

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 27 2005

A handwritten signature in blue ink, appearing to read "Mary Ann Whipple".

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 05-34195
	)	
James Grayson,	)	Chapter 7
Karen Grayson,	)	
	)	
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. #43] from the lien of General Motors Acceptance Corporation ("GMAC") and GMAC's objection to the motion [Doc. # 52]. The issue before the court is the value of Debtors' 2004 Cadillac SRX vehicle, which the parties agreed at the hearing should be determined on the documents submitted by the parties 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. Debtors do not dispute that GMAC has a properly perfected security interest in the vehicle at issue. On August 8, 2005, the court granted GMAC's motion for relief from stay and abandonment with respect to the vehicle. Thus,

under § 722, Debtors may redeem the vehicle by paying GMAC the amount of its allowed secured claim.<sup>1</sup>

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.<sup>2</sup> *Triad Financial Corp. v. Weathington (In re Weathington)*, 254 B.R. 895, 899 (B.A.P. 6<sup>th</sup> Cir. 2000); *see also In re Donley*, 217 B.R. 1004, 1007 (Bankr. S.D. Ohio 1998).

This dispute centers on the proper valuation of Debtors’ vehicle 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. GMAC submits a valuation report dated September 8, 2005, from the National Association of Automobile Dealers (“NADA”) Official Used Car Guide for a 2004 Cadillac SRX with a rear entertainment system and 25,001 miles. The report lacks clarity, however, as to the engine size of the vehicle it is valuing, with the vehicle description stated as an “SRX-V6/V8.” The NADA report indicates a retail value of \$33,425, a trade-in value of \$29,500 and a loan value of \$26,625. [Cr. Ex. A].

Debtors, on the other hand, submit a Manheim market report indicating the following sale prices for 2004 Cadillac SRX vehicles at auction for the week ending August 10, 2005: an average sale price of \$25,669 for vehicles with 11,573 miles, an above average sale price of \$29,523 for vehicles with approximately 6,000 miles, and a below average price of \$21,815 for vehicles with approximately 17,000

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<sup>1</sup> Although cited by neither party, the court is aware of the holding in *In re Buck*, 2005 WL 2496400, 2005 Bankr. LEXIS 1910 (Bankr. N.D. Ohio, April 29, 2005), that the debtor no longer had a right to redeem his vehicle that was subject to a creditor’s security interest after the creditor was granted relief from stay and had sold the vehicle. *Buck* is distinguishable from this case in that the vehicle at issue in *Buck* had already been sold. To the extent that the case can be read to have a broader application regarding a debtor’s redemption rights beyond those facts, this court respectfully disagrees. The critical fact in *Buck* is that the creditor no longer had any interest to be redeemed by the debtor because the vehicle had been sold. While relief from stay was necessary to enable the foreclosure of the creditor’s lien by sale, relief from stay did not itself terminate any interest of either the debtor or the creditor in the vehicle.

<sup>2</sup> The court notes that this case was filed before October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, § 1501(a), 119 Stat. 23 (2005). Thus, the amended version of § 506(a) is inapplicable.

miles. The average auction mileage is reported as being 10,333 miles. [Db. Ex. 1]. The model being valued is reported on the Manheim market report as an “SRX 2WD V6.”

The court finds the Manheim market report, rather than the NADA valuations, more closely reflects the liquidation value of the vehicle, that is, the amount that GMAC can reasonably expect to recover upon repossession and sale by auction or other wholesale means, in that the report indicates actual sale prices obtained at auction. The NADA report’s lack of clarity as to the engine size of the model being valued also influences the court in relying on the Manheim valuation.

In determining which of the Manheim values approximates the value of Debtors’ vehicle, the court has further considered the mileage on Debtors’ vehicle as indicated in the NADA valuation submitted by GMAC compared to the mileage on the vehicles sold at auction as indicated in the Manheim report. Debtors’ vehicle has mileage of 25,001 miles, more than twice the mileage for similar vehicles sold at the average auction sale price of \$25,669. Thus, the court concludes that the below average auction price of \$21,815 for cars with approximately 17,000 miles most closely approximates the value of Debtors’ vehicle. The Manheim report, however, does not indicate any added value for optional equipment. The NADA report indicates, and Debtors do not dispute, that their car does include a rear entertainment system as optional equipment with a loan and trade in value of \$600. The court therefore finds that the liquidation value of Debtors vehicle is \$21,815 plus \$600 for the added value of the optional equipment, for a total of \$22,415.

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 \$22,415 and orders it to accept from Debtors a lump sum payment in this amount if paid within 21 days from the date of this order and, if so paid, to release its lien of record with respect to the 2004 Cadillac SRX.

**THEREFORE**, for the foregoing reasons, good cause appearing,

**IT IS ORDERED** that Debtors’ Motion to Redeem [Doc. # 43] be, and hereby is, **GRANTED** as provided herein; and

**IT IS FURTHER ORDERED** that Debtors may redeem the 2004 Cadillac SRX from GMAC’s lien by tendering a lump sum payment in the amount of \$22,415 to GMAC within 21 days of the entry of this order. Upon receipt of the \$22,415, GMAC shall promptly take all steps necessary to release its lien of record with respect to the 2004 Cadillac SRX and shall promptly make the 2004 Cadillac SRX available to Debtors. Thereafter, Debtors shall, at Debtors’ expense, immediately retrieve the vehicle from GMAC.