

SO ORDERED,



Jason D. Woodard
Judge Jason D. Woodard
United States Bankruptcy Judge

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re:)
)
JOHN ELLIS JOHNSON,) Case No.: 19-13357-JDW
)
Debtor.) Chapter 13

JOHN ELLIS JOHNSON,)
)
Plaintiff)
)
v.) A.P. No.: 20-01029-JDW
)
FEDEX CREDIT)
ASSOCIATION,)
B&B TOWING & PAR, INC.,)
)
Defendants.)

MEMORANDUM OPINION

This matter comes before the Court on the *Motion for Summary Judgment* filed by the defendants FedEx Credit Association (“FedEx”), B&B

Towing, LLC (“B&B”), and PAR, Inc. (“PAR”) (Dkt. # 53) and the *Plaintiff’s Response to Motion for Summary Judgment* filed by the debtor John Ellis Johnson (Dkt. # 55). The debtor seeks damages for violation of the automatic stay, alleging that the defendants improperly retained possession of his truck after his bankruptcy filing and disposed of his personal property in the truck. The defendants’ motion is due to be granted as to the truck and denied as to the personal property.

I. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157(a) and 1334, and the *United States District Court for the Northern District of Mississippi’s Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 6, 1984. This is a core proceeding as set forth in 28 U.S.C. § 157(b)(2)(A), (C) and (G).

II. FINDINGS OF FACT¹

The facts related to the truck are largely undisputed. The debtor co-owned a 2012 Peterbilt 587 truck with his brother, which was financed by FedEx.² The debtor became delinquent on his loan payments and FedEx repossessed the truck through B&B/PAR on August 11, 2019.³ On August 21,

¹ To the extent any of the findings of fact are considered conclusions of law, they are adopted as such, and vice versa.

² (A.P. Dkt. # 1, ¶ 7); (A.P. Dkt. # 54, Ex. A, Responses 1-2).

³ (A.P. Dkt. # 54, Ex. A, Responses 3-4); (A.P. Dkt. # 1, ¶¶ 8, 10-11); (A.P. Dkt. # 54, p. 1).

the debtor filed the underlying bankruptcy case, and the defendants were aware of the bankruptcy by the next day.⁴ On August 26, FedEx filed motions for relief from the stay and the co-debtor stay as to the truck.⁵ The defendants retained possession of the truck and the debtor did not file a turnover motion at any point in the case. In fact, the lift stay motions were granted by agreed order on November 20.⁶ The defendants were aware that the bankruptcy case prevented an auction of the truck until the stay was lifted and any sale took place after entry of the agreed order.⁷

The factual dispute here relates to other personal property that the debtor alleges was located inside the truck. He contends that he had \$9,000.00 worth of property in the truck when it was repossessed.⁸ B&B denies that the debtor owned any personal property items that were in the truck, but admits that it “disposed of the items of personal property in the [truck] after no one retrieved those items for approximately sixty-four days.”⁹ While the debtor did not file a turnover motion at any point in the case, the stay has not been lifted as to any personal property.

⁴ (Dkt. # 1); (A.P. Dkt. # 55, Ex. D, Response 3); (A.P. Dkt. # 55, Ex. E, Response 3); (A.P. Dkt. # 55, Ex. F).

⁵ (Dkt. # 10, 11).

⁶ (Dkt. # 47, 48).

⁷ (A.P. # 55, Ex. F).

⁸ (A.P. Dkt. # 1, ¶ 9).

⁹ (A.P. Dkt. # 55, Ex. A, Response 8).

III. SUMMARY JUDGMENT STANDARD

Rule 56 permits a court to grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”¹⁰ The Court must view the pleadings and the facts in the light most favorable to the non-moving party.¹¹ The moving party bears the initial burden of “identifying parts of the record that it believes demonstrates the absence of a genuine issue of material fact”.¹² Alternatively, the moving party may also show “an absence of evidence to support the nonmoving party’s case” to succeed at the summary judgment phase.¹³ “If the moving party satisfies this burden, ‘the burden then shifts to the nonmoving party to go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.’”¹⁴ Here, the defendants bear the initial burden as the moving party.

¹⁰ Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056 applies Fed. R. Civ. P. 56 to all bankruptcy proceedings.

¹¹ *Green v. Life Ins. Co. of N. Am.*, 754 F.3d 324, 329 (5th Cir. 2014) (citing *Duval v. N. Assur. Co. of Am.*, 722 F.3d 300, 303 (5th Cir. 2013)).

¹² *Rice v. Cornerstone Hosp. of W. Monroe, L.L.C.*, 674 F. App'x 391, 392 (5th Cir. 2017) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–323 (1986)).

¹³ *Celotex*, 477 U.S. at 325.

¹⁴ *Rice*, 674 F. App'x at 392 (quoting *Davis v. Fort Bend Cty.*, 765 F. 3d 480, 484 (5th Cir. 2014)).

IV. CONCLUSIONS OF LAW

Section 362(a)(3) of the Bankruptcy Code provides that a bankruptcy petition operates as a stay of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” The United States Supreme Court recently held that “mere retention of estate property after the filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code.”¹⁵ In *Fulton*, the City of Chicago had impounded multiple debtors’ vehicles prepetition.¹⁶ Each debtor filed a chapter 13 bankruptcy petition and requested that the City return his or her vehicle. The City refused.¹⁷ The Court carefully analyzed each operative word of the subsection, concluding that it “halts any affirmative act that would alter the status quo as of the time of the filing of a bankruptcy petition.”¹⁸ The Court found the City had not violated the stay, because it had not altered the status quo by merely holding vehicles that had been impounded prepetition. Notably, the court explicitly limited its finding to § 362(a)(3) and did not decide how a turnover obligation under § 542 would affect the result.¹⁹

¹⁵ *City of Chicago, Illinois v. Fulton*, 141 S. Ct. 585, 592 (2021).

¹⁶ *Id.* at 589.

¹⁷ *Id.*

¹⁸ *Id.* at 590.

¹⁹ *Id.* at 592.

A. The Truck

Here, the defendants have carried their burden to show that no dispute of material fact exists as to the truck.²⁰ *Fulton* makes clear that viewing those facts in the light most favorable to the debtor, the defendants did not violate the automatic stay as to the truck. The documents show that the defendants were aware that the truck could not be sold until the bankruptcy stay was lifted.²¹ The debtor took no action to recover the truck by filing a turnover motion under § 542. In contrast, the defendants immediately filed motions to lift the stay and held the truck until the stays were lifted. Under *Fulton*, there was no violation of the stay based on these facts. The Supreme Court has made clear that retention of vehicles, alone, is not a stay violation.²²

B. Other Personal Property

The defendants did not address the personal property in their motion for summary judgment. While the defendants did not violate the automatic stay by retaining the truck, it is possible that they violated the stay if they disposed of the debtor's personal property, which was property of the bankruptcy estate. At this stage, it is unclear what personal property was in the truck, whether the debtor owned it, the value of it, and/or whether a stay violation occurred.

²⁰ *Rice*, 674 F. App'x at 392 (citing *Celotex*, 477 U.S. at 322–323).

²¹ (A.P. Dkt. # 55, Ex. F).

²² *Fulton*, 141 S. Ct. at 590 (“the language of § 362(a)(3) implies that something more than merely retaining power is required to violate the disputed provision”).

It is also unclear whether FedEx even had a lien on the debtor's personal property.²³ Regardless, the defendants did not seek stay relief before disposing of the personal property. Because there is a material dispute of fact here, the motion is due to be denied as to the personal property.

Accordingly, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the Motion for Summary Judgment is **GRANTED** as to the truck and **DENIED** as to the personal property. A pretrial conference will be scheduled by the Court as to the personal property issue.

##END OF OPINION##

²³ When the defendants filed the motion for relief from stay, they attached the security agreement listing the truck as collateral (Dkt. # 10). The granting clause in the security agreement references the truck but not any other tangible property. *Id.* Further, the defendants did not attach a UCC-1 financing statement to prove a perfected interest in any other personal property.