

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 03-30126
)	
Jennifer Fonseca)	Chapter 7
)	
Debtor)	JUDGE MARY ANN WHIPPLE

**MEMORANDUM AND ORDER REGARDING MOTION FOR REDEMPTION AND
MOTION FOR RELIEF FROM STAY AND ABANDONMENT**

This matter is before the Court on a Motion for Relief from Stay and Abandonment [Doc. #9] filed by DaimlerChrysler Services North America, LLC, successor by merger to Chrysler Financial Company, L.L.C. (DaimlerChrysler) and Debtor’s response. DaimlerChrysler requests relief from the automatic stay with respect to a loan to Debtor with a balance of \$13,951.37, plus interest, that is secured by a 2000 Chrysler Voyager owned by Debtor. Also before the Court is Debtor’s motion to redeem the vehicle [Doc. #13] and DaimlerChrysler’s objection. The motions were consolidated and were presented to the Court, pursuant to the parties’ agreement, for determination without an evidentiary hearing. The issue before the Court is the valuation of the Chrysler Voyager which the parties agree should be determined solely on the documents attached to Debtor’s motion to redeem and DaimlerChrysler’s opposition. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Under 11 U.S.C. § 722, an individual debtor may redeem consumer goods from a lien securing a dischargeable consumer debt, if the property is exempt under § 522 or has been abandoned under § 554, by paying the lienholder the amount of the allowed secured claim that is secured by the lien. An “allowed secured claim” is defined in § 506(a) as follows:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property . . . and is an unsecured claim to the extent that the value

of such creditor's interest . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

In the context of a Chapter 7 redemption, the creditor's allowed secured claim is determined by the liquidation value, that is, the amount that the creditor would expect to recover upon repossession and sale by auction or other wholesale means. *Triad Financial Corp. v. Weathington (In re Weathington)*, 254 B.R. 895, 899 (B.A.P. 6th Cir. 2000); *see also In re Donley*, 217 B.R. 1004, 1007 (Bankr. S.D. Ohio 1998).

DaimlerChrysler does not dispute that the Voyager owned by Debtor may be redeemed under § 722. The dispute centers on the proper valuation of the vehicle in order to determine the amount of DaimlerChrysler's allowed secured claim and, thus, the amount to be paid in order to redeem the vehicle. Both parties submit evidence of the trade-in value of the vehicle as the proper liquidation value for redemption purposes. However, the source of the parties' evidence differs.

Debtor submits the Kelley Blue Book Trade-In Report dated April 7, 2003, which indicates a trade-in value of \$2,930 for a 2000 Voyager in good condition with 70,841 miles. Debtor's unnumbered Exhibit 1. "Good condition" is defined as being free of major defects, having only minor blemishes on the body and interior, minimal rust, and as needing some reconditioning to be sold at retail. *Id.* Kelley Blue Book explains that most recent model cars owned by consumers fall into this category. *Id.* Debtor also submits a document indicating that Collateral Valuation Services, LLC, has valued the vehicle using the Kelley Blue Book Trade-In Value of \$2,930 for purposes of making a secured loan on the vehicle.

DaimlerChrysler, on the other hand, submits a valuation report dated May 1, 2003, from NADAguides.com which is based on the consumer edition of the National Association of Automobile Dealers (NADA) Official Used Car Guide. Creditor's Exhibit A. The NADA report indicates a trade-in value of \$6,550 for a 2000 Voyager in average condition with 70,841 miles. An "average" trade-in vehicle is defined as a vehicle without glaring defects, with tires and glass in good condition, having interior wear in relation to the age of the vehicle and clean upholstery, and with all power options working and mileage being within the acceptable range for the model year. *Id.* No further evidence was submitted by either

party.

While both the NADA and Kelley Blue Book valuations appear to place a value on the “average” Voyager and both take into account the mileage on the vehicle, each report indicates a significantly different value from the other. Some courts have used Kelley Blue Book while other courts have used the NADA valuations in assisting the court in placing a value on a creditor’s collateral. *See, e.g., In re Mitchell*, 954 F.2d 557 (9th Cir. 1992)(using Kelley Blue Book)(overruled on other grounds by *In re Taffi*, 96 F.3d 1190 (9th Cir. 1996); *United Carolina Bank v. Hall*, 1992 WL 499541 (E.D.N.C. 1992)(using NADA). The parties do not attempt to provide this Court with any basis for choosing one valuation source over the other, nor does the court discern any basis from the documents submitted. The Court must, therefore, arrive at the fairest approximation of liquidation value it can fashion on the record. *See, In re Abruzzo*, 249 B.R. 78, 86 (Bankr. E.D. Pa. 2000)(“I am left to some extent with the proverbial battle of the appraisers. Finding merit to both their positions, the only conclusion I can reach is to find some value in between.”).

The Court concludes that the midpoint between the NADA and the Kelley Blue Book trade-in values, or \$4,470, is an appropriate estimate of the liquidation value of the vehicle at issue.¹ Simply put, the Kelly Blue Book trade-in value of \$2,930 appears low to the court. The Court notes that Fonseca stated the fair market value of the vehicle at \$12,000 in her bankruptcy Schedules B and D, and at the same time indicated her intent to redeem in her statement of intentions. [Doc. #1]. Debtors are competent to provide opinions on the value of vehicles they own. *In re Ard*, 280 B.R. 910, 916 (Bankr. S.D. Ala. 2002). While Fonseca’s opinion in her schedules as to the market value of the van is not a binding judicial admission, it is relevant as an evidentiary admission in evaluating the liquidation value of this particular vehicle as between the conflicting published valuations. *In re Cobb*, 56 B.R. 440, 442, n.3 (Bankr. N.D. Ill. 1985). *But see In re Bohrer*, 266 B.R. 200 (Bankr. N.D. Cal. 2001)(statements in schedules are subject to treatment as judicial admissions). The opinion in her schedules indicates that Fonseca would herself expect to pay more than \$2,930 for the van at an auction. This is important because the legislative

1

The Court notes that while the midpoint between the NADA and Kelley Blue Book values is utilized herein, it is not necessarily dispositive on future valuations. Valuation in future cases remains subject to specific evidence introduced by the parties.

history states in discussing § 722 that a debtor's paying "the allowed amount of the creditor's secured claim...amounts to a right of first refusal on a foreclosure sale of the property involved." H.R. Rep. No. 95-595, at 127 (1977). On the other hand, with a published Kelley Blue Book trade-in value of only \$2,930, it seems very unlikely that DaimlerChrysler would actually realize \$6,550 at an auction or other wholesale disposition of the vehicle after repossession. Hence, the court arrives at the midpoint between the two proffered trade-in values as a realistic liquidation value for redemption of Fonseca's 2000 Voyager under 11 U.S.C. § 722.

In light of the foregoing, the Court will deny DaimlerChrysler's motion for relief from stay but will grant its motion for abandonment of the 2000 Voyager. In addition, the Court finds that DaimlerChrysler has an allowed secured claim in the amount of \$4,470 and orders it to accept from Debtor a lump sum payment in this amount and to release its lien of record with respect to the 2000 Chrysler Voyager.

THEREFORE, for the foregoing reasons, good cause appearing, IT IS ORDERED that:

1. Debtor's Motion for Redemption Under 11 U.S.C. § 722 [Doc. #13] is hereby GRANTED as provided herein.
2. Debtor may redeem the 2000 Chrysler Voyager vehicle from DaimlerChrysler's lien by tendering a lump sum payment in the amount of \$4,470 to DaimlerChrysler within 30 days of the entry of this order. Upon receipt of the \$4,470 Daimler Chrysler shall promptly take all steps necessary to release its lien of record with respect to the 2000 Chrysler Voyager.
3. DaimlerChrysler's Motion for Relief from Stay and Abandonment [Doc. #9] shall be, and hereby is, GRANTED insofar as abandonment and DENIED insofar as relief from stay.²
4. The 2000 Chrysler Voyager is hereby deemed abandoned from the estate.

Dated:

/s/ Mary Ann Whipple

2

It appears from the case docket that Fonseca's discharge will be entered before the expiration of the 30-day redemption period established by this order, by which time the request for relief from stay will be moot. 11 U.S.C. § 362(c)(1) and (2)(C).

Mary Ann Whipple
United States Bankruptcy Judge