

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

**BRENDAN LINEHAN SHANNON
JUDGE**



**824 N. MARKET STREET
WILMINGTON, DELAWARE
(302) 252-2915**

September 26, 2022

Vivian A. Houghton, Esquire
Doroshow, Pasquale, Krawitz & Bhaya
1202 Kirkwood Highway
Wilmington, DE 19805

Garvan F. McDaniel, Esquire
Hogan McDaniel
1311 Delaware Avenue
Wilmington, DE 19806

Re: In re: Shayla Freeman
Case No. 21-11583 (BLS)

Dear Counsel:

This letter concerns the objection [Docket No. 12] of DEXSTA Federal Credit Union (“DEXSTA”) to confirmation of the Debtor’s Chapter 13 plan (the “Plan”) [Docket No. 4]. DEXSTA asserts that it is a secured creditor of the Debtor and asserts that the Debtor’s Plan does not provide for treatment of its secured claim. For the reasons set forth below, DEXSTA’s objection will be overruled.

The relevant facts are not in material dispute. The Debtor owned a 2014 Chevrolet Malibu (the “Vehicle”) and obtained a loan for the purchase from DEXSTA. DEXSTA’s lien against the Vehicle was properly perfected via notation of the lien on the title. DEXSTA timely filed a proof of claim in the amount of \$6,918.02 in this Chapter 13 proceeding.

Debtor represents that she is no longer in possession of the Vehicle. Specifically, she alleges that she was driving to work in October 2020 when the Vehicle broke down. Debtor further alleges that the Vehicle was towed to M&M Auto Repair (“M&M”) and, after investigation by mechanics at M&M, she was advised that the engine was “blown.” The Debtor represents that she lacked the funds to either repair the Vehicle or to pay the towing and storage fees. Accordingly, Debtor surrendered the Vehicle to M&M. Finally, Debtor admits that she did not promptly advise DEXSTA either of the Vehicle’s breakdown or that it had been surrendered to M&M.

DEXSTA argues that, at a minimum, it should hold an allowed secured claim for the trade-in value of the Vehicle when it was taken by M&M. The Debtor responds that, without any identifiable collateral, DEXSTA is an unsecured creditor.

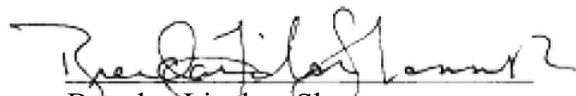
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Addressing a similar scenario, the court in *In re Walker*¹ was asked to consider a plan objection by a credit union whose claim was secured by three vans that were “missing.” Rejecting the creditor’s request for treatment as a secured creditor, the court observed that “where collateral is lost pre-confirmation, it is well-settled that the creditor has only an unsecured claim even if it continues to have a security interest in the missing collateral under state law.”² The court in *Walker* found that there are two reasons to treat a secured creditor with no collateral as unsecured: first, a secured claim requires availability of the collateral to secure the creditor’s right to payment; second, § 506(a) provides that a creditor with a lien on property has a secured claim only to the “extent of the value of such creditor’s interest in the estate’s interest in the property.”³ Because the vans in *Walker* were missing and neither the debtor nor the credit union had access to them, that court properly determined that the vans had no value from the perspective of the estate. In other words, the estate’s interest in the missing vans was zero, so the secured portion of the credit union’s claim was zero and the balance was unsecured. Importantly, the court in *Walker* noted that the result could be different if the debtor in that case had committed fraud or other culpable, wrongful behavior. However, that debtor in that case was at most guilty of negligence in protecting the collateral.

In the present case, there is no dispute that the collateral (*viz.*, the Vehicle) is missing. DEXSTA therefore has no estate property to which its security interest could attach under §506(a). There are no facts alleged that would support a finding that this Debtor is committing fraud or other culpable behavior: yes, the Debtor was remiss in not advising DEXSTA sooner that she had abandoned the Vehicle to M&M. But the record supports a determination that she was, at most negligent in this regard. The Vehicle had a blown engine, and the Debtor could not afford the towing and storage fees, much less the cost the cost to actually repair the Vehicle.

Based on the foregoing, the objection of DEXSTA to confirmation is overruled. DEXSTA will be treated as an unsecured creditor under the Plan. An appropriate order will follow.

Very truly yours,



Brendan Linchan Shannon

BLS/jmw

cc: William Jaworski, Esquire
Chapter 13 Trustee

¹ *In re Walker*, 2003 W: 22794533 (Bankr. E.D. Ark. Oct 31, 2003)

² *Walker* at 2.

³ *Id.*