

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:) Case No. 04-32656
)
Jason C. Allwood) Chapter 7
Marlena M. Allwood,)
)
Debtors.) JUDGE MARY ANN WHIPPLE

MEMORANDUM AND ORDER REGARDING MOTION TO REDEEM

This matter is before the court on Debtors' amended motion to redeem a motor vehicle under 11 U.S.C. § 722 [Doc. #3] from the lien of Capital One Auto Finance ("Capital One") and Capital One's objection to the motion. The issue before the court is the value of Debtors' 2001 Chevrolet Venture vehicle 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 as well as Jason Allwood's testimony at the hearing. 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. *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).

Debtors do not dispute that Capital One has a properly perfected security interest in the car,

and Capital One does not dispute that the 2001 Chevrolet Venture 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 Capital One's allowed secured claim and, thus, the amount to be paid in order to redeem the car from the lien. Although the parties agree that the car has a compact disc player, there is conflicting evidence as to other characteristics of the vehicle. Capital One's document indicates that the car has aluminum/alloy wheels, LS trim, a towing/camper package and mileage of 54,210. Debtor Jason Allwood, on the other hand, testified that the vehicle has standard wheels, that he is fairly certain it does not have a towing/camper package and that the vehicle has nearly 66,000 miles. Allwood also testified that the car needs new rotors and brake pads on the front brakes and is losing water, the cause of which has not yet been diagnosed. Both parties submit written evidence of the trade-in value of the 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 September 8, 2004, which indicates a trade-in value of \$6,390 for a like 2001 Chevrolet Venture in good condition with 65,115 miles. [Debtors' Hearing Exhibit B]. "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 vehicle condition and valuation report prepared by Collateral Valuation Services, LLC, for the purpose of making a secured loan on the vehicle. The report indicates a trade-in value of \$8,000. Although the Collateral Valuation Services report is also based on the Kelley Blue Book trade-in value for a 2001 Chevrolet Venture in good condition with 65,115 miles, it lists with more specificity the various characteristics of the vehicle. Finally, Debtors submit a document indicating that Thomas E. Cater of Tom Cater Auto Sales values the car at \$8,000. [Exhibit attached to Debtors' amended 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.

Capital One, on the other hand, submits a valuation report for the period July 2004 from the National Association of Automobile Dealers ("NADA") Official Used Car Guide for a 2001 Chevrolet Venture with 54,210 miles. [Capital One's Exhibit attached to Objection]. The NADA report indicates a wholesale/trade-in base value of \$9,950 and, after adjustments for aluminum/alloy

wheels, compact disc player, LS trim and a towing/camper package, a “Retail/Wholesale Average” value of \$11,775. The report does not indicate the condition of the vehicle. No further evidence was submitted by either party.

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). In this case, the NADA and Kelley Blue Book reports each indicate a significantly different value of Debtors’ vehicle. 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 base value (rather than the “Retail/Wholesale Average” value)¹ and the Kelley Blue Book trade-in value, or \$8,170, is an appropriate estimate of the liquidation value of the vehicle at issue. The Kelley Blue Book trade-in value of \$6,390 appears low to the court, especially in light of the fact that Debtors stated the fair market value of the car at \$7,800 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 Debtors’ opinion in their schedules as to the market value of the vehicle 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

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Capital One does not attempt to explain the difference between the NADA report’s “Wholesale/Trade-in” base value and the adjusted “Retail/Wholesale Average” other than the fact that the base value is adjusted upward for various optional equipment. The court finds the base value the more appropriate starting point in light of Jason Allwood’s testimony indicating that the vehicle at issue does not possess all of the optional equipment indicated in the NADA report.

admissions). The opinion in their schedules indicates that Debtors would themselves expect to pay more than \$6,390 for the vehicle 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 mitigates in favor of a greater value than the Kelley Blue Book value of \$6,390.

On the other hand, with a published Kelley Blue Book trade-in value of only \$6,390, it seems very unlikely that Capital One would actually realize the NADA base valuation of \$9,950 at an auction or other wholesale disposition of the vehicle after repossession. The Collateral Valuation Services, LLC, valuation of \$8,000 for loan purposes seems to the court to be the more realistic estimate of what would be garnered by Capital One 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 Furthermore, as the owner of the vehicle, the court credits the testimony of Jason Allwood that the actual mileage on the car is significantly greater than that reflected in the NADA report. These factors mitigate a reduction in the NADA valuation.

Hence, the court arrives at the midpoint of \$8,170 between the proffered base trade-in NADA valuation and the Kelley Blue Book valuation as a realistic liquidation value for redemption of Debtors' 2001 Chevrolet Venture under 11 U.S.C. § 722. This figure 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 Kelley Blue Book valuation and the decrease the court believes is appropriate, for the reasons stated, insofar as Capital One's proposed NADA valuation.

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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 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 Chevrolet Venture from the record before it.

In light of the foregoing, the Court will grant Debtors' motion in part. The court finds that Capital One has an allowed secured claim in the amount of \$8,170 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

Chevrolet Venture.

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 2001 Chevrolet Venture vehicle from Capital One's lien by tendering a lump sum payment in the amount of \$8,170 to Capital One within 30 days of the entry of this order. Upon receipt of the \$8,170, Capital One shall promptly take all steps necessary to release its lien of record with respect to the 2001 Chevrolet Venture.

Mary Ann Whipple
United States Bankruptcy Judge