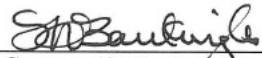




SO ORDERED.

SIGNED this 23rd day of May, 2023

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

GREGORY EUGENE THOMAS
aka GREG EUGENE THOMAS

Case No. 3:23-bk-30777-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER ON MOTION FOR TURNOVER

A hearing was held May 10, 2023, on the Motion for Turnover filed by Debtor on May 3, 2023 [Doc. 17], seeking turnover of his 2008 Dodge Ram repossessed by Eastman Credit Union. The Court finds that Eastman Credit Union chose to exercise its rights under the Uniform Commercial Code, as adopted in Tennessee at Tennessee Code Annotated § 47-9-601(a)(1) and used judicial process to obtain a judgment and order for possession. That judgment, however, did not remove the 2008 Dodge Ram from the provisions of the Uniform Commercial Code as adopted in Tennessee. Indeed, the judgment itself says: “If this action is governed by the Uniform Commercial Code Provisions of state law, Plaintiff shall dispose of said property in

accordance with the applicable provisions of said law and shall notify Defendants of the amount to be credited against this judgment prior to the issuance of any writ of execution.” [Doc. 15-2.]

Under Tennessee law, “[a] redemption may occur at any time before a secured party: (1) has collected collateral under § 47-9-607; (2) has disposed of collateral or entered into a contract for its disposition under § 47-9-610; or (3) has accepted collateral in full or partial satisfaction of the obligation it secures under § 47-9-622.” Tenn. Code Ann. § 47-9-623(c). Eastman Credit Union has not indicated that subsections (c)(1), (2), or (3) apply to effect a prepetition termination of Debtor’s right to redemption. Thus, the vehicle became property of the bankruptcy estate under 11 U.S.C. § 541(a), and Debtor is entitled to use his Chapter 13 plan to redeem the property over the course of the plan. *See Tidewater Fin. Co. v. Curry*, 347 B.R. 596 (B.A.P. 6th Cir. 2006) (finding that the debtor could “redeem” the property by paying the creditor through the Chapter 13 plan); *cf. Stevenson v. First Union Nat’l Bank (In re Skinner)*, 213 B.R. 335 (Bankr. W.D. Tenn. 1997) (holding that a sheriff who possesses personal property subject to a writ of execution holds the property subject to the execution lien in favor of the judgment creditor and must turn over the property as property of the bankruptcy estate).

Here, turnover is governed by 11 U.S.C. § 542(a), which provides, in material part, that “an entity . . . in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.”

Furthermore, turnover under § 542(a) is self-executing, and Eastman Credit Union argued only that the 2008 Dodge Ram is not property of the estate under 11 U.S.C. § 541 and did not

otherwise oppose the Court requiring turnover on a finding that the vehicle is property of the estate (conditioned as directed herein). *See, e.g., Cordova v. City of Chicago (In re Cordova)*, 635 B.R. 321, 350 (Bankr. N.D. Ill. 2021) (“That compliance with section 542(a) is required even absent an order is tautological. It is so fundamental that it is set forth as such in Collier’s.” (citing 5 Collier on Bankruptcy ¶ 542.02 (“By its express terms, [section] 542(a) is self-executing, and does not require that the trustee take any action or commence a proceeding or obtain a court order to compel the turnover.”))).

Accordingly, for cause shown and the reasons stated herein, the Court directs the following:

1. The Motion for Turnover is GRANTED conditional upon payment of \$666.00 by Debtor to the Chapter 13 Trustee no later than noon on Friday, May 26, 2023, which amount shall be paid over to Eastman Credit Union as a single adequate protection payment.

2. Eastman Credit Union shall return possession of the 2008 Dodge Ram to Debtor no later than close of business on Friday, May 26, 2023.

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