

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 03-39305
)	
Michael L. Jones)	Chapter 7
Patty J. Jones)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

MEMORANDUM AND ORDER REGARDING MOTION TO REDEEM

This matter is before the court on Debtors’ motion to redeem a motor vehicle under 11 U.S.C. § 722 [Doc. #3] from the lien of General Motors Acceptance Corporation (“GMAC”) and GMAC’s objection to the motion. The issue before the court is the value of Debtors’ 2001 Oldsmobile Alero car, which the parties agreed at the hearing should be determined on the documents submitted by the parties at the hearing or that are otherwise part of the case record.

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 of the collateral, that is, the amount that the creditor would expect to recover upon

repossession and sale by auction or other wholesale means. *Iriad 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).

Debtors do not dispute that GMAC has a properly perfected security interest in the car, and GMAC does not dispute that the 2001 Oldsmobile Alero owned by Debtors may be redeemed under § 722. The dispute centers on the proper valuation of the car in order to determine the amount of GMAC's allowed secured claim and, thus, the amount to be paid in order to redeem the car from the lien. For purposes of the court's determination, the parties agree that the car is in good condition with average mileage, for a vehicle of its age, of 41,000. They also agree on most of the characteristics of the car, namely that it has automatic transmission, front wheel drive, cruise control, air conditioning, dual front air bags, an AM/FM stereo and CD player and power steering and door locks. There seems to be conflicting evidence as to the engine, with Debtors' document indicating that the car has a 4 cylinder 2.4 liter engine and GMAC's document seeming to indicate that the engine is a 6 cylinder. Both parties submit written evidence of the trade-in value of such a vehicle as the proper liquidation value for redemption purposes. But the sources of the parties' evidence differ.

Debtors submit the Kelley Blue Book Trade-In Report (Ohio) dated January 6, 2004, which indicates a trade-in value of \$5,445 for a like 2001 Oldsmobile Alero GL Sedan 4d in good condition. [Debtors' Unnumbered Hearing Exhibit]. "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.* Debtors also submit a document indicating that Thomas E. Cater of Tom Cater Auto Sales values the car at \$5500.00. [Exhibit attached to Debtors' motion]. The basis for and nature of Mr. Cater's appraisal, such as wholesale, trade-in, retail, or some other basis, is not indicated, making it of limited value to the court.

GMAC, on the other hand, submits a valuation report for the period 12-2003, from the National Association of Automobile Dealers ("NADA") Official Used Car Guide for the Central Region. [GMAC's exhibit attached to objection]. The NADA report indicates a trade-in value of \$7,325, both base and adjusted, a loan value of \$6,600 and a retail value of \$9,125 for a 2001 Oldsmobile Alero-V6 Sedan 4D

GL.

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” 2001 Oldsmobile Alero, each report indicates a significantly different value from the other.

Some courts have used Kelley Blue Book valuations while other courts have used 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 have not provided the court with any persuasive basis for choosing one valuation source over the other, nor does the court discern any particular basis for choosing one or the other from the documents submitted.

The court must, therefore, arrive at the fairest approximation of liquidation value it can fashion from the record before it. *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 \$6388, is an appropriate estimate of the liquidation value of the vehicle at issue.¹ Simply put, the Kelly Blue Book trade-in value of \$5,450 appears low to the court. The court notes that Debtors stated the fair market value of the car at \$8,500 in their bankruptcy Schedules B and D, and at the same time indicated their intent to redeem in their 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 the Jones’ opinion in their schedules as to the market value of the car 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 their schedules indicates that the Jones’ would

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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.

themselves expect to pay more than \$5,450 for the car at an auction. This is important because the legislative 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). This

fact mitigates in favor of a greater value than the Kelly Blue Book value.

On the other hand, with a published Kelley Blue Book trade-in value of only \$5,450, it seems very unlikely that GMAC would actually realize \$7,325 at an auction or other wholesale disposition of the car after repossession. The NADA loan value of \$6,600 seems to the court to be the more realistic estimate of what would be garnered by GMAC were it to repossess and liquidate the car: a new lender on the vehicle would only lend the amount it could be reasonably assured of recovering on default and pursuit of its remedies as to the collateral.² And the NADA loan value is very close to the midpoint between the two trade-in valuations before the court.

The court is also concerned based on the documents submitted that the reports are valuing two different engine sizes, with Debtors valuing a 4 cylinder engine, which would have less value, and GMAC apparently valuing a 6 cylinder engine, which would have more value. As the owners of the vehicle, the court credits the Debtors' submission of the engine size, a factor that also mitigates a reduction in the NADA

² The court in *Weathington* ultimately adopted the figure representing the car's trade-in value as the "liquidation value" of the vehicle there in issue. *Weathington*, 254 B.R. at 900-01. The court notes, however, that the parties had stipulated as a fact in that particular case that, if the court held that the proper standard of valuation is "liquidation" value and not "replacement" value, that the "liquidation" value would be the trade-in value of \$6,700 from the NADA Guide. *Id.*, 897. And both the parties and the court characterized the "trade-in" value as the "wholesale" value of the vehicle, which in turn the court also equated to the "liquidation" value. *Id.*, at 897, 899 n.1. Because the parties had stipulated as a matter of fact to the NADA trade-in value in that case as the "liquidation" or "wholesale" value, this court does not consider *Weathington* to hold as a matter of law either that the NADA guide is the only sanctioned valuation source, as GMAC is essentially arguing, or that trade-in value in published valuation sources is always the same as "liquidation value." The bottom line is that the proper test of value for redemption purposes, as articulated by *Weathington*, is "the secured creditor's expected recovery upon repossession and sale by auction or other wholesale means." *Id.*, 899, n.1. And this is the value the court believes it has derived for Debtors' 2001 Oldsmobile Alero from the record before it.

trade-in value for purposes of this particular case.

Hence, the court arrives at the midpoint of \$6388 between the two proffered trade-in values as the realistic liquidation value for redemption of Debtors' 2001 Oldsmobile Alero from GMAC's lien under 11 U.S.C. § 722. The parties might be inclined to comment that the court is engaging in the proverbial act of splitting the baby. In this case, however, the midpoint between the two proffered

valuations takes into account, in light of the applicable legal standard, both the increase the court believes is appropriate, for the reasons stated, insofar as Debtors' proposed valuation and the decrease the court believes is appropriate, for the reasons stated, insofar as GMAC's proposed valuation.

In light of the foregoing, the court will grant Debtors' motion in part. The court finds that GMAC has an allowed secured claim in the amount of \$6,388 and orders it to accept from Debtors a lump sum payment in this amount and to release its lien of record with respect to the 2001 Oldsmobile Alero in issue.

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

1. Debtors' Motion for Redemption Under 11 U.S.C. § 722 [Doc. #3] is hereby GRANTED as provided herein.

2. Debtors may redeem the 2001 Oldsmobile Alero vehicle from GMAC's lien by tendering a lump sum payment in the amount of \$6,388 to GMAC within 30 days of the entry of this order. Upon receipt of the \$6,388, GMAC shall promptly take all steps necessary to release its lien of record with respect to Debtors' 2001 Oldsmobile Alero.

Dated:

Mary Ann Whipple
United States Bankruptcy Judge