

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

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Judge: David D. Cleary

Appearance of Counsel:

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Case No. 21 B 10189
)	
KAHNIYAH CORDER,)	Chapter 13
)	
Debtor.)	Judge David D. Cleary

**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CONTEMPT
UNDER § 105(a) FOR FAILURE TO COMPLY WITH STATUTORY
OBLIGATIONS UNDER § 543 OR § 542 IN THE ALTERNATIVE AND TO
DETERMINE ADEQUATE PROTECTION UNDER § 361 AND § 363(e) (EOD 24)
and DENYING MOTION TO MODIFY THE STAY (EOD 25)**

This matter comes before the court on the motion of Debtor Kahniyah Corder (“Debtor” or “Corder”) for Contempt Under § 105(a) For Failure to Comply with Statutory Obligations Under § 543 or § 542 in the Alternative and to Determine Adequate Protection Under § 361 and § 363(e) (the “Turnover Motion”) and the motion of creditor Future Finance Company, Inc. (“Future Finance”) to Modify the Stay (the “RFS Motion”). Both motions were heard in court on September 8. The parties each filed a response to the other’s motion before returning to court for a continued hearing and oral argument on September 13, 2021. For the reasons stated below, the Turnover Motion will be granted in part and denied in part, and the RFS Motion will be denied.

BACKGROUND

Although the parties submitted no evidence, they generally agree on the factual background. Corder purchased a 2016 Nissan Altima in March 2021, for which Future Finance provided the financing. The Altima was damaged in an accident, although it is still operable, and Corder’s insurance declined coverage for the damage. The parties disagree on the cost of repairs.

The financing terms required Corder to maintain full coverage insurance. At some point prepetition she changed her policy to liability-only insurance because she could not afford full coverage.

On August 25, 2021, after Corder missed three of the five loan payments that had come due, Future Finance repossessed the Altima. Corder filed for relief under chapter 13 about a week later, on August 31, 2021. Her attorneys demanded by phone, on September 1 and September 2, that Future Finance return the Altima, and followed up with a letter on September 3, 2021. Corder obtained full coverage insurance effective September 4, 2021. When Future Finance did not turn over the Altima, she filed the Turnover Motion on an emergency basis. The same day, Future Finance filed the RFS Motion.

The Schedule J that Corder filed with her petition did not include a line item for car insurance; she filed an amended Schedule J on September 9, allowing \$325 for that expense. Corder amended her chapter 13 plan the next day, providing a \$200 monthly payment to Future Finance on a claim of \$10,069 at 5.5%. The plan provides for pre-confirmation adequate protection payments in the same amount, an increase of about \$150 from her original plan.

LEGAL DISCUSSION

A. The Turnover Motion

1. Future Finance consented to this matter being heard as a contested motion

The Federal Rules of Bankruptcy Procedure require the filing of an adversary proceeding when a party seeks “to recover money or property,” except in certain situations not relevant here. [Fed. R. Bankr. P. 7001\(1\)](#). See *Matter of Perkins*, [902 F.2d 1254, 1258](#) (7th Cir. 1990). Future Finance waived the argument that it must be served with a summons and complaint and

consented to proceeding by contested motion. *See* Response to the Debtor’s Motion for Contempt or in the Alternative to Determine Adequate Protection, p. 1.

2. Debtor’s request for turnover is granted

[11 U.S.C. § 542\(a\)](#) requires an entity in possession of property that the trustee (or in this case, the chapter 13 debtor) may use under section 363 to deliver the property to the debtor unless it is of inconsequential value or benefit to the estate. According to a letter attached to the Turnover Motion, Debtor cited § 542(a) and demanded on September 1, 2 and 3 that Future Finance deliver the Altima to her.

The Supreme Court has acknowledged that the question of “how bankruptcy courts should go about enforcing creditors’ separate obligation to ‘deliver’ estate property to the trustee or debtor under § 542(a)” is not settled. *City of Chicago v. Fulton*, [141 S. Ct. 585, 592](#) (2021) (Sotomayor, J., concurring). In this case, Debtor chose to request that the court impose sanctions under section 105 of the Code and order turnover of the Altima and payment of monetary sanctions.

The obligation to turn over property under § 542 is mandatory, unless the property is “of inconsequential value or benefit to the estate.”¹ Future Finance argues that this exception applies, because the Altima was damaged in an accident prior to the bankruptcy filing, and that the damage is not covered by insurance. It asserts that \$5,704.93 in damages to a \$10,889.67 vehicle results in little remaining value for the estate, thereby leaving a significant financial burden for the estate and its creditors to bear.

¹ Future Finance did not assert that either of the exceptions to turnover in § 542(c) (transferring the property in good faith due to lack of notice or knowledge of the case) or § 542(d) (the entity holding the property is a life insurance company) apply.

Debtor pointed out at oral argument that the car is not inoperable. She alleges that she needs the vehicle to travel 35 miles each way to work and that she must transport her two young children, asserting that public transit is not a realistic method for accomplishing either of these. Although the insurance policy is relatively expensive, requiring Corder to pay more than the amount of her monthly plan payment, without it she could not propose a plan at all.

The Altima provides a means for Corder to earn a living, transport her children and fund a chapter 13 plan, so Future Finance did not establish that it is of inconsequential value and benefit to the estate.

As a result, section 542 requires turnover of the Altima. Having determined that turnover is required under § 542, the court will not address the alternative request for turnover based on the Debtor's alleged failure to comply with § 543.

3. Debtor's request for monetary sanctions is denied.

Having reviewed the circumstances of this case, the court finds that an award of monetary sanctions for Future Finance's failure to "deliver" the Altima is not appropriate at this time. Debtor sent a letter demanding turnover on September 3, 2021. The full coverage insurance policy naming Future Finance as the lienholder did not go effect until Saturday, September 4, 2021. Monday, September 6 was a holiday, and Corder filed the Turnover Motion the very next day. Future Finance filed the RFS Motion also on September 7, 2021. Corder did not amend Schedule J to show that she could afford the premiums for the upgraded full coverage insurance policy for another two days.

Future Finance challenges the Debtor's entitlement to turnover on several bases, including an assertion that the Altima is of inconsequential value to the estate. Future Finance also seeks relief from the automatic stay on several grounds, including the allegation that the

Altima is not necessary for an effective reorganization. The parties quickly brought their disputes to the court, including Future Finance's dispute over the Debtor's entitlement to turnover.

With these facts in mind, the court will deny the request for monetary sanctions for failure to turn over the Altima prior to this ruling. This denial does not prejudice a future motion to compel compliance or request for sanctions should Future Finance refuse to turn over the Altima in accordance with this order.

4. Corder has provided Future Finance with adequate protection

As a chapter 13 debtor, Corder has some of the rights of a trustee. [11 U.S.C. § 1303](#). This includes the powers of a trustee under § 363(e) to provide adequate protection to protect an entity that has an interest in property the debtor may use. [11 U.S.C. § 361](#) explains that when adequate protection is required under § 363, it may be provided by cash payments, replacement liens, or "such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property."

"In general, debtor must provide to the creditor adequate protection for the potential harm that the creditor could reasonably sustain as a result of debtor's possession and use. Protection must be provided for potential damage to the collateral ... and for the depreciation of the asset including mileage and wear and tear." *In re Coleman*, [229 B.R. 428, 432](#) (Bankr. N.D. Ill. 1999) (quotation omitted). *See In re Welch*, No. 08-74139, [2009 WL 691189](#) (Bankr. N.D. Ill. March 13, 2009).

To provide adequate protection to Future Finance, Debtor proposes to pay \$200 per month before plan confirmation, and \$200 per month once her plan is confirmed. Debtor listed Future Finance on Schedule D with a claim in the amount of \$10,069, but no proof of claim is

yet on file. The claims bar date is nearly two months away; neither party has firmly established the amount of Future Finance's claim. In this situation, Debtor has shown that \$200 per month provides adequate protection to Future Finance under either of two methods used to satisfy the requirements of § 1326(a)(1)(C), the Code section that requires payments to creditors for diminution of value in collateral securing the obligation, when that collateral is personal property and the claim is attributable to the purchase of the property. *See In re Robson*, [369 B.R. 377, 383](#) (Bankr. N.D. Ill. 2007) ("a debtor must provide a creditor with adequate protection payments ... in the amount the collateral depreciates within the first month after the filing of the bankruptcy petition"); *In re Beaver*, [337 B.R. 281, 285](#) (Bankr. E.D.N.C. 2006) (adequate protection acceptable to the court when preconfirmation payments are made in the amount of 1% of the value of the secured creditor's collateral).

In order to further protect the creditor's interest in the property, Corder also provided proof of a full coverage insurance policy, naming Future Finance as the lienholder, and included the premium payments in an amended Schedule J. The combination of the \$200 monthly payments and the full coverage insurance policy provide Future Finance with adequate protection of its interest in the Altima.

B. Motion to Modify the Stay

Future Finance seeks relief from the automatic stay to permit it to foreclose on its security interest in the Altima. [11 U.S.C. § 362\(d\)](#) provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization[.]

Stay relief shall be granted either for cause, or if the debtor lacks equity and the property is not necessary for an effective reorganization. The burden of proof to establish a lack of equity is on Future Finance; Corder bears the burden of proof on all other issues. [11 U.S.C. § 362\(g\)](#).

1. Corder established that cause to modify the stay does not exist.

It appears that Future Finance argues that cause exists to modify the stay because of Debtor's prepetition conduct. She made only two of five required payments, she did not continuously maintain full coverage insurance on the vehicle, and she allowed the car to be significantly damaged.

None of these factors rise to the level required to find that cause exists to modify the automatic stay. Each of these allegations refer to Corder's prepetition conduct. The court is not taking the position that prepetition conduct can never constitute cause to modify the stay; there may be circumstances that are more compelling. But if prepetition payment defaults or temporarily lapsed insurance always constituted cause to modify the stay, the protection of the stay would be virtually meaningless. The unrepaired damage to the car is troubling, but Debtor has alleged that it was not her fault. Instead, it is the result of a hit and run accident and there is a dispute regarding the cost and extent of the necessary repairs.

Additionally, Debtor proposes to pay Future Finance \$200 per month as preconfirmation adequate protection, as well as \$200 per month once her plan is confirmed. As discussed above, these payments provide adequate protection of Future Finance's interest in the Altima. Corder has established, as is her burden under § 362(g), that cause to modify the stay does not exist.

To ensure that Future Finance remains protected, the court will adopt two of Debtor's proposals: (1) that the stay will automatically terminate in the event the full coverage insurance policy lapses, with a three-business-day window to cure the defect; and (2) the stay will automatically terminate unless Corder repairs the body damage sustained in the prepetition accident within thirty days of receiving the Altima. These provisions are appropriate because failure to maintain insurance and failure to repair the car would constitute cause to lift the stay.

2. Future Finance established a lack of equity, but Corder showed that the Altima is necessary for an effective reorganization

Corder does not dispute that she lacks equity in the Altima, so that element is established. Future Finance argues that Debtor's budget and plan are not feasible, and therefore the Altima is "not necessary to an effective reorganization."

This can be a difficult question, because the terms "necessary" and "effective reorganization" are not defined in the Code. The Supreme Court discussed this issue in a chapter 11 case, stating that the phrase "necessary to an effective reorganization" requires "not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect.*" *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, [484 U.S. 365, 375–76 \(1988\)](#). In other words, it is Corder's burden to show that there is "a reasonable possibility of a successful reorganization within a reasonable time." *Id.* at 376. See *In re Spencer*, [531 B.R. 208, 216](#) (Bankr. W.D. Wis. 2015), *aff'd sub nom. Spencer v. Fed. Home Loan Mortg. Corp.*, [246 F. Supp. 3d 1241](#) (W.D. Wis. 2017) ("Many debtors file Chapter 13 cases for the main purpose of curing delinquent mortgage or car payments so that they may retain a home or vehicle. Because this can be a legitimate use of Chapter 13, courts often conclude that a home or vehicle is typically necessary for a debtor's effective rehabilitation without significant

analysis.”). *See also Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, [749 F.2d 670, 673 n.7](#) (11th Cir. 1984) (“For property to be ‘necessary to an effective reorganization’ of the debtor, within the meaning of § 362(d)(2)(B), it must be demonstrated that an effective reorganization is realistically possible....”); *In re Kolnberger*, [603 B.R. 253, 269](#) (Bankr. E.D.N.Y. 2019) (“The test is one of feasibility. The debtor need not show that the plan is confirmable, but that the things which are to be done after confirmation can be done as a practical matter. A motion for relief from the stay should not be turned into a confirmation hearing; the debtor need only show that where there is lack of equity, the proposed plan has a realistic chance of being confirmed and is not patently unconfirmable.”) (quotation omitted).

It is still very early in the life of Corder’s chapter 13 case. *See In re Bovino*, [496 B.R. 492, 507](#) (Bankr. N.D. Ill. 2013) (stating in the chapter 11 context that “[e]arly on in a bankruptcy case, a debtor may be given a greater benefit of the doubt as to the success of a proposed feasible plan”). She filed a plan that proposes to pay Future Finance, and then an amended plan that increased the amount of its preconfirmation adequate protection payments. Her budget now includes funds for full coverage insurance.

Future Finance vigorously argued that the policy Corder chose is extremely expensive and will be nearly impossible to maintain, calling the feasibility of Corder’s plan into question. But Corder need not establish beyond a reasonable doubt, or even by clear and convincing evidence, that her plan will be confirmed and will succeed. She must show only that there is a reasonable possibility of a successful reorganization within a reasonable period of time.

Her plan has not yet been before this court for confirmation even once, and no objections to confirmation are on file nor has the bar date for filing claims passed. It is too early to pass judgment on the feasibility of her plan. But Corder’s actions since the petition date support the

conclusion that this is a debtor who has taken an active role in her case and intends to succeed, and that she has a realistic chance of confirming a plan. She suffered a setback prepetition when she was laid off for approximately nine weeks. Currently, however, her employment with the U.S. Postal Service is stable and provides regular income. She filed all required documents in her case; when notified that her Statement About Your Social Security Number and a signature on the petition were missing, she cured the defects the next day. Additionally, this is her first bankruptcy case; she is not a serial filer.

The allegations and limited evidence before the court support the conclusion that the Altima is necessary for an effective reorganization, one that is in prospect. Since the second element of § 362(d)(2) is not satisfied, the court will deny the RFS Motion.

For the reasons stated above, **IT IS HEREBY ORDERED THAT:**

1. The Turnover Motion is **GRANTED** to the extent Debtor seeks turnover of the Altima;
2. The Turnover Motion is **DENIED** to the extent sanctions are requested;
3. The \$200 monthly preconfirmation payments and the full coverage insurance policy are adequate and shall continue;
4. Future Finance must make the Altima available to the Debtor for pickup no later than 12:00 p.m. (noon) on Friday, September 17; and
5. The RFS Motion is **DENIED**; except that (a) that the stay will automatically terminate in the event the full coverage insurance policy attached as an exhibit to the Turnover Motion lapses, with a three-business-day window to cure the defect; and (b) the stay will automatically terminate unless Corder repairs the body damage sustained in the prepetition accident within thirty days of receiving the Altima.

ENTERED:

A handwritten signature in cursive script that reads "David D. Cleary". The signature is written in black ink on a white background.

Date: September 15, 2021

DAVID D. CLEARY
United States Bankruptcy Judge