

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: December 09 2005

A handwritten signature in blue ink, appearing to read "Mary Ann Whipple".

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 05-72888
)	
Dena M. Bringinger,)	Chapter 7
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF DECISION AND ORDER

This case came before the court for hearing on a motion filed by Foster Auto Body (“Foster”) requesting a determination regarding the validity of an artisan’s lien that it claims arises from the towing and storage of Debtor’s motor vehicle (“Motion”). [Doc. # 6]. In response, Debtor filed an Objection to Motion and Motion for an Order to Appear and Show Cause Why Creditor Foster’s Auto Body Should Not be Found in Contempt of Court for Violating the Automatic Stay [Doc. # 7]. Both counsel for Debtor and counsel for Foster Auto Body appeared in person. There was no appearance by or on behalf of the Chapter 7 Trustee or Croghan Colonial Bank, holder of a security interest in the vehicle. For the reasons that follow, the court will order Foster to release the vehicle at issue to Debtor but finds that sanctions for violation of the automatic stay are not appropriate under the circumstances of this case.

FACTUAL BACKGROUND

Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on October 10, 2005. Earlier in the year, Debtor's car was involved in an accident. The vehicle is subject to a security interest held by Croghan Colonial Bank. Foster provided towing services and has provided storage of the vehicle since the accident. However, no repairs have been made and the vehicle is inoperable.

Foster was served with notice of Debtor's bankruptcy on October 16, 2005. On October 27, 2005, Debtor's counsel called Foster to make arrangements for the release of the vehicle to Debtor. However, on November 4, 2005, Foster's counsel indicated that Foster would not release the vehicle to Debtor and on November 7, 2005, Foster filed the instant Motion. Foster asserts a possessory artisan's lien and seeks direction as to the disposition of the vehicle given its claimed lien and the possible interests of Croghan Colonial Bank and the Chapter 7 Trustee.

Debtor, on the other hand, argues that Foster's attempt to enforce a lien against the vehicle is a violation of the automatic stay. According to Debtor, she is requesting that Foster release the vehicle so that a co-signor on the Croghan Colonial Bank loan can attempt to sell the vehicle in order to pay on the co-signor's continued liability to the Bank. She requests that the court find that Foster has violated the automatic stay imposed by 11 U.S.C. § 362 and impose sanctions against Foster in the amount of \$1,500.

LAW AND ANALYSIS

A statutory automatic stay arises upon the filing of a bankruptcy petition. 11 U.S.C. § 362(a). A stay is imposed under § 362(a)(3) against any act "to exercise control over property of the estate" and under § 362(a)(4) against "any act to . . . enforce any lien against property of the estate." The effect of these provisions requires that the creditor either turn over the property or promptly seek relief from the court. *See In re Berscheid*, 223 B.R. 579, 581 (Bankr. D. Wyo. 1998); 11 U.S.C. § 362(f) and § 363(e) (providing a creditor with immediate or even ex parte access to the court for adequate protection if a turnover jeopardizes the creditor's interest in the collateral).

In this case, there is no dispute that Debtor's vehicle became property of the bankruptcy estate on the filing of her petition. Withholding possession of property of the estate is technically a violation of the stay. *Sharon v. TranSouth Fin. Corp. (In re Sharon)*, 234 B.R. 676, 682 (B.A.P. 6th Cir. 1999) (finding that "[w]ithholding possession of property of the bankruptcy estate constitutes 'the exercise [of] control over property of the estate for purposes of the automatic stay in 11 U.S.C.

§ 362(a)(3)). Foster did, however, seek what the court construes as a request for adequate protection in a timely manner given the circumstances of this case. There is no dispute that the vehicle at issue is inoperable and, thus, does not provide a means of transportation for Debtor. In addition, Foster's request for direction as to the disposition of the vehicle is not unreasonable since this is a Chapter 7 case and, unlike cases addressing automatic stay violations in Chapter 13 cases, the obligation to turnover property of the estate runs to the Chapter 7 Trustee, not to Debtor. *See* 11 U.S.C. § 542(a). The court therefore, finds no willful violation of the automatic stay by Foster and no harm to Debtor as the result of Foster withholding possession of the vehicle. As such, sanctions are inappropriate in this case.

Finding that the automatic stay prohibits Foster's continued possession of the vehicle, the court next addresses Foster's claimed lien against the vehicle and, thus, the extent to which it might be entitled to adequate protection. Foster asserts a common law possessory lien for towing and storage fees incurred since approximately March, 2005. However, under Ohio common law, an entity operating a garage and body shop "acquires no lien for storage or towing services for an automobile. Such lien arises only when such bailee or artisan imparts or confers value upon the automobile by virtue of his 'performing work or furnishing material' for the automobile." *Candler v. Ash*, 53 Ohio App. 2d 134, 136 (1976)(citation omitted). Foster does not assert a statutory lien in its favor with respect to the storage and towing services rendered nor can it do so. *See id.* (explaining that garage keepers and repairmen are not warehousemen and have no lien for storage under Ohio Rev. Code § 1307.14(A), that motor vehicles are specifically excluded from the bailee's lien codified in § 1333.41, and that the "artisan's lien as it affects automobiles remains a common-law lien"). Since Foster has no lien, common law or otherwise, on the vehicle at issue, it has no interest in the vehicle that would be entitled to adequate protection.

In light of the foregoing, the court will order Foster to return possession of the vehicle to Debtor. Although not formally abandoned by the Trustee, the court assumes the Trustee's absence from the hearing on the Motion and her failure to otherwise respond to the Motion is indicative of her lack of interest in the vehicle and in its return to Debtor. Likewise, the court assumes Croghan Colonial Bank's absence from the hearing indicates its lack of interest in the vehicle. Nevertheless, the court's order will not constitute an order of abandonment or relief from stay and will be without prejudice to, and does not confer on Debtor any right to dispose of the vehicle in violation of, any rights of the Chapter 7 Trustee and/or Croghan Colonial Bank.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that Foster Auto Body must immediately turn over to Debtor the vehicle at issue, with turnover constituting making the vehicle available to Debtor to remove at Debtor's expense during normal business hours and with Debtor directed to remove said vehicle from the premises on or before the date that is 10 days after the entry of this order; and

IT IS FURTHER ORDERED that the court's order is without prejudice to, and does not confer on Debtor any right to dispose of the vehicle in violation of, any rights of the Chapter 7 Trustee and/or Croghan Colonial Bank; and

IT IS FURTHER ORDERED that Debtor's request for sanctions against Foster Auto Body for violation of the automatic stay be, and hereby is, **DENIED**.