

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

RICKY LYNN MOORE,

Debtor.

Case No. DM 15-90015
Chapter 13
Hon. Scott W. Dales

MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

On or about March 26, 2015, chapter 13 debtor Ricky Lynn Moore (the “Debtor”), his chapter 13 trustee Barbara P. Foley (the “Trustee”), and the lender who financed his automobile, Co-Vantage Credit Union (the “Lender”), filed their Stipulation Allowing Debtor to Sell Property (the “Stipulation,” DN 18), together with a proposed order.¹

Although the Stipulation is not styled as a motion for authority to sell the 2007 Pontiac Solstice (the “Pontiac”), this seems to be what the parties intended by filing it together with a proposed order approving it. For example, although the Stipulation includes no prayer for relief, the second page recites that the “Motion” was prepared by Attorney Allan J. Rittenhouse. *See* Stipulation at p. 2. A “motion” is generally the pleading filed when requesting an order. Fed. R. Bankr. P. 9013. In addition, the text of the docket entry for the Stipulation, selected by Debtor’s counsel using the CM/ECF program, describes the Stipulation as a “Stipulated Motion.” *See* DN

¹ The Debtor’s case has been referred to the court under 28 U.S.C. § 157(a), and the court has jurisdiction under 28 U.S.C. § 1334(a). The issues the Debtor raises in the Stipulation may only arise in a case under the Bankruptcy Code, and the contested matter is a core proceeding under 28 U.S.C. § 157(b)(2)(M).

18. Given the tenor of the Stipulation, and because the Pontiac remains within the property of the estate, the court concludes that by filing the Stipulation, the Debtor is seeking authority to sell it under § 363(b), with the Trustee's and Lender's consent.² The court will treat the Stipulation, therefore, as a motion seeking such authority.

Because this is a chapter 13 case, the Debtor enjoys some of the rights and powers of a trustee, including the right to “use, sell, or lease” property of the estate under § 363(b), outside the ordinary course of business, with court approval. *See* 11 U.S.C. § 1303. These rights and powers regarding estate property are “exclusive of the trustee,” which means that a chapter 13 debtor, rather than the trustee, is the only person with the power to sell such property under the statute. *Id.* A chapter 13 debtor presumptively remains in possession and control of estate property during the case —this is why many debtors elect to file their cases under chapter 13 in the first place. *See* 11 U.S.C. § 1306(b). A debtor-in-possession seeking to sell property of the estate, however, must act as if he were a trustee because he is subject to the same limitations applicable to a trustee. *Id.* § 1303.

If a trustee were selling the Pontiac outside the ordinary course of business in a private transaction under § 363(b) (as the Debtor seems to be doing), the sale could not occur without “notice and a hearing.” 11 U.S.C. § 363(b). The same limitation applies to the Debtor under § 1303. For most bankruptcy sales, “notice and a hearing” generally requires notice to all creditors under Fed. R. Bankr. P. 2002(a)(2), using a “notice of proposed sale” that discloses, among other things, “the terms and conditions of any private sale and the time fixed for filing objections.” Fed. R. Bankr. P. 2002(c); *see also* Fed. R. Bankr. P. 6004(a).

After carefully reviewing the Stipulation and the docket, the court concludes that the Debtor has not satisfied the conditions for obtaining authority to sell the Pontiac. The docket

² According to the Stipulation, the Pontiac secures the Lender's claim in the amount of \$17,042.00.

reflects no sale notice, let alone one that complies with the rules, and no attempt to serve the disguised motion on creditors. Notice to creditors would seem particularly important in this case, where the purchase price (\$10,500.00) is substantially less than the supposed Kelley Blue Book value (\$17,000.00) reflected in the schedules the Debtor signed under penalty of perjury two short months ago. *See* Schedules B, C & D (DN 1, pp. 13, 17 & 19). Moreover, there is no provision or deadline in the Stipulation for filing objections —the Stipulation and proposed order were filed almost simultaneously. Remarkably, the only term of the sale disclosed in the record is the purchase price. The Stipulation does not even identify the buyer or the form of the purchase price (*e.g.*, cash or credit).

The consent of the Trustee and the Lender, though certainly helpful, does not amount to “notice and a hearing” applicable to private sales of estate property under § 363(b) or Fed. R. Bankr. P. 2002 & 6004, and does not otherwise excuse compliance with the court’s procedures. Nor, for that matter, does the Debtor’s proposed *surrender* upon plan confirmation excuse his compliance with the procedures governing pre-confirmation *sale*. Accordingly, the court will withhold approval of the Stipulation, leaving the Debtor to file a formal motion which seeks authority to sell the Pontiac in a manner that comports with the Bankruptcy Code and Rules. The Stipulation, however, will remain on file to evidence the consent of the Trustee and the Lender.

NOW, THEREFORE, IT IS HEREBY ORDERED that the relief requested in the Stipulation (DN 18) is DENIED, without prejudice.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Mr. Ricky Lynn

Moore, Allan J. Rittenhouse, Esq., Barbara P. Foley, Esq., Mr. Brian Millar, and the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated March 30, 2015



A handwritten signature in black ink, appearing to read "S. Dales", written over a horizontal line.

Scott W. Dales
United States Bankruptcy Judge