



IT IS ORDERED as set forth below:

Date: May 27, 2016

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBER
	:	
RANDY LEE HARRIS, SR.,	:	16-10426-WHD
	:	
Debtor.	:	
	:	
MCINTOSH FINANCE, CO.,	:	CONTESTED MATTER
	:	
Movant,	:	
	:	
v.	:	
	:	
RANDY LEE HARRIS, SR.,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Respondent.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Relief from the Automatic Stay filed by McIntosh Finance, Co. (hereinafter "McIntosh") in the above-styled case. This

matter is a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(a) & (b)(2), 1334. A hearing was held on McIntosh's motion on May 26, 2016.

McIntosh holds a security interest in the Debtor's 2007 Honda Accord. The interest is not a purchase-money security interest (hereinafter "PMSI"). The Debtor's proposed plan calls for adequate protection payments to McIntosh of \$15 per month. McIntosh, citing an NADA depreciation analysis, asserts that it should be receiving adequate protection payments of \$78. Because it does not believe its interest is adequately protected, McIntosh requests relief from the stay pursuant to § 362(d).

In reply to McIntosh's motion, the Debtor contends that McIntosh is not entitled to any pre-confirmation adequate protection payments. The Debtor cites to § 1326(a)(1)(C), which requires pre-confirmation adequate protection payments to be made to creditors holding PMSIs and argues that because McIntosh's interest is not a PMSI, it is not entitled to receive pre-confirmation payments. The Court disagrees.

As the Court stated on the record at the hearing, § 1326(a)(1)(C) and § 362(d) are not mutually exclusive. Section 1326(a)(1)(C) states that a debtor must make

pre-confirmation payments in the amount “that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief.” 11 U.S.C. § 1326(a)(C)(1). A straightforward reading of that section shows that a debtor is only required to provide pre-confirmation adequate protection payments to creditors holding PMSIs. *See* 8 COLLIER ON BANKRUPTCY ¶1326.02[1][c] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

However, Section 362(d)(1) provides that the court shall grant relief from the automatic stay if it finds “cause, *including a lack of adequate protection.*” 11 U.S.C. § 362(d)(1) (emphasis added). Nothing in § 1326 overrides the general principle of § 362(d) that a creditor whose interest is not adequately protected has the right to seek relief from the stay. Simply because a debtor is not required to provide the adequate protection in pre-confirmation payments to a certain creditor does not mean that the debtor may not have to deal with the consequences of failing to provide those payments voluntarily. *See generally Johnson v. Midland Funding, LLC*, No. 15-11240, slip op. at 10 (11th Cir. May 24, 2016) (“[W]hile we recognize that creditors can file proofs of claim they know to be barred by the relevant statute of

limitations, those creditors are not free from all consequences of filing these claims.”). Consequently, in situations in which an interest is not adequately protected—even a non-PMSI in a Chapter 13 case—the creditor is entitled to relief from the stay.

Here, McIntosh alleges that the 2007 Honda Accord securing its claim is depreciating at a rate faster than the payments the Debtor is currently making and that there is not a sufficient cushion of equity to protect McIntosh’s interest. As an interest “is not adequately protected if it the security is depreciating during the term of the stay,” *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370 (1988) (Scalia, J.), the Court concludes that the Debtor’s payments of \$15 per month are not adequate protection. Instead, as the Court stated on the record at the hearing, the payments should be \$50. It appearing that the Debtor is capable and willing to make these payments, the Court will not grant relief from the automatic stay at this time, as McIntosh’s interest will be adequately protected.

Therefore, in accordance with the foregoing, it is hereby **ORDERED** that McIntosh’s Motion for Relief from the Automatic Stay is **DENIED**.

IT IS FURTHER ORDERED that the Debtor shall provide pre-confirmation

adequate protection payments to McIntosh in the amount of \$50 per month.

The Clerk is **DIRECTED** to serve this Order on the Debtor, McIntosh, and respective counsel.

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