SO ORDERED.

SIGNED this 9th day of March, 2026.

Mitchell L. Herren
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re: **Carr's Plumbing and Maintenance, LLC,** **Debtor.**	**Case No. 26-10101** **Chapter 11**

Order Denying Without Prejudice
Debtor's Motion for Enforcement of Automatic Stay and Related Relief

Debtor Carr's Plumbing and Maintenance, LLC seeks an order enforcing the automatic stay, compelling a creditor to take certain actions to rectify a stay violation, and awarding Debtor sanctions against that creditor. The creditor, Fox Funding Group, LLC ("Fox Funding"), a merchant cash advance entity, argues Debtor has not met its initial burden to show any interference with property of the estate, and an adversary proceeding is necessary to determine the rights and liens in the property at issue.

The Court concludes Debtor did not carry its burden of proof at the expedited

hearing on the motion to show a violation of the automatic stay and denies Debtor's motion without prejudice.[1] A more robust presentation of evidence is necessary to determine if a stay violation has occurred, and if so, what the remedy for that violation should look like.

I. Findings of Fact

Debtor is a plumbing and maintenance contactor providing services around the Wichita, Kansas area, and employs about seventy-five individuals. Debtor's principal, Christopher Carr, has been employed by Debtor since 2016. In March 2021, Debtor began a lending relationship with Intrust Bank, and Intrust Bank obtained a security interest in all Debtor's assets, including its accounts and receivables.

A couple of years later, in February 2023, Debtor signed its first contract with Fox Funding. Fox Funding filed a UCC financing statement at this same time. For collateral, the UCC financing statement says:

> Secured party has purchased an interest in accounts and proceeds from Debtor, described as "Receipts" in the agreement between Debtor and Secured Party, and as a result, Secured Party has a security interest in such Receipts. "Receipts" means all accounts receivable and payment rights arising out of or relating to for [sic] Merchant's sale or delivery of goods and/or services due to Debtor after the date of the agreement, whether paid directly by Merchant's customers or paid by others on Merchant's customers' behalves or as reimbursements. Debtor and Secured Party intend that the sale of Receipts is a sale and not an assignment for security.
> Secured Party has been granted a security interest in: all accounts and proceeds.[2]

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[1] Debtor appeared at the evidentiary hearing through Justin T. Balbierz of Mark J. Lazzo, P.A. Fox Funding appeared through David Prelle Eron of Prelle Eron & Bailey, P.A.

[2] Debtor Exh. 12 p. 6.

The current version of the parties' agreement, modified several times over the next couple of years, is reflected in a "Future Receivables Sale and Purchase Agreement," dated February 19, 2025.[3] The Agreement, signed by Mr. Carr on behalf of Detor and as a guarantor,[4] is seventeen single spaced pages and difficult to parse. The Agreement begins with a heading that seems to be a definition of terms:

"Purchase Price"	"Purchased Percentage"	"Purchased Amount"	"Daily Remittance"	"Net Purchase Price"
$625,000.00	9.64%	$868,750.00	$3,999.00	$606,250.00

The rest of the Agreement, however, is not as clear as those initial terms would suggest.

Under the Agreement, Debtor "sells, assigns, and transfers" to Fox Funding "the Purchased Percentage" of all Debtor's "accounts receivable and payment rights . . . up to the Purchased Amount, which shall be remitted to [Fox Funding] in the manner set for forth in this Agreement until the entire Purchased Amount has been delivered."[5] In consideration of the sale, under the Agreement Debtor would receive the $625,000 Purchase Price, less fees, for a net of $606,250. The testimony and evidence about what Debtor actually received, however, was unclear. In an "Addendum to Secured Merchant Agreement for Transfer of Prior Balance" included as the final page of the seventeen-page Agreement, a prior agreement is identified, under which Fox Funding "purchased" Debtor's receivables in the amount of

[3] Debtor Exh. 32.

[4] The Court notes Debtor's Exhibit 32 is not signed, however, by a representative of Fox Funding.

[5] Debtor Exh. 32 p. 1.

$1,147,500. Of that amount, a balance of $506,006 had "not yet been delivered to [Fox Funding]."[6] Under this Addendum, Debtor authorized Fox Funding to "withhold, deduct or debit" the $506,006 from the $625,000 Purchase Price, leaving only $100,244 to be transferred to Debtor after payment of fees.[7]

The next paragraph of the first page of the Agreement expressly disavows the Agreement is a loan, stating "THIS IS NOT A LOAN."[8] The Agreement claims: "There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by [Fox Funding]. In lieu of calculating the value of the Purchased Percentage of the Receipts each day, [Debtor] shall remit the Daily Remittance."[9] Despite the Agreement expressly disavowing the existence of a payment schedule or a time period to collect, the Agreement also identifies strict payment terms. In the Agreement itself, Debtor authorizes Fox Funding to debit the Daily Remittance (defined above) each business day from Debtor's bank account. But then in an "Addendum to Secured Merchant Agreement for Weekly Remittance," that schedule changes the remittance to a weekly remittance in the amount of $19,950.[10]

At some point in the spring of 2025, Debtor apparently defaulted under the terms of the parties' Agreement, but the basis of that default was not explained (or

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[6] *Id.* p. 17.
[7] *Id.*
[8] *Id.* p. 1
[9] *Id.*
[10] *Id.* p. 16.

even addressed).[11] On May 7, 2025, the parties entered a "Settlement Agreement." Under the Settlement Agreement, Debor agreed "to pay to [Fox Funding] . . . $872,000.00 . . . as settlement in full of [Fox Funding's] claims against [Debtor] and [Mr. Carr]."[12] The $872,000 would be paid by Debtor sending $12,576 to Fox Funding every Friday as a weekly payment "until paid in full."[13]

About nine months later, on or around February 1, 2026, Debtor stopped making payments to Fox Funding.[14] On February 3, 2026, Fox Funding sent letters to at least some of the general contractors who owed Debtor on open accounts. The February 3, 2026 letters informed the general contractors Fox Funding purchased Debtor's receipts, filed a UCC-1 financing statement, and had obtained "a perfected security interest in the [Debtor's] receipts."[15] The letters then stated Debtor "has assigned its receipts to [Fox Funding] and $570,149.48 is due and owing."[16] The letters directed the general contractors to direct all funds to the law firm acting on Fox Funding's behalf "until the amount of $570,149.48 accrues."[17] At least two entities, Intuit, Inc. and Simpson's Construction Services, received the letters, both asking for the same $570,149.48.[18]

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[11] *See* Debtor's Exh. 34 p. 1 ("Whereas, on or before 04-30-2025 [Debtor] defaulted under the terms of the aforesaid contract;").

[12] *Id.*

[13] *Id.*

[14] Mr. Carr testified he "complied with the dailies" until February 1, a Sunday, not addressing the weekly payment schedule or the exact time of default.

[15] *See, e.g.*, Debtor's Exh. 1 p. 1.

[16] *Id.*

[17] *Id.*

[18] Debtor's Exh. 1 and Debtor's Exh. 2.

The next day, on February 4, 2026, Debtor filed its Chapter 11 petition. Fox Funding was provided notice of Debtor's bankruptcy. The petition was a quick-file, with no supporting Schedules, Statement of Financial Affairs, or other supporting documents. On the same date the petition was filed, and apparently after being provided notice of the filing, Fox Funding sent a letter to multiple entities stating:

> As you know, our firm represents FOX FUNDING GROUP LLC. This letter is to inform you that any funds that have been placed on hold and have accumulated from February 4, 2026, to the present should be released to [Debtor]. Please note that any funds that are from prior to February 4, 2026, shall remain on hold.[19]

Again, the Court is unclear who or how many entities received this postpetition letter.

Just two days after the bankruptcy filing, on February 6, 2026, the Court entered an Order granting Debtor's Motion for Interim Use of Cash Collateral and Providing Adequate Protection.[20] Fox Funding had notice of the motion and the expedited hearing set thereon but did not appear. The Interim Order states: "Debtor owns accounts receivable which totaled approximately $677,000 as of the Petition Date."[21] The Interim Order also states: "the accounts receivable are the cash collateral of each Secured Lender," identifying each alleged Secured Lender on an Exhibit 1 to the Interim Order, "to the extent that: (a) such Secured Lender's security interest is perfected; and (b) the amount of such Secured Lender's claim equals or exceeds the present value of the accounts receivable after deducting the

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[19] *See, e.g.*, Debtor's Exh. 3 and Debtor's Exh. 4.

[20] Doc. 23.

[21] *Id.* p. 2 ¶ 2.

amount of any Secured Claim having priority over such Secured Lender's claim."[22] The Interim Order's Exhibit 1 identifies Fox Funding with an approximate balance owed of $495,000, although as noted above, Fox Funding claims the amount it is owed is $570,149.48.[23] Mr. Carr testified he believes Debor owes Fox Funding about $395,000, although he gave no basis for the computation of that number, and owes about $1.1 million to Intrust Bank. The Court is unclear if the parties agree or dispute that Intrust Bank is first in line as secured party in the receivables.[24]

Mr. Carr testified that Debtor billed just under $12 million in 2025. Debtor's accounts receivable aging summary as of February 5, 2026, shows total receivables owed of $676,834.27.[25] Mr. Carr believes Debtor has not received these funds because of the letters from Fox Funding. Debtor's counsel requested Fox Funding contact all entities who received letters "directing them to ignore [the] prior directive and directing them to make payments on their invoices" to Debtor,[26] but Fox Funding did not do so.

Debtor then filed its motion seeking relief from this Court. Debtor's most

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[22] *Id.* p. 2-3 ¶ 4.

[23] *Id.* p. 6. As indicated above, the petition was not filed with the majority of the supporting documents, but Debtor did file an Official Form 204 listing its creditors who have the twenty largest unsecured claims and are not insiders, and listed Fox Funding as holding a partially secured and partially unsecured claim of $476,426. Doc. 1 p. 5.

[24] Based on the debt amount owed to Intrust Bank compared to the value of the receivables, presumably Fox Funding would agree if the Court concludes the Agreement is a secured transaction and not a sale, then their claims would be wholly unsecured due to Intrust Bank's senior secured lien, but that was not clear at the hearing.

[25] Debtor's Exh. 18 p. 1. Debtor appears to have an additional $324,461.75 of receivables that are at least potentially uncollectible. *Id.* p. 2-3.

[26] *See* Debtor's Exh. 5; *see also* Debtor's Exh. 6, Exh. 8, Exh. 9.

recently amended motion (a second amended motion) argues Fox Funding's February 4, 2026 letters violate §§ 362(a)(3) and (a)(6).[27] The second amended motion seeks an order: (1) requiring Fox Funding to immediately produce an exhaustive list of each person—including name, phone number, email, and company—to whom the February 4, 2026 letters or similar notices were sent; (2) requiring Fox Funding to cease communication with Debtor's general contractors regarding Debtor's receivables; (3) requiring Fox Funding to notify in writing each recipient of the February 4, 2026 letters that Fox Funding withdraws its directive; and (4) awarding Debtor reasonable attorney fees and costs incurred in connection with the motion and compensatory sanctions.

The Court granted Debtor's request for an expedited hearing on its motion. Debtor provided Fox Funding notice of its motion and the expedited hearing thereon. The evening before the expedited hearing, Fox Funding filed an objection to the motion, arguing the receivables were not estate property, but even if they are property of Debtor's bankruptcy estate, there was no stay violation.[28]

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[27] Doc. 56.

[28] More specifically, Fox Funding argues if the receivables are estate property, (1) the accounts were already being held prepetition, and under *City of Chicago, Ill. v. Fulton*, 592 U.S. 154 (2021), there was no affirmative act postpetition that disturbed the status quo of estate property, (2) Debtor should have pursued a turnover action, not filed a motion for a violation of the automatic stay, because the receivables are not in Fox Funding's possession and § 362 does not grant turnover, and (3) no sanctions are available to a corporate debtor for violation of the automatic stay under § 362(k) and *In re Rafter Seven Ranches L.P.*, 414 B.R. 722, 731 (B.A.P. 10th Cir. 2009). Fox Funding also argues the receivables are not property of the estate because the receivables were sold under a purchase agreement, Debtor cannot carry its burden of proof to show the receivables are property of the estate, and the Court must first decide whether the receivables are property of the estate and then determine lien priority, both of which require an adversary proceeding. *See* Doc. 57.

At the conclusion of the evidentiary hearing on this matter, the Court concluded Debtor had not carried its burden of proof to show a stay violation, and denied the motion without prejudice, with this Order to follow.

II. Conclusions of Law

Motions regarding the automatic stay are core proceedings over which this Court may exercise subject matter jurisdiction.[29] Venue is proper in this District.[30]

Under the Bankruptcy Code, Debtor's filing of its bankruptcy petition triggered an automatic stay of collection efforts by creditors.[31] The purpose of the Bankruptcy Code's automatic stay is "to protect the debtor and his creditors by allowing the debtor to organize his affairs" and to ensure "that the bankruptcy procedure may operate to provide an orderly resolution of all claims."[32]

Debtor claims the receivables are interests of the Debtor in property and are property of the estate under § 541(a).[33] Debtor then argues the February 4, 2026, letters were postpetition acts to interfere with and exercise control over Debtor's property and acts to collect on a prepetition claim, and, as noted above, asserts

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[29] 28 U.S.C. §§ 1334(b), 157(a), (b)(1) and (b)(2)(G) (core proceedings include "motions to terminate, annul, or modify the automatic stay"), and Amended Order of Reference, D. Kan. S.O. 13-1. *See Johnson v. Smith (In re Johnson)*, 575 F.3d 1079, 1083 (10th Cir. 2009) (a proceeding alleging violations of the automatic stay "is a core proceeding because it derives directly from the Bankruptcy Code and can be brought only in the context of a bankruptcy case." (internal quotations and alterations omitted)).

[30] 28 U.S.C. § 1409(a).

[31] *See* § 362(a) (filing of a bankruptcy petition "operates as a stay, applicable to all entities, of" delineated activities).

[32] *Pursifull v. Eakin*, 814 F.2d 1501, 1504 (10th Cir. 1987); *see also In re Peeples*, 880 F.3d 1207, 1216 (10th Cir. 2018) (purpose of the automatic stay is "to protect the debtor from collection efforts and to protect creditors from inequitable treatment").

[33] Section 541(a) governs property of the estate broadly, to include "all legal or equitable interests of the debtor in property as of the commencement of the case."

violations of §§ 362(a)(3) and (a)(6). Section 362(a)(3) stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Section 362(a)(6) stays "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title."

Debtor carries the burden of proof on its motion,[34] which Debtor acknowledged at the evidentiary hearing. The Court concludes Debtor has not carried its burden of proof to show a stay violation under either § 362(a)(3) or § 362(a)(6).

Regarding § 362(a)(3), Debtor has not shown Fox Funding is exercising control over *property of the estate*. First, procedurally, in this matter, there has been no determination of the interests in the property at issue—the receivables. Under Federal Rule of Bankruptcy Procedure 7001(b), a "proceeding to determine the validity, priority, or extent of a lien or other interest in property" is an adversary proceeding, to be governed by the Federal Rules governing those proceedings.[35] A

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[34] *See Johnson v. Smith (In re Johnson)* 501 F.3d 1163, 1171 (10th Cir. 2007) (movant has burden to show willful violations of automatic stay by a preponderance of the evidence); *In re Hall*, No. 23-11129, 2024 WL 2986763, at *2 (Bankr. D. Kan. June 12, 2024) ("The burden is on Debtor to establish, by a preponderance of the evidence, actual damages caused by a willful violation of the automatic stay."); *In re Karmi*, 638 B.R. 804, 816 (Bankr. D. Kan. 2022) (debtor must demonstrate by a preponderance of the evidence that a stay violation occurred).

[35] Per Fed. R. Bankr. P. 7001, "An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings: . . . (b) a proceeding to determine the validity, priority, or extent of a lien or other interest in property--except a proceeding under Rule 3012 [determining the amount of a secured or priority claim under § 506(a) or § 507] or Rule 4003(d) [a proceeding under § 522(f) to avoid a lien or other transfer of exempt property]."

threshold issue to determine whether there has been a violation of the automatic stay is a determination of what constitutes estate property. And "the issue of whether the estate has an interest in particular property ordinarily should be determined in an adversary proceeding."[36] To the contrary, relief was sought here via a motion and expedited hearing. The Court concludes an adversary proceeding is necessary here to address the threshold issue of what constitutes estate property.[37]

That said, "in the absence of an adversary proceeding, bankruptcy courts addressing requests for relief that raise questions about an asserted property interest should assess . . . whether the party asserting the interest has made a prima facie showing of the validity and scope of that interest."[38] Here, the Court cannot make even that preliminary determination on the record before it. Although the trend in the case law appears to be a conclusion that merchant cash advance

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[36] *In re Jahr*, No. BAP EW-11-1538-MKHJU, 2012 WL 3205417, at *4 (B.A.P. 9th Cir. Aug. 1, 2012).

[37] *See, e.g.*, *Heritage Collegiate Apparel, Inc. v. Elemental Cap., Inc. (In re Heritage Collegiate Apparel, Inc.)*, No. 24-47922, Adv. No. 25-4146, 2026 WL 166928, at *1, *8 (Bankr. E.D. Mich. Jan. 20, 2026) (adversary proceeding brought by Chapter 11 debtor seeking determination of loans versus sales concerning merchant cash advance agreements and alleging interest rates were usury; acknowledging defendant's statement that "an adversary proceeding would be necessary before the Court could determine that the transaction between the Debtor and [the defendant] is not a true sale" (internal quotations omitted)); *Butler Trucking LLC v. CashFloit, LLC (In re Butler Trucking LLC)*, No. 24-32443, Adv. No. 25-03004, 2025 WL 1934205, at *1 (Bankr. N.D. Ohio 2025) (adversary proceeding seeking determination of validity of any lien or determination of secured status of a merchant cash advance creditor); *Cap Call, LLC v. Foster (In re Shoot the Moon, LLC)*, 635 B.R. 797, 806-07 (Bankr. D. Mont. 2021) (adversary proceeding filed by merchant cash advance entity against Chapter 11 trustee seeking declaratory relief to determine ownership of receivables).

[38] *In re First Brands Grp., LLC*, No. BR 25-90399, 2026 WL 253634, at *3 (S.D. Tex. Jan. 31, 2026).

agreements are secured loans and not true sales,[39] and therefore the receivables would be property of Debtor's bankruptcy estate, the decision is a multi-factor, fact-intensive inquiry, and the Court does not have the facts necessary to make that determination.

State law determines whether a debtor has a particular property interest.[40] Federal law then determines whether that property interest is included within the scope of "property of the estate."[41] Under the Uniform Commercial Code, receivables are "accounts."[42] Fox Funding contends that under U.C.C. § 9-318, a debtor who sells an account does not retain a legal or equitable interest in that account. For this reason, Fox Funding argues the receivables were sold outright prepetition, and Debtor had no property interest in them (at all) at filing. Debtor argues the receivables remain its property and Fox Funding is simply a junior lien claimant—a secured party, but junior to Intrust Bank.[43]

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[39] *See, e.g.*, *In re Heart Heating & Cooling, LLC*, No. BR 23-13019 TBM, 2024 WL 1228370, at *18 (Bankr. D. Colo. Mar. 21, 2024) (calling the "proper legal characterization of MCA contracts or similar factoring arrangements . . . very challenging" and comparing cases, with many cases cited concluding the transactions were secured loans and not sales).

[40] *Butner v. United States*, 440 U.S. 48, 54–55 (1979); *Taylor v. Rupp (In re Taylor)*, 133 F.3d 1336, 1341 (10th Cir. 1998).

[41] *Ogden v. Big Sky Motors, Ltd. (In re Ogden)*, 314 F.3d 1190, 1197 (10th Cir. 2002).

[42] U.C.C. § 9-102(a). The parties did not address which state's law applies. Fox Funding's objection says in a footnote that Florida law "may apply" but discussed Kansas law in the body of its objection, and Debtor does not address the issue at all. The Agreement itself says any dispute arising out of it is governed by Florida law. Debtor's Exh. 32 p. 11 § 6.5. Because of the rulings herein, the Court simply points out this issue, which will need to be addressed by the parties in future proceedings.

[43] Debtor raised for the first time at the expedited hearing on its motion a recent decision, *In re IVF Orlando, Inc.*, No. 6:24-bk-05475-TPG, 2025 WL 2831400 (Bankr. M.D. Fla. Oct. 3, 2025), which considered U.C.C. § 9-318 and concluded an "expectancy of future receivables dependent on future services cannot be the subject of a completed sale

"The Uniform Commercial Code does not provide rules for distinguishing between sales transactions and security transactions."[44] As a result, "courts have developed a series of factors to be employed in determining whether assets transfers are 'true sales' or transfers of collateral in connection with secured financing."[45] "[T]he case law focuses on the economics of the transaction and which party bears the risk of non-collection from the account debtor in determining whether a sale of accounts is a true sale or a secured transaction. While the terminology and characterization of the transaction in the agreement itself is a factor to be considered, it is not conclusive."[46] Where the risk "remains with the debtor, the

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transaction." The Court is not reaching a decision on the issue and again, the parties will need to address the argument in future proceedings.

[44] *In re R&J Pizza Corp.*, No. 14-43066-CEC, 2014 WL 12973408, at *2 (Bankr. E.D.N.Y. Oct. 14, 2014).

[45] *Id.* One older bankruptcy court decision has stated the factors as: (1) Language of the documents and conduct of the parties; (2) Recourse to the seller; (3) Seller's retention of servicing and commingling of proceeds; (4) Purchaser's failure to investigate the credit of the account debtor; (5) Seller's right to excess collections; (6) Purchaser's right to alter pricing terms; (7) Seller's retention of right to alter or compromise unilaterally the terms of the transferred assets; and (8) Seller's retention of right to repurchase assets. *Id.* at *3. More recent decisions state the governing factors in a different way: "Three primary factors guide the determination: whether the agreement contains: (i) a finite term, (ii) a reconciliation provision, and (iii) recourse provisions in the event of bankruptcy or a default. The factors are only a guide and do not dictate the conclusion." *In re IVF Orlando, Inc.*, 2025 WL 2831400, at *10. A decision describing these three factors in detail is *In re McKenzie Contracting, LLC*, No. 8:24-bk-01255-RCT, 2024 WL 3508375, at *2-3 (Bankr. M.D. Fla. July 19, 2024).

[46] *In re R&J Pizza Corp.*, 2014 WL 12973408, at *3. *See also Cap Call, LLC v. Foster (In re Shoot the Moon, LLC)*, 635 B.R. 797, 813-814 (Bankr. D. Mont. 2021) ("[A] consideration that overlays and unites the factors is how the parties allocated risk. A sale typically occurs when the risk of loss from the purchased assets passes to the buyer—a gamble usually reflected in the purchase price. Conversely, in a disguised loan, the parties may employ various methods to allocate risk – the putative seller typically remains exposed to the underlying receivables and may grant the putative buyer recourse to sources of recovery beyond the receivables.").

transaction appears to be treated as a loan, and the receivables . . . remain property of the estate."[47]

The facts necessary to make the analysis here have not yet been properly developed. Debtor's case was filed on an emergency basis only a few weeks ago. Debtor has not filed its Schedules, Statement of Financial Affairs, or other supporting documents. The hearing on Debtor's motion was expedited, and the parties have only minimally identified the issues, and have not briefed any of them. At the evidentiary hearing on the motion, Debtor admitted many exhibits but rarely developed the details contained in them. Most importantly, Debtor did not address the Agreement's provisions in any detail.

As a result, the Court does not have sufficient facts to make a determination about who is a secured creditor, what amounts are owed to each creditor, or who is first in line on the receivables as collateral. The Court cannot determine the total receivables that remain "owed" to Fox Funding, how much of those receivables are being held by third parties—i.e., the general contractors, or how much Fox Funding has been paid to date. The Court is unclear how Debtor's weekly payment to Fox Funding was computed, how many weekly payments were transmitted, and what remains due. It appears probable there is at least some portion of the total receivables that are property of the estate (because even using Fox Funding's

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[47] *In re Butler Trucking LLC*, No. 24-32443, 2025 WL 1934205, at *5 (Bankr. N.D. Ohio July 14, 2025); *see also In re IVF Orlando, Inc.*, 2025 WL 2831400, at *10 ("When considering the 'sale versus loan' issue, courts place the most emphasis on the transfer of risk — if the 'buyer' is absolutely entitled to repayment under all circumstances, then the risk remains with the 'seller' and the transaction is considered a loan.").

number of $570,149.48 for the amount owed to it by Debtor, the total receivables are approximately $676,834.27), but the Court cannot determine what that portion is, or whether Fox Funding has acted against that total amount. The Court does not know the basis for any alleged default by Debtor, or when or how the default occurred.[48] The record did not provide the evidence needed to reach a conclusion about the fundamental facts necessary to a decision under § 362(a)(3).

Regarding § 362(a)(6), Debtor has not shown Fox Funding has acted "to collect . . . a claim against the debtor." Fox Funding's postpetition letter was sent to third parties, and not to or against Debtor individually. As one bankruptcy court noted, § "362(a)(6) is very similar to and complements § 362(a)(3), with the major distinction between the two provisions being that § 362(a)(3) protects property of the estate, while § 362(a)(6) protects the debtor, individually."[49] Here, there was no evidence of Fox Funding acting postpetition to collect a claim from Debtor individually.

Debtor's requested relief at the hearing on its motion was an order to Fox Funding to retract its postpetition letter. It is not clear to the Court how that relief would solve Debtor's concerns and Debtor presented no evidence from any of the

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[48] The Agreement says that in the case of default, Fox Funding "shall have the right to declare the full uncollected Purchased Amount . . . due and payable immediately." Debtor's Exh. 32 p. 9 § 3.3. The Agreement then permits Fox Funding to, among other remedies, "enforce the provisions" of a "Pledge of Security" and a "Guaranty." *Id.* The Pledge of Security is further addressed in Section 4 of the Agreement, and the Guaranty addressed in Section 5. None of these provisions were addressed by Debtor at the expedited hearing.

[49] *In re Harchar*, 393 B.R. 160, 183 (Bankr. N.D. Ohio 2008); *see also In re Briggs*, 143 B.R. 438, 452 (Bankr. E.D. Mich. 1992) ("collection efforts that constitute harassment [of the debtor] are proscribed by § 362(a)(6)").

third-party general contractors. Retraction of the February 4, 2026, postpetition letter does not tell those entities what to do with the receivables on hand and does not require the entities to turnover the funds to Debtor. If the February 4, 2026 letter was a violation of the automatic stay, the "law in the Tenth Circuit is clear that actions taken in violation of the automatic stay are *void ab initio*; that is, they are without legal effect."[50] But voiding an action that violated the automatic stay does not then equate to requiring a third party to turnover funds held by that third party. Again, additional actions would be necessary—an adversary proceeding to determine who is the proper owner of the receivables at issue would be the first step, and then a turnover action if those receivables are property of the estate.[51]

Finally, Debtor raised the issue of this Court's Interim Order on cash collateral. Debtor intimates that because the Interim Order says "Debtor owns" the receivables, the Court has already determined the receivables are estate property.[52] But the order is interim, not final, and a cash collateral order does not establish property interests. In an interim order on cash collateral a court concludes a debtor has made a colorable claim that the collateral is estate property and creditors with

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[50] *Rushton v. Bank of Utah (In re C.W. Min. Co.)*, 477 B.R. 176, 191 (B.A.P. 10th Cir. 2012).

[51] As noted, Debtor's motion and Fox Funding's objection each briefly raised the availability of sanctions if a stay violation is shown. While the Court makes no ruling on the matter, the Court does not rule out an award of attorney's fees if a stay violation is ultimately shown. *See, e.g.*, *In re C.W. Min. Co.*, 477 B.R. at 192 ("Where a transfer or transaction is voided as being in violation of the automatic stay, the proper remedy is to return the parties to the place each occupied prior to the violation of the stay. The Tenth Circuit has previously adopted this same position, holding that the relief for violating the automatic stay is to return the parties to the status quo before the stay violation occurred (including payment of attorneys fees incurred).").

[52] *See* Doc. 23.

claimed liens were as they claimed, and adequate protection is granted to the extent of those liens. An adversary proceeding is required to conclusively "determine the validity, priority, or extent of a lien or other interest in property," per Rule 7001(b).

III. Conclusion

The Court denies without prejudice "Debtor's Second Amended Motion for Order (i) Enforcing Automatic Stay; (ii) Compelling Fox Funding Group, LLC to Immediately Cease Interfering with Debtor's Accounts Receivable; and (iii) Awarding Sanctions."[53] The Court's ruling is limited to concluding Debtor did not carry its burden of proof at the expedited hearing on this motion to show violations of the automatic stay under either § 362(a)(3) or § 362(a)(6), and a fuller factual record needs developed in an adversary proceeding under Fed. R. Bankr. P. 7001(b). All other issues are merely raised but not decided.

It is so Ordered.

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[53] Doc. 56.