

Bankruptcy Court Grants Relief from Stay When Debtors Fail to Redeem Pledged Collateral in Title Pawn Transactions

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Secured creditors must be ever mindful of their rights in consumer bankruptcy cases. Details that might seem technical or insignificant can mean the difference between a creditor's obligation being secured and being unsecured, having a claim denied or having collateral released from the bankruptcy estate into the hands of the creditor, allowing the creditor to mitigate its financial loss.

In a recent case from the U.S. Bankruptcy Court for the Middle District of Alabama, a secured creditor was able to protect its interest in collateral in two bankruptcy cases where its title pawn transaction customers failed to redeem their pledged vehicles during the required time period. As a result, the secured creditor was able to obtain relief from the automatic stay and exercise rights against the collateral, resulting in a better financial result for the creditor.

As always, the technical details were important to the end result for the creditor. Donna Thompson and Kisha Daniel entered into title pawn transactions and several renewals with TitleMax of Alabama, Inc. Each customer provided TitleMax with the certificate of title to her vehicle, and those certificates of title identified TitleMax as the first and only lienholder.

Each customer then filed for protection under Chapter 13 of the U.S. Bankruptcy Code and declared her intention to repay TitleMax through her Chapter 13 plan. TitleMax objected to confirmation of both Chapter 13 plans and asked the court to grant it relief from the automatic stay with respect to both debtors' vehicles, claiming that the vehicles were not property of the debtors' bankruptcy estates and were not subject to the automatic stay. TitleMax argued that the debtors failed to redeem their vehicles within the time period allowed under Alabama law and the Bankruptcy Code and that the court should grant TitleMax relief from the automatic stay with respect to both vehicles.

The debtors argued, among other things, that their transactions were invalid under Alabama law because TitleMax failed to take possession of endorsed certificates of title and keys to the vehicles in connection with the transactions, as they alleged was necessary under the Alabama Pawnshop Act for TitleMax to establish "possession" of the vehicles. The court disagreed with the debtors, finding that TitleMax's possession of the vehicles' certificates of title naming it as lienholder was sufficient to create a "pawn transaction" subject to the Pawnshop Act.

Then, examining the critical issue of whether the bankruptcy estate of each debtor had any remaining interest in the debtor's vehicle, the court determined that it did not because each debtor failed to redeem her interest in the vehicle within the time allowed. Specifically, under Alabama's Pawnshop Act, a debtor can redeem pledged collateral within the time allowed in the pawn ticket. To the extent the

debtor files a bankruptcy petition while the redemption period is running under the Alabama statute, Section 108(b) of the U.S. Bankruptcy Code extends that redemption period for another 60 days from the date the debtor files her petition. If either the vehicle or the debtor's right to redeem the pledged vehicle was property of the debtor's bankruptcy estate, TitleMax might not be entitled to relief from the automatic stay.

Thompson renewed her pawn transaction a couple of times and filed her bankruptcy petition before her last pawn ticket matured. Her filing extended the redemption date under the Bankruptcy Code to 60 days after her bankruptcy filing. But because Thompson failed to pay TitleMax and redeem her vehicle during that additional 60-day period, the court found that the redemption period had expired so that Thompson's right of redemption was no longer part of her bankruptcy estate. Daniel's redemption period under her pawn ticket expired before her bankruptcy filing, so neither her right to redeem nor the vehicle became part of her bankruptcy estate.

When the debtors did not redeem their vehicles in time, their interests in the pledged vehicles forfeited to TitleMax under Alabama law. Because the debtors had no existing right of redemption and no continuing interest in the vehicles, the court found that TitleMax was free to exercise its rights in the pledged vehicles and granted its motion for relief from the automatic stay in Thompson's case while confirming termination of the automatic stay in Daniel's case.

In re Thompson, 2019 Bankr. LEXIS 3328 (Bankr. M.D. Ala. October 24, 2019).

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