

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

IN RE: )  
 )  
CHRISTOPHER DAWAN ELDRIDGE, ) Case No. 19-12443  
 )  
Debtor. )

ORDER SUSTAINING OBJECTIONS TO CONFIRMATION (DOCS. 17, 57) AND  
GRANTING MOTION TO DETERMINE APPLICABILITY OF STAY (DOC. 18)

This case came before the court for an evidentiary hearing on January 24, 2020 on the objections to confirmation (docs. 17, 57) and motion to determine the applicability of the automatic stay (doc. 18) filed by TitleMax of Alabama, Inc. (“TitleMax”). The court heard testimony from the debtor Christopher Dawan Eldridge (“Mr. Eldridge” or “the debtor”) and from Julie Bennett (“Ms. Bennett”), district director of operations for TitleMax. The court also admitted into evidence debtor’s exhibits 1-58 and TitleMax’s exhibits 59-69. TitleMax submitted a pre-trial brief and Mr. Eldridge submitted pre- and post-trial briefs, all of which the court has reviewed. For the reasons discussed herein, the court sustains TitleMax’s objections to confirmation (docs. 17, 57)<sup>1</sup> and grants the motion to determine (doc. 18).

Background

The facts underlying the objections are largely undisputed. Mr. Eldridge drives a Dodge Ram and his adult son, who lives with him, drives a 2002 Jeep Cherokee. Mr. Eldridge, not his son, is listed on the certificate of title for the Jeep. Mr. Eldridge pawned the title to the Jeep with TitleMax on August 15, 2015. (*See* debtor exs. 1, 53). Under the pawn terms, Mr. Eldridge

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<sup>1</sup> The court delayed ruling on a similar issue in *In re Deakle*, No. 19-11820 (doc. 65) because the court is waiting on related decisions to be issued by U.S. Bankruptcy Judge Jennifer Henderson for the Northern District of Alabama. However, the *Deakle* case has already been confirmed. The court does not want to further delay the confirmation hearing in this case.

received \$1,800.00 and had to pay \$2,033.82 by September 14, 2015 to redeem the title to the Jeep. Mr. Eldridge did not redeem the title but instead entered into several successive pawn transactions with TitleMax related to the Jeep, including one on May 27, 2016. (*See* debtor exs. 2-15). Each time, Mr. Eldridge paid the pawnshop charge and signed a new pawn ticket but did not receive any additional money.

The maturity date for the May 27, 2016 pawn was June 26, 2016. (*See* debtor ex. 14). Mr. Eldridge did not redeem the Jeep or enter into a successive pawn transaction on or before that date. He likewise did not redeem the Jeep or enter into another pawn transaction on or before July 26, 2016, within the 30-day “grace” period provided under Alabama Code § 5-19A-10(b). He did, however, sign a new pawn ticket with TitleMax on July 29, 2016, 63 days after the May 27, 2016 pawn. (*See* debtor exs. 16-17). Ms. Bennett testified that it is TitleMax’s practice to allow a customer to enter into a successive transaction even if the customer missed the grace period if the pawn was less than 90 days old and TitleMax still had a relationship and communication with the customer. She further testified that is what happened in this case; because TitleMax still had contact from Mr. Eldridge, it elected to allow him to enter into a new pawn transaction instead of repossessing the Jeep.

Mr. Eldridge then entered into more than a dozen successive pawn tickets with TitleMax until entering into a final pawn transaction on April 2, 2019. (*See* debtor exs. 18-52). In eight of these transactions, Mr. Eldridge did not redeem the Jeep or enter into a new pawn transaction before the maturity date or within the 30-day grace period. When this happened, though, Mr. Eldridge always entered into a new pawn transaction between 60 days and 90 days after the original pawn date. TitleMax did not take any steps to repossess the Jeep and allowed Mr. Eldridge to enter into successive pawn transactions through April 2019. (*See* debtor ex. 54). Mr.

Eldridge testified that he kept entering into new pawn transactions because he wanted to keep the Jeep.

The May 27, 2016 pawn ticket and subsequent pawn tickets contain the following language:

**Nonredemption and Forfeiture. You shall have no obligation to redeem Pledged Goods or make any payment on this Pawn transaction. Pledged Goods not redeemed within 30 days following the Maturity Date shall be forfeited to us and absolute right, title, and interest in and to the goods shall vest in us, unless you request and we agree to enter into a new pawn ticket, in which case you will retain title to the Pledged Goods.**

. . .

**Notices and Waivers.** . . . We may waive or delay enforcing our rights without losing them.

Mr. Eldridge's final pawn with TitleMax matured on May 2, 2019 (*see* debtor ex. 51) and the redemption period expired on June 2, 2019, but he has never made the payment due to TitleMax. Mr. Eldridge filed for chapter 13 bankruptcy on July 18, 2019 and proposed to pay the debt to TitleMax as a secured claim over the life of his chapter 13 plan. Despite this, at the hearing, Mr. Eldridge through counsel took the position that TitleMax no longer has any interest in the Jeep at all.

### Analysis

The court looks to state law to see what rights, if any, Mr. Eldridge has in relation to the Jeep. *See In re Northington*, 876 F.3d 1302, 1310 (11th Cir. 2017). 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). 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, as in this case.<sup>2</sup> 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).

Pawnbrokers are permitted to charge a pawnshop charge of up to 25% per month of the principal amount advanced in the pawn transaction. See Ala. Code § 5-19A-7. Any amount in excess of the 25% “shall be uncollectible and the pawn transaction shall be void.” See *id.* “The pawnshop charge . . . shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month.” *Id.*

“Pledged goods not redeemed on or before the [pawn’s] maturity date . . . shall be held by the pawnbroker for 30 days following that date and may be redeemed . . . within the period by the payment of the originally agreed redemption price” and “an additional pawnshop charge . . . .” Ala. Code § 5-19A-10(b). “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.

Mr. Eldridge argues (1) that any pawn transaction was void under § 5-19A-7 because he paid over \$9,000 to TitleMax over the three years of entering into successive pawn transactions; and (2) that under § 5-19A-6, TitleMax obtained absolute right, title, and interest” to the Jeep on July 27, 2016 because that statutory provision is mandatory and cannot be waived – that is, after 60 days (the 30-day maturity date and the 30-day grace period) the only remedy a pawnbroker

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<sup>2</sup> In this respect, “redeem” in the title pawn context is slightly different than in the post-repossession context, *i.e.*, a person can retain possession of a car but still be required to redeem it under the Pawnshop Act.

has is repossession. (*See* debtor trial br., doc. 59, at 1-2). The court discusses each argument in turn below.

#### Excessive pawnshop charge

TitleMax did not charge Mr. Eldridge \$9,000 in one transaction. Each time Mr. Eldridge entered into a new pawn transaction (setting aside his waiver argument, discussed below), he incurred a new pawnshop charge. This new charge was contemplated by the Pawnshop Act itself. *See In re Gunn*, 387 B.R. 856, 861 (M.D. Ala. 2008). While it was perhaps a terrible deal for Mr. Eldridge to pay over \$9,000 to attempt to keep the Jeep, that does make any of the pawn transactions void.

#### Waiver

“[I]t is a well-settled principle of Alabama law that a waiver is generally defined as the intentional relinquishment of a known right.” *See Edwards v. Kia Motors of Am., Inc.*, 8 So. 3d 277, 281 n.5 (Ala. 2008) (citation, quotation marks, and brackets omitted); *see also Stewart v. Bradley*, 15 So. 3d 533, 543 (Ala. Civ. App. 2008) (“Waiver is defined as the voluntary surrender or relinquishment of some known right, benefit, or advantage.”) (citation and quotation marks omitted). In this case, on the one hand, Mr. Eldridge contends that TitleMax cannot waive forfeiture under § 5-19A-6 and that the provision of its pawn tickets purporting to do so (“We may waive or delay enforcing our rights without losing them.”) is without effect insofar as forfeiture is concerned.<sup>3</sup> On the other hand, he contends that TitleMax’s failure to assert its ownership in the Jeep from July 2016 until the filing of the bankruptcy in 2019 “amounts to

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<sup>3</sup> Mr. Eldridge does not challenge the validity of the non-waiver provision as a whole, only as it relates to forfeiture. In any event, Alabama courts generally uphold such provisions. *See, e.g., Johnson v. Cent. Bank of the South*, 514 So. 2d 969, 969 (Ala. 1987).

waiver and the subsequent transfer of ownership back to” the debtor. (*See* debtor trial br., doc. 59, at 2).

Whether a pawnbroker can waive forfeiture after the statutory grace period has expired appears to be a matter of first impression in Alabama.<sup>4</sup> As discussed in more detail below, the court finds that a pawnbroker can waive forfeiture. As it relates to this particular case, the court expressly finds that TitleMax waived its right to immediately repossess the Jeep when it allowed Mr. Eldridge to enter into a new pawn transaction even though he did not redeem title to the Jeep by the maturity date or within 30 days thereafter. This was not a unilateral waiver, either. TitleMax did not force Mr. Eldridge to enter into the new pawn transactions; Mr. Eldridge did so voluntarily because he wanted to keep the Jeep, thereby waiving his right to give up the Jeep in full satisfaction of the nonrecourse debt. Even if the court accepted Mr. Eldridge’s position that TitleMax became the owner of the Jeep in July 2016, that would not help Mr. Eldridge because the court would still conclude that the Jeep is not part of the debtor’s bankruptcy estate.

Mr. Eldridge argues that TitleMax could not waive forfeiture under § 5-19A-6 because “[m]andatory statutory provisions are not discretionary and cannot be waived.” (*See* debtor trial br., doc. 59, at 11). The use of “shall” in the statute is not determinative; for example, courts routinely find waivers of statutes of limitations, which are often worded as mandatory (*i.e.*, a cause of action “shall” be brought within a specified time period). *See, e.g., Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982); *see also Sec’y, U.S. Dep’t of Labor v. Preston*, 873 F.3d 877, 886-87 (11th Cir. 2017). And criminal defendants can waive numerous statutory

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<sup>4</sup> *Cosby v. Cash Pawn Shop, Inc.*, 702 So. 2d 175 (Ala. Civ. App. 1997), cited by TitleMax, stands for the proposition that a pawnshop may enter into a new pawn transaction with a customer in lieu of forfeiture upon the customer’s failure to redeem by the maturity date. *Cosby* did not discuss the timing of the renewal or the situation here, where TitleMax entered into new pawn transactions with a customer after the statutory grace period had expired.

rights, “even some that contain mandatory language[,]” *see Lay v. State*, 82 So. 3d 9, 13 (Ala. Crim. App. 2011), as well as “many of the most fundamental protections afforded by the Constitution.” *See United States v. Mezzanatto*, 513 U.S. 196, 201 (1995). If a criminal defendant can waive such fundamental protections, surely TitleMax can waive the forfeiture provision of the Pawnshop Act and choose to allow a customer to enter into a new pawn agreement in lieu of taking possession of a vehicle, as it did here.

In *Mezzanatto*, the United States Supreme Court acknowledged that both contractual and statutory rights are waivable. *See id.*; *see also Shutte v. Thompson*, 82 U.S. 151, 159 (1872) (“A party may waive any provision, either of a contract or of a statute, intended for his benefit.”). Absent affirmative indication in a statute of an intent to preclude waiver, the Supreme Court “presume[s] that statutory provisions are subject to waiver by voluntary agreement of the parties.” *See Mezzanatto*, 513 U.S. at 201. This court sees no distinction between waiving federal statutory provisions and waiving the state statutory provision at issue here.

While not dispositive of the issue, the court notes that if it accepted Mr. Eldridge’s position, thousands of Alabama residents would lose their vehicles because title pawnbrokers would immediately repossess on day 61. Although debtor’s counsel argues that a bright-line rule prohibiting waiver of forfeiture after the statutory grace period expires would be better for consumers in the long run, that is an issue for the Alabama legislature – not this court. *See In re Northington*, 876 F.3d at 1315 n.10 (cautioning against “interpreting statutes by reference to the goodness or badness of particular consequences or outcomes”).

Having rejected Mr. Eldridge’s waiver argument, the result here is clear based on prior rulings of this court. Under his April 2, 2019 pawn with TitleMax, Mr. Eldridge had until May 2, 2019 to redeem the Jeep. He then had an additional 30 days under the Pawnshop Act.

TitleMax did not elect to allow Mr. Eldridge to enter into a new pawn transaction after the redemption period expired. When Mr. Eldridge filed for bankruptcy on July 18, 2019, the Jeep was not property of his estate and TitleMax's interest in the Jeep is not subject to modification in the debtor's chapter 13 plan.

### Conclusion

To the extent the court has not specifically addressed any of the parties' arguments, it has considered them and determined that they would not alter the result. The court sustains TitleMax's objections to confirmation (docs. 17, 57), denies confirmation, and orders the debtor to file an amended plan within 14 days of the date of this order removing the 2002 Jeep Cherokee from the plan.

Because the court has found that the Jeep is not property of the estate, relief from stay is not necessary. The court grants TitleMax's motion to determine applicability of the automatic stay (18) and finds that the automatic stay is not applicable to the 2002 Jeep Cherokee because it is not property of the bankruptcy estate.

Dated: February 13, 2020

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE