

THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:

TOYA DAVIS

Debtor.

In Proceedings Under Chapter 13

Case No.: 11-13615

JUDGE JESSICA E. PRICE SMITH

MEMORANDUM OF OPINION AND ORDER

There are two matters before this Court, the Motion for Relief from Stay (the “Stay Relief Motion”) filed by creditor Kia of Bedford and the Motion for Order on Kia of Bedford to Appear and Show Cause why they should not be held in Contempt for Violation of the Automatic Stay (the “Contempt Motion”) filed by the Debtor, Toya Davis. Both motions arise from the attempt of the Debtor to purchase a 2008 Kia Spectra the month prior to the filing of her bankruptcy petition. Although the debtor was allowed to leave the car dealership with the vehicle, the purchase was never finalized. Kia of Bedford repossessed the vehicle, but returned it to the debtor because the within case was pending. For the reasons set forth below, the Stay Relief Motion is granted and the Contempt Motion is denied.

This Court acquires core subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a), (b)(1), 28 U.S.C. § 1334 and General Order No. 84 of the District.

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There is no dispute that on March 21, 2011, Ms. Davis entered into an agreement to purchase a 2008 Kia Spectra (the “Vehicle”) from Kia of Bedford. What is in dispute is whether the purchase was conditioned on Ms. Davis’ ability to obtain financing for the Vehicle. In support of the contention that the purchase was conditional, Kia of Bedford submitted copies of

the Retail Buyer's Order, Retail Installment Sale Contract, Conditional Purchase Agreement and Down Payment Agreement. (Kia of Bedford's Exh. 1, 2, 3 and 4, respectively.) Each of these exhibits was admitted into evidence without objection. Ms. Davis refutes the notion that the sale was conditional, by asserting that the Retail Installment Contract contains a check mark that was not in the original, and that she doesn't remember signing the Conditional Purchase Agreement.

Although, Ms. Davis does not recall signing the Conditional Purchase Agreement, she does not dispute that the signature on that document is hers. By signing the Conditional Purchase Agreement, Ms. Davis agreed to integration of that agreement into the Retail Installment Sale Contract dated March, 21, 2011, and agreed that her purchase of the Vehicle could be cancelled by written or oral notice if Kia of Bedford was unable to obtain financing for her purchase within 60 days of the delivery date. Ms. Davis admits signing the Down Payment Agreement, in which she acknowledges that she could be required to forfeit her possession of the vehicle if she did not make the required down payment for the purchase.

Ms. Davis filed her Chapter 13 petition on April 28, 2011. Although she states that after she met with her attorney she told Kia of Bedford that she was filing for bankruptcy, it is not clear that the communication occurred after the petition was filed. Based upon the docket in this case, notice of the filing of the bankruptcy petition was not put in the mail for delivery to creditors until Wednesday, May 4, 2011.

Kia of Bedford caused the Vehicle to be repossessed from T-Jay's Repairs on Monday, May 8, 2011. When she found out that the vehicle had been repossessed, Ms. Davis went to the dealership and demanded its return. After speaking with Ms. Davis' attorney and their own attorney, Kia of Bedford returned the Vehicle to Ms. Davis. Although she regained physical possession of the Vehicle, Ms. Davis was unable to drive it, because her temporary tag expired,

and Kia of Bedford was not able to issue a second temporary plate, or allow a dealer plate to be used for operation of the Vehicle.

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Kia of Bedford seeks relief from stay to obtain possession of the vehicle, which they assert that they own. Ms. Davis objects to the requested relief on the grounds that she is the owner of the vehicle, Kia of Bedford does not have a security interest in it, and therefore, they do not have standing to obtain relief from the automatic stay. The first thing that must be determined, therefore, is what interest Kia of Bedford holds in the Vehicle.

Section 1302.42 of the Ohio Revised Code controls when ownership of a vehicle is transferred from a seller to a buyer. “Unless otherwise explicitly agreed,” delivery is the indicator of the change of ownership. O.R.C. § 1302.42(B). The Conditional Purchase Agreement and Down Payment Agreement establish that purchase of the Vehicle was conditioned on Ms. Davis’ ability to finance the purchase within 60 days of its delivery, and that her continued possession of the Vehicle was conditioned upon her paying the full down payment as agreed. Accordingly, the transfer of ownership of the Vehicle was to occur after the payment of the down payment *and* Ms. Davis’ financing was completed. Kia of Bedford was not able to obtain financing to complete Ms. Davis’ purchase of the Vehicle. And, Ms. Davis acknowledges that she did not make a complete down payment on the Vehicle. Therefore, on the date she filed her bankruptcy petition, title to the Vehicle had not transferred to Ms. Davis and Kia of Bedford remained its owner.

As the owner of the Vehicle, Kia of Bedford is entitled to relief from the automatic stay under Section 362(d) of the Bankruptcy Code if it can establish “cause, including the lack of adequate protection of an interest in property. . . “ that supports its request to retake possession of

the Vehicle.. 11 U.S.C. § 362. I find that cause exists to grant the relief requested by Kia of Bedford because they are the owner of the vehicle, received only half of the required down payment in connection with its conditional purchase, and were not able to finalize that purchase because of the inability to obtain financing for Ms. Davis. Therefore, I grant Kia of Bedford's Stay Relief Motion so that it may cancel the Retail Installment Sale Contract and obtain possession of the Vehicle. Kia of Bedford is also ordered to return the vehicle that Ms. Davis provided as a trade in in connection with the conditional purchase of the 2008 Kia Spectra.

Next, Ms. Davis requests that this Court find Kia of Bedford in contempt for its actions to regain possession of its Vehicle and its failure to provide her with a certificate of title showing her as the owner of the Vehicle. Because I have determined that the ownership of the Vehicle never transferred to Ms. Davis, there is no basis to hold Kia of Bedford in contempt for failure to transfer title to her. The only issue then is whether Kia of Bedford's initial repossession of the Vehicle constituted an act to obtain possession of property of the estate, or to exercise control over property of the estate, after it had knowledge of Ms. Davis' bankruptcy filing.

The Vehicle did not become property of the estate when Ms. Davis filed her bankruptcy petition, but she may have had the right to possess it, if the notice of cancellation was not given either orally or in writing prior to the filing of her bankruptcy petition. Notice to creditors of the filing of the bankruptcy petition was put in the mail on Wednesday, May 4, 2011. The repossession took place on Monday, May 8, 2011. The fact that there were four days between the date the notice of the bankruptcy petition was mailed and the repossession, which included a weekend, precludes finding by a preponderance of the evidence that there was a willful violation of the automatic stay requiring the imposition of sanctions.

Accordingly, Kia of Bedford's Motion for Relief from Stay is hereby granted. Debtor's Amended Objection thereto is overruled. Debtor's Motion for Order on Kia of Bedford to Appear and Show Cause why they should not be held in Contempt for Violation of the Automatic Stay is hereby denied, and Kia of Bedford's Objection is sustained. Each party is to bear its respective costs.

IT IS SO ORDERED.

Dated this 28th day
of September, 2011


JUDGE JESSICA E. PRICE SMITH
UNITED STATES BANKRUPTCY COURT