SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: December 1, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

FELIX RODGER DEAN AND KRISTINA DEAN,	**CASE NO. 16-12296-NPO**
DEBTORS.	**CHAPTER 13**

ORDER ON OBJECTION TO SECURED CLAIM

This matter came before the Court for hearing on October 6, 2016 (the "Hearing"), on the Objection to Secured Claim (the "Objection") (Dkt. 17) filed by the debtors, Felix Rodger Dean ("Rodger Dean") and Kristina Dean ("Kristina Dean," or, together with Rodger Dean, the "Debtors"), and the Response to Objection to Secured Claim (#17) (the "Response") (Dkt. 23) filed by Planters Bank & Trust Company ("Planters Bank") in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Chris F. Powell ("Powell") represented the Debtors, Robert Lawson Holladay, Sr. ("Holladay") represented Planters Bank, and G. Adam Sanford appeared on behalf of Locke D. Barkley, the standing chapter 13 panel trustee. After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Notice of the Objection was proper under the circumstances.

Facts

Many of the facts surrounding the issue before the Court are not in dispute. The Debtors negotiated a loan with Planters Bank in May 2015, in order to begin operating a tanning business (the "Loan").[1] The Debtors then purchased a tanning business, including eight (8) tanning beds. The Debtors pledged the eight (8) tanning beds, a 2008 Ford F150 (the "Ford"), and a 2005 Chevrolet Tahoe (the "Tahoe") as collateral for the Loan. The Debtors fell behind on their payments, and Planters Bank required them to make payments toward the Loan before it would allow the Debtors to refinance the Loan. The Debtors sold three (3) of the tanning beds so that they could make payments toward the Loan, but Planters Bank disputes whether they actually used the proceeds from the sales to make a payment toward the Loan. The Debtors refinanced the Loan on March 11, 2016, combining several loans obtained by the Debtors into one loan, as evidenced by the Disbursement Request and Authorization. (Hr'g Debtor's Ex. 2).[2] The Debtors filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code (the "Petition") (Dkt. 1) on July 8, 2016.

[1] Rodger Dean testified at the Hearing that when the Debtors obtained the Loan in May of 2015, several loans were consolidated into the Loan. (Hr'g at 10:39:15) (The Hearing was not transcribed; citations are to the timestamp of the audio recording). Rodger Dean stated that the Debtors refinanced the Loan in March of 2016, which is the date reflected on the Proof of Claim (the "POC") (Claim No. 6-1) filed by Planters Bank. The POC evidences the refinanced Loan. The Court will refer to the Loan and the refinanced loan collectively as the "Loan."

[2] The Debtors' Hearing exhibits will be cited as "(Hr'g Debtors' Ex. ___)." Planters Bank's Hearing exhibit will be cited as "(Hr'g Planters' Bank Ex. 1)."

On Schedule D: Creditors Who Have Claims Secured by Property ("Schedule D") (Dkt. 1 at 20) filed contemporaneously with the Petition, the Debtors indicated that Planters Bank holds a claim of $80,390.00 for a "mortgage loan secured by homestead" (the "Mortgage Loan"). The Debtors also indicated on Schedule D that Planters Bank held a second claim for the Loan in the amount of $80,072.25 (Schedule D at 1). According to Schedule D, $14,000.00 of the Loan was secured by three (3) tanning beds[3] valued at $1,500.00 each, the Tahoe, which had 300,000 miles and an alleged value of $5,000.00, and the Ford, which had 230,000 miles and an alleged value of $4,500.00. (Schedule D at 1).

I. Plan, Objection, and Response

The Debtors filed the Chapter 13 Plan (the "Plan") (Dkt. 6) contemporaneously with the Petition. In the Plan, the Debtors proposed to make weekly payments of $58.00 for sixty (60) months. (Plan at 1). The Plan indicated the Debtors would pay the Mortgage Loan by making monthly payments of $563.00 directly to Planters Bank. (*Id.*).

Planters Bank filed the POC on August 1, 2016. In the POC, Planters Bank indicated that it had a claim in the amount of $81,637.01 for the Loan. (POC at 2). According to the POC, the Loan is secured by the Ford, Tahoe, and tanning beds. (*Id.*). The following documents were attached to the POC: (1) the Promissory Note (POC at 5-6) evidencing the Loan;[4] (2) the Business Loan Agreement (POC at 7-11); (3) the Commercial Security Agreement (the "Security Agreement") (POC at 14-18), which listed eight (8) tanning beds as collateral, as well as the Tahoe and the Ford; (4) the UCC Financing Statement (POC at 19); (5) the Certificate of Title for the Ford (POC at 20); (6) the NADA Used Card Guide (the "NADA") estimated value of the

[3] At the Hearing, Rodger Dean testified that this was in error. The Debtors sold three (3) tanning beds pre-petition and currently have five (5) tanning beds in storage.

[4] *See supra* note 1.

Ford ("Ford NADA Estimate") (POC at 21); (7) the Certificate of Title for the Tahoe (POC at 22); and (8) the NADA Used Car Guide estimated value of the Tahoe (the "Tahoe NADA Estimate") (POC at 23).

The Debtors filed the Objection on August 17, 2016. The Debtors objected to the secured claim of Planters Bank, claiming that they only had three (3) tanning beds, rather than the eight (8) listed by Planters Bank in the POC, worth a total of $4,500.00.[5] (Obj. at 2). In the Objection, the Debtors proposed to "surrender the tanning beds but retain the vehicles" and "pay Planters Bank a secured claim of $9,500.00 with five percent (5%) interest, at the rate [of] $179.29/month for sixty (60) months, for a total payment of $10,757.40." (*Id.*). The Objection further provided that, "[u]pon successful completion of this bankruptcy, this debt will be deemed entirely satisfied. Planters Bank will then release its lien per state law." (*Id.*). According to the Objection, the Ford and Tahoe are "together worth $9,500.00." (*Id.*).

Planters Bank filed the Response on September 15, 2016, arguing that, as the Security Agreement indicated, the Loan was secured by eight (8) tanning beds rather than only three (3). (Resp. at 1). "Debtors were asked to sell five (5) of the tanning beds and pay that money on their note to the Bank," and although the Debtors claimed that they did sell five (5) of the tanning beds for a total of $4,500.00, "this money was never paid to [Planters Bank], and this money is apparently in the possession of the Debtors at this time." (*Id.*). Because the Debtors claimed that the three (3) remaining beds are worth $1,500.00 each, Planters Bank argued that the value of the five (5) tanning beds that the Debtors sold "should be $7,500.00, which the Debtors owe to [Planters Bank]." (*Id.*). Planters Bank also contested the Debtors' valuation of the Ford and the

[5] *See supra* note 3.

Tahoe, claiming that the NADA shows the Ford "has a clean retail value of $12,950.00",[6] and the Tahoe "has a clean retail value of $8,750.00 at this time" (Tahoe NADA Estimate at 1). (*Id.*).

II. Hearing

A. Debtors

Both Rodger Dean and Kristina Dean testified at the Hearing. The Debtors entered two (2) exhibits into evidence.

1. Rodger Dean's Testimony

At the Hearing, Rodger Dean clarified that although the pleadings provide that the Debtors sold five (5) tanning beds, the Debtors only sold three (3) of the tanning beds; therefore, five (5) tanning beds remain in the Debtors' possession. The Debtors purchased the tanning business in May of 2015, after obtaining the Loan. They purchased the business and everything inside of the building, including the tanning beds. According to Rodger Dean, the Debtors had personal checking accounts as well as a checking account for the tanning business at Planters Bank. He explained that the Debtors fell behind on their payments to Planters Bank, and before Planters Bank allowed them to refinance the Loan in March 2016, it required them to make a lump sum payment toward the Loan. Planters Bank required the Debtors to pay approximately $1,500.00 to refinance the Loan, so the Debtors sold one (1) of the tanning beds to pay that amount. Later, the Debtors sold two (2) more tanning beds, which were not operational, for a total of $500.00. The Debtors had been in communication with an employee at the bank named

[6] Although Planters Bank stated in the Response that the Ford had a clean retail value of $12,950.00 according to the Ford NADA Estimate, the Ford NADA Estimate attached to the POC actually shows that the value is $12,025.00 (Ford NADA Estimate at 1). On the other hand, the Ford NADA Estimate attached to the Response shows that the value of the Ford is $12,950.00 (Resp. at 4). Because the Debtors are surrendering the Ford, this inconsistency is immaterial.

Alicia, who Rodger Dean claimed knew that the Debtors sold two (2) of the tanning beds to repay the Loan. Rodger Dean claimed that the Debtors paid the proceeds from the sale of the three (3) tanning beds to Planters Bank, although they do not have a receipt.

Rodger Dean speculated that the five (5) remaining tanning beds are comparable to the tanning bed that they sold for $1,500.00. He stated that the Debtors are willing to abandon the five (5) remaining tanning beds to Planters Bank, as well as the Ford, which he stated broke down and would cost too much to repair. As to the value of the Tahoe, Rodger Dean testified that the Debtors purchased it in 2011 for $12,300.00. The Tahoe had 120,000 miles on it when they purchased it, and it currently has a total amount of about 300,000 miles. Rodger Dean stated that he believes the value of the Tahoe is approximately $4,500.00, based on an offer he received from someone willing to purchase the Tahoe.

2. Kristina Dean's Testimony

At the Hearing, Kristina Dean testified that she had paperwork to demonstrate that the Debtors deposited the $1,500.00 proceeds from the sale of one (1) of the tanning beds into the tanning bed business account at Planters Bank. The Planters Bank Statement (the "Bank Statement") (Hr'g Debtors' Ex. 1) was entered into evidence at the Hearing without objection. The Bank Statement shows that on August 20, 2015, the Debtors deposited $1,500.00 into the account. (Hr'g Debtors' Ex. 1 at 1). There is a handwritten notation next to the $1,500.00 deposit, which is circled, that says "stand up bed sold." (*Id.*). According to Kristina Dean, she did not have a check or receipt because the Debtors' bank account was "upside down" and an employee at Planters Bank told them to deposit the proceeds and Planters Bank would apply them to the Loan. (Hr'g at 1:00:45). She stated that the Debtors refinanced the Loan after the $1,500.00 deposit was made. Kristina Dean testified that the payments for the Loan were on

automatic draft from the Debtors' bank account, which is why they deposited the proceeds from the sale of all three (3) tanning beds into the account.

3. Powell's Argument

At the Hearing, Powell explained that the Mortgage Loan is not at issue, but the parties disagree about the value of the collateral securing the Loan. Because the Debtors agreed to abandon all of the collateral except for the Tahoe, Powell requested that the Court make a judicial determination as to the value of the Tahoe. According the Powell, the Tahoe should be valued at approximately $4,500.00 based on an offer the Debtors received for the purchase of the Tahoe.

B. Planters Bank

Dustin Sullivan ("Sullivan"), a special assets officer at Planters Bank, testified on behalf of Planters Bank at the Hearing. Planters Bank entered one (1) exhibit into evidence.

1. Sullivan's Testimony

Sullivan works at Planters Bank and aids customers in solving issues regarding their loans. Sullivan's procedure for determining the value of cars is to use the NADA estimate for that particular vehicle. Referencing the Tahoe NADA Estimate, Sullivan testified that the NADA estimate for the Tahoe is $8,750.00. (Hr'g Planters' Bank Ex. 1). Although he has never personally sold repossessed vehicles, he testified that he handles the sale of repossessed vehicles through a Grenada auction company. When Sullivan values a vehicle, he uses a formula to discount the estimates provided by NADA to account for differences in vehicles because he recognizes that prices vary from the NADA estimate. According to Sullivan, he discounted the Tahoe NADA Estimate by ten-percent (10%), meaning that the value of the Tahoe is $7,875.00. (*Id.*).

Sullivan testified that he is familiar with the Debtors' payment history and that the Debtors have made only two (2) payments towards the Loan since it was refinanced in March 2016. When someone makes a payment toward a loan in cash, Planters Bank issues a receipt and Planters Bank keeps a copy of the receipt. When Sullivan reviewed the Debtors' account, he did not find a copy of a receipt. Although Sullivan told the Debtors to sell some of the tanning beds and apply the proceeds towards the principal amount of the Loan, he stated that there was no evidence to indicate that they actually did so. (Hr'g at 11:11:20).

2. Holladay's Argument

Holladay argued that there is still a question about what happened to the proceeds from the sale of three (3) of the tanning beds. Although the Debtors claimed that they used the proceeds to repay the Loan, the Debtors had the burden of proof and there is no evidence that they paid the proceeds to Planters Bank. Accordingly, Holladay contended that Planters Bank should be entitled to the proceeds from the sale of its collateral. The Debtors stated that they sold one (1) of the tanning beds for $1,500.00 and two (2) others collectively for $500.00, which he argued Planters Bank is entitled to receive.

Holladay also contended that under § 506,[7] Planters Bank is entitled to the retail purchase price of the Tahoe. According to him, the Tahoe should be valued at an amount higher than what the Debtors claimed. Holladay argued that the Court should consider the Tahoe NADA Estimate and the ten-percent (10%) reduction implemented by Planters Bank as the best evidence of the retail value of the Tahoe.

[7] Hereinafter, all code sections refer to the Bankruptcy Code found in title 11 of the U.S. Code unless indicated otherwise.

Discussion

At the Hearing, the Debtors agreed to surrender the five (5) remaining tanning beds they had in their possession and the Ford. Accordingly, the only issues remaining for the Court's consideration are the valuation of the Tahoe and the appropriate treatment of the proceeds from the sale of three (3) of the tanning beds. The Court will first consider the value of the Tahoe.

The Federal Rules of Bankruptcy Procedure provide that a properly filed proof of claim serves as *prima facie* evidence of the validity and amount of the creditor's claim. FED. R. BANKR. P. 3001(f). If no party in interest objects to the proof of claim, the amount of the creditor's claim as listed in the proof of claim is "deemed allowed." 11 U.S.C. § 502(a). Once a party in interest objects, the initial burden of proof is on the objector to provide "enough evidence to rebut the *prima facie*" validity of the proof of claim. *Bourdeau Bros., Inc. v. Mantagne (In re Montagne),* No. 08-1024, 2010 WL 271347, at *15 (Bankr. D. Vt. Jan 22, 2010) (quotation omitted). If the objector "carries its burden, the creditor [then] has the ultimate burden of proving the amount and validity of [its] claim by a preponderance of the evidence." *Stancill v. Harford Sands Inc. (In re Harford Sands Inc.),* 372 F.3d 637, 640 (4th Cir. 2004). The Debtors objected to the POC; therefore, the burden shifted to them to provide evidence to rebut Planters Bank's *prima facie* valid proof of claim.

I. Valuation of Tahoe

The Debtors proposed to bifurcate the Loan in the Plan. A chapter 13 debtor may modify the contractual rights of a secured creditor in his plan of reorganization as long as the claim is not "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2). If the creditor's claim is not "secured only by a security interest in real property that is the debtor's principal residence," the debtor may bifurcate the secured creditor's

claim into a partly secured and partly unsecured claim. *In re Lara*, No. 07-60188, 2008 WL 961892, at *2 (Bankr. S.D. Tex. Apr. 8, 2008). The fair market value of the collateral securing the claim is treated as a secured claim, while the remaining debt owed on the claim is treated as an unsecured claim. *Id.*

In the Bankruptcy Case, the Debtors sold three (3) of the tanning beds securing the Loan and are surrendering the five (5) remaining tanning beds and the Ford. The Tahoe, therefore, is the only collateral for the Loan that remains in the Debtors' possession. Thus, the POC will be partially secured by the value of the Tahoe.[8] Accordingly, the Court must determine the value of the Tahoe in order to determine the amount of the secured portion of the POC.

Pursuant to § 506(a), when a creditor is secured, a determination must be made regarding the value of the collateral securing its claim. Under § 506(a), courts are to determine the value of collateral "in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditors' interest." 11 U.S.C. § 506(a). Section 506(a) also provides that if a debtor is in a chapter 7 or chapter 13 bankruptcy, like the Debtors in the Bankruptcy Case,

> such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

11 U.S.C. § 506(a)(2). Pursuant to § 506(a)(2), therefore, "the amount of allowed claims secured by personal property which is utilized for personal, family, or household purposes shall be determined by using a replacement value." *In re Greer*, No. 07-00218-NPO, slip op. at *2

[8] The Court will consider whether the POC should be further secured by the replacement value of the three (3) tanning beds in Section II.

(Bankr. S.D. Miss. Mar. 19, 2007); *Assocs. Comm. Corp. v. Rash,* 520 U.S. 953 (1997). The replacement value is "the price a willing buyer in the debtor's trade, business, or situation would pay a willing seller to obtain property of like age and condition." *Rash,* 529 U.S. at 959 n.2. Accordingly, in determining the value of the Tahoe, the Court will use the replacement value standard.

As this Court noted in *In re Greer,* the bankruptcy court in *In re Mayland,* No. 06-10283, 2006 WL 1476927 (Bankr. M.D.N.C. May 26, 2006), addressed whether NADA provides a method of determining the replacement value of a vehicle pursuant to § 506(a)(2). "The *Mayland* court stated that while the NADA Guide 'is meant to provide information about the amount for which a retail automobile dealer would sell a given vehicle,' the 'values listed by the NADA Guide assume that the vehicle has been cleaned, repaired, reconditioned, and otherwise prepared for sale as an automobile dealer would normally do.'" *In re Greer,* slip op. at *2 (citing *In re Mayland,* 2006 WL 1476927, at *1-2). Because a debtor usually will not have "cleaned, repaired, reconditioned, or otherwise prepared for sale a vehicle he or she is using on a day-to-day basis, a 10% deduction from the NADA Guide retail value was necessary . . . ." *Id.* Ultimately, this Court agreed with the bankruptcy court in *In re Mayland,* concluding that "in chapter 13 cases, the starting point for determining the 'replacement value' of a vehicle is the NADA Guide retail value, less 10%." *Id.* Then, "if there are particular characteristics of the vehicle in question that would affect its value, such as high mileage or special features, [] evidence of same may be introduced and may affect the value ultimately determined by the Court." *Id.* (citing *In re Mayland,* 2006 WL 1476927, at *1).

In *In re Greer,* the Court concluded that the presumptive value of the vehicle in dispute was the NADA estimate, less ten-percent (10%), because "the parties did not dispute that the

Debtor is an individual in a chapter 13 case or that the Vehicle was purchased for personal, family, or household purposes." *Id.* Similarly, in the Bankruptcy Case, Rodger Dean testified that the Debtors, who initiated a chapter 13 bankruptcy case, purchased the Tahoe for Kristina Dean's personal use. Accordingly, the presumptive value of the Tahoe is the Tahoe NADA Estimate, less ten-percent (10%). The Tahoe NADA Estimate indicates that the Tahoe has a value of $8,750.00. The Tahoe NADA Estimate accounts for 300,000 in mileage, which Rodger Dean testified is the number of miles on the Tahoe. Sullivan testified at the Hearing that Planters Bank reduces the NADA estimate for vehicles by ten-percent (10%) to account for differences in vehicles. The Court, therefore, finds that the presumptive value of the Tahoe is $7,875.00.

The Debtors did not present sufficient evidence to demonstrate that there are particular characteristics of the Tahoe that would affect its value. *See In re Greer*, No. 07-00218-NPO, slip op. at *3. Although Powell argued that the actual value of the Tahoe is $4,500.00 based on an offer the Debtors allegedly received for the purchase of the Tahoe, the Debtors presented no corroborating evidence to that effect. Accordingly, the Court finds that the value of the Tahoe is $7,875.00, plus five percent (5%) interest to be paid over the life of the Plan. The Plan should be amended accordingly.

II. Proceeds from Sale

The Debtors testified at the Hearing that, at the direction of Planters Bank, they sold three (3) of the tanning beds securing the Loan in August of 2015, to make payments toward the Loan. In order to determine whether the secured portion of Planters Banks' bifurcated claim should be increased by the value of the three (3) tanning beds the Debtors sold pre-petition, the Court is guided by its decisions in *In re Ogburn*, No. 15-12946-NPO (Bankr. N.D. Miss. Apr. 15, 2016), *In re Williams*, No. 16-10624-NPO (Bankr. N.D. Miss. Aug. 5, 2016), and *In re Lewis*, No. 16-

10842-NPO (Dkt. 39) (Bankr. N.D. Miss. Nov. 29, 2016). Like the Bankruptcy Case, each of these cases involved the pre-petition loss of collateral. Based on the Court's precedent, if the Debtors satisfactorily explain the pre-petition sale of the tanning beds, Planters Bank is not entitled to have the POC secured by the value of those tanning beds. On the other hand, if the Debtors' explanation is insufficient, the value of the tanning beds they sold will increase the secured amount of the POC.

In *In re Ogburn,* the debtor objected to a creditor's proof of claim, arguing that the claim should be unsecured because the collateral was no longer in her possession. *In re Ogburn,* No. 15-12946-NPO, slip op. at *2. The debtor stated that the collateral, a vehicle, had malfunctioned and she abandoned it on the side of the road. *Id.* When the debtor went back to get the vehicle, it was no longer there. *Id.* Because the collateral was no longer in her possession, the debtor argued that she could not surrender it to the creditor and, therefore, the claim was unsecured. *Id.* at *2-3. In overruling the debtor's objection, the court found persuasive the bankruptcy court's opinion in *American Express Travel Related Servs., Co. v. Klauder (In re Klauder),* No. 91-0242JC, (Bankr. S.D. Miss. Mar. 19, 1993).

In *In re Klauder,* the bankruptcy court considered the dischargeability of a debt. *In re Klauder,* No. 91-0242JC, slip op. at *1. In the debtors' statement of financial affairs, they had provided that the collateral, jewelry, had been stolen. *Id.*, at *3. The debtors did not file a police report and did not file a claim on their insurance. *Id.*, at *4. The bankruptcy court noted that the debtors relied on their own testimony to prove that the jewelry was stolen and "offered no evidence to corroborate their testimony." *Id.*, at *6-7. Likewise, in *In re Ogburn,* there was no evidence to prove that the car was missing or had been stolen, and the debtor did not attend the hearing to offer any testimonial evidence as to why the car was no longer in her possession. *In*

re Ogburn, slip op. at *4. This Court, therefore, held in *In re Ogburn* that the creditor was secured and ordered the debtor to amend her chapter 13 plan accordingly. *Id.*, at *5.

In *In re Williams*, the debtor objected to the creditor's proof of claim, arguing that the collateral, also a car, "became inoperable and is no longer in the debtor's possession," and, therefore, the claim should be treated as unsecured. *In re Williams*, No. 16-10624-NPO, slip op. at *2. At the hearing in *In re Williams*, the debtor testified that the "motor went out" on the car and her son "took [it] to the junkyard." *Id.* This Court found that, like the debtor in *In re Klauder*, the debtor in *In re Williams* "relied solely on her own testimony that the [collateral] is no longer in her possession, and offered no corroboration." *Id.*, at *4. Because the debtor offered no corroborating evidence to support her claim, the Court found that the claim should be treated as secured. *Id.*

This Court in *In re Lewis* determined that, unlike the debtors in *In re Ogburn* and *In re Williams*, the debtor did satisfactorily demonstrate that the collateral was no longer in her possession due to an accident and, therefore, the claim could be treated as unsecured. *In re Lewis*, No. 16-10842-NPO (Dkt. 39), slip op. at *6-7. The debtor in *In re Lewis* produced an incident report that evidenced the fact that the collateral, a vehicle, was destroyed in an accident. *Id.*, at *7. The Court determined that the replacement value of the collateral on the date the petition was filed was $0.00 because it was not in the debtor's possession. *Id.* Thus, the vehicle was not property of the estate and the creditor was unsecured. *Id.*

The Court finds that, like the debtor in *In re Lewis*, the Debtors have satisfactorily explained the absence of the collateral. The Debtors testified, and Sullivan confirmed, that Planters Bank directed them to sell tanning beds in order to make payments toward the Loan so that it could be refinanced. Although Sullivan claimed that there is no evidence to demonstrate

that the Debtors actually used the proceeds to pay the Loan, the Bank Statement indicates that on August 20, 2015, the Debtors deposited $1,500.00 into their bank account at Planters Bank. Sullivan testified that the Debtors were told to sell the tanning beds, and the Debtors both testified that a Planters Bank employee named Alicia directed them to deposit the proceeds into their bank account, which had an automatic draft for repayment of the Loan. The Bank Statement evidences the fact that the Debtors complied with this instruction. The Court finds that the Debtors' reliance on two (2) Planters Bank employees' instructions to sell the tanning beds and deposit the proceeds into their bank account was rational. Because the Loan payments were automatically drafted from the bank account, it was reasonable for the Debtors to deposit the proceeds directly into that account.

Additionally, Planters Bank required the Debtors to make a $1,500.00 payment in order to refinance the Loan. The fact that Planters Bank refinanced the Loan after the $1,500.00 deposit evidenced by the Bank Statement indicates that at least a portion of the proceeds from the sale of a tanning bed were applied to the Loan.[9] Unlike in *In re Klauder* where the bankruptcy court determined that the debtors' explanation for the loss of the collateral was unsatisfactory because they "offered no evidence to corroborate their testimony," the Debtors in the Bankruptcy Case did offer corroborating evidence *via* the Bank Statement. Thus, the Court finds that three (3) of the tanning beds were not in the Debtors' possession on the date they filed the Petition

[9] The Bank Statement shows that $850.00 may have gone towards the rental payment for the tanning business and $150.00 went to Capital One, which Kristina Dean testified was an insurance payment for the tanning business. (Bank Statement at 1). Kristina Dean testified that because the Loan payment was automatically drafted from the account, the Debtors deposited the money into the account at the direction of Planters Bank so that it could allocate the proceeds as necessary. Whether Planters Bank utilized the entire $1,500.00 to pay the Loan or if a portion was used to pay rent and insurance is immaterial because the Court finds the Debtors' explanation for the sale of the collateral sufficient.

and, therefore, they are not property of the estate under § 541. The secured portion of the POC should not be increased by the value of the tanning beds that were sold.

Conclusion

The Objection should be sustained in part and overruled in part. The value of the Tahoe is $7,875.00 consistent with the Tahoe NADA Estimate and the ten percent (10%) reduction implemented by Planters Bank, plus 5% interest. The secured portion of the POC should not be increased by the value of the three (3) tanning beds the Debtors sold before filing the Petition. The Court finds that the Debtors should amend the Plan within fourteen (14) days from the date of this Order to reflect the surrender of the Ford and the five (5) tanning beds remaining in their possession and the $7,875.00 value of the Tahoe.

IT IS, THEREFORE, ORDERED that the Objection is hereby sustained in part and overruled in part.

IT IS FURTHER ORDERED that the Debtors have fourteen (14) days from the date of this Order in which to amend the Plan consistent with this Order.

##END OF ORDER##