

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 31 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 05-33812
)	
Mei'cha D. Dyer-White,)	Chapter 7
DeWayne White,)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

MEMORANDUM AND ORDER REGARDING MOTION TO REDEEM

This matter is before the court on Debtor DeWayne White’s motion to redeem a motor vehicle under 11 U.S.C. § 722 [Doc. #10] from the lien of North Coast Financial (“North Coast”) and North Coast’s objection to the motion [Doc. # 17]. The issue before the court is the value of Debtor’s 1988 Cadillac, which the court will determine based on the testimony offered and 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. 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.¹ *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).

North Coast does not dispute that the Cadillac 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 North Coast's allowed secured claim and, thus, the amount to be paid in order to redeem the vehicle. Debtor testified at the hearing regarding the condition of the vehicle. He testified that the car has not been driven since 1999 and that it is presently not able to be driven as neither the motor nor the transmission are in working order. Although he listed the value of the Cadillac on bankruptcy Schedule B at \$1,500, he testified that his attorney simply used a Kelley Blue Book valuation but that he had not actually obtained an appraisal of the vehicle. Since that time, the "junk yard" offered him \$65 for the vehicle. However, Debtor testified that he believed he could sell parts of the vehicle for approximately \$100.

North Coast, on the other hand, submits a valuation report dated September 15, 2005, from NADAguides.com, which is based on the consumer edition of the National Association of Automobile Dealers (NADA) Official Used Car Guide. [Cr. Ex. C]. The NADA report indicates a "low retail" value of \$1,250 for a 1988 Cadillac Deville with 155,000 miles. The report indicates that a "low retail" value is appropriate for a vehicle that has "extensively visible wear and tear" but that is "able to pass local inspection standards and be in safe running condition." [*Id.*]. North Coast also offered the testimony of its collection manager, Melissa Barutti. Ms. Barutti testified that Debtor's last payment was received by North Coast on February 2, 1999. She further testified that she has no knowledge regarding the condition of the Cadillac. Although she testified that North Coast did not repossess the vehicle because it could not be located, the North Coast collection notes include a notation that the car is too old to repossess.

The court credits Debtor's testimony regarding the condition of the Cadillac. Although the court is very skeptical that the vehicle has not been driven since 1999, given North Coast's difficulties in finding it for repossession, Debtor's testimony about the vehicle's condition comports with its advanced age and

¹ 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.

the “junk yard’s” offer. The court also credits his testimony regarding the value of the vehicle over the NADA valuation report. The NADA report values a vehicle that is in working condition, which Debtor’s Cadillac is not. It also reports a “retail” value, which does not necessarily reflect the liquidation value of the car, that is, the amount that North Coast can reasonably expect to recover upon repossession and sale by auction or other wholesale means. Although Debtor was offered \$65 for the vehicle, the court credits his testimony that the Cadillac’s value is approximately \$100 if sold for parts. The court therefore finds that the liquidation value of Debtor’s vehicle is \$100.

In light of the foregoing, the Court will grant Debtor’s motion. The court finds that North Coast has an allowed secured claim in the amount of \$100 and orders it to accept from Debtor a lump sum payment in this amount if paid within 30 days from the date of this order and, if so paid, to release its lien of record with respect to the 1988 Cadillac.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that Debtor’s Motion to Redeem [Doc. # 10] be, and hereby is, **GRANTED** ; and

IT IS FURTHER ORDERED that Debtor may redeem the 1988 Cadillac from North Coast’s lien by tendering a lump sum payment in the amount of \$100 to North Coast within 21 days of the entry of this order. Upon receipt of the \$100, North Coast shall promptly take all steps necessary to release its lien of record with respect to the 1988 Cadillac.