SO ORDERED.

SIGNED this 10 day of June, 2022.

Austin E. Carter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

In re:	)	
	)	Case No. 20-10350-AEC
Brenda Weston Jenkins,	)	
	)	Chapter 13
Debtor.	)	
	)	
	)	
Brenda Weston Jenkins,	)	
	)	
Debtor/Movant,	)	
	)	
v.	)	Contested Matter
	)	
TitleMax of Georgia, Inc.,[1]	)	
	)	
Respondent.	)	

OPINION AND ORDER ON DEBTOR'S MOTION FOR TURNOVER

Before the Court is the Debtor's *Motion for Turnover* (Doc. 63), the Respondent's *Response in Opposition* (Doc. 66), and related Declarations and Affidavits submitted by the parties (Docs. 67, 68, 86, and 88). In her Motion, the

[1] The parties stipulated that TitleMax of Georgia, Inc. is the proper Respondent to the Debtor's Motion (Doc. 89).

Debtor requests turnover of a motor vehicle that was repossessed by the Respondent.[2]

This matter came on for an initial telephonic hearing on March 8, 2022.[3] This hearing was continued to April 7, 2022, where counsel for the parties appeared in-person. At the conclusion of that hearing, the parties were given an opportunity to file briefs. Both parties submitted briefs (the last of which was filed on April 29, 2022), which have been considered by the Court (Docs. 93, 94, and 95).

I. Findings of Fact.[4]

A. *The Title Pawn Transaction*

On April 3, 2018, the Debtor entered into a title pawn transaction under Georgia law with Respondent, whereby the Debtor pledged her 2014 Dodge Avenger (the "Vehicle") as collateral in exchange for a loan. (*See* Doc. 86 at 3–8). By executing this pawn transaction, the Debtor granted Respondent a security interest in the Vehicle (*Id.* at 3). As pledgor, she is not personally liable under the agreement (*Id.*). The agreement notes in bold text that "[f]ailure to make your payments . . . can result in the loss of" the Vehicle and that Respondent "can sell or keep" the Vehicle if all payments are not made by the specified maturity date (*Id.*). The agreement further provided that Respondent "may waive or delay enforcing [its] rights without losing them." (*Id.* at 5).

The length of the pawn transaction was for thirty days. At the end of the term, on May 3, 2018 (identified in the agreement as the "Maturity Date"), the

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[2] Rule 7001 contemplates that an action "to recover money or property" be presented as an adversary proceeding. Fed. R. Bankr. P. 7001(1). However, the Court's local rules allow a Chapter 13 debtor to move to recover a repossessed automobile repossessed as a contested matter. *See* M.D. Ga. LBR 7001-1.

[3] At the conclusion of the March 8 hearing, the Court announced that it would enter an order denying the Debtor's Motion. Upon further consideration, the Court decided that further proceedings were necessary to determine whether the Debtor has shown or can show that the Vehicle is property of the estate that must be turned over to the Debtor. Thus, the Court issued an Order withdrawing its oral ruling and setting further proceedings in this matter (Doc. 79).

[4] To the extent any of the Court's findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are so adopted.

Debtor was required to pay the full amount owed (*Id.* at 3–4). In the event the principal was not paid in full, the pawn transaction could be renewed for additional thirty-day incremental periods provided that both parties agreed and the Debtor had paid "the fees, sums, interest, charges, and other amounts" owed Respondent (*Id.* at 4). Upon renewal, a new Maturity Date would be set at the end of the thirty-day period *(Id.*). If a default in payments occurred, a thirty-day redemption grace period would begin to run from the Maturity Date then in effect (*Id.*). In the event the Debtor failed to redeem the Vehicle during this grace period, the Vehicle "shall be automatically forfeited to [Respondent] by operation of O.C.G.A. §44-14-403, and any of [the Debtor's] ownership interest in the [Vehicle] shall be automatically extinguished" and "the [Vehicle] become[s] the property of [Respondent]" (*Id.*).

Based on the loan history provided by Respondent, the Debtor renewed the pawn transaction and extended the Maturity Date eight times (*Id.* at 10–12). The Debtor took no action to redeem the Vehicle, and her right of redemption terminated on January 28, 2019 (*Id.* at 2). Upon expiration of the redemption period, Respondent took no action to repossess the Vehicle until much later, and it remained in the Debtor's possession.

B. *The Bankruptcy Case*

The Debtor filed her petition to commence this case on March 26, 2020 (Doc. 1). In Schedule A/B, the Debtor valued the Vehicle at $100, noting that it was "non-operable, listed as scrap value." (*Id.* at 11). As of the petition date, the Debtor testified that the Vehicle "was derelict . . . with a 'blown' engine and had front end damage." (Doc. 88 at ¶ 3). In her Supplemental Declaration, the Debtor states that she "contacted TitleMax in order . . . to get the vehicle out of my yard if TitleMax wanted the [Vehicle]." (*Id.* at ¶ 5).[5]

[5] Because the Declaration does not identify the date (or method) of this communication, it is unclear if this communication occurred prior to or after the petition date. The surrounding testimony in the

In her plan, the Debtor proposed to surrender the Vehicle to the Respondent, again noting that it was "non-operable." (Doc. 2 at ¶ 3.6). The Debtor's plan further provided that, upon confirmation, the automatic stay of § 362(a)[6] would be terminated as to the Vehicle. (*Id.*). The plan was confirmed on August 10, 2020 (Doc. 17). After the plan was confirmed, Respondent again failed to repossess the Vehicle.

In January 2021, the Debtor "paid over $2,000.00 to repair the [Vehicle], by having the engine replaced and the front end repaired." (Doc. 67 at ¶ 4). These repairs made the Vehicle "drivable" and, as asserted by the Debtor, increased its value to $7,000.00. (Doc. 88 at ¶ 9). After the repairs were completed, the Debtor brought the car's registration current and maintained insurance on the Vehicle. (Doc. 67 at ¶ 5, 7). When the Debtor renewed the registration in January 2022, "the car was still titled in [the Debtor's] name." (*Id.* at ¶ 8)

C. *Repossession and Modified Plans*

Due to a miscommunication with the Chapter 13 trustee's office, the case was dismissed by Order entered November 2, 2021 for failure to make plan payments (Docs. 40, 42). On the same date, the Debtor filed a Motion to Modify Plan After Confirmation to address the payment arrearage (Doc. 41). The Debtor served this motion and proposed modified plan on Respondent (Doc. 43). In this proposed modified plan, the Debtor re-asserted her intent to surrender the Vehicle to Respondent (*Id.* at 6–7). The Debtor's proposed modified plan also reiterated the provision of the confirmed plan then in effect that, upon confirmation, the automatic stay of § 362(a) would be terminated as to the Vehicle (*Id.* at 6–7). Despite the

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Debtor's Declaration, however, suggests that this communication likely occurred close in time to the petition date. Debtor's counsel takes the position in his argument that this communication occurred "at the time of filing the petition." (Doc. 93 at 2).

[6] Statutory references herein are to Title 11 of the United States Code (the "Bankruptcy Code"), unless otherwise specified.

Debtor's Declaration testimony that the repairs completed in January 2021 rendered the Vehicle drivable, the Debtor describes the Vehicle in this proposed modified plan (that she signed on November 2, 2021) as "non-operable." (*Id.* at 7, 9).

This motion and modified plan were subsequently withdrawn on December 8, 2021 (Doc. 47) and replaced by a second Motion to Modify Plan After Confirmation (Doc. 48), which the Debtor served on Respondent (Doc. 49). In her second motion and accompanying proposed modified plan (which the Debtor signed on December 8, 2021), the treatment of the Vehicle and Respondent (i.e., surrender and stay relief) is unchanged, and the Debtor again describes the Vehicle as "non-operable." (*Id.* at 6–7, 9).

The Court vacated the dismissal and reinstated the case on December 10, 2021 (Doc. 51). On December 29, 2021, the Respondent repossessed the Vehicle (Doc. 63 at 4). At the time of the repossession, the Debtor had been using the now-operable Vehicle for her own benefit for approximately eleven months.[7] On the next day, the Debtor withdrew her second Motion to Modify and proposed modified plan (Doc. 55), and filed a third Motion to Modify the Plan After Confirmation (Doc. 56). In her third motion and proposed modified plan, the Debtor sought retain the Vehicle and to pay Respondent $3,683.00 at 0% interest in monthly payments (*Id.* at 7).[8] Respondent was served with this third motion and proposed modified plan (Doc. 58)[9] but failed to object, and the motion was granted on January 25, 2022,

[7] In her Declaration, the Debtor testified that the Vehicle "was necessary for . . . transportation to and from work and routine daily activities." (Doc. 67 at ¶ 11).

[8] The Debtor has subjected Respondent's secured claim to "cramdown." The plan sets the amount of the Respondent's claim at $4,112.07, but the Debtor intends to pay only the "value of the vehicle" for a total of $3,683.00 (Doc. 56 at 7). At the March hearing, the Debtor's counsel recognized that this plan does not reflect accurately the value of the Vehicle. Based on the value of $7,000, there would be no "cramdown," as the loan balance is less than that amount.

[9] It is unclear if Respondent was properly served with this Motion. The pawn agreement includes a "Bankruptcy Notice" which provides that "[a]ny notice to [Respondent] under the Federal Bankruptcy Code must . . . be sent to the Notice Address (Doc. 86 at 5). The "Notice Address" stated in the agreement is "TitleMax of Georgia, Inc., ATTN: Legal Department, P.O. Box 8323, Savannah, Georgia 31412 (*Id.*). The Certificate of Service for the third Motion to Modify Plan After

confirming the proposed modified plan (Doc. 60). Respondent remained in possession of the Vehicle at that time.

Respondent's loan history reflects a balance owed of $4,170.07 as of December 29, 2021 (Doc. 86 at 12). The last payment the Respondent received from the Debtor was on December 17, 2018 (*Id.* at 11). From that date until not earlier than the filing of the third proposed modified plan filed on December 30, 2021, the Debtor made no payment to Respondent nor provided for or suggested in a plan or otherwise that any payment be made to Respondent.[10]

II. Conclusions of Law.

Pursuant to § 542(a), an entity "in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease . . . shall deliver to the trustee,[11] and account for such property or value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). To enforce turnover under § 542(a), the Debtor has the burden to "establish the following elements: (1) the property sought to be turned over is property of the estate [under §§ 541 and 1306]; (2) the party against whom turnover is sought is an 'entity;' (3) the entity was in possession, custody, or control of the property during the case; and (4) the [Debtor] may use or sell the property." *Smith v. Meredith (In re Smith)*, 637 B.R. 758, 777 (Bankr. S.D. Ga. 2022) (quoting *Morris v. King (In re*

Confirmation shows that the Motion was mailed not to the Notice Address, but rather to TMX Finance, f/k/a TitleMax, 15 Bull Street, Suite 200, Savannah, Georgia 31401-2686 (Doc. 58 at 5). Respondent did not raise this issue.

[10] The record is unclear as to the extent to which the Debtor has begun making the payments called for under her confirmed modified plan. However, the Court observes that the Debtor appears to have fallen behind on plan payments, at least according to the trustee, who on May 19, 2022 filed a motion to dismiss this case for failure to make plan payments (*See* Doc. 96). To the extent any such plan payments are made, Respondent will receive no share until and unless it files a proof of claim in the case, assuming no objection is successfully made thereto.

[11] Although the statute refers to the trustee, "[c]ourts have recognized that the chapter 13 debtor, by virtue of his right to possess and use the property of the estate, may sue to enforce the turnover obligation under § 542(a)." *Dawson v. Thomas (In re Dawson)*, 411 B.R. 1, 29 (Bankr. D.D.C. 2008) (citing *TranSouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676, 687 (6th Cir. BAP 1999)).

Rosales), 621 B.R. 903, 916–17 (Bankr. D. Kan. 2020)) (internal quotation marks omitted). Respondent contests only the first element; it controls the outcome in this matter.

A. *Northington and its Progeny*

The Debtor's initial argument is that the confirmation of the plan is res judicata on the issue of whether the Vehicle is property of the estate. She cites the Eleventh Circuit case of *Northington* in support of her argument. *TitleMax v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. 2017).

In *Northington*, the Circuit, in reversing the denial of a motion for stay relief, addressed the res judicata effect of a confirmed chapter 13 plan that provided for redemption of a pawned vehicle for which the redemption period expired after the bankruptcy case was filed. The Circuit's ruling makes clear that a pawn creditor who fails to object to confirmation of a such plan can lose its rights to title of a pawned vehicle, notwithstanding the expiration of the redemption period. A key fact in *Northington* is that the redemption period expired after the bankruptcy case was filed, so that the bankruptcy estate included the debtor's redemption rights. *Id.* at 1309-10.

In our case, however, the redemption period expired long before the Debtor filed her bankruptcy petition. This fact aligns us more closely with *In re Thorpe*, cited by Respondent. *TitleMax of Georgia, Inc. v. Thorpe (In re Thorpe)*, 612 B.R. 463 (Bankr. S.D. Ga. 2019). Citing *Thorpe*, Respondent argues that, because the redemption period expired prepetition, the Court has no jurisdiction over the Vehicle, and therefore confirmation of the modified plan could not and did not bring the Vehicle back into the estate.

Thorpe indeed supports Respondent's position:

> Unfortunately for Debtor, the 2018 Plan attempted to created [sic] estate property that simply did not exist on the petition date of the

> Present Case. Debtor's confirmed 2018 Plan's treatment of the Vehicle as property of the Debtor is immaterial. The redemption period on the subject title pawn expired pre-petition. The Vehicle was not property of the bankruptcy estate in the Present Case because Debtor's ownership interest in the Vehicle was automatically extinguished pre-petition by operation of O.C.G.A. § 44-14-403(b)(3) when the Vehicle became the property of TitleMax.

In re Thorpe, 612 B.R. at 468.

The court in *Thorpe* distinguished its facts from those in *Northington*:

> The debtor in *Northington* filed bankruptcy still with a right to redeem his vehicle, which became part of his bankruptcy estate. Debtor here did not. This fact stops any further analysis in its tracks. The Vehicle belonged to TitleMax when Debtor filed for bankruptcy. As such, TitleMax was not required to take any action in the Present Case to preserve its rights in a Vehicle it wholly owned at the start of the case.

Id. at 469. The material facts of our case are similar to *Thorpe*, and the Court adopts the rationale espoused in *Thorpe*. The redemption period expired before the filing of this bankruptcy case. Therefore, the Vehicle did not become property of the estate at case filing and the Court does not have jurisdiction over it so as to give effect to the provision in the latest modified plan that the Debtor will redeem the Vehicle.[12]

Other courts have held similarly. *See, e.g., In re Thompson*, 609 B.R. 443, 453 (Bankr. M.D. Ala. 2019), aff'd sub nom. *Thompson v. TitleMax of Alabama, Inc.*, 621 B.R. 267 (M.D. Ala. 2020), and aff'd sub nom. *Daniel v. TitleMax of Alabama, Inc.*, 621 B.R. 278 (M.D. Ala. 2020) ("In circumstances where a default occurs and the redemption period expires pre-petition, the pawned vehicle does not become property of the estate."); *Johnson v. North Mill Credit (In re Johnson)*, 608 B.R. 784,

[12] "The fact that the [V]ehicle's certificate of title still named Debtor as its owner does not change this result. As between Debtor and [Respondent], [Respondent] owned the [V]ehicle and Debtor had no continuing interest therein." *Bell v. Instant Car Title Loans (In re Bell)*, 279 B.R. 890, 897 (Bankr. N.D. Ga. 2002).

792 (Bankr. S.D. Ga. 2019) (agreeing with argument that "confirmation cannot bring the Truck into the bankruptcy estate if it was never property of the estate.").

B. *Alternative Arguments*

During the initial hearing in this matter, the Debtor's counsel acknowledged that that he had no case law to cite in opposition to *Thorpe*. Instead, the Debtor offers a series of collateral attacks which are designed to side-step the holding in that case.[13] None are persuasive.

1. Abandonment of Vehicle

The first such argument by the Debtor is that Respondent abandoned the Vehicle and any ownership interest by not retrieving it from the Debtor for a period of approximately twenty-one months after the petition date. The Debtor cites O.C.G.A. § 40-11-9 ("Procedures of determination that vehicle is a derelict motor vehicle; disposition of derelict motor vehicles") in support of her argument.

While perhaps novel, this argument is not persuasive. The statute cited by the Debtor is a traffic law, which imposes a misdemeanor criminal offense on a person who leaves his vehicle on another's property such that it becomes a "derelict motor vehicle" in accordance with the statute. O.C.G.A. § 40-11-9(d). A fine of not less than $500 is imposed. *Id.*

Nowhere in this or the accompanying statutes is there any reference to transfer of ownership of a vehicle, as the Debtor argues has occurred. Moreover, the Debtor cites no case law or other authority for the application of O.C.G.A. § 40-11-9 to convey or otherwise affect a person or entity's ownership of a vehicle. The Debtor has failed to demonstrate what relevance this code section has in determining whether the Vehicle is property of the estate subject to turnover.

[13] Respondent made the curious election not to meaningfully address in its post-hearing brief these alternative arguments put forth by the Debtor (*See* Doc. 94). Fortunately for Respondent, this questionable tactic did not come back to haunt it.

More specifically, the Debtor offers no cases supporting her argument that a delay in repossessing a car gives rise to an abandonment of ownership. By executing the pawn agreement, the Debtor acknowledged that the Respondent may delay enforcing its rights without losing them. Moreover, courts have recognized that creditors have no duty retrieve a vehicle right away upon its surrender. *See, e.g., Arsenault v. JP Morgan Chase Bank, N.A. (In re Arsenault)*, 456 B.R. 627, 630 (Bankr. S.D. Ga. 2011), aff'd No. CV 311-106, 2012 U.S. Dist. LEXIS 128412 (S.D. Ga. Aug. 30, 2012) (creditor remains in control of exercise of its remedies after confirmation of plan providing for surrender of property).

In any event, at the time this Motion for Turnover was filed, the Vehicle had been repossessed. And prior to repossession, the Debtor benefited from any alleged abandonment as she had access to and used an operable Vehicle for eleven months without making any payments to Respondent.

2. Unjust Enrichment

Next, the Debtor argues that, in the event the Court rules that Respondent has title to the Vehicle, then the Debtor would be entitled to an award of $6,900 under the doctrine of unjust enrichment. The Debtor reasons that, because this unjust enrichment award would be owing, the Court should determine the Vehicle to be estate property and therefore grant the Debtor's Motion for Turnover.

The Debtor cites O.C.G.A. § 9-2-7 in support of her theory, arguing that because there is no legal contract between the Debtor and Respondent as to repairing the Vehicle, then Respondent should have to pay the Debtor for the increase in value of the Vehicle due to the repairs she made. The Debtor argues that, if Respondent has title to the Vehicle, then it should be obligated to reimburse the Debtor for this amount because Respondent has accepted this benefit.

Unjust enrichment is an equitable remedy, the elements of which are: "(1) the plaintiff has conferred a benefit on the defendant; (2) the defendant has knowledge

of the benefit; (3) the defendant has accepted or retained the benefit conferred; and (4) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying for it." *Jenkins v. BAC Home Loan Servicing, LP*, 822 F. Supp. 2d 1369, 1377 (M.D. Ga. 2011) (citation omitted). This doctrine applies when there is no contract between the parties. *Id.*

The Court is not convinced that no agreement between parties covers this situation. It is a stretch to accept that Debtor's argument that her unilateral decision to repair the Vehicle after expiration of the redemption period is outside the scope of the pawn agreement between the parties. In addition, the confirmed plan then in effect was itself a contract between the parties, which provided that the Debtor surrendered the Vehicle. *See Martin v. CitiFinancial Servs., Inc. (In re Martin)*, 491 B.R. 122, 126 (Bankr. E.D. Cal. 2013) ("[T]he Chapter 13 Plan, by which the debtor commits him or herself, . . . becomes the modified contract between the debtor and creditors.").

However, even if there were no agreement between the parties as the Debtor urges,[14] the unjust enrichment argument fails because the Debtor has not persuaded the Court that it is inequitable for Respondent to retain the Vehicle without paying for the increase in its value. Quite the opposite is the case, as the equities do not favor the Debtor.

The Debtor elected to make the repairs five months after confirmation of her plan which obligated her to surrender the Vehicle.[15] She then used the Vehicle for

[14] There is authority for the principle that unjust enrichment is available only in the context of a failed contract, which the Debtor does not allege. *See Wachovia Ins. Servs., Inc. v. Fallon*, 299 Ga. App. 440, 449, 682 S.E.2d 657, 665 (2009) ("[A] claim for unjust enrichment is not a tort, but an alternative theory of recovery if a contract claim fails. Because [appellant] asserts unjust enrichment as a separate tort and not an alternative theory of recovery for a failed contract, this claim fails as a matter of law."). (citations omitted).

[15] Because the confirmed plan called for surrender of the Vehicle, the Debtor "[should] not take any action inconsistent with the surrender." Drake, Bonapfel, and Goodman, *Chapter 13 Practice & Procedure* § 5:9 (2022).

eleven months without making any payments to Respondent, until it was repossessed. She received a benefit in return for her repairs expenditure.

Moreover, after making the repairs, the Debtor made two affirmative misrepresentations to Respondent that the Vehicle remained inoperable, even after she made the repairs. These misrepresentations took the form of the two proposed modified plans (signed by the Debtor on November 2, 2021 and December 8, 2021, respectively) that the Debtor filed and served on Respondent, showing that the Vehicle was being surrendered and was inoperable.

At the time she made the repairs, the Debtor was also charged with knowledge that under the pawn agreement, title was held by Respondent. This renders voluntary her repairs expenditure.

Further, the record includes no indication that Respondent was aware of the Debtor's repairs to the Vehicle or resulting increased value. Inherent in unjust enrichment is the requirement that the receiving party knew of the value being bestowed upon them by another and failed to stop the act or to reject the benefit. *Reidling v. Holcomb*, 225 Ga. App. 229, 232, 483 S.E.2d 624, 626 (1997). The record contains no suggestion that Respondent was made aware of the Debtor's plan to make the repairs or that the repairs were made. To the contrary, the Debtor served proposed modified plans on Respondent on November 3, 2021 and December 9, 2021, showing that the Debtor was surrendering the Vehicle and that it was inoperable.

Finally, the Debtor has not shown that she had any expectation that Respondent would be responsible for the repairs or the increased value. "For unjust enrichment to apply either in law or equity, the party conferring the labor and things of value must act with the expectation that the other will be responsible for the cost." *Hollifield v. Monte Vista Biblical Gardens, Inc.*, 251 Ga. App. 124, 131, 553 S.E.2d 662, 670 (2001). Rather than acting with the expectation that

Respondent would be responsible for the cost of repairs, the Debtor made these repairs of her own volition, and operated the Vehicle to her benefit for a period of eleven months while making no payments to Respondent during that time.

The Debtor's argument that Respondent has been unjustly enriched fails.

3. Quantum Meruit

The Debtor next argues that, if Respondent is allowed to retain the Vehicle, it should be liable to the Debtor for the amount of the increased value as a result of the repairs made by the Debtor.

The elements of quantum meruit are: "(1) the performance of valuable services; (2) accepted by the recipient or at his request; (3) the failure to compensate the provider would be unjust; and (4) the provider expected compensation at the time services were rendered." *Amend v. 485 Properties*, 280 Ga. 327, 329, 627 S.E.2d 565, 567 (2006).

As with unjust enrichment, this argument can be swiftly dismissed on several grounds. First, the Debtor made the repairs for her benefit, to provide a means for her transportation. Nothing in the record suggests that the Debtor expected compensation for making the repairs at any time, much less at the time services were rendered. *See Hollifield*, 251 Ga. App. At 129, 553 S.E.2d at 668 ("Quantum meruit does not apply where the services are rendered with no expectation of compensation . . . .").

Second, failure to compensate the Debtor for the increased Vehicle value would not be unjust. The Court makes this conclusion for the same reasons discussed above, in connection with how it would not be inequitable for Respondent to retain the repaired Vehicle without paying for the repairs or increased value. The equities do not favor the Debtor.

Third, the record does not demonstrate that Respondent either requested or accepted the repairs which the Debtor made to the Vehicle. The Court assumes the

Debtor would argue that Respondent has accepted the Vehicle because it kept it after repossession. If the Debtor had made that argument, it would be rejected. The record contains no indication that Respondent was aware that the repairs had been made when it repossessed the Vehicle (indeed, the Debtor had represented to Respondent in three court filings that it was inoperable). And the Court is aware of no authority that would require Respondent to return the Vehicle to the Debtor once it became aware that the Debtor had made repairs to the Vehicle which increased its value. Making repairs to a vehicle is an incidental cost of ownership.

The Debtor's argument that Respondent is liable to her under quantum meruit is not persuasive.

4. Mechanic's Lien

The Debtor asserts that the use of estate funds[16] to replace the engine and repair front-end damage entitles her to a mechanic's lien on the Vehicle pursuant to O.C.G.A. § 40-3-54. The Court disagrees. The furnishing of funds does not transform the Debtor into a mechanic entitled to a lien. *See D.H. Overmyer Warehouse Co. V. W.C. Caye & Co.*, 116 Ga. App. 128, 129, 157 S.E.2d 68, 70 (1967) (the law affords "liens to mechanics, materialmen and others supplying labor or materials used in the improvement of realty. . . ."). Further, a mechanic's lien "requires a valid debt to exist" as established "by a contract with the owner" of the vehicle. *See P & B Corp. of America, Ltd. V. One 1983 BMW*, 175 Ga. App. 462, 462, 333 S.E.2d 633, 634 (1985) (citations omitted). As no "contract for repairs or services" was entered into with Respondent (who gained ownership of the Vehicle by

[16] The Debtor did not identify the source of the funds she used for the repairs. Debtor's counsel assumes in his argument, but has not proven, that the funds used were property of the bankruptcy estate. "[T]he ongoing nature of a bankruptcy proceeding does not, by itself, dictate whether something is or is not property of the estate." *U.S. v. Annamalai*, 939 F.3d 1216, 1229 (11th Cir. 2019).

the terms of the pawn transaction), the Debtor is entitled to no such lien. O.C.G.A. § 40-3-54(a).

5. Equitable Lien

Debtor's counsel asserts that the Debtor should be awarded an equitable lien on the Vehicle, on account of the repairs she made to it which increased its value. The Court disagrees.

For the Court to impose an equitable lien, the Debtor must demonstrate that the Vehicle "was either acquired by fraud or that it is 'against equity that [the Vehicle] should be retained by [Respondent]." *In re Dukes*, 213 B.R. 202, 205 (Bankr. S.D. Ga. 1997). The Debtor cannot meet this test. For all of the reasons discussed previously in connection with the unjust enrichment and quantum meruit discussions, the Court, having weighed the equities, does not find that it is against equity that the Vehicle be retained by Respondent. The Court concludes that Respondent is the owner of the Vehicle.

6. Engine and Component Parts Used in Repairs

The Debtor asserts, as its last alternative, that the Debtor should be recognized as the owner of the engine and other component parts in the Vehicle for which she paid the repairs. To support this position, the Debtor cites to a Georgia statute (O.C.G.A. § 43-47-12) and a criminal case (*Harris v. State*, 286 Ga. 245, 686 S.E.2d 777 (2009)).

The Court is not persuaded. As discussed, the Debtor voluntarily made repairs to the Vehicle that was property of Respondent. *See Austrian Motors, Ltd. v. Travelers Ins. Co.*, 156 Ga. App. 618, 620, 275 S.E.2d 702, 704 (1980) ("One cannot demand compensation for the voluntary additions which he has made to the value of another's property without the assent of the owner . . . .") (citing 1 Am.Jur.2d, Accession and Confusion, s 14, p. 284).

Moreover, the component parts of the Vehicle added or replaced during the repairs were mere accessions that are now part of the Vehicle. The Georgia Court of Appeals has adopted the rule that:

> [F]or an innocent trespasser or a person acting under mistake of right to acquire title by accession by reason of improvements or changes made in personal property, most courts require that the identity of the original property be lost by its transformation into an article substantially different. The mere fact that unauthorized persons have bestowed expense or labor upon it does not bar the owner's right to reclaim his property so long as identification is not impracticable.

Id. (citing 1 Am.Jur.2d, Accession and Confusion, s 12, p. 283).

Here, the Debtor is in a weaker position than either an innocent trespasser or a person acting under mistake of right, as she made the repairs while (i) having at least constructive knowledge that the Vehicle was property of Respondent under the terms of the pawn agreement, and (ii) her confirmed plan was in effect that obligated her to surrender the Vehicle. But even if she could claim either role, the Debtor has not shown that the repairs she made to the Vehicle transformed its original identity as a motor vehicle. Consequently, the Court concludes that the Debtor has no interest in the component parts of the Vehicle for which she paid.

C. *Section 541(b)(8)*

Aside from Debtor's failure to persuade the Court through her myriad legal theories, it would appear that § 541(b)(8) presents another obstacle by excluding the Vehicle from the estate, though neither party raised this issue. Section 541(b)(8) excludes from the estate:

> any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where–

> (A) the tangible personal property is in the possession of the pledgee or transferee;
>
> (B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and
>
> (C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b).

11 U.S.C. § 541(b)(8). This code section "reflects congressional intent for unredeemed pawned property to be excluded from the bankruptcy estate." *TitleMax of Georgia, Inc. v. Hamilton (In re Hamilton)*, 635 B.R. 877, 896 (Bankr. S.D. Ga. 2022); *TitleMax of Georgia, Inc. v. Snyder (In re Snyder)*, 635 B.R. 901, 920 (Bankr. S.D. Ga. 2022); *see also Paul v. South Georgia Title Pawn (In re Paul)*, 534 B.R. 430, 434 (Bankr. M.D. Ga. 2015) ("property covered by [§ 541(b)(8)] was 'property no longer subject to redemption.'") (citation omitted).

Here, the elements of § 541(b)(8) appear satisfied. The Vehicle, having been repossessed, is in the possession of the Respondent.[17] As stated in the pawn agreement, the Debtor has no obligation to repay the loaned funds nor is she personally liable to the Respondent. The grace period to redeem the Vehicle expired more than a year prior to the petition date and the Debtor did not exercise her right to redeem within that time period. If the Vehicle is excluded from the estate by virtue of § 541(b)(8), then it is not subject to turnover under § 542. Because neither party raised this statutory provision, the Court highlights it in hopes of attracting attention to it in future cases.

[17] As Judge Coleman notes, there has been at least one court who declined to apply § 541(b)(8) to a Georgia pawn transaction, based on the exclusion in § 541(b)(8) of its application to tangible personal property that in the form of "written or printed evidences of . . . title." *In re Hamilton*, 635 B.R. at 896 (citing *TitleMax of Ga. Inc. v. Stanfield (In re Stanfield)*, No. 15-50612, 2016 WL 669472, at *3 n.3 (Bankr. S.D. Ga. Feb. 18, 2016)); *In re Snyder*, 635 B.R. at 920 (same).

III. Conclusion.

The Court notes that the Debtor did not argue that Respondent has waived its ownership rights in the Vehicle under the Georgia pawnshop statute, as the court found under Alabama law in *In re Deakle*, 617 B.R. 709, 717 (Bankr. S.D. Ala. 2020), aff'd sub nom. *TitleMax of Alabama, Inc. v. Deakle*, No. CV 1:20-335-JB-N, 2021 WL 1759302 (S.D. Ala. Mar. 31, 2021). Without assessing what material differences might exist between Georgia and Alabama pawn or waiver law, in this case the Court would reject such a waiver argument. At the end of the day, the Court cannot accept that the Debtor has unilaterally transformed Respondent's property into property of the estate by having the Vehicle repaired with no notice to Respondent, while operating under a confirmed plan that provided that the Vehicle remained inoperable and provided for its surrender. Not only did the Debtor fail to notify Respondent that she was going to make the repairs to the Vehicle then owned by Respondent, after the Vehicle was repaired, the Debtor twice affirmatively misrepresented to Respondent the status of the Vehicle, labeling it inoperable.

For the foregoing reasons, the Court holds that the Debtor failed to satisfy her burden to show that the Vehicle is property of the estate, the first element for turnover of property.[18]

IT IS ORDERED that the Debtor's Motion is DENIED.

[END OF DOCUMENT]

[18] Because the Debtor failed to establish that the Vehicle is property of the estate, the Court declines to discuss the remaining elements of § 542(a).