



IT IS ORDERED as set forth below:

Date: November 24, 2014

W. Homer Drake
U.S. Bankruptcy Court Judge

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

IN THE MATTER OF:	:	CASE NUMBER
	:	
MARCUS ANTONIO DAVIS,	:	11-14181-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Relief from Automatic Stay (hereinafter the "Motion") filed by Georgia's Own Credit Union (hereinafter the "Movant"). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(G); § 1334.

Movant seeks relief from the automatic stay to exercise its rights with regard to Debtor's 2007 Suzuki GSX-R600K7 and his 2008 Nissan Sentra S (hereinafter the

“Vehicles”). Movant asserts that it has valid security interests in the Vehicles and that the Debtor lacks equity in the Vehicles.

At the hearing, Movant and Theo Davis Mann (hereinafter the “Trustee”) informed the Court that they have a dispute over the validity of electronic titles. This dispute apparently arises from the fact that Movant did not provide the Trustee with an official certificate of title, notated with Movant’s security interest, but rather relied upon an electronically generated report of its security interest in the Vehicles. This report (hereinafter the “Title Report”) was generated by VINtek, which Movant represents is a vendor authorized under Georgia’s recently enacted Electronic Lien and Title program to transmit notice and release of security interests on Georgia certificates of title. *See* O.C.G.A. § 40-3-26; Rules of Dep’t of Revenue Motor Vehicle Div. 560-10-12-.03. The Trustee apparently insisted on reviewing an official certificate of title issued by the Georgia Department of Revenue Motor Vehicle Division before deciding whether he would oppose the Motion, but otherwise raised no opposition to the Motion.

The Court directed the parties to submit briefs on the issue, expecting that the Trustee’s brief would explain fully his objection to the Motion. The Trustee filed no brief, however, and the brief filed by Movant simply argues that, because Georgia law requires Movant to participate in the Electronic Lien and Title program, the Court should accept reports from any of the authorized vendors as “corroboration and proof of a security interest in a vehicle.” Further, in addition to a grant of relief from the automatic

stay in this case, Movant's brief requests what appears to be a blanket advisory opinion "instructing trustees as to the validity and authority of VINtek electronic title reports." Presumably, Movant seeks a declaration from the Court that all trustees should rely on similarly generate reports as proof of the validity of a security interest and, presumably, the date of its perfection, when deciding whether to oppose a motion for relief from the automatic stay.

As to instructing all trustees as to how to conduct their investigations regarding estate assets, the Court finds that giving such guidance would be "unwise, and perhaps impermissible." *In re Freedlander Inc., The Mortg. People*, 95 B.R. 390, 394 (Bankr. E.D. Va. 1989). A Chapter 7 trustee has the duty and responsibility to "collect and reduce to money the property of the estate" and to "investigate the financial affairs of the debtor." 11 U.S.C. §§ 704(a)(1), (a)(4). Such duties inherently require a trustee to investigate and determine whether she is satisfied that the administration of estate property would not benefit the estate. It is not for the Court to advise the Trustee, let alone all trustees who are not now before the Court, as to how to conduct such an investigation. *In re Freedlander Inc., The Mortg. People*, 95 B.R. at 391 (denying the trustee's request for guidance as to whether to continue the prosecution of an appeal; after reviewing "the development of the bankruptcy laws of the United States over the last 100 years," the court explained that "[i]n the 20th century the trend has been toward removing bankruptcy judges from the administration of bankruptcy cases, and allowing them to

serve instead as neutral arbiters of disputes” and, “[a]lthough at one time it may have been appropriate for the bankruptcy judge to respond to trustees' requests for guidance in matters of estate administration, that time has passed”).

With regard to whether the Court should lift the automatic stay in this case, the Court assumes that the dispute between Movant and the Trustee goes to whether Movant can provide evidence sufficient to meet its *prima facie* burden of establishing that it has a valid security interest in the Vehicles. *See First Nat’l Bank of Barnesville v. Alba (In re Alba)*, 429 B.R. 353, 357 (Bankr. N.D. Ga. 2008) (Diehl, J.) (explaining that the “moving party has the burden of production and must establish a *prima facie* case” for the relief sought—the “existence of a valid security interest in” the debtor’s property); 11 U.S.C. 362(g) (stating that the party requesting relief from the automatic stay has the burden of proof to establish the debtor’s equity in the property, and the party opposing relief has the burden on all other issues); *see also In re Allstar Bldg. Prods., Inc.*, 834 F.2d 898 (11th Cir. 1987). Although the parties did not request an evidentiary hearing and Movant did not tender the Title Report, the Court assumes that at least part of the parties’ dispute involves the admissibility of the Title Report. The Court cannot properly address this issue without knowing the basis, if any, upon which the Trustee opposes the admission of the Title Report. To that end, if the Trustee continues to oppose the Motion, the Trustee shall, on or before December 5, 2014, either submit a brief outlining his objections to the Title Report’s admissibility or request an evidentiary hearing. If the Trustee submits a

brief, Movant shall have fourteen (14) days to file a response. If the Trustee requests an evidentiary hearing, the Court will schedule a hearing. If the Trustee does neither, the Court will enter an order granting Movant relief from the automatic stay with regard to the Vehicles on the basis that no party in interest opposes the Motion.

END OF DOCUMENT

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