

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
VAKESHIA T. BURRELL,) Case No. 18-04602
)
Debtor.)

ORDER SUSTAINING OBJECTION TO CONFIRMATION AND
ORDERING DEBTOR TO FILE AN AMENDED PLAN WITHIN 14 DAYS

This case is before the court on the objection (doc. 22) to confirmation filed by creditor TitleMax of Alabama, Inc. (“TitleMax”). TitleMax objects to the debtor Vakeshia T. Burrell’s attempt to redeem her 2016 Hyundai Elantra through her chapter 13 plan. TitleMax argues that the redemption period has run and, thus, in accordance with Alabama law and the Eleventh Circuit’s opinion in *In re Northington*, 876 F.3d 1302 (11th Cir. 2017), TitleMax now owns the car and the car is no longer part of the bankruptcy estate. Having carefully considered the applicable law, the argument of the parties, and the evidence at the confirmation hearing, the court sustains the objection.

The Alabama Pawnshop Act defines a “pawn transaction” as “[a]ny loan on the security of pledged goods or any purchase of pledged goods on condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.” Ala. Code § 5-19A-2(3). “A ‘pawn transaction’ does not include the pledge to, or the purchase by, a pawnbroker of real or personal property from a customer followed by the sale or the leasing of that property back to the customer in the same or a related transaction.” *Id.* “Pledged goods not redeemed within 30 days following the originally fixed maturity date shall be forfeited to the pawnbroker and absolute right, title, and interest in and to the goods shall vest in the pawnbroker.” Ala. Code § 5-19A-6.

The documents submitted by TitleMax evidence a pawn transaction, not a sale or lease.¹ (See creditor ex. 1). Nonetheless, Burrell argues that this is not a pawn transaction subject to the Alabama Pawnshop Act because she always retained possession of the car, she was listed as owner on the title, and TitleMax was listed as lienholder on the title. (See debtor ex. 1). However, the Alabama Supreme Court and another bankruptcy court in Alabama have found that money-lending transactions involving the transfer of motor vehicle certificates of title for the purpose of giving security are “pawn transactions” subject to the Pawnshop Act, even when the pledgor retains possession of the car. See *Floyd v. Title Exch. & Pawn of Anniston, Inc.*, 620 So. 2d 576, 577-79 (Ala. 1993); *Blackmon v. Downey*, 624 So. 2d 1374, 1376 (Ala. 1993); *In re Jones*, 544 B.R. 692, 697, 701 (Bankr. M.D. Ala. 2016).

In *In re Northington*, the Eleventh Circuit held that when the time to redeem a pawned car under the applicable state law lapses, the debtor’s rights in the car are “immediately forfeited, extinguished, and vested in” the pawnbroker. See 876 F.3d at 1315. Burrell contends that *In re Northington* is distinguishable because the Eleventh Circuit in that case applied Georgia’s pawnshop act – which specifically mentions cars, unlike the Alabama Pawnshop Act. The court is not persuaded by this argument because the Alabama Supreme Court, as discussed above, has expressly stated that motor vehicle certificates of title are under the purview of the Alabama Pawnshop Act.

The court is bound by Eleventh Circuit precedent and Alabama statutory and case law. Under her October 22, 2018 contract with TitleMax (creditor ex. 1), Burrell had until November 21, 2018 to redeem the car. She then had an additional 30 days, or until December 21, 2018,

¹ TitleMax bought the loan from Ace Title Loans, but that does not change the court’s analysis of the issues herein.

under the Pawnshop Act. Her bankruptcy filing on November 12, 2018 extended the redemption period 60 days from the filing, until January 11, 2019, but she did not redeem by that date. *See* 11 U.S.C. § 108(b); *In re Northington*, 876 F.3d at 1306. As a result, on January 11, 2019, the car “ceased to be property of the bankruptcy estate” and TitleMax does not have a mere claim in Burrell’s bankruptcy, it has a 2016 Hyundai Elantra. *See In re Northington*, 876 F.3d at 1315. Burrell no longer has any “rights in the car, possessory or otherwise” and cannot redeem the car through her chapter 13 plan. *See id.*

Accordingly, the court sustains TitleMax’s objection (doc. 22) to confirmation, denies confirmation, and orders Burrell to file an amended plan within 14 days of the date of this order. By separate order, the court will reset this case for a confirmation hearing on May 30, 2019.

Dated: April 2, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE