

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**LEROY LENEL HUNT, JR. AND  
AVON PATTERSON HUNT,**

**CASE NO. 12-00302-NPO**

**DEBTORS.**

**CHAPTER 13**

**LEROY LENEL HUNT, JR.**

**PLAINTIFF**

**VS.**

**ADV. PROC. NO. 12-00047-NPO**

**SANTANDER CONSUMER USA, INC.**

**DEFENDANT**

**MEMORANDUM OPINION AND ORDER ON DEFENDANT  
SANTANDER CONSUMER USA, INC.'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on the Defendant Santander Consumer USA, Inc.'s Motion for Summary Judgment (the "Motion") (Adv. Dkt. 17), Defendant Santander Consumer USA, Inc.'s Statement of Uncontested Material Facts (the "Statement") (Adv. Dkt. 17-1), and Defendant Santander Consumer USA, Inc.'s Memorandum in Support of Motion for Summary Judgment (the "Brief") (Adv. Dkt. 17-2) filed in the above-referenced adversary proceeding (the "Adversary"). The Motion, Statement, and Brief were filed by Santander Consumer USA, Inc. ("Santander"). Keith M. Benit represents Santander, and Richard R. Grindstaff represents the Debtor, Leroy Lenel Hunt, Jr. ("Hunt").

Although the Uniform Local Rules of the United States Bankruptcy Courts for the Southern and Northern Districts of Mississippi (the "Local Rules")<sup>1</sup> require a response to a

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<sup>1</sup> The Local Rules provide that "[t]he respondent shall file its response and memorandum brief within 21 days of service of the motion for summary judgment and supporting memorandum." Miss. Bankr. L.R. 7056-1(3)(B). Santander filed the Motion on April 1, 2013, and Notice of Motion for Summary Judgment (Adv. Dkt. 18) was electronically mailed to counsel for the Debtor on April 2, 2013. Therefore, the last day for Hunt to file a timely response under the Local Rules was April 22, 2013. As of the date of this Opinion, Hunt has not responded to the Motion.

motion for summary judgment, Hunt filed no response whatsoever to the Motion. As a result, the Court has only the pleadings and exhibits filed by Santander upon which to base its decision.<sup>2</sup>

### **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of this case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E). Notice of the Motion was proper under the circumstances.

### **Facts**

If a party fails to respond to a motion for summary judgment, the moving party is not entitled to relief by “default.” *Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988). “When no response is filed, however, such failure does permit the court to accept as undisputed the evidence set forth in support of a movant’s motion for summary judgment.” *Reed v. Litton Loan Servicing, LP*, No. 1:10-CV-217, 2011 WL 817357, \*3 (E.D. Tex. Jan. 27, 2011) (citation omitted). Nevertheless, many courts will “act with caution and consider the record on their own, which is over and above their duty under Rule 56.” *Victory v. Sneed Fin. Servs., LLC*, No. 03:07CV1797O, 2010 WL 45918, at \*3 (N.D. Tex. Jan. 6, 2010). Guided by these standards, the Court accepts as undisputed the following material facts listed by Santander in support of its Motion:

1. On June 18, 2002, Hunt financed the purchase of a 2001 Charger VF boat (the “Charger Boat”) in the total amount of \$23,683.00. (Statement ¶1).
2. Hunt defaulted on his payment obligations, and Santander, who had acquired the loan, hired All Star Recovery Watercraft to repossess the Charger Boat. (Statement ¶ 2).

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<sup>2</sup> Specifically, the Court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

3. All Star Recovery Watercraft repossessed the Charger Boat on January 16, 2012. (See All Star Recovery Watercraft Condition Report, Ex. 1; Statement ¶ 3).<sup>3</sup>

4. Kelly Auction Services, at Santander's behest, sold the Charger Boat at an auction held on January 24, 2012. (See Bill of Sale, Ex. 2; Statement ¶ 4).<sup>4</sup>

5. Santander credited net proceeds of \$2,149.12 from the sale of the Charger Boat to Hunt's account on January 31, 2012. (See Payment History, Ex. 3; Statement ¶ 4).

6. Scott Pickens, Santander's bankruptcy manager, testified by affidavit (Ex. 4) as to the authenticity of Santander's exhibits, including: (1) the All Star Recovery Watercraft Condition Report (Ex. 1), the Bill of Sale (Ex. 2), and the Payment History (Ex. 3).

7. Hunt and his spouse, Avon Patterson Hunt (who is not a party in the Adversary), filed a voluntary petition for relief (the "Petition") under chapter 13 of the U.S. Bankruptcy Code on January 31, 2012, at 7:33 p.m. (Case No. 12-00302-NPO, Bankr. Dkt. 1).

8. The next day, February 1, 2012, Hunt's counsel notified Santander by facsimile that Hunt had filed the Petition and asked Santander to return the Charger Boat. (Ex. 6). Santander refused, on the ground that the Charger Boat had been sold eight (8) days earlier on January 24, 2012. (Statement ¶¶ 7-8).

9. On May 8, 2012, Hunt filed a Complaint to Turnover Personal Property (the "Complaint") (Adv. Dkt. 1). Hunt alleged in the Complaint that Santander wrongfully refused to return the Charger Boat, as well as certain personal belongings stored inside the Charger Boat, "despite the fact the bankruptcy was filed." (Compl. ¶ 4). Hunt maintained that Santander willfully violated the automatic stay provisions in 11 U.S.C. § 362. (Compl. ¶ 4). Hunt asked

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<sup>3</sup> Santander's exhibits are cited as "(Ex. \_\_\_\_)".

<sup>4</sup> Santander's pleadings refer to "Kelly Auction Services," but the Bill of Sale (Ex. 2) lists "Kelly Auto Auction." The variation is immaterial to the Motion.

the Court to order Santander to return the Charger Boat and other personal property, and to award him damages, costs, and attorney's fees. (Compl. at 2-3).

10. Hunt is no longer pursuing any claim in the Adversary with respect to the personal belongings that were allegedly inside the Charger Boat when it was repossessed. (*See* E-Mail from Hunt's Counsel, Ex. 7; Statement ¶ 9).

## **Discussion**

### **A. Standard of Review**

Rule 7056 of the Federal Rules of Bankruptcy Procedure incorporates the summary judgment standard established in Rule 56 of the Federal Rules of Civil Procedure.<sup>5</sup> Summary judgment is appropriate under Rule 56(a) when viewing the evidence in the light most favorable to the non-moving party, the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, show that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

Defending a proper summary judgment motion requires more from the non-moving party than mere allegations or denials in his pleadings. Rule 56(e)(2) provides:

If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion.

FED. R. CIV. P. 56(e)(2). Thus, once the moving party has made its required showing, the non-moving party must go beyond the pleadings and by his own affidavits, depositions, answers to interrogatories, or admissions demonstrate specific facts to establish that there is a genuine issue

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<sup>5</sup> Pursuant to the Rules Enabling Act, 28 U.S.C. § 2072, Rule 56 of the Federal Rules of Civil Procedure was amended, as of December 1, 2010. The amendment did not change the standard for granting summary judgment. *See* FED. R. CIV. P. 56 advisory committee's note to 2010 Amendments ("The standard for granting summary judgment remains unchanged.").

for trial. *Celotex*, 477 U.S. at 324. A non-moving party who does not respond to a summary judgment motion has failed to do more than simply rely on the allegations in his complaint. *Taylor v. Dallas Cnty. Hosp. Dist.*, 959 F. Supp. 373, 376 (N.D. Tex. 1996). In that event, the moving party is entitled to summary judgment, if appropriate, as a matter of law. *Id.*

## **B. Violation of the Automatic Stay**

The filing of a bankruptcy petition operates as a self-executing injunction that prevents creditors from taking any action to obtain possession of property of the debtor's estate outside the procedures of the bankruptcy forum. *See* 11 U.S.C. § 362(a)(3); *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348, 353 (5th Cir. 2008). Because the automatic stay is imposed automatically upon the filing of the bankruptcy petition, "a party may violate the stay without realizing that it has taken effect." 3 COLLIER ON BANKRUPTCY ¶ 362.12 (16th ed. 2011). The purpose of the automatic stay under 11 U.S.C. § 362(a)<sup>6</sup> is to provide "breathing room" to the debtor and the bankruptcy court. *Brown v. Chestnut (In re Chesnut)*, 422 F.3d 298, 301 (5th Cir. 2005).

The automatic stay applies to property of the bankruptcy estate, which is defined in § 541(a)(1) to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The scope of § 541(a) is broad enough to reach property repossessed by a secured creditor prior to the commencement of a bankruptcy case. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05 (1983). In other words, if a debtor still has an interest in repossessed property, then that property may remain part of the debtor's bankruptcy estate, regardless of whether the original repossession was lawful. *Id.* A creditor that repossesses collateral that is property of the estate must restore the *status quo* by

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<sup>6</sup> Unless specifically noted otherwise, code sections hereinafter will refer to the United States Bankruptcy Code, located at Title 11 of the United States Code.

returning the repossessed property to the debtor. *Commercial Credit Corp. v. Reed*, 154 B.R. 471, 476 (E.D. Tex. 1993).

Turning to the Motion, Santander failed to return the Charger Boat after it became aware of Hunt's bankruptcy filing. Nevertheless, Santander maintains in the Motion that it is entitled to summary judgment as a matter of law because the sale of the Charger Boat took place on January 24, 2012, several days prior to the bankruptcy filing.

Hunt failed to oppose the Motion, and, consequently, there is no evidence in the record that disputes Santander's factual assertion that the Charger Boat was sold, and ownership changed, on January 24, 2012. This undisputed fact requires the Court to conclude that the Charger Boat is not property of the estate and is not subject to turnover. The Court, consequently, concludes that Santander did not violate the automatic stay provisions in § 362(a) by failing to return the Charger Boat to Hunt. Hence, the Court further concludes that the Motion should be granted, and the Complaint should be dismissed with prejudice.

A separate final judgment will be entered in accordance with Rule 7058 of the Federal Rules of Bankruptcy Procedure.

SO ORDERED.



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Neil P. Olack  
United States Bankruptcy Judge  
Dated: April 29, 2013