

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

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| In re |) | |
| |) | CASE NO. 05-43416-BKC-RAM |
| RICARDO LORENZO and EVERIDA |) | CHAPTER 13 |
| GUADALUPE MARTINEZ, |) | |
| |) | |
| Debtors. |) | |

ORDER DENYING DEBTOR’S MOTION FOR CONTEMPT AND SANCTIONS

The Court conducted a hearing on March 13, 2006, on the Debtor’s Motion for Contempt against Ilima Auto Sales and Request for Sanctions (“Motion for Contempt”). The basic facts underlying the Motion for Contempt are as follows. Debtors had fallen behind in their Chapter 13 plan payments. At a confirmation hearing conducted on February 9, 2006, the Chapter 13 Trustee alerted the Debtors about the deficiency. Consistent with the standard procedures in Chapter 13 cases in this district, the case was subject to dismissal at the confirmation hearing since the Debtors were not current under their proposed plan. The Trustee announced at the confirmation hearing that she would not submit the dismissal order if the Debtors immediately became current with their plan payments.

Debtor's counsel asserts that on the day of the confirmation hearing, the Debtors forwarded to the Trustee the necessary amounts to come current with the Chapter 13 plan. However, for reasons unknown, the Trustee never received the money and a subsequent trace of the money orders confirmed that they were not cashed. Since the Trustee had not received the money, she submitted an order dismissing the case which was entered on February 22, 2006 ("Dismissal Order"). On February 27, 2006, Ilima Auto Sales Corporation ("Ilima"), a secured creditor in this case, repossessed the Debtors' vehicle. The Debtors subsequently filed a Motion to Reinstate Case and also, the Motion for Contempt. The Motion to Reinstate Case was granted at the March 13, 2006 hearing because the Debtors had deposited sufficient funds in their attorney's trust account to bring them current under their Chapter 13 plan.

In the Motion for Contempt, Debtors argue that the repossession by Ilima was unlawful. First, Debtors argue that pursuant to Rule 7062, Fed.R.Bankr.P., Ilima was required to wait ten days from entry of the Dismissal Order before it could repossess the vehicle. The Court rejects this argument and agrees with the majority of courts which have held that the ten-day stay period set forth in Rule 7062 is only applicable to adversary proceedings. See, e.g., In re Hill, 305 B.R. 100, 109 (Bkrtey. M.D. Fla. 2003). As such, Ilima's repossession of the vehicle five days after entry of the Dismissal Order was not unlawful.

The second argument raised by the Debtors relies on an unpublished opinion by Judge Cristol of this Court, In re Cristina M. Suarez-Rivas, Case No.01-18112-BKC-AJC. In Suarez, the trustee mistakenly submitted a dismissal order which she shortly thereafter moved to vacate. Unfortunately, in the interim, the debtor's car was repossessed. Relying on In re Krueger, 88 B.R. 238 (9th Cir. 1988), Judge Cristol held that since the order of dismissal was entered in error, the

order was void. As such, he concluded that subsequent repossession of the vehicle by the secured creditor violated the automatic stay and thus, the secured creditor was required to return the vehicle to the debtor.

Even if Saurez was correctly decided on its facts, an issue this Order does not address, this Court finds that the holding in Suarez should be limited to orders entered in error, not orders that may be subject to reconsideration. In Saurez, there was an undisputed error. The trustee submitted an order where no cause existed for dismissal. In contrast, cause to dismiss this case existed at confirmation and continued to exist at the time the Dismissal Order was entered because the payments had not been received. Vacating the Dismissal Order was appropriate because the Debtors timely filed their Motion to Reinstate Case and replaced the money orders with cash deposited in their attorney's trust account. However, the Dismissal Order itself was never void.

Finally, denying the Motion for Contempt is further supported, if not mandated, by Bell-Tel Fed. Credit Union v. Kalter (In re Kalter), 292 F.3d 1350 (11th Cir. 2002). In Kalter, the Eleventh Circuit clearly held that outside of bankruptcy, a secured creditor's repossession of its collateral immediately ended the debtor's ownership interest in the vehicle. Id. at 1360. Ilima acted lawfully when it repossessed the Debtors' car after the Dismissal Order was entered. Under Kalter, upon repossession, Ilima became the rightful owner of the vehicle. Vacating the Dismissal Order did not and could not change that unfortunate result. Therefore, it is --

ORDERED that the Debtor's Motion for Contempt is denied.

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COPIES FURNISHED TO:
Michael A. Frank, Esq. (Counsel for Debtor)
Alberto Tundidor (Ilima Auto Sales Corp.)

Nancy Herkert, Chapter 13 Trustee