



**SO ORDERED,**

A handwritten signature in blue ink that reads "Jamie A. Wilson".

**Judge Jamie A. Wilson  
United States Bankruptcy Judge  
Date Signed: January 20, 2022**

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

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

**IN RE:**

**MELVIN STOKES, JR. AND  
GLENDDORA STOKES,**

**CASE NO. 21-00352-JAW**

**DEBTORS.**

**CHAPTER 13**

**ORDER ON TRUSTEE'S MOTION TO DISBURSE INSURANCE PROCEEDS**

This matter came before the Court for hearing on January 10, 2022 (the "Hearing"), on the Trustee's Motion to Disburse Insurance Proceeds (the "Motion") (Dkt. #27) filed by Harold J. Barkley, Jr., chapter 13 trustee (the "Trustee"), and the Response to Trustee's Motion to Disburse Insurance Proceeds (the "Response") (Dkt. #30) filed by Nissan Motor Acceptance Corporation ("Nissan") in the above-referenced bankruptcy case (the "Bankruptcy Case"). At the Hearing, Justin Jones represented the Trustee, Charles F.F. Barbour represented Nissan, and Jim Arnold represented the debtors, Melvin Stokes, Jr. and Glendora Stokes (the "Debtors"). The issue before the Court concerns the distribution of insurance proceeds paid to the Trustee after the Debtors' car was totaled in a post-confirmation accident. The parties agree that Nissan, which holds a security interest in the insured vehicle, is entitled to payment of its allowed secured claim under the

Debtors' confirmed chapter 13 plan but disagree as to the proper distribution of the remaining insurance proceeds. After considering the pleadings and arguments of counsel, the Court finds as follows:<sup>1</sup>

### **Jurisdiction**

This Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (L), and (O). Notice of the Motion was proper under the circumstances.

### **Facts**

The facts are not in dispute. The Debtors entered into a Retail Installment Sale Contract (the "Contract") to purchase a new 2017 Nissan Versa (the "Versa"). (Cl. #13-1). They financed \$16,429.75 of the purchase price at an annual interest rate of 11.13%, payable over six years. The Contract granted the lender a security interest in the Versa and included provisions regarding insurance coverage. (Cl. #13-1 at 6-10). It required the Debtors to maintain "physical damage insurance covering loss of or damage to the vehicle for the term of this contract" and allowed the lender to use any insurance settlement to reduce what the Debtors owed if the Versa was lost or damaged. (Cl. #13-1 at 8).

About four years after they purchased the Versa, the Debtors filed a joint petition for relief (Dkt. #1) under chapter 13 of the Bankruptcy Code. In their bankruptcy schedules, the Debtors listed the Versa as an asset of the estate having a present value of \$6,800.00. (Dkt. # 7 at 4). They did not claim any exemption in the Versa. Nissan filed a proof of claim in the amount of \$11,698.15, asserting that the value of the Versa was \$6,840.00, and correspondingly, the amount of its secured claim. (Cl. #13-1). The Debtors' confirmed chapter 13 plan (the "Plan") (Dkt. #20)

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<sup>1</sup> Pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, the following constitutes the findings of fact and conclusions of law of the Court.

provides for 60 monthly payments of \$614.00 and no payments to general unsecured creditors. The Plan “crams down” Nissan’s secured claim to \$6,800.00, the present value of the Versa, payable over the life of the Plan at an annual interest rate of 5.25% and treats the balance of the Contract debt as an unsecured claim. (Dkt. #20). The Plan provides that property of the estate “will revert in the debtor(s) upon entry of discharge.” (Dkt. #20 at 4).

Sometime last year, the Versa was involved in an accident. The insurer declared the vehicle to be a “total loss” and paid the Trustee insurance proceeds of \$10,128.25, representing the value of the Versa before the accident.<sup>2</sup> The Trustee stated at the Hearing that distributions under the Plan before the accident had reduced Nissan’s secured claim to \$6,280.16. The balance owed Nissan under the terms of the Contract at the time of the accident is approximately \$11,000.00,<sup>3</sup> which is more than the amount of insurance proceeds. For reasons that become apparent later, two additional facts are worth emphasizing: the underlying debt owed to Nissan as determined under non-bankruptcy law has not been paid in full, and the Debtors have not received a discharge.

The Trustee filed the Motion seeking permission to disburse an amount of insurance proceeds to Nissan necessary to satisfy its allowed secured claim in the amount of \$6,280.16. (Dkt. #27). As to the remaining insurance proceeds of \$2,834.27,<sup>4</sup> the Trustee proposes in the Motion to bring the Debtors’ Plan payments current and pay the Debtors “any remaining exempt funds.” (Dkt. #27). In the Response, Nissan supports the Trustee’s request to pay off its “crammed down” claim and suggests that any excess proceeds be paid either to the Trustee or the Debtors. (Dkt. #30). Both Nissan and the Trustee, however, revised their respective positions at the Hearing regarding the

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<sup>2</sup> A copy of the insurance policy was not provided to the Court.

<sup>3</sup> This figure is based on the assertion of the Trustee at the Hearing that Plan payments have reduced Nissan’s secured claim by \$519.84 ( $\$11,178.31 = \$11,698.15 - (\$6,800.00 - \$6,280.16)$ .) and that unsecured creditors receive no payments under the Plan.

<sup>4</sup>  $\$2,834.27 = \$10,128.25 - \$6,280.16$ .

surplus insurance proceeds. They argued that the Trustee should hold the excess proceeds until the Debtors receive a discharge in the Bankruptcy Case, and in the event the Bankruptcy Case is dismissed or converted to another chapter, the excess proceeds should be paid to Nissan.

The Debtors did not file a written response to the Motion but instead filed a Motion to Modify Confirmed Plan (the “Motion to Modify”) (Dkt. #31). The Debtors propose in the Motion to Modify to surrender both the wrecked Versa and \$6,280.16 of the insurance proceeds to Nissan and to retain the excess insurance proceeds for themselves. This proposal in the Motion to Modify is consistent with the argument of the Debtors’ counsel at the Hearing. The Motion to Modify and the Trustee’s Response to Debtors’ Motion to Modify Plan (the “Trustee’s Response”) (Dkt. #34) are set for hearing next week.

### **Discussion**

At the Hearing on the Motion and the Response, the parties agreed that the insurance proceeds constitute property of the estate subject to Nissan’s security interest. *See* 11 U.S.C. §§ 541(a), 1306(a). Also, there is no dispute that Nissan is entitled to \$6,280.16 of the insurance proceeds, an amount that combined with the payments already made under the Plan equals the allowed amount of Nissan’s secured claim. The issue before the Court concerns the disbursement of the remaining insurance proceeds of \$2,834.27. Who is entitled to the surplus insurance proceeds—the Trustee, Nissan, or the Debtors? At the Hearing, the parties agreed that no binding precedent exists in this jurisdiction. Counsel for the Trustee, however, cited a decision from a Missouri bankruptcy court, *In re Cotton*, No. 11-42420, 2015 WL 5601454 (Bankr. W.D. Mo. Sept. 22, 2015), in support of his position that the Debtors are not entitled to the surplus insurance proceeds unless and until they receive a discharge in the Bankruptcy Case.

In *Cotton*, the debtor borrowed funds from Toyota Motor Credit Corporation (“Toyota”) to purchase a 2008 Toyota Yaris (the “Yaris”). *In re Cotton*, 2015 WL 5601454, at \*1. Three years later, the debtor and her spouse filed a chapter 13 petition for relief. Toyota filed a proof of claim asserting a claim secured by the Yaris in the amount of \$14,408.74. The contract rate of interest was 13.85% per annum. The debtors’ confirmed plan bifurcated Toyota’s claim into an allowed secured claim of \$11,925.00 and an unsecured claim of \$2,483.74. All unsecured creditors, including Toyota to the extent of its unsecured claim, receive only a *de minimis* distribution under the plan.

In 2015, the Yaris was totaled in an accident, and the insurance company tendered a check made payable jointly to the debtor and Toyota in the amount of \$6,684.55. At that time, the amount owed on Toyota’s secured claim was only \$1,558.06, but the balance owed under the terms of the loan was \$9,136.06. The debtors filed an application for distribution of the insurance proceeds, asserting that \$1,558.06 should be paid to Toyota to satisfy the balance of its allowed secured claim, plus an additional \$18.03 on its unsecured claim,<sup>5</sup> but that the remaining proceeds of \$5,108.56 should be paid to them.

The bankruptcy court denied the debtors’ request. Citing 11 U.S.C. § 1325(a)(5)(B),<sup>6</sup> the bankruptcy court noted that Toyota’s lien could not be released until the debtors received a discharge or Toyota was paid all of the insurance proceeds in satisfaction of its security interest under non-bankruptcy law, whichever occurred first. *In re Cotton*, No. 11-42420, 2015 WL 5601454, at \*1. The bankruptcy court, therefore, concluded that the trustee should hold the remaining proceeds until the debtors receive a discharge, or if the debtors did not obtain a discharge, the trustee should

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<sup>5</sup> This amount was based on the chapter 13 trustee’s estimated percentage distribution to unsecured creditors of 0.726%.

<sup>6</sup> Hereinafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code, unless otherwise noted.

pay the excess funds to Toyota. The decision in *Cotton* supports the position urged by the Trustee and Nissan at the Hearing that Nissan has an inchoate lien in the surplus insurance proceeds pending the Debtors' successful completion of the plan and discharge. The Debtors object to the Trustee's retention of the insurance funds in excess of Nissan's allowed secured claim and seek permission to use the surplus funds to purchase another car. Unlike the Trustee, however, the Debtors have not supported their argument with any authority.

Admittedly, the Debtors' position finds some support in cases rendered before the passage of the Bankruptcy Abuse and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23 (2005). Before BAPCPA, § 1325(a)(5)(B)(i) provided that absent the secured creditor's consent or the debtor's surrender of the collateral, the holder of an "allowed secured claim" retains "the lien securing such claim." 11 U.S.C. § 1325(a)(5)(B)(i) (1978) (amended by 11 U.S.C. § 1325(a)(5)(B)(i) (2005)). Some courts interpreted the term "allowed secured claim" as the "cramdown" amount rather than the amount of the debt under state law and, therefore, ruled that it was permissible to require an undersecured creditor to release its lien upon full payment of the cramdown amount. See *In re Gray*, 285 B.R. 379, 386-89 (Bankr. N.D. Tex. 2002); *Bank One, Chicago, NA v. Flowers (In re Flowers)*, 183 B.R. 509, 517-18 (N.D. Ill. 1995); *Ford Motor Credit Co. v. Lee (In re Lee)*, 162 B.R. 217, 225 (D. Minn. 1993); see also KEITH A. LUNDIN, LUNDIN ON CHAPTER 13 § 74.12, LundinOnChapter13.com. The amended version of § 1325(a)(5)(B)(i), enacted as part of BAPCPA, overrules these decisions by clarifying that a creditor with an allowed secured claim retains "the lien securing such claim" until "the payment of the underlying debt determined under nonbankruptcy law" or "discharge under section 1328" and further providing that the creditor retains the lien "to the extent by applicable nonbankruptcy law" if a chapter 13 case is dismissed or converted. 11 U.S.C. § 1325(a)(5)(B)(i) (2005).

With the only cases supporting the Debtors' position having been overruled by BAPCPA, the Court finds *Cotton* to be persuasive authority. Nissan has an inchoate lien on the surplus insurance proceeds under the amended version of § 1325(a)(5)(B)(i) pending the Debtors' successful completion of the Plan and discharge. Until the release of Nissan's inchoate lien, the Debtors are not entitled to use the surplus insurance funds to buy another vehicle without Nissan's consent.<sup>7</sup> After the Debtors receive a discharge, the surplus insurance proceeds will revert in the Debtors free of Nissan's lien. This result is consistent not only with *Cotton* but also with other decisions reached by courts confronted with the lien retention provisions in § 1325(a)(5)(B)(i).

In *In re Smith*, 616 B.R. 773, 778 (Bankr. E.D. Ark. 2020), for example, the debtors' vehicle was totaled in an accident, and the creditor sought relief from the automatic stay to assert its lien rights to the insurance proceeds paid by the insurer. The debtors' confirmed chapter 13 plan "crammed down" the creditor's allowed secured claim to the value of the vehicle. At the time of the accident, the balance of the allowed secured claim under the plan was only \$282.94. The creditor's lien under nonbankruptcy law, however, was more than the insurance proceeds. For this reason, the creditor argued that it was entitled to the full amount of the insurance proceeds under § 1325(a)(5)(B)(i).

The bankruptcy court in *Smith* held that although the creditor retained its lien in the insurance proceeds pending a discharge or the dismissal or conversion of the bankruptcy case, its present interest in the insurance proceeds was limited to the balance remaining on its allowed secured claim under the plan. *In re Smith*, 616 B.R. at 778. As a result, the bankruptcy court granted the creditor limited relief from the automatic stay in the amount of \$282.94. *In re Smith*, 616 B.R. at 778; *see also In re Kelley*, No. 11-51197, 2012 WL 5457331, at \*4 (Bankr. E.D. Ky. Nov. 8, 2012).

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<sup>7</sup> The Debtors do not offer Nissan any adequate protection and, therefore, the Court does not consider whether § 363(b)(1) or (c)(1) may apply to these facts.

The decision in *Smith* supports the Court's finding that Nissan's present interest in the insurance proceeds is limited to \$6,280.16, the amount of its allowed secured claim under the Plan.

### **Conclusion**

The Court finds that Nissan should be paid the secured portion of its "crammed down" claim from the insurance proceeds. The Court further finds that the remaining insurance proceeds should be held by the Trustee until the Debtors receive a discharge or the Bankruptcy Case is dismissed or converted. Although the Debtors will not be eligible for a discharge until 2026, the Trustee's retention of the funds pending the Debtors' successful completion of the Plan and discharge is necessary to protect Nissan's inchoate lien. Because the Motion to Modify was filed before the issuance of this Order, the Court will require the Debtors to file an amended Motion to Modify consistent with the Court's ruling and will cancel the hearing currently set on the Motion to Modify.

IT IS, THEREFORE, ORDERED that the Motion is hereby granted in part and denied in part.

a. The Motion is hereby granted to the extent that the Trustee shall pay Nissan \$6,280.16 of the insurance proceeds in satisfaction of its allowed secured claim and shall hold the remaining insurance proceeds of \$2,834.27 until the Debtors receive a discharge or the Bankruptcy Case is dismissed or converted. If the Debtors receive a discharge, the Trustee shall pay the excess insurance funds of \$2,834.27 to the Debtors. In the event the Bankruptcy Case is dismissed or converted, the Trustee shall pay the excess insurance funds of \$2,834.27 to Nissan.

b. In all other respects, the Motion is hereby denied.

IT IS FURTHER ORDERED that the hearing on the Motion to Modify and the Trustee's



Response set for January 24, 2022 is hereby cancelled. Within 14 days of this Order, the Debtors shall amend the Motion to Modify consistent with this Order.

##END OF ORDER##