commissioner shall prescribe by rule the manner in which the title pledge lender shall remit any surplus to the pledgor.

\*\*\*

T.C.A. § 45-15-114. Pursuant to the Tennessee Title Pledge Act, the Debtor had twenty days from November 14, 2016, the date of repossession, to redeem the Vehicle and Certificate of Title. Only after that time period would the Debtor forfeit any ownership interest. Twenty days after November 14, 2016 was December 4, 2016, a Sunday. The Tennessee Title Pledge Act does not include a specific computation of days provision; however, the Tennessee Code and Statutes does provide a general Computation of days provision under its Construction of Statutes chapter. That provision provides: “The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.” T.C.A. § 1-3-102.

The application of this provision to the facts before the court means that Monday, December 5, 2016, not Sunday, December 4, 2016, was the twentieth day by which the redemption must be accomplished. Because the statutory redemption period had not already expired on the date of filing, the Debtor had not “forfeit[ed] all right, title and interest in and to the titled personal property to the title pledge lender....” T.C.A. § 45-15-114(a). Thus, the Vehicle and Certificate of Title became property of the estate, and the Debtor maintained the right of redemption.

But for the Debtor’s bankruptcy filing, the redemption period would have expired at the end

of the twentieth day after recovery of the Vehicle. “However, upon the filing of a bankruptcy petition, Bankruptcy Code section 108 governs the time periods in which a debtor may redeem property. Pursuant to § 108(b), a debtor has sixty (60) days from the date of the petition to redeem property. 11 U.S.C. § 108(b).” *In re Walker*, 204 B.R. 812, 816 (Bankr. M.D. Fla. 1997), citing *In re Hand*, 52 B.R. 65, 66 (Bankr. M.D. Fla. 1985)(holding that “immediately upon filing[,] § 108(b) automatically [gives debtors] 60 days in which they could exercise their right to redeem [] property.”).

The Debtor was entitled to redeem the Vehicle and Certificate of Title through the sixtieth day after the filing of the bankruptcy petition. However, the Creditor foreclosed the Debtor’s right to redeem and to recover the Vehicle by selling the Vehicle on December 6, 2016, the day after the Debtor filed the bankruptcy petition. As a result of the Creditor’s sale of property of the estate without first seeking and having been granted relief from the stay, the Creditor violated the automatic stay of § 362(a), and the Vehicle is not available for turnover from the Creditor.

#### **IV. CONCLUSION**

The Court concludes that ownership of the Debtor’s vehicle had not transferred by operation of law to the Creditor on the date that the Chapter 13 petition was filed. On that date, the Debtor retained her ownership interest in the Vehicle, along with the right to redeem the Vehicle. Furthermore, the Creditor violated the automatic stay by selling the Vehicle the day following the filing of the Chapter 13 petition.

The Clerk of the Court should set this matter for hearing to determine the damages sustained by the Debtor as a result of the sale of the Vehicle--property of the estate. After the hearing has concluded, the Court will enter a separate final judgment in accordance with Federal Rule of

Bankruptcy Procedure 7058.

Copies to  
Debtor  
Debtor's counsel  
Creditor  
Creditor's Counsel  
Chapter 13 Trustee