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IT IS SO ORDERED.

Dated: August 27, 2025



Tyson A. Crist
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re: :
 :
 Julian S. Fire, : Case No. 25-31277
 : Chapter 13
 : Judge Crist
 Debtor. :
 :

**ORDER GRANTING DEBTOR’S MOTION FOR
TURNOVER OF PROPERTY (DOC. 7)**

This matter is before the Court on Debtor Julian S. Fire’s (the “Debtor”) *Motion for Turnover* (Doc. 7) filed on July 7, 2025 (the “Motion for Turnover”), pursuant to 11 U.S.C. §§ 363 and 542(a)¹, and Creditors Jennifer Hansen and Ross “Zach” Hansen’s (the “Hansen Creditors”) *Response to Motion for Turnover* (Doc. 13) (the “Response”). Debtor filed his chapter 13 petition initiating this case on July 2, 2025, just five days prior to filing the Motion for Turnover.

¹ Unless otherwise stated, all references to code sections herein are to sections of Title 11 of the United States Code (the “Bankruptcy Code”).

In accordance with the Court’s prior *Order Granting Motion to Expedite Hearing (Doc. 14)* and *Setting Hearing on Debtor’s Motion for Turnover of Property (Doc. 7)* and *Hansen Creditors’ Response to Motion for Turnover (Doc. 13)* entered on August 8, 2025 (Doc. 15) (the “Scheduling Order”), the Court held a hearing on August 19, 2025. The parties were represented at the hearing by Andrew Zeigler, counsel for the Debtor, and Richard L. Carr, counsel for the Hansen Creditors. In accordance with the Scheduling Order, Debtor filed a Witness List (Doc. 19) and an Exhibit List (Doc. 20) with Exhibits on August 15, 2025. And the Hansen Creditors filed a Witness List (Doc. 21) and an Exhibit List (Doc. 22) with Exhibits, also on August 15, 2025. The Court first heard the testimony of Montgomery County Sheriff Deputy Kevin Kerschner, who had been subpoenaed to appear, and then heard the testimony of the Debtor. Debtor’s Exhibits 1 through 7 were identified and admitted into evidence without objection from the Hansen Creditors. And the Hansen Creditors’ Exhibits A and B were identified and admitted without objection. Exhibit C, however, which is a complaint filed against the Debtor and Julian Fire Paint Company, LLC by Lance Branham, as Plaintiff, in the Court of Common Pleas of Montgomery County, Ohio, Civil Division, No. 2025-CV-00300, was objected to by the Debtor as irrelevant. The Court overrules that objection for purposes of considering and ultimately denying the Hansen Creditors’ opposition to the Motion for Turnover.²

This Court has subject matter jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334(b) and (e)(1) and Amended General Order No. 05-02 of the District Court for the Southern District of Ohio (Amended Standing Order of Reference). This is a core proceeding under 28 U.S.C. § 157(b)(2)(E); this Court may enter a final judgment within its constitutional authority; and this matter is properly before the Court by way of a motion – the Debtor’s Motion – given the December 1, 2024 amendment to Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 7001(a) which excepts and no longer requires an adversary proceeding for “a proceeding by an

² The Court takes judicial notice that in this litigation pending in Montgomery County Common Pleas Court an Entry & Order Granting Plaintiff’s Motion for Default Judgment Against Julian Fire Paint Company, LLC and Debtor, Individually was entered on May 6, 2025, as to liability; however, said Entry & Order indicates the matter was referred to the Magistrate’s Office for determination of damages. *See* Ex. C (Doc. 22 at 27). The complaint in said litigation, similar to the Hansen Creditors’ complaint in the action giving rise to the judgment leading to the execution, involved a claim based on the Ohio Consumer Sales Practices Act that was filed on January 21, 2025. As discussed in the body of this order, the complaint is marginally relevant to the Hansen Creditors’ argument about the Debtor failing to comply with state law and the Court considered both the complaint and took judicial notice of the record of the Branham litigation. However, in the end, the Court finds nothing in either the Branham litigation or the litigation with the Hansen Creditors justify withholding the Personal Property from the Debtor’s estate as the analysis is whether it would be a benefit to the estate.

individual debtor to recover tangible personal property under § 542(a) . . . [.]”³ The following constitutes the Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this contested matter by Bankruptcy Rules 9014(c) and 7052.

Although seemingly a procedural matter, the reason for changing Bankruptcy Rule 7001 to allow individual debtors to seek turnover of tangible personal property by way of motion rather than by adversary proceeding, a more expedited process, highlights the need for relief in this case. “As the Advisory Committee Note to the amendment points out, ‘[a]n individual debtor may need to obtain the prompt return from a third party of tangible personal property—such as an automobile or tools of the trade—in order to produce income to fund a plan or to regain use of property that may be exempted.’ ” 10 *Collier on Bankruptcy* ¶ 7001.02[6] at 7001-9-7001-10.⁴ That is the situation now before the Court.

The Hansen Creditors, in opposition to the Motion for Turnover, originally submitted a two-page Response (Doc. 13) in which they raised issues about towing and storage charges, which are no defense to turnover;⁵ questioned whether Debtor’s use and payment for the personal property at issue will ultimately be part of a chapter 13 plan; and mentioned reserving rights to pursue a determination of non-dischargeability. At the hearing, however, the Hansen Creditors argued a point not raised in the Response. Not only that, but counsel asserted that the point had been intentionally omitted from the Response so that Debtor would not come to the hearing prepared to rebut the Hansen Creditors’ assertion that the Motion for Turnover should be denied because Debtor will use the tools of the trade for an alleged criminal purpose – to further violate the Ohio Consumer Sales Practices Act (“CSPA”). In other words, counsel attempted to sandbag

³ “Effective December 1, 2024, Rule 7001(a) was amended by excluding from the definition of adversary proceedings ‘a proceeding by an individual debtor to recover tangible personal property under § 542(a).’ ” 10 *Collier on Bankruptcy* ¶ 7001.02[6] at 7001-9 (Richard Levin & Henry J. Sommer eds., 16th ed.).

⁴ This change in Bankruptcy Rule 7001 was, in no small part, prompted by the Supreme Court’s ruling in *City of Chicago v. Fulton*, 592 U.S. 154, 166 (2021) (Sotomayor, J., concurring) (“One hundred days is a long time to wait for a creditor to return your car, especially when you need that car to get to work so you can earn an income and make your bankruptcy-plan payments. . . . Ultimately, however, any gap left by the Court’s ruling today is best addressed by rule drafters and policymakers, not bankruptcy judges. It is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors’ requests for turnover under § 542(a), especially where debtors’ vehicles are concerned.”).

⁵ See, e.g., *In re Jackson*, No. 24-5021, 2024 WL 4806395, at *7, 2024 Bankr. LEXIS 2795, at *14 (Bankr. E.D. Ky. Nov. 15, 2024) (citing *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05 (1983); *TranSouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676, 684 (B.A.P. 6th Cir. 1999).

his opponent. For this reason alone the Response of the Hansen Creditors could be overruled. But the argument also is not supported by the law or the evidence and is not well-taken. Moreover, given that the Hansen Creditors' counsel acknowledged at hearing that their executions on the personal property at issue (some of which is leased) could not result in any recovery on their judgment, their adamant opposition to the Motion for Turnover seems to be motivated by animus that carried over from the action in Montgomery County Common Pleas Court that resulted in the judgment they executed upon. But the assertions by Counsel for the Hansen Creditors that Debtor's past violations of the CSPA are criminal is wrong as evidenced by the fact that both actions brought against Debtor were civil matters.⁶

In short, adopting the Hansen Creditors' argument to deny turnover would serve no purpose but to prevent the Debtor from attempting to reorganize his financial affairs in this chapter 13 case, at least by working at his trade, earning a living for him and his family, and having a place to live with his family. That is the antithesis of the purpose of turnover, which is to restore a Debtor's possession of personal property so that they may attempt to reorganize their financial affairs, as recognized by the Supreme Court of the United States in *Fulton*. See 592 U.S. at 166 (Sotomayor, J., concurring). Moreover, the arguments about the CSPA have nothing to do with Debtor's need for the RV as transitional housing for him, his wife, and his children⁷ to be together as a family. And continued possession and sale of the RV through the execution process would not result in any monetary recovery for the Hansen Creditor as there is an acknowledged senior secured creditor who appears to be undersecured, who has not been involved in this contested matter, and whose claim and rights will most likely be addressed through the chapter 13 plan confirmation process in this case.⁸

⁶ Although R.C. § 1345.99 provides that there can be criminal penalties for violations of certain provisions of the Ohio Consumer Sales Practices Act, there was no evidence of any criminal charges or convictions, and obviously the Hansen Creditors obtained a civil judgment in the Civil Division of the Court of Common Pleas for Montgomery County, Ohio.

⁷ In his Amended Schedule J (Doc. 12), filed on July 23, 2025, Debtor lists a non-filing spouse and four children – three daughters and a son ranging in ages from 6 to 21, the younger two of which live with Debtor.

⁸ Debtor listed the RV on Schedule A/B with a value of \$47,250 and listed a claim in favor of Marine1 Acceptance on Schedule D, secured by the RV, in the amount of \$56,456. (Doc. 1 at 11, 20).

Based upon the documentary evidence, the testimony of the witnesses, and the arguments of counsel, and for the reasons explained below, the Court hereby **GRANTS** the Debtor's Motion for Turnover.

Debtor is seeking, through his Motion for Turnover, to recover a 2022 Forest River Vengeance, VIN# 5ZT2VGXBXN1004468 (the "RV"), a Quality 7 x 14 Trailer (the "Trailer") used for his painting business, various household goods, and tools of the trade also used for his painting business (collectively, the "Personal Property"), which goods and tools of the trade are currently contained within the Forest River and Trailer. Notably, the Trailer is leased⁹ and the Hansen Creditors' counsel agreed on the record at the hearing that Debtor had no equity in the Trailer. *See* Rental Purchase Agreement and Disclosure Statement Ohio, Ex. 4 (Doc. 20-4). Further, the parties did not dispute that Debtor owns the RV and that Marine1 (One) Acceptance ("Marine1") holds the first lien on the RV, as noted on the Certificate of Title, and that Marine1 appears to be undersecured. *See* Memorandum of Title, Ex. 5 (Doc. 20-5); Schedule D, Ex. 6 (Doc. 1 at 20) (listing Marine1 as holding a secured claim of \$56,456 on the RV valued at \$47,250, leaving an unsecured balance of \$9,206); Chapter 13 Plan, § 5.1.4(A), Ex. 7 (Doc. 20-6 at 4). In addition, it appears the tools of the trade may be fully exempt. *See* Schedule C, Ex. 6 (Doc. 1 at 18) (claiming tools of the trade, with a value of \$3,000, as exempt pursuant to R.C. § 2329.66(A)(5)).

The Debtor's proposed Chapter 13 Plan (Doc. 9) was scheduled for confirmation on September 25, 2025. *See* Doc. 8. The Debtor's counsel indicated at the hearing that an amended plan would be forthcoming, and by an agreed order between the Debtor and the Chapter 13 Trustee, confirmation of the original plan is denied and an amended plan is required to be filed by September 10, 2025. Nevertheless, it was clear that the fundamental parameters of that plan would remain unchanged. Specifically, the Debtor was assuming the lease on the Trailer, and proposing a cramdown of the secured claim on the Forest River. The Hansen Creditors raised issues whether the proposed plan was feasible. The Court believes those issues may be more appropriately addressed, if at all, through the process to confirm a chapter 13 plan. Additionally, a significant part of the Hansen Creditors' concern was the \$134,452.43 priority claim of the Internal Revenue

⁹ The Debtor scheduled this lease with HMG Servicing Trust as an unexpired lease and testified that the lease was entered into on May 15, 2025. *See* Sch. G (Doc. 1 at 34) and Debtor Ex. 4 at 1.

Service (Claim 7-1), but that proof of claim is based in part on estimated claims for the 2023 and 2024 tax years. The Debtor testified that the returns have been filed and Debtor's counsel indicated that the priority claim amounts should be reduced as a result. This statement is consistent with the Court's experience with such tax claims and a footnote contained within the claim itself.¹⁰

The Hansen Creditors hold a prepetition judgment against the Debtor. The Debtor has scheduled the debt as non-priority unsecured in the amount of \$162,408.56. (Doc. 1 at 29.) It is undisputed that the Personal Property was seized prepetition by the Montgomery County Sheriff pursuant to a Civil Writ of Execution issued by the Clerk of the Montgomery County Court of Common Pleas to the Sheriff of Montgomery County, Ohio, pursuant to a Praecipe for Writ of Execution filed by Counsel for the Hansen Creditors in Case No. 2024 CV 01970, which initiated Case Number 2025 EX 75649. *See* Exs. 1-3 (Doc. 20-1 to 20-3). The Personal Property is currently held at Sandy's Towing and Storage ("Sandy's"). Sheriff Deputy Kerschner testified that the Personal Property¹¹ would be returned if it was ordered by this Court, but that he would feel more comfortable with guidance from this Court in light of the conflicting positions of the parties.

The Debtor testified that the items in question were necessary for him to have a transitional place for him, his wife, and his children to live and for him to earn money to fund a chapter 13 plan to reorganize his financial affairs. The Debtor has a painting business and needs the tools of the trade and the Trailer to continue to earn a living to fund his reorganization plan. Further, the Debtor intends to live in the Forest River with his spouse and children until permanent housing can be found. Currently, the Debtor is unhoused, living with a friend and sleeping on his couch, and the Debtor's wife and children are living with his mother-in-law. The undisputed testimony was that Debtor currently had no ability to fund and complete a chapter 13 plan without use of the Trailer and Painting Tools, and nowhere for his family to live without use of the RV.

The Hansen Creditors' counsel argued that the Debtor was running a "criminal enterprise" and without appropriate guardrails the Debtor would not operate his business in compliance with

¹⁰ The proof of claim states "LIABILITY BASED ON AVAILABLE INFORMATION BECAUSE THE RETURN HAS NOT BEEN FILED. THIS CLAIM MAY BE AMENDED AS NECESSARY AFTER THE DEBTOR FILES THE RETURN OR PROVIDES OTHER REQUIRED INFORMATION." Claim 7-1 at 4-5 n.1.

¹¹ The record also showed some of the Personal Property seized is owned by the Debtor's spouse and a friend of the Debtor that is also apparently in the painting business.

the Ohio Consumer Sales Practices Act.¹² The Court finds this statement to be hyperbolic and not supported by the evidence. Instead, the record showed that the Debtor had completed two to three thousand painting jobs in Ohio, had two civil lawsuits filed against him, and either did not fully comply with certain CSPA provisions or did not adequately defend those lawsuits leading to the judgments. *See* Am. Decision, Entry and Order Granting Plaintiffs’ Motion for Partial Summary Judgment, Case No. 2024 CV 01970 (Montgomery C.P. Apr. 14, 2025), Part of Ex. 3 (Doc. 20-3). One of those two lawsuits was the one pursued by the Hansen Creditors and led to judgment against the Debtor based on the Hansen Creditors’ claims for breach of contract and Consumer Sales Practices Act (“CSPA”) violations. That judgment included “trebled damages under [the CSPA], ORC 1345.01, *et seq.* . . .” *Id.* The Debtor, however, testified that he was working with his counsel to use a new contractual form his lawyer was creating once he finalized tax issues for his business. There was no dispute amongst the parties that all the items of Personal Property are currently held at Sandy’s. And Counsel for the Debtor represented that he understood Sandy’s would comply with the Court’s order on this matter. In addition, Deputy Kerschner indicated that the Sheriff was looking for direction on how to proceed.

Turnover is governed by § 542(a) of the Bankruptcy Code. As the Personal Property was indisputably seized prepetition, the appropriate remedy is to seek turnover. *City of Chicago v. Fulton*, 592 U.S. at 159-63. As the Hansen Creditors admitted at the hearing, this is the “right place” for this dispute to have been brought.¹³ Additionally, as discussed above, pursuant to a recent change to the Bankruptcy Rules, the Debtor is entitled to proceed by motion. Fed. R. Bankr. P. 7001(a). “[T]he burden of proving each element by a preponderance of the evidence” rests with the Debtor. *Bailey v. Suhar (In re Bailey)*, 380 B.R. 486, 490 (B.A.P. 6th Cir. 2008).

The turnover section of the Bankruptcy Code, which is section 542, states with exceptions not at issue in this case, that:

[A]n entity, other than a custodian, 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

¹² Although cited nowhere in the response filed by the Hansen Creditors, the Ohio Consumer Sales Practices Act is found in Chapter 1345 of the Ohio Revised Code.

¹³ Counsel for the Hansen Creditors professed at the hearing to not know whether the Hansen Creditors were authorized to release the Personal Property from the execution, but the testimony of Deputy Kerschner indicated that the Sheriff’s office was receiving conflicting instructions from the Hansen Creditors and the Debtor.

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.

11 U.S.C. § 542(a). Because a chapter 13 debtor has “the rights and powers of a trustee,” “exclusive of the trustee,” under various sub-parts of section 363, “a chapter 13 debtor has standing to bring a turnover action under § 542.” *In re Jackson*, No. 24-5021, 2024 WL 4806395, at *5, 2024 Bankr. LEXIS 2795, at *14 (Bankr. E.D. Ky. Nov. 15, 2024) (citing *TranSouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676, 686-87 (B.A.P. 6th Cir. 1999)).

As the Court stated during the hearing, the elements of a turnover action are “(1) that the property is or was in the possession, custody or control of an entity during the pendency of the case, (2) that the property may be used by the trustee¹⁴ in accordance with § 363 or exempted by the debtor under § 522; and (3) that the property has more than inconsequential value or benefit to the estate.” *Bailey*, 380 B.R. at 490 (quoted in *Jackson*, 2024 WL 4806395, at *6). The Hansen Creditors did not dispute that the first and second elements had been met but argued under the third element that that the Personal Property, if returned, would lead to further claims against the bankruptcy estate, or would burden the bankruptcy estate, as opposed to benefitting the estate. However, the Hansen Creditors’ main argument on this point, concerning criminal activity, was a bridge too far.

Fundamentally, Counsel for the Hansen Creditors argued that because two of Debtor’s painting jobs over his career had resulted in litigation the Court should therefore conclude he was going to continue to violate the CSPA if allowed to resume his livelihood.¹⁵ But not only that, Counsel was implicitly jumping to the conclusion that future hypothetical violations of the CSPA would rise to the level of criminal conduct. While it may ultimately be the case that Debtor does not need an expensive recreational vehicle in order to reorganize his financial affairs, the evidence before the Court established that Debtor is in-between permanent housing and had planned to utilize the Forest River Vengeance Rogue as his interim housing for his family. This is sufficient for the Debtor to regain possession of the RV in this particular circumstance. *See Keith M. Lundin*,

¹⁴ A Chapter 13 Debtor can act as a trustee for purposes of turnover. *Sharon*, 234 B.R. at 687 (consistent with § 1303 of the Bankruptcy Code, “[t]o the extent a Chapter 13 debtor can then use property of the estate under § 363, the debtor succeeds to the mandate in § 542(a) that compels delivery of property that is usable under § 363.”).

¹⁵ Debtor testified that he did not fully defend the lawsuits due to his limited resources to pay attorney fees. He also testified that he had completed two to three thousand painting jobs in his career.

Lundin On Chapter 13, § 50.1, at ¶ 17, LundinOnChapter13.com (last visited on Aug. 27, 2025) (“In a Chapter 13 case, the debtor carries this burden by demonstrating that the repossessed property is necessary to the debtor’s rehabilitation. If the property is a car, the debtor might show that the car is used to go to and from work. If the property is furniture, the debtor might demonstrate that the furniture will have to be replaced if not recovered to provide an ordinary living environment.”). And considering that the Hansen Creditors admit they will not recover anything from an execution sale of the RV, which is encumbered by a senior lien, the equities lie in returning it to the Debtor and letting the chapter 13 plan confirmation process play out. Therefore, the Court determines that all the elements for turnover have been met. The Personal Property is in the possession of a third-party, having been executed on by the Montgomery County Sheriff, at the Hansen Creditors’ direction, prepetition; it is to be used by the Debtor for his reorganization in this chapter 13 case; the Personal Property is of consequential value or benefit to the estate; and, at least as to the tools of the trade, the Personal Property also appears to be exempt.

To the extent the Hansen Creditors wanted the turnover conditioned on the Debtor complying with certain guardrails, the Court finds no legal basis for such conditions, and any such request by the Hansen creditors is hereby **DENIED**.

Accordingly, the Motion for Turnover is hereby **GRANTED** and the Hansen Creditors and the Sheriff of Montgomery County, Ohio,¹⁶ who they directed to take action to carry out the Civil Writ of Execution obtained in Case Number 2025 EX 75649 in the Montgomery County, Ohio Court of Common Pleas, are hereby directed to immediately release and make the Personal Property available to the Debtor, without any condition or demand for payment of any fees, costs, or other amounts,¹⁷ whether from the hold at Sandy’s or otherwise, to ensure that the Personal Property is turned over to the Debtor as soon as possible. The Hansen Creditors shall take any and all actions necessary to carry out this order, and shall cooperate in any manner required, to instruct,

¹⁶ The Montgomery County Sheriff was served with a copy of the Motion for Turnover by ordinary U.S. Mail, the Sheriff did not oppose the Motion for Turnover, and Deputy Kerschner was subpoenaed and testified at the hearing that the Sheriff just wants direction on how to proceed and would comply with the court’s order.

¹⁷ To the extent that any fees, costs, or other amounts are asserted to be owed by Debtor, nothing in this order prevents such parties from filing claims in this bankruptcy case. In fact, Debtor amended his Schedule E/F on July 23, 2025 (Doc. 11) to add Sandy’s at 1541 South Broadway, Dayton, Ohio 45417 in an unknown amount as a prepetition creditor, along with the Montgomery County Sheriff, though only for notice.

facilitate, and effectuate the turnover and shall do so expeditiously so that Debtor may utilize the Personal Property for purposes of this reorganization under chapter 13.

IT IS SO ORDERED.

Copies to:

Default List Plus

Richard L. Carr, Jr. (Counsel for Ross Zach Hansen and Jennifer Hansen)

Sandy's Towing and Storage, 1541 S. Broadway Street, Dayton, Ohio 45417-4616

Jennifer Hansen and Ross Zach Hansen, 6881 Timberlands Drive, Dayton, Ohio 45414

Montgomery County Sheriff, 345 W. Second Street, Dayton, Ohio 45422