

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: February 14 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 05-73965
)	
Jay East,)	Chapter 7
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

MEMORANDUM OF DECISION AND ORDER REGARDING MOTION TO REDEEM

This matter came before the court for hearing on Debtor’s motion to redeem a motor vehicle under 11 U.S.C. § 722 [Doc. # 8] from the lien of Heritage Acceptance Corp (“Heritage”) and Heritage’s objection to the motion. The issue before the court is the value of Debtor’s 1995 Ford F150 Short Bed pick-up truck, which the parties agreed at the hearing should be determined solely 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. 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).

Heritage does not dispute that the vehicle 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 Heritage's allowed secured claim and, thus, the amount to be paid in order to redeem the vehicle. Debtor submits the Kelley Blue Book Trade-In Report (Ohio) dated October 12, 2005, the date of filing of the case, which indicates a trade-in value of \$750 for a 1995 Ford F150 Short Bed with a 6-cylinder engine and 147,000 miles that is in fair condition. [Debtor's Hearing Ex. 1]. "Fair condition" is defined as a vehicle that "has some mechanical or cosmetic defects and needs servicing but is still in reasonable running condition." [*Id.*] Kelley Blue Book explains that "the paint, body and/or interior need work performed by a professional" and that "the tires may need to be replaced" and "there may be some repairable rust damage." [*Id.*]

Heritage, on the other hand, submits three documents in support of a higher valuation of the vehicle, all of which were admitted without objection. First, it submits the National Association of Automobile Dealers ("NADA") Official Used Car Guide dated January 23, 2006, for a 1/2 ton, 1995 Ford F150 pick-up with a 6-cylinder engine and 147,000 miles. [Creditor's Ex. C.] The NADA report indicates a retail price between \$3,475 and \$5,675. Next, it submits the NADA Official Older Used Car Guide, which indicates retail values between \$4,050 and \$8,100² for similar vehicles. [Creditor's Ex. A.] Heritage also submits a Vehicle Condition Report describing Debtor's vehicle that is dated February 6, 2006. The report indicates no reported mechanical problems, normal wear of the truck bed, and that the vehicle has a bed liner, newer tires, multiple scratches on the body of the vehicle, and an interior in average condition. [Creditor's Ex. B.] The Vehicle Condition Report further indicates a wholesale value between \$2,500 and \$2,900, "depending upon current market at time of sale and location of sale," and a retail value of \$4,200, plus or minus 20%.

¹ 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.

² These values include a deduction of \$150 due to the fact that Debtor's vehicle has a 6-cylinder engine rather than a V8 engine. [*See* Creditor's Ex. A.]

[*Id.*]

The court finds that the retail valuations in the NADA reports and the Vehicle Condition Report submitted by Heritage do not reflect the proper test of value for redemption purposes. As explained in *Weathington*, liquidation value, rather than retail value, “best reflects Congressional intent because the commercial reality is that creditors that repossess vehicles most often sell them wholesale at auctions.” *Weathington*, 254 B.R. at 900. Thus, in determining the vehicle’s redemption value, the court will consider only the wholesale value indicated in the Vehicle Condition Report and the Kelley Blue Book trade-in value, each of which indicate a significantly different value of Debtor’s vehicle. The parties do not attempt to provide the court with any basis for distinguishing between “wholesale” and “trade-in” values. Courts have used the term “liquidation value” interchangeably with both “wholesale” and “trade-in” value. *See, e.g., Id.* at 899 n.1 (noting that the court uses the terms “liquidation” and “wholesale” valuation interchangeably); *In re Weber*, 332 B.R. 432, 437-38 (B.A.P. 10th Cir. 2005) (finding the trade-in value reflects the liquidation value); *In re Bouzek*, 311 B.R. 239, 231 (Bankr. E.D. Wis. 2004) (finding wholesale value the equivalent of trade-in value). The court must, therefore, arrive at the fairest approximation of liquidation value it can fashion from the evidence. *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 Kelley Blue Book trade-in value of \$750 and the Vehicle Condition Report wholesale value of \$2,500, or \$1,625, is an appropriate estimate of the liquidation value of Debtor’s vehicle. Simply put, the Kelley Blue Book value appears to low to the court since just eighteen months ago Debtor purchased the vehicle for \$7,351 and there is no evidence of any major damage to the vehicle since that time. The court notes that the Kelley Blue Book value for a like vehicle in fair condition does not reflect newer tires and a truck bed liner as were found on Debtor’s vehicle. This mitigates in favor of a greater value than the Kelley Blue Book value of \$750. On the other hand, the Vehicle Condition Report valuation does not reflect consideration of the type of engine (i.e. 6 cylinder rather than V8) or the mileage on the vehicle, nor does it indicate the basis for the valuation, that is, whether it is based upon the NADA wholesale value or some other published source. Furthermore, with a published Kelley Blue Book trade-in value of only \$750, it seems very unlikely that Heritage would actually realize \$2,500 at an auction or other wholesale disposition of the vehicle after repossession. Hence, on the evidence before it, the court arrives at the midpoint between the two proffered values as a realistic liquidation value for redemption of Debtor’s 1995 Ford F150 under § 722.

In light of the foregoing, the court will grant Debtor's motion in part. The court finds that Heritage has an allowed secured claim in the amount of \$1,625 and orders it to accept from Debtor a lump sum payment in this amount and to release its lien of record with respect to the 1995 Ford F150.

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

1. Debtor's Motion for Authority to Redeem Personal Property Under 11 U.S.C. § 722 [Doc. #8]be, and hereby is, **GRANTED** as provided herein.

2. Debtor may redeem the 1995 Ford F150 vehicle from Heritage's lien by tendering a lump sum payment in the amount of \$1,625 to Heritage within 30 days of the entry of this order. Upon receipt of the \$1,625, Heritage shall promptly take all steps necessary to release its lien of record with respect to the 1995 Ford F150.