

IT IS SO ORDERED.

Dated: 11:32 AM May 08 2007



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO.: 06-51916
)	
Randy Wayne Stallard)	CHAPTER 7
)	
DEBTOR(S))	JUDGE MARILYN SHEA-STONUM
)	
)	DENIAL OF DEBTOR'S MOTION
)	(Docket # 24)

This matter is before the Court on the Debtor's Motion (the "Motion") seeking to hold Creditor Kent Credit Union in contempt for violation of the automatic stay for having failed to deliver possession of a non-operative vehicle repossessed from the Debtor prior to the Petition Date (defined below), upon demand by the Debtor. A hearing was held on the Motion and Kent Credit Union's response on December 13, 2006. Appearing at the hearing were Patricia Dougan, counsel for the Debtor, and William Costello, counsel for Kent Credit Union. Following the hearing, the Court allowed counsel the opportunity to present case law involving a chapter 7 case that supported counsels' positions through the filing of post-hearing briefs. Upon submission of

the post-hearing briefs (docket ##35 and39) the Court took the matter under advisement.

JURISDICTION

This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b), 157(a) and (b)(1) and by the Standing Order of Reference entered in this District on July 16, 1984.

UNDISPUTED FACTS

On September 20, 2006, Kent Credit Union held a non possessory non-purchase money security interest in the inoperable 1995 Mercury Sable (the “Sable”) that is the subject of the Motion.

On September 20, 2006, Kent Credit Union repossessed the Sable from the Debtor. During the hearing, Debtor’s counsel stated that she believed that with certain repairs the Sable could be made operable.

On September 28, 2006 (the “Petition Date”) the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. The Debtor’s Schedule B did not list the Sable, the statement of intention did not indicate an intent to redeem the Sable and Schedule C did not claim an exemption in the Sable. The Debtor listed Kent Credit Union on Schedule F as an unsecured creditor of the Debtor.

On October 3, 2006, the Debtor filed amended schedules B, C, D and F (docket # 11). The Debtor’s amended schedules listed the Sable as personal property of the Debtor, claimed an exemption in the Sable and listed Kent Credit Union as the holder of a secured claim against the Debtor. Notice of the Debtor’s amended schedules was not sent to Kent Credit Union until October 10, 2006 (docket # 15). On the same date, the Debtor filed a motion to avoid the non-

possessory, non-purchase money security interest of Kent Credit Union in the Sable (docket # 16). Kent Credit Union did not file a response to the motion to avoid lien, and on a default basis, the Court entered an order granting the motion to avoid Kent Credit Union's lien on November 8, 2006 (docket # 22).

After the entry of the order avoiding Kent Credit Union's lien, Debtor demanded that the Sable be returned to the possession of the Debtor. Counsel for Kent Credit Union told Debtor's counsel that the Sable was available for pickup at the wholesale automobile auction house. On November 14, 2006, the Debtor filed the Motion seeking to have Kent Credit Union held in contempt for violation of the automatic stay. On November 17, 2006 - according to Kent Credit Union's initial response (docket #25) and Debtor's post-hearing brief (docket #35) (or November 21, 2006 - according to debtor's counsel's statements during hearing) (or November 15, 2006 - according to Kent Credit Union's post hearing brief (docket #39)) Kent Credit Union physically returned the Sable to the Debtor.

DISCUSSION

The Debtor argues that Kent's actions violated the automatic stay provided for in Bankruptcy Code § 362(a)(3). Section 362(a)(3) provides, in pertinent part, that the filing of a voluntary petition operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." The Debtor does not dispute that the repossession of the Sable prior to the Petition Date was lawful. Rather, the Debtor argues that Kent Credit Union was required to return possession of the Sable to the Debtor pursuant to §§ 541 and 542 and its failure to do so was a violation of the automatic stay. The Debtor's argument, however, is based on case law arising in the context of reorganization,

not liquidation. *See, e.g., In re Curry*, 347 B.R. 596 (6th Cir. 2006), *In re Sharon*, 234 B.R. 676 (6th Cir. 1999). In the context of a liquidation, the analysis of the turnover requirements of section 542 is different.

Section 542 of the Bankruptcy Code provides, in pertinent part,

an entity, ..., 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, ... , such property ... , *unless such property is of inconsequential value or benefit to the estate.*

11 U.S.C. § 542 (emph. added). The Sable is property that the Debtor may exempt under § 522. However, it is of inconsequential value or benefit to the estate. Debtor's amended schedule B lists the value of the Sable as \$2,287. Only part of the \$2,287 would belong to the estate. On the Petition Date, according to amended schedule D, there existed a valid claim secured by the Sable in the amount of \$427.00 and the Debtor claimed an exemption in the amount of \$1,000 on amended schedule C. Thus, at most, the value to the estate would be \$860.00. This value is likely to be reduced even further by the cost of repairs needed to make the Sable operable and costs of sale.

The Debtor argues that the Sable is of value to the estate because "it could be used for transportation of the household to and from work, the store, etc." In a chapter 13 context, where a debtor's post petition income is property of the estate pursuant to § 1306, a vehicle used to transport the debtor to and from work is valuable to the estate because without it the debtor might not be able to continue earning income. However, in a Chapter 7, the estate is fixed as of the date the case is commenced. 11 U.S.C. § 541(a)(1). Post petition income is not property of the chapter 7 estate and, therefore, property used to help generate such income is not of value to the chapter

7 estate.

For these reasons, the Court finds that the Sable was not subject to the turnover provisions of § 542 and Kent Credit Union's continued possession of the Sable was not a violation of the automatic stay. In addition, following the avoidance of its lien, Kent Credit Union promptly returned possession of the Sable to the Debtor. Therefore, the Debtor's Motion is denied.

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cc: Patricia Dougan

William Costello