IT IS ORDERED as set forth below:

Date: April 28, 2015

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	
NATONYA DENITRIA BROWN,	CASE NO. 14-72940-BEM
Debtor.	CHAPTER 7
JEREMIAH SIMMONS,	
Movant,	
v.	Contested Matter
NATONYA DENITRIA BROWN,	
Respondent.	

O R D E R

Movant's request for turnover of a vehicle (doc. no. 16) came before the Court for hearing on March 19, 2015. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(K), (O). Based on the evidence and legal arguments presented by the parties, the Court will deny Movant's request.

Findings of Fact

Debtor and Movant were formerly in a romantic relationship. Both parties testified that during the relationship Movant provided parts and repairs for Debtor's Cadillac Escalade (the "Cadillac"). In addition, Movant testified that Debtor took $1,500 out of his account to pay her rent.

On March 5, 2014, Debtor purchased a 2004 Chrysler Pacifica (the "Chrysler") (Debtor's exhibit 1). A Georgia Certificate of Title for the car was issued in Debtor's name on April 7, 2014 (Movant's exhibit 1). No liens were noted on the title. *Id.* On February 29, 2015, a second certificate of title was issued in Debtor's name, showing no liens on the Chrysler, but including a notation, that "[t]his is a replacement certificate and may be subject to the rights of a person under the original certificate." *Id.* (Debtor's exhibit 2). Movant testified that Debtor used cash from the parties' joint checking account to pay for the Chrysler, including money he had put in the account. Debtor testified that Movant contributed no money toward the purchase of the Chrysler because he had no money at the time.

Sometime prior to June 2014, the relationship between the parties deteriorated, and Movant sought reimbursement for the work he had done on the Cadillac and possibly for money he gave Debtor to pay her rent. The result was apparently Debtor's handwritten letter dated June 24, 2014 providing, in relevant part:

> To whom it may concern this is a contract between [Movant] and [Debtor] in regards to the debt owed of $3000 and the reuturn [sic] of the 2005 Chrysler Pacifica Vin # 2C8GF78485R269758. [Movant] will continue to drive the 2005 Chrysler Pacifica until [Debtor] pays out the $3000 cash in full. While continuing to drive the 2005 Chrysler at no time will [Movant] have any females that he is involved with … in this vehicle. … If at any point this occurs and it is proven that he allowed this to happen, he will forfeit the $3000 and [Debtor] will not have to pay any money at all or pay

> whatever balance remaining. Both Parties agree to this contract by signing their signatures.

(Doc. No. 16, hereinafter the "Letter"). Debtor and Movant both signed the Letter.

At the time the Letter was signed, Movant apparently took possession of the Chrysler. Movant testified that Debtor gave him the title and bill of sale. Debtor testified that she did not give the documents to Movant; rather, they were in the glove compartment of the Chrysler at the time Movant took the car.

Debtor testified that she reported the Chrysler stolen in August 2014. She testified that she did so because she learned Movant did not have a driver's license and was allowing others to drive the car. Because the Chrysler was insured in her name, she filed a police report to protect herself from liability. After filing the police report, Debtor received an insurance payout for the loss of the car. The police recovered the vehicle from Movant and impounded it. It was eventually returned to Debtor, at which time Debtor returned the insurance proceeds.

Debtor filed a Chapter 7 petition on November 20, 2014. She listed the Chrysler on Schedule B with a value of $5,025. On Schedule C, Debtor claimed an exemption of $5,000 in the Chrysler. On Schedule D, Debtor listed Title Bucks as having a lien on the Chrysler in the amount of $2,562.[1] Also on Schedule D, Debtor listed Movant as a creditor with a total claim of $13,000, secured to the extent of $3,877 by a November 2014 judgment lien. The lawsuit giving rise to the judgment was also disclosed on the Statement of Financial Affairs. Debtor filed a statement of intention as to Movant indicating her intent to avoid the lien under 11 U.S.C. § 522(f). Debtor did not list either a secured or unsecured claim to Movant based on the Letter, nor does the record reveal any connection between the Letter and the judgment. The meeting of

[1] At the March 19, 2015 hearing, Debtor's counsel reported that the title pawn had been satisfied.

creditors was held on December 19, 2014, and the Trustee filed a report of no distribution thereafter.

Conclusions of Law

At issue in this case is whether Movant has any interest in the Chrysler that would justify his obtaining possession of the Chrysler.[2] Movant contends he holds a security interest in the vehicle by virtue of the Letter. Debtor contends Movant has no rights in the Chrysler and is a general unsecured creditor, entitled to nothing more than a pro rata share of any distributions made by the chapter 7 Trustee.[3] Generally, the issues presented by Movant's request require an adversary proceeding. *See* Fed. R. Bank. P. 7001(1), (2). However, because the parties in this case received actual notice of the dispute, participated in an evidentiary hearing, and did not object to the procedure, they will not be prejudiced by allowing the matter to continue as a contested matter. *See In re Hayden*, 477 B.R. 260, 264 n.3 (Bankr. N.D. Ga. 2012) (Drake, J.).

In Georgia, a security interest "attaches to collateral when it becomes enforceable against the debtor with respect to the collateral …." O.C.G.A. § 11-9-203(a). A security agreement is enforceable if: (1) value has been given; (2) the debtor has rights in the collateral; and (3) the debtor has authenticated a security agreement that describes the collateral.[4] *Id.* § 11-9-203(b). A security agreement is defined as "an agreement that creates or provides for a security interest." *Id.* § 11-9-102(a)(73). A debtor may authenticate it by signing it. *Id.* § 11-9-102(a)(7)(A). Therefore, the only formal requirements of a security agreement are: (1) a writing;

[2] To the extent Debtor has not exempted the full value of the Chrysler, it is property of the estate subject to the Court's *in rem* jurisdiction. The issues in this matter raise questions of state law, which raises the possibility of permissive abstention. 28 U.S.C. § 1334(c)(1). However because the issues are neither novel nor complex and because the Court has already conducted a full evidentiary hearing on the merits, the Court declines to permissively abstain.

[3] The Court observes that Debtor has not yet filed a motion to avoid the judicial lien held by Movant as disclosed in Debtor's schedules.

[4] The third element of enforceability may be satisfied by other means, none of which are applicable in this case. O.C.G.A. § 11-9-203(b)(3)(B), (C), (D).

(2) with language showing an intent to create a security interest; (3) that describes the collateral; and (4) is signed by the debtor. *Trust Company Bank v. Walker (In re Walker)*, 35 B.R. 237, 239-40 (Bankr. N.D. Ga. 1983) (Drake, J.). The document need not invoke any magic words or include a specific grant of a security interest. *In re Hollie*, 42 B.R. 111, 117 (Bankr. M.D. Ga.1984); *see also First Nat'l Bank v. Alba* (*In re Alba*), 429 B.R. 353, 357-58 (Bankr. N.D. Ga. 2008) (Diehl, J.); *In re Flager*, No. 07-50293, 2007 Bankr. LEXIS 2027, at *4-5 (Bankr. M.D. Ga. June 8, 2007).

In this case, the Letter is a written document, signed by Debtor, that describes the collateral in detail, including year, make, model, and VIN number. Furthermore, both the original title and the duplicate title show Debtor as the owner of the collateral. Thus, the only requirement in question is whether the language of the Letter shows an intent to create a security interest.

In *Flager*, the creditor claimed a security interest in the debtor's truck. 2007 Bankr. LEXIS 2027 at *2. Although the promissory note executed by the parties made no reference to a security interest, the debtor had signed a title application that named the creditor as a lienholder. *Id.* at *3. As a result, the court concluded that when taken together, the promissory note, bill of sale, and title application, all executed within one day of each other, showed an intent to create a security interest. *Id.* at *7. In *Hollie*, the court found intent to create a security interest when the contract between the parties was titled a "Security Agreement," referred to the creditor as the "secured party," and stated that its purpose was to secure payment of a note. 42 B.R. at 117.

By contrast, nothing in the documents presented by the parties in this case shows an intent to create a security interest. The only right granted to Movant by the Letter is the right

to drive the car until the debt is paid. It does not state that the car is given as security for the debt, nor does it authorize Movant to repossess or sell the car in the event of a default by Debtor. In fact it provides no recourse for Debtor's default. Instead it places conditions on Movant's use of the car and provides for extinguishment of the debt if Movant violates those conditions. Further, nothing in the bill of sale or title evidences an intent to create a security interest; both documents are in Debtor's name, and the title shows no liens on the car.[5] The only evidence of intent to create a security interest comes in the form of Movant's disputed testimony that Debtor gave him the title, the bill of sale, and the Letter to make him feel secure. As a result, the Court concludes that Movant does not have a security interest in the Chrysler, and any debt owed to him pursuant to the Letter is unsecured and subject to discharge. There being no legal basis for ordering Debtor to turn the car over Movant, it is now

ORDERED that Movant's request for turnover is DENIED.

END OF ORDER

[5] Under Georgia law, a security interest in a vehicle is perfected by recording the lien on the certificate of title. O.C.G.A. § 40-3-50(b); *Metzger v. Americredit Fin. Svcs*., 273 Ga. App. 453, 455 (2005)

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