

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: October 14 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 05-34818
)	
Vicki C. James,)	Chapter 13
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

ORDER REGARDING OBJECTION TO PROOF OF CLAIM

This matter came before the court for hearing on Debtor’s Objection to Proof of Claim filed by Capital One Auto Finance (“Objection”) [Doc. # 12] and Capital One Auto Finance’s (“Capital One”) response [Doc. # 26]. Having considered the Objection, the response and the evidence and testimony presented at the hearing, the court will sustain the Objection in part and overrule the Objection in part.

FACTUAL BACKGROUND

Capital One filed a proof of claim indicating the Debtor owes it a debt in the amount of \$16,544.99 that is secured in full by a 2001 Toyota Tundra - V8 SR5 Access Cab with four-wheel-drive. Debtor does not dispute the total amount of the debt set forth in the proof of claim and the parties agree that the proper interest rate applicable to the secured claim to be paid in Debtor’s Chapter 13 plan is 7 per cent. But Debtor objects to Capital One’s characterization of the entire debt as being secured. Debtor’s Chapter 13 plan proposes a repayment plan of Capital One’s debt pursuant to the “cram down” provision of 11 U.S.C.

§ 1325(a)(5)(B).¹

At the hearing, Debtor offered evidence, that was admitted without objection, of market reports of the value of the vehicle as of October 10, 2005. The reports included a Kelley Blue Book report indicating a trade-in value of \$8,860, and a report from NADAguides.com, which is based on the consumer edition of the National Association of Automobile Dealers (NADA) Official Used Car Guide, of an average trade-in value of \$10,400 and average retail value of \$12,950. [Debtor's Ex. A & B]. While the values submitted take into consideration the mileage on the vehicle, they do not reflect the value of certain options on the vehicle. They also appear to value two different models of the 2001 Toyota Tundra - the NADA valuation being for an SR5 with four-wheel-drive and the Kelley Blue Book valuation being for an SR5 Access Cab with four-wheel-drive. The court notes that the model of the vehicle identified in Capital One's proof of claim is the SR5 Access Cab with four-wheel-drive.

Capital One offered the testimony of Daniel Stevens, an appraiser stipulated by Debtor to be an expert in valuing vehicles. Stevens testified that he personally examined the vehicle on October 6, 2005. At that time, the battery was dead and there was no visible oil in the engine. There was, however, no visible sign of an oil leak. There was also damage to the vehicle apparently caused by a collision. Stevens itemized the damage and estimated the cost of repairs to be \$3,743.09. [Creditor's Ex. 1, p. 8-10]. He testified that the NADA retail value for the vehicle is \$17,350, after considering the vehicle's mileage and options not included in the base price. Stevens also testified that he found two comparable vehicles being offered for sale in the amounts of \$12,500 and \$13,500. He testified that he calculates the value of the vehicle to be between \$11,000 and \$11,500. This calculation, set forth in Stevens' appraisal [Creditor's Ex. 1], is based on the average of (1) the NADA retail value for the vehicle and (2) the \$13,000 average of the quotes for the two comparable vehicles [$(\$17,350 + \$13,000) \div 2 = \$15,175$]. His calculation then reduces that average by \$4,025, the amount of the cost of repairs plus miscellaneous costs for preparing the vehicle for sale ($\$15,175 - \$4,025 = \$11,150$).

LAW AND ANALYSIS

A proof of claim constitutes "*prima facie* evidence of the validity and amount of the claim." Bankruptcy Rule 3001(f). When an objection is filed, the objecting party bears the initial burden of

¹ Section 1325(a) provides that the court shall confirm a plan if, among other things,
(5) with respect to each allowed secured claim provided for by the plan --

...
(B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and
(ii) the value, as of the effective date of the plan, of property to be distributed under
the plan on account of such claim is not less than the allowed amount of such claim. . . .

producing sufficient evidence to rebut the presumption of validity given to the claim. *In re Nelson*, 206 B.R. 869, 878 (Bankr. N.D. Ohio 1997). The burden then shifts to the claimant to prove the validity and amount of the claim by a preponderance of the evidence. *Id.* While the burden of going forward shifts during the claims objection process, the ultimate burden of persuasion is always on the claimant to prove the claimed entitlement. *In re Holm*, 931 F.2d 620, 623 (9th Cir.1991). Thus, Capital One bears the burden of proving the secured value of its claim. *Lenior v. GE Capital Corp. (In re Lenior)*, 231 B.R. 662, 671 (Bankr. N.D. Ill. 1999).

An “allowed secured claim” is defined in 11 U.S.C. § 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.

Unlike a Chapter 7 redemption where the allowed secured claim is determined by the liquidation value, in the context of a Chapter 13 case in which a debtor proposes continued use of the property in question and utilizes the cramdown provision of § 1325(a)(5)(B) for repayment of the allowed secured claim, “the value of the property (and thus the amount of the secured claim under § 506(a)) is the price a willing buyer in the debtor’s trade, business, or situation would pay to obtain like property from a willing seller.” *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 960 (1997); *see also Ardmor Vending Co. v. Kim (In re Kim)*, 130 F.3d 863, 865 (9th Cir. 1997) (holding that, in a Chapter 13 case, when the debtor retains property subject to a lien, “the proper valuation is fair market value, not foreclosure value”). This “replacement-value standard” ties the valuation to the “the creditor’s interest in the collateral in light of the proposed [repayment plan] reality: no foreclosure sale and economic benefit for the debtor derived from the collateral equal to . . . its [replacement] value.” *Id.* at 962 (quoting *In re Winthrop Old Farm Nurseries*, 50 F.3d 72, 75 (1st Cir. 1995).

In support of her position, Debtor offers the Kelley Blue Book trade-in reports, which indicates a trade-in value of \$8,860 for a 2001 Toyota Tundra SR5 Access Cab in fair condition. Debtor also offers the NADA report, which indicates an average trade-in value of \$10,400 and an average retail value of \$12,950 for a 2001 Toyota Tundra SR5. As noted above, Capital One indicates in its proof of claim that the vehicle in which it holds a security interest is a 2001 Toyota Tundra SR5 Access Cab, not a 2001 Toyota Tundra SR5. Debtor has not objected to Capital One’s secured claim on the grounds that it claims an

interest in the wrong vehicle. The court therefore finds that the NADA valuation submitted by Debtor is not an accurate valuation of the vehicle in issue. The court also finds that while the Kelley Blue Book trade-in value may be appropriate to consider in determining liquidation value, retail value more closely approximates the replacement value of a vehicle.

The court finds Stevens' testimony regarding his appraisal of the vehicle to more accurately represent the replacement value of Debtor's vehicle. As discussed above, his appraisal is based on his inspection of the vehicle, the NADA average retail value of a similar vehicle, and the prices quoted for two comparable vehicles offered for sale at the time of the appraisal. Based on this evidence, the court finds that Capital One has met its burden of proving that the replacement value, or fair market value, of the Debtor's vehicle is \$11,150.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that Debtor's Objection to Claim be, and hereby is, **SUSTAINED in part** and **OVERRULED in part**; and

IT IS FURTHER ORDERED that Capital One's claim is secured in the amount of \$11,150 to be paid at 7% interest and is otherwise unsecured.