

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

Case No. 6:06-bk-01286-ABB  
Chapter 7

SHAZAD KHAN  
ZULAIKA KHAN,

Debtors.

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**ORDER**

This matter came before the Court on the Trustee's Motion to Compel Debtors to Turnover Vehicle (Doc. No. 66) ("Trustee's Motion") filed by Emerson C. Noble ("Trustee") against Shazad and Zulaika Khan, the Debtors, herein ("Debtors"), the Trustee's Objection to Amended Schedule C and Motion for Turnover of Non-exempt Personal Property (Doc. No. 93) ("Objection") filed by the Trustee, the Motion for Relief from Stay (Doc. No. 113) ("Motion for Relief") filed by JP Morgan Chase Bank, N.A. ("Chase Bank"), and the Trustee's Objection to Motion for Relief from Stay (Doc. No. 115) ("Objection to Relief"). A hearing on each of the aforementioned pleadings was held on February 26, 2007, and the Debtors, the Trustee, their respective counsel, and counsel for Chase Bank appeared. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

**FINDINGS OF FACT**

The Debtors filed a Chapter 13 bankruptcy petition on July 5, 2006 ("Petition Date"). The Debtors' Chapter 13 case was subsequently dismissed in August and the Debtors opted for conversion to a Chapter 7 case pursuant to 11 U.S.C. § 1307(a).<sup>1</sup> The Debtors possess a 2006 Nissan Armada, VIN #5N1AA08A66N710865 (the "Vehicle"). The Vehicle is a van valued in the Debtors' Schedules at \$35,000.00 and Chase Bank has a lien of \$15,049.00 on the Vehicle. The Debtors initially claimed a \$500.00 exemption against the Vehicle in their Schedule C. The Trustee filed Trustee's Motion asserting the Vehicle constitutes property of the bankruptcy estate. The Trustee

wishes to administer the non-exempt equity in the Vehicle for the estate.

The Debtors subsequently filed an Amended Schedule C: Property Claimed as Exempt on November 4, 2006 ("Amended Schedule C").<sup>2</sup> The Debtors seek full exemption of \$35,000.00 of the Nissan Armada. The Debtors indicate in their Amended Schedule C "[t]he vehicle is designed and utilized to accommodate the Debtors' middle child, age 4 who has Down Syndrome, a permanent medical disability. Additionally, the vehicle is approved for the 'Disabled Persons Parking Identification Permit, #K500780020940'."<sup>3</sup> The Debtors do not require any unique quality or design of the Vehicle to satisfy their needs based on their child's disability. The Vehicle suffices the Debtors' requirements in that it is a typical van containing three rows of seating where their disabled child can sit separate from other children.

The Trustee followed by filing his Objection asserting the Debtors' vehicle does not appropriately qualify as a "professionally prescribed health aid for the debtor or a dependant of the debtor."<sup>4</sup>

Chase Bank is the first lienholder of the Vehicle pursuant to a Retail Installment Contract and Security Agreement. Chase Bank is seeking relief from stay or adequate protection if it does not gain possession of the Vehicle. The Debtors have defaulted on the monthly payments since October 2006, with past due total of \$1,430.12, and the payoff on the Vehicle is \$14,461.23. The Trustee asserts the Vehicle has sufficient equity for administration and liquidation by the Trustee will provide satisfaction of Chase Bank's lien, with funds available for the bankruptcy estate. Chase Bank is adequately protected.

The Vehicle is property of the estate. It is not uniquely designed to satisfy the Debtors' requirements for their disabled child and does not qualify as a health aid.

**CONCLUSIONS OF LAW**

Property of the estate includes "all legal or equitable interest of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The Vehicle is property of the estate. A debtor may exempt from property of the estate any property that

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<sup>1</sup> Doc. No. 31: Order Converting Case to a Chapter 7.

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<sup>2</sup> Doc. No. 71.

<sup>3</sup> Id.

<sup>4</sup> Doc. No. 93.

is exempt pursuant to State law that is applicable on the petition date at any place where the debtor's domicile has been located for 730 days immediately preceding the petition date. 11 U.S.C. § 522(2)(A).

A debtor's interest in any professional prescribed health aids for the debtor or a dependent of the debtor is exempt from attachment, garnishment, or other legal process pursuant to F.S.A. § 222.25(2). Such prescribed health aid entitled to exemption must be "*uniquely* suited and principally used for the diagnosis, cure, mitigation, treatment, or prevention, of disease or for the purpose of affecting any structure or function of the body." In re Hellen, 329 B.R. 678, 685 (Bankr. N.D. Ill. 2005) (*emphasis added*). An exemption is not permitted where the asset is not distinctively suited or primarily used for a medical purpose. Id. citing In re Driscoll, 179 B.R. 664, 666 (Bankr. D.Or. 1995). An automobile may not be exempted as a health aid unless it is uniquely situated as a health aid. Driscoll, 179 B.R. at 666. A vehicle discovered to accommodate the debtor's disability was not uniquely designed as a health aid. Id. at 665.

The Debtors argue because a medical professional has prescribed them a "Disabled Persons Parking Identification Permit", their Vehicle conforms to the requirement of F.S.A. § 522.25(2) as a professionally prescribed health aid. The Vehicle, however, is not uniquely designed to accommodate the Debtors' needs. The Vehicle is a typical van possessing the same characteristics as any similar van. The Debtors' have made no additional changes to the Vehicle qualifying it as distinctively designed nor are any further adjustments necessary based on their disabled child's needs. The Trustee's Objection is sustained as the Vehicle does not qualify for exemption. The Trustee's Objection to Relief is sustained because Chase Bank is adequately protected. The Vehicle has sufficient equity and liquidation will satisfy Chase Bank's lien. Chase Bank's Motion for Relief is conditionally denied for 60 days for the Trustee to liquidate the estate.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Trustee's Motion to Compel Debtors to Turnover Vehicle is hereby **GRANTED**; and it is further

**ORDERED, ADJUDGED and DECREED** that the Trustee's Objection to Amended Schedule C and Motion for Turnover of Non-exempt

Personal Property is hereby **GRANTED**; and it is further

**ORDERED, ADJUDGED and DECREED** that the Trustee's Objection to Motion for Relief from Stay Relief is hereby **SUSTAINED**; and it is further

**ORDERED, ADJUDGED and DECREED** that Chase Bank's Motion for Relief from Stay is hereby **CONDITIONALLY DENIED** for 60 days.

Dated this 1<sup>st</sup> day of March, 2007.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge