

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

FILED

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U.S. BANKRUPTCY COURT
SAVANNAH, GA.

In the matter of:)	
)	Adversary Proceeding
ISAAC OGLESBY)	
LINDA OGLESBY)	Number <u>01-4072</u>
(Chapter 13 Case No. <u>01-41577</u>))	
)	
<i>Debtors</i>)	
)	
)	
ISAAC OGLESBY)	
LINDA OGLESBY)	
)	
<i>Plaintiffs</i>)	
)	
v.)	
)	
TITLE MAX)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

Debtors Linda and Isaac Oglesby (“Debtors”) owned a 1998 Mercury automobile (“the vehicle”) prior to the filing of their case. On April 4, 2001, they entered into a title pawn agreement with Defendant Title Max (“Title Max”), who advanced \$4,000.00 pursuant to applicable provisions of Georgia law with a maturity date on the monetary advance of May 4, 2001. On May 4, Debtors failed to pay the balance due under the title pawn contract. On May 25, 2001, Title Max repossessed Debtors’ vehicle and continues to hold it in safekeeping pending the outcome of this adversary proceeding. On

May 30, 2001, Debtors filed for protection under Chapter 13 and on June 8 filed this adversary proceeding seeking turnover of the vehicle by Title Max.

Title Max contends that, under the terms of its contract with Debtors and Georgia law, Debtors had no remaining interest in the vehicle on the date of filing other than the right to redeem it by paying cash in full all sums due under the pawn contract and that the statutory grace period expired on June 3, 2001, thirty days after the maturity date of the contract. Title Max concedes that 11 U.S.C. § 1108(b) extends the time when Debtors or the Trustee may exercise certain rights when a Chapter 13 case is filed but also contends that 108(b) extends that right of redemption only to the later of the expiration of the original grace period or sixty days after the order for relief. In this case, the order for relief was entered on May 30, 2001. As a result, Title Max contends that Debtors had only until July 29, the end of the sixty-day period, to redeem the property and that redemption requires cash payment in full.

Debtors contend that redemption in the context of a Chapter 13 plan permits an extension of payments for a reasonable period of time and does not require a cash payment in full to redeem, that the automatic stay provisions of 11 U.S.C. § 362 extend the § 108 deadline until such time as the automatic stay is lifted, and that because the automatic stay has not been lifted, Debtors retain as of this date a right to redeem, which can be accomplished by a long-term payout of debt rather than by cash payment in full. Debtors also contend that Title Max's refusal to turn over the vehicle to Debtors constitutes a

violation of the § 362 automatic stay provisions.

CONCLUSIONS OF LAW

This Court has jurisdiction over this core adversary proceeding under 28 U.S.C. § 157(b).

The filing of a bankruptcy petition under 11 U.S.C. § 541 operates to stay the commencement or continuation of an action or proceeding against a debtor, including “any act to obtain possession of property of the bankruptcy estate or of property from the estate or to exercise control over property of the estate,” § 362(a)(1), (3), so long as the case continues. The bankruptcy estate includes all of a debtor’s legal and equitable interests in property at the time the case is commenced. § 541(a)(1); *see also* Charles R. Hall Motors, Inc. v. Lewis (In re Lewis), 137 F.3d 1280, 1283 (11th Cir. 1998).

In this case, Debtor’s contractual agreement with Title Max was a pawn transaction, and the dimensions of Debtor’s property rights in the vehicle were determined by Georgia law, *see* Butner v. United States, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L.Ed. 2d 136 (1979) (“Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”). The Georgia Code defines “pawn transaction” as “any loan on the security of pledged goods or

any purchase of pledged goods on the condition that the pledged goods may be redeemed or repurchased by the pledgor or seller for a fixed price within a fixed period of time.” O.C.G.A. § 44-12-130(3).

In a Georgia pawn transaction involving a motor vehicle, the title lender receives a statutory lien on the vehicle, and the lender’s possession of the certificate of title is “conclusively deemed to be [legal] possession of the motor vehicle.” O.C.G.A. § 44-12-130(5). If the pledgor, who retains physical possession and use of the vehicle, defaults in making the contracted payment, the title lender may then repossess the vehicle itself. *See id.* § 44-12-131(a)(3). After a thirty-day “grace period,” the pledgor’s ownership interest in the vehicle is automatically forfeited to the title lender, the ownership interest in the vehicle is automatically extinguished, and the title lender may dispose of the vehicle. *Id.* § 44-14-403(b)(1), (3). This provision for the automatic extinguishing of the pledgor’s ownership rights eliminates the need for action on the part of the title lender to acquire title to the vehicle.

Here, Debtors filed a Chapter 13 bankruptcy petition after default and repossession of the vehicle but prior to the running of the thirty-day statutory grace period. Because the grace period had not yet run, Debtors retained a legal and equitable property interest at the time they filed their Chapter 13 petition. The mere existence of the estate’s ability to redeem the automobile, however, does not render a debtor’s vehicle itself “property

of the estate” in that the vehicle should be turned over to the debtor pursuant to 11 U.S.C. § 542(a). In re Lewis, 137 F.3d at 1285 (equating exercising of right of redemption with fulfilling debtor’s secured obligation in accordance with relevant state law). In accordance with state law, a debtor must have “take[n] certain affirmative steps to change the otherwise dormant right to redeem repossessed collateral into a meaningful ownership interest.” Id. at 1284; *see also* Dunlap v. Cash Amer. Pawn of Nashville (In re Dunlap), 158 B.R. 724, 727 (M.D. Tenn. 1993) (“[A]lthough the definition of estate property contained in § 541 is meant to be expansive, it is not meant to enhance the nature or extent of the debtor’s interest in property as that interest exists at the time the bankruptcy petition is filed.” (quoting Anderson County Bank v. Newton (In re Chem. Isotope Enrichment, Inc.), 127 B.R. 829, 837 (Bankr. E.D. Tenn. 1991))). At the time of Debtors’ filing, Title Max was in legal and physical possession of the vehicle and had taken all steps necessary under Georgia law to transfer ownership from Debtors to Title Max subject only to Debtors’ timely exercise of their right of redemption. Accordingly, I hold that the extent of Debtors’ interest at the time they filed their bankruptcy petition was their then unexpired right of redemption and that Title Max’s refusal to turn over the vehicle was not a violation of the automatic stay.

11 U.S.C. § 108(b) operates to modify the rights of secured creditors by extending the redemption period provided by state law. Under § 108(b), a Chapter 13 debtor or trustee is entitled to redeem pledged property within sixty days from the date of the debtor’s bankruptcy petition. Some courts have found that the sixty-day redemption period

is inadequate to accomplish equal distribution of assets to creditors and allow debtors time to propose a plan or repayment, *see, e.g., In re Amant*, 41 B.R. 156, 160 (Bankr. D. Conn. 1984), and that “the all encompassing nature of § 362(a) overrides the specific extension of time granted in 108(b),” Cash Amer. Pawn v. Murph, 209 B.R. at 419, 423 (E.D. Tex. 1997) (summarizing minority position). The prevailing view, however, is that because the more specific provisions of § 108(b) should control and that to enlarge property rights by allowing § 362 to prevail over § 108(b) would render the § 108 time allotments unnecessary, § 362(a) does not toll the running of redemption periods. *See id.* at 422-23 (summarizing majority position); In re Jackson, 133 B.R. 541, 545-546 (Bankr. W.D. Okla. 1991) (“All of the courts of appeals, and the majority of district and bankruptcy courts which have addressed the applicability of § 108(b) and § 362(a) to statutory redemption rights have concluded that § 108(b) controls.”).

Because a defaulting pawnor’s sole property interest at filing is his right to redeem the property in accordance with relevant state law, to extend the redemption period indefinitely would impermissibly create a property right. Moreover, the right of redemption in the context of a Chapter 13 case is the right to redeem property pursuant to state law, not the right of redemption with respect to pledged goods addressed in 11 U.S.C. § 722, which applies only in Chapter 7 cases. Nat’l City Bank v. Elliott (In re Elliott), 214 B.R. 148, 153, (B.A.P. 6th Cir. 1997); Amer. Honda Fin. Corp. v. Littleton (In re Littleton), 220 B.R. 710, 713 n.6 (Bankr. M.D. Ga. 1998). Therefore, to extend the redemption period by providing

for repayment in a Chapter 13 plan would serve to impermissibly re-define state-created property rights by changing a title lender's non-recourse pawn transaction into a recourse loan, *see* O.C.G.A. § 44-12-137(a)(7) (prohibiting pawnbroker from "mak[ing] any agreement requiring the personal liability of a pledgor or seller"), and by expanding a pawnor's property interest from a time-limited right of redemption to an indefinitely extended right of redemption.

The Court is mindful that 11 U.S.C. § 1322(b)(3) allows modification of rights of secured claim holders to "provide for the curing or waiving of any default" and that the Eleventh Circuit Court of Appeals has not foreclosed the possibility of providing for a vehicle to be redeemed as provided in a Chapter 13 plan, *see In re Lewis*, 137 F.3d at 1284-85 (partially supporting decision that state statutory right to redeem vehicle was insufficient to include vehicle as property of estate by discussing other factors, including failure of Chapter 13 plan proposal tendering sixty-two cents on dollar in return for debtor's continued use of vehicle to "fulfill" debtor's obligation plus expenses in accordance with state law and debtor's failure to adequately protect creditor's ownership and possessory interests in vehicle); *but cf. Commercial Fed. Mortgage Corp. v. Smith (In re Smith)*, 85 F.3d 1555, 1559-61 (11th Cir. 1996) (holding that Chapter 13 debtor may cure default in mortgage payments only through statutory right of redemption, which may not be modified under plan). "Although it is possible, in theory, to hold that a Chapter 13 debtor is entitled to pay the redemption amount over the life of his plan and also to hold that the statutory redemption

period is not tolled by the bankruptcy proceeding, the practical effect of allowing the debtor to pay the redemption amount over an extended period would in many respects be the same as a suspension of the redemption period.” Fed. Land Bank of Louisville v. Glenn (In re Glenn), 760 F.2d 1428, 1442 (6th Cir. 1985) (discussing cure of mortgage arrearage after acceleration and judgment but before foreclosure).¹

One issue in this case is whether tolling the redemption period by permitting Debtors to include payment of the redemption amount in their Chapter 13 plan would merely modify Title Max’s rights and provide for the curing of the default as permitted under § 1322(b)(2)-(3) or impermissibly create a property right that did not exist prepetition. I hold that allowing a debtor to pay the redemption amount over the life of a Chapter 13 plan would, in effect, toll the redemption period in a manner that would place a title lender’s interests in jeopardy so as to invalidate Georgia property rights law, *see In re Dunlap*, 158 B.R. at 728 (“The property rights of the debtors cease when the statutory period ends”). I further hold, for purposes of determining the legal and equitable property interests to be protected by the § 362 automatic stay, that from the date of a debtor’s default in a pawn transaction until the date on which the statutory grace period runs, that debtor’s sole interest in the property pledged to the title lender is a right of redemption. If the debtor files for bankruptcy under Chapter 13 before the grace period has run, he or she retains the right of redemption

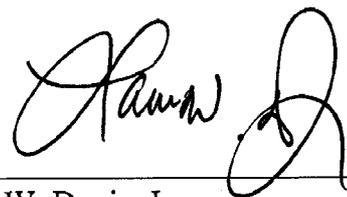
¹ The In re Glenn court also observed that “most of the considerations that cut against allowing the debtor to reinstate the mortgage terms after a foreclosure sale also argue against allowing the debtor to pay off the redemption amount over the life of the plan.” Id.

existing at the time of filing for an additional sixty days from the date of filing as provided by § 108(b). If, however, that debtor fails to redeem the property in full and in cash or by terms agreed upon with the title lender, then his or her right to redeem is extinguished.

Here, when Debtors failed to exercise their right of redemption within the sixty-day extension provided by § 108(b), any legal or equitable interest they possessed in the vehicle ceased to be part of their bankruptcy estate. Accordingly, I find that their right to redeem has been extinguished.

ORDER

Pursuant to the foregoing memorandum, IT IS THE ORDER OF THIS COURT that the relief sought in Plaintiff's complaint seeking turnover of the vehicle and damages is denied. Judgment shall be entered in favor of Defendant.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 22nd day of October, 2001