

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 03-26701
)
SHAWN L. JEFFREY,) Chapter 13
)
Debtor.) Judge Arthur I. Harris

ORDER DENYING DEBTOR'S
EMERGENCY MOTION TO RETURN VEHICLE

Before the Court is debtor's emergency motion (Docket # 4) for an order to compel Ford Motor Credit Company (Ford) to return the debtor's 2001 Ford Explorer, which Ford allegedly repossessed prepetition. This matter is before the undersigned judge at the request of Judge Pat E. Morgenstern-Clarren, who is assigned to preside over this case but is presently unavailable to hear the emergency motion. For the reasons explained below, the debtor's emergency motion is denied, but Ford should be aware that sale of the subject vehicle without relief from the automatic stay would constitute a violation of the automatic stay.

This Court concurs with those courts which have held that requests for non-debtors to turn over property must be filed as an adversary proceeding. *See, e.g., In re Camall Co.*, 16 Fed. Appx. 403, 407, 2001 WL 897441, **3 (6th Cir. July 31, 2001) (unpublished)(party seeking turnover must file an adversary proceeding rather than motion); *In re Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990) (“A turnover action is an adversary proceeding which must be commenced by a

properly filed and served complaint. Bankruptcy Rule 7001.”). *Cf. In re Sharon*, 234 B.R. 676, 687 (BAP 6th Cir. 1999) (declining to address need for adversary proceeding in turnover action because issue was not raised in proceeding below). Because the debtor's motion was not filed as an adversary proceeding, the matter is not properly before the Court and is therefore denied.

Notwithstanding this denial, the Court's review of relevant case law shows that, even if property has been validly repossessed prepetition pursuant to a security interest, sale of that property is stayed under 11 U.S.C. § 362(a)(4). *See, e.g., In re Omni Graphics, Inc.*, 119 B.R. 641 (Bankr. E.D. Wis. 1990); *In re Koresko*, 91 B.R. 689, 700 (Bankr. E.D. Pa. 1988), and cases cited therein; 3 *Collier on Bankruptcy* (15th Ed. Rev.) at ¶ 362.03[6][b].

In general, the nondebtor party seeking to take action against the debtor or its property is well advised to assume that the stay applies and seek relief by appropriate proceedings in the bankruptcy court. Relief may be given through modification of the stay or, when necessary, by vacating the stay completely.

3 *Collier on Bankruptcy* (15th Ed. Rev.) at ¶ 362.03[6][b]. Furthermore, applicable bankruptcy law and Ohio statutory law appear to give debtor the right to redeem the collateral "at any time before a secured party ... (2) Has disposed of collateral or entered into a contract for its disposition" OHIO REV. CODE ANN. § 1309.623 (UCC 9-623) (Anderson 2003). *See also United States v.*

Whiting Pools, Inc., 462 U.S. 198 (1983); *In re Sharon*, 234 B.R. at 681-82.

Cf. In re Kalter, 292 F.3d 1350 (11th Cir. 2002)(under Florida law, ownership transfers upon repossession of vehicle).

For these reasons, debtor's emergency motion for an order on Ford to turn over property is denied.

IT IS SO ORDERED.

Arthur I. Harris 12/29/2003
Arthur I. Harris
United States Bankruptcy Judge