



**IT IS ORDERED as set forth below:**

**Date: April 03, 2009**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	:	CASE NUMBER
	:	
JEFFREY ALLAN CHARNOTE AND	:	<b>03-93371-MGD</b>
DEBRA SPARKS CHARNOTE,	:	
	:	
Debtors.	:	CHAPTER 13
	:	

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**ORDER**

This matter is before the Court on Mitsubishi Motor Credit of America, Inc.'s Application to Reconsider Petition for Payment of Unclaimed Funds ("Motion to Reconsider"). (Docket No. 60). The matter came on for hearing on April 1, 2009. Brian J. Dilks for Mitsubishi Motor Credit of America, Inc. ("MMCA") participated in the hearing telephonically. Ed Safir, counsel for the Chapter 13 Trustee, was also present at the hearing.

Debtors filed their voluntary Chapter 13 petition on March 27, 2003. Debtors Chapter 13 plan was confirmed on May 23, 2003 and provided for the surrender of a 2001 Mitsubishi automobile. (Docket No. 21). On May 21, 2003, MMCA filed a motion for relief from the

automatic stay with respect to the same Mitsubishi automobile. (Docket No. 20). The motion for relief from stay was granted by the Court on June 23, 2003. (Docket No. 26). MMCA filed a proof of claim on May 27, 2003 in the amount of \$34,389.31, and the claim was not amended at any time during the case.

Debtors were discharged on May 15, 2008, following the completion of their plan. (Docket No. 52). The Court entered an order approving account, discharging the Chapter 13 Trustee, and closing the estate on July 25, 2008. (Docket No. 55).

MMCA subsequently filed a motion to disburse unclaimed dividends, and the motion was denied on February 5, 2009. (Docket Nos. 57 & 58). MMCA sought to recover unclaimed funds in the amount of \$1,719.47. The Court denied MMCA's motion to disburse unclaimed dividends on the basis that there was no evidence that it was entitled to any such distribution.

MMCA's Motion to Reconsider now provides supporting documentation for its claim to these funds, including a transaction history report that shows auction proceeds applied to the account in the amount of \$12,317.50 on August 12, 2003, and a later chargeoff for the repossession deficiency totaling \$23,792.84. (Exhibit B). However, the transaction history report and other supporting documentation included with the Motion to Reconsider still fails to establish that MMCA is entitled to any unclaimed funds.

Upon obtaining relief from the automatic stay, MMCA's rights and remedies were governed by applicable non-bankruptcy law. *Fidelity Nat'l Bank v. Winslow (In re Winslow)*, 39 B.R. 869, 871 (Bankr. N.D. Ga. 1984) ("An order which lifts the automatic stay returns the parties to the legal relationships that existed before the stay became operative."). As such, to properly pursue any deficiency claim that follows the repossession and sale of a motor vehicle, MMCA must comply with

the requirements under Georgia law. *Gibson v. Citifinancial Auto Corp. (In re Gibson)*, Case No. 05-40782, 2005 Bankr. LEXIS 2672 (Bankr. N.D. Ga. Nov. 15, 2005). O.C.G.A. § 10-1-36 provides in pertinent part:

When any motor vehicle has been repossessed after default in accordance with Part 6 of Article 9 of Title 11, the seller or holder shall not be entitled to recover a deficiency against the buyer unless within ten days after the repossession he or she forwards by registered or certified mail or statutory overnight delivery to the address of the buyer shown on the contract or later designated by the buyer a notice of the seller's or holder's intention to pursue a deficiency claim against the buyer.

O.C.G.A. § 10-1-36(a) (2008).

In the absence of any evidence that MMCA complied with Georgia law to properly preserve its right to seek a deficiency claim on the repossessed and sold 2001 Mitsubishi, it is

**ORDERED** that MMCA's Motion to Reconsider is hereby **DENIED**.

**IT IS FURTHER ORDERED** that the unclaimed funds totaling \$1,917.47 shall be remitted to the Debtors if MMCA does not file any further pleadings within ten (10) days of entry of this Order.

**END OF DOCUMENT**

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