

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**WALLACE E. BERRY,
DEBTOR.**

**CHAPTER 13
CASE NO. 06-01198-NPO**

WALLACE E. BERRY

PLAINTIFF

VS.

ADVERSARY NO. 06-00101-NPO

MIKE HILL USED CARS

DEFENDANT

**ORDER GRANTING
MOTION TO TURNOVER PROPERTY**

There came on for consideration at the hearing on July 26, 2006 (the "Hearing"), the Motion to Turnover Property (Dk No. 1) (the "Motion") (which was treated as a complaint in this adversary proceeding) pursuant to 11 U.S.C. § 542 filed by Wallace E. Berry, Debtor (the "Debtor") and the Response thereto (Dk No. 3) (the "Response") filed by Mike Hill Used Cars (the "Defendant") in the above-referenced adversary proceeding. At the Hearing, the Motion and Response were taken under submission. The Court, being fully advised in the premises, finds as follows:

1. On July 6, 2006, the Debtor filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code in the Southern District of Mississippi. On his petition, the Debtor averred that he had been domiciled in the Southern District of Mississippi for 180 days immediately preceding the date of his bankruptcy petition or for a longer part of such 180 days than in any other district.

2. Prior to the filing of the petition, the Debtor entered into an Installment Sales Contract

(the "Contract") with the Defendant for the purchase of a 2000 Chevrolet Tahoe (the "Vehicle"). The

Contract was executed in Florida.

3. Upon the Debtor's default in payments, the Defendant repossessed the Vehicle while it was located in Mississippi. Following the repossession, the Vehicle was impounded at a lot on Terry Road in Jackson, Mississippi (the "Lot"). While the Vehicle was impounded at the Lot, the Defendant received notification that the Debtor had filed his bankruptcy petition. Despite notification of the Debtor's bankruptcy filing, the Defendant transported the Vehicle to Florida.

4. On July 17, 2006, the Debtor filed the Motion and a request for expedited hearing, to which the Defendant filed the Response. At the Hearing, the Debtor, relying on Mississippi and Fifth Circuit law, maintained that the Vehicle is property of the bankruptcy estate pursuant to 11 U.S.C. § 541 and that he is entitled to turnover of the Vehicle pursuant to 11 U.S.C. § 542(a) which requires that "an entity ... in possession . . . of property . . . that the trustee may use . . . shall deliver to the trustee . . . such property . . ." 11 U.S.C. § 542. The Defendant took the position, however, that because the Vehicle was repossessed prepetition, it is not property of the bankruptcy estate under Florida law. As a result, the Defendant contends that it is not subject to turnover.

5. "Ownership under section 541 is determined under state law." Mitchell v. BankIllinois, 316 B.R. 891, 896 (S.D. Tex. 2004). "Once the debtor's state law property rights are determined, federal bankruptcy law applies to establish the extent to which those rights are property of the estate." Id. Because the parties disagree as to whether Mississippi or Florida law governs the Debtor's property rights in the Vehicle, the Court must first determine which state's law to apply to this matter to establish the Debtor's property rights in the Vehicle.

6. Bankruptcy courts should defer to state court choice of law rules where the case, while "arising out of federal question jurisdiction, could have been heard independently in a state court

forum." Briggs Electrical Contracting Services, Inc. v. Elder-Beerman Stores Corp. (In re Elder-Beerman Stores Corp.), 221 B.R. 404, 408 (Bankr. S.D. Ohio. 1998); *see also* MRO Communications, Inc. v. American Telephone & Telegraph Co., 197 F.3d 1276, 1282 (9th Cir. 1999) ("In a federal question action where the federal court is exercising supplemental jurisdiction over state claims, the federal court applies the choice-of-law rules of the forum state."). In this case, the forum state is Mississippi and, accordingly, the Court will utilize Mississippi's choice of law rules.

7. Mississippi Code Annotated § 75-1-101 *et seq.*, which adopts the Uniform Commercial Code and governs Mississippi law on secured transactions such as the Contract at issue in this case, provides that the parties may agree on a choice of law provision. However, failing such an agreement between the parties, Mississippi law "applies to transactions bearing an appropriate relation to this state." Miss. Code Ann. § 75-1-105(1).

8. At the hearing, the Defendant introduced into evidence a partial copy of the Contract. (See Exhibit "A"). The Contract, as admitted, does not include a choice-of-law provision. Moreover, Debtor's counsel made undisputed representations during the Hearing that the Contract does not include a choice-of-law provision.

9. Thus, the Court must determine whether the transaction at issue, i.e., the Contract, bears an "appropriate relation to Mississippi." At the Hearing, the parties established that the Debtor resides in Mississippi, the Vehicle was located in Mississippi at the time it was repossessed, the Vehicle was transported to an impound lot in Mississippi, the Debtor filed bankruptcy in Mississippi, and the Vehicle was held at the impound lot in Mississippi at least until the Defendant received notice of the Debtor's bankruptcy filing. In contrast, the only relation to Florida is that Florida was the place of execution of the Contract. Consequently, the Court finds that the transaction bears an appropriate relation to Mississippi and that Mississippi law should be applied

to determine whether the Debtor retains property rights in the Vehicle.

10. Applying United States v. Whiting Pools, 462 U.S. 198, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983) and Williams v. Guaranty Agricultural Credit Corp. (In re Williams) 44 B.R. 422 (Bankr. N.D. Miss. 1984), to this case. the Court finds that the Vehicle remains property of the estate and is subject to turnover despite the fact that it was repossessed prepetition. That is, in accordance with Mississippi Code Annotated § 75-9-623, the Debtor retains a statutory right of redemption in the collateral until the secured party has disposed of the collateral or entered into a contract for its disposition. "[B]y virtue of the right of redemption, the Debtor[] own[s] a legal interest in the repossessed collateral. . . ." In re Williams, 44 B.R. at 424.

11. The Court further notes that the two cases relied upon by the Defendant have been criticized as "problematic from both a legal and policy standpoint." 5 Collier on Bankruptcy, ¶ 542.02 (Matthew Bender 15th Ed. Revised 2006). First, the court in Charles R. Hall Motors v. Elgin Lewis (In re Lewis), 137 F.3d 1280 (11th Cir. 1998), "used arguably inapposite state law provisions to support its conclusion that legal title moved to the secured creditor upon repossession." Id. Second, the court in Bel-Tel Federal Credit Union v. Kalter (In re Kalter), 292 F.3d 1350 (11th Cir. 2002), used a "mere procedural exception to the Florida Certificate of Title Statute to support its holding that ownership passed when the creditor repossessed the vehicle." Id. Such holdings prevent debtors from "regain[ing] valuable personal property that will likely be crucial to a successful rehabilitation and fresh start . . . undermin[ing] a key policy goal of consumer bankruptcy law, [and] also put debtors residing in the Eleventh Circuit at a disadvantage relative to debtors nationwide." Id.

12. For the Foregoing reasons, the Court finds that the Debtor retains an ownership interest in the Vehicle. the Vehicle is therefore property of the Debtor's bankruptcy estate, and that the

Debtor is entitled to turnover of the Vehicle.

IT IS THEREFORE ORDERED that the Debtor's Motion to Turnover Property is granted.

IT IS FURTHER ORDERED that the Defendant shall return the Vehicle to the Debtor's residence located at 880 William Blvd., Apt. 809, Ridgeland, Mississippi, on or before Tuesday, August 1, 2006, at 5:00 p.m. Failure to do so will result in the imposition of sanctions against the Defendant.

IT IS FURTHER ORDERED that any claim for damages incurred between the time of the repossession and the turnover of the Vehicle to the Debtor shall be determined at a later date upon separate motion of the Debtor.

SO ORDERED this the 28th day of July, 2006.

/s/ Neil P. Olack
NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE