

The court incorporates by reference in this paragraph and adopts as the findings and analysis 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: August 07 2006

Mary Ann Whipple  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**In Re:** Reginald W. Murphy, Sr.

**Debtor(s)**

)  
)  
)  
)  
)  
)

Case No. 06-30040

Chapter 7

**JUDGE MARY ANN WHIPPLE**

**MEMORANDUM OF DECISION REGARDING MOTION TO REDEEM**

This matter is before the Court on Debtor's motion to redeem a motor vehicle under 11 U.S.C. § 722 [Doc #8] from the lien of Centrix Financial, LLC ("Centrix") and Centrix's objection to the motion [Doc. #14].<sup>1</sup> The court must determine the value of Debtor's motor vehicle under § 506(a) of the Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), 11 U.S.C. § 506(a), which became effective in cases filed on or after October 17, 2005, as this one was. In his motion, Debtor asserts that the redemption value of his

---

<sup>1</sup>

The court has jurisdiction over Debtor's chapter 7 case pursuant to 28 U.S.C. §§ 1334(a) and 157(a). The United States District Court for the Northern District of Ohio has referred all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 to the bankruptcy judges in this district. General Order 84-1. The motion to redeem is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(K) and (O).

2003 Pontiac Grand Am V6 2D Coupe GT is \$6,740.00. In its response, Centrix asserts that the redemption value of Debtor's car is \$14,425.00. Based on the evidence at the hearing, and for the reasons stated below, the court finds that the amount of Centrix's allowed secured claim and the redemption value of the vehicle is \$12,095.63.

Under § 722 of the Bankruptcy Code, as amended by BAPCPA, 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, in full at the time of redemption, the amount of the allowed secured claim that is secured by the lien. The only change to the text of § 722 under BAPCPA was addition of the language requiring the redemption amount to be paid in full at the time of redemption. Addition of this language to § 722 did not, however, change the law in the Sixth Circuit, as that court had long ago decided that redemption value had to be paid in a lump sum. *In re Bell*, 700 F.2d 1053, 1058 (6<sup>th</sup> Cir. 1983). Debtor in fact properly proposes to pay the redemption amount in a lump sum, and Centrix does not dispute that Debtor's car is subject to redemption from its lien. Rather, as is generally the case, the dispute is over the amount to be paid by Debtor to Centrix to effect the redemption.

The "allowed secured claim" that Debtor must pay to redeem his car from Centrix's lien is defined in § 506(a)(1) 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 on a plan affecting such creditor's interest.

The pre-BAPCPA version of § 506(a) did not contain a specific valuation standard, leaving it to the courts to determine valuation standards appropriate to specific provisions of and issues under the Bankruptcy Code. The Sixth Circuit had not ruled before BAPCPA on the proper valuation standards

for a secured creditor's allowed claim for purposes of redemption under § 722. In the absence of binding Sixth Circuit authority, courts in this circuit generally held that a creditor's allowed secured claim under pre-BAPCPA § 506(a) for purposes of redemption under § 722 was measured 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. 6<sup>th</sup> Cir. 2000); *see also In re Donley*, 217 B.R. 1004,1007 (Bankr. S.D. Ohio 1998).

Under BAPCPA, Congress added a statutory valuation standard in § 506(a)(2) that applies to redemption of collateral from liens under § 722. Section 506(a)(2) reads as follows:

If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time the value is determined.

The Supreme Court set the standard for valuing property retained by debtors in *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 963, 117 S.Ct. 1879, 138 L.Ed.2d 148 (1997). Observing that § 506(a) of the Bankruptcy Code contained no statutory valuation standard, *Rash* determined that, under § 506(a), the value of property retained when the debtor decides to “cram-down” a creditor's claim in a chapter 13 case is the “cost the debtor would incur to obtain a like asset for the same proposed use.” In other words, *Rash* required a debtor to value the creditor's collateral in a chapter 13 at replacement value. In new § 506(a)(2) Congress appears to be codifying *Rash* for application to a broader set of circumstances under individual chapter 7 and chapter 13 cases.<sup>2</sup>

---

2

The Supreme Court's rationale for applying replacement value in the context of chapter 13 cram-downs was that it would more accurately reflect the loss of value of the collateral to the creditor from deterioration caused by retention and continued use of the property by the debtor. *Id.*, 520 U.S. at 962-63. But where the secured claim is being paid in a lump

Section 506(a)(2) thus changes the standard generally applied pre-BAPCPA by courts in the Sixth Circuit for valuing collateral and determining a creditor's allowed secured claim for purposes of redemption under amended § 722.

The court must therefore determine in this particular case “the price a retail merchant would charge for property of that kind [2003 Pontiac Grand AM V6 2D Coupe GT] considering the age and condition of the property at the time value is determined.” At the evidentiary hearing, Debtor presented only published market data, including two printouts from Manheim auctions [Exhibit A] and ads published on Internet for sale of comparable 2003 Pontiac Grand Am cars [Exhibit B and C]. *See* Fed. R. Bankr. P. 9017; Fed. R. Evid. 803(17) and 902(6); *In re Roberts*, 210 B.R. 325, 330-31 (Bankr. N.D. Iowa 1997). Debtor's evidence also contains a loan commitment for lending on the vehicle at \$12,100 [Exhibit C]. The court has disregarded the loan commitment in reaching this decision, as it lacks persuasive value and relevance since the court cannot really tell whether it is premised on the valuation standard in new § 506(a)(2) and the sources of the valuation are unknown. It is also double hearsay without an apparent applicable exception beyond the residual exception. The Manheim evidence, while in summary form, is time specific and estimates a range of retail values based on 18 vehicles actually sold from a high of \$13,000 to a low \$11,200, with an average of \$12,100. The Internet ads, which are now the equivalent of newspaper classified ads, show the offering price of 6 different 2003 Pontiac Grand Am V6 2 door coupes: (1) \$10,995 for car with

---

sum, as must now occur by statute under amended § 722, instead of over time as in a chapter 13 plan, and the creditor is not therefore subject to the risk of further collateral deterioration, this rationale does not seem to work. Moreover, in *Rash*, 520 U.S. at 965, n.6, and in case law since *Rash*, *see, e.g., In re Bryan*, 318 B.R. 708, 710 (Bankr. W.D. Mo. 2004)(defines retail value as the price a willing buyer is willing to pay for any car and replacement value as the price a willing buyer is willing to pay for a similar car minus the cost of sale), replacement value was not necessarily equated with retail value, as Congress has now chosen to do for at least some circumstances. Nevertheless, despite this disconnect, the new statutory replacement value standard Congress has established in § 506(a)(2) clearly applies to redemptions under amended § 722.

24,712 miles from AutoTrader.com for a dealer in Grand Ledge, MI; (2) \$11,800 for car with 45,493 miles from AutoTrader.com for a dealer in Sparta, WI; (3) \$11,690 for car with 18,314 miles from AutoTrader.com from a dealer in an unknown location; (4) \$11,995.00 for a vehicle of unknown mileage from a dealer in North Ridgeville, OH; (5) \$11,995.00 for car of unknown mileage from a dealer in Lake, Orion, MI; and (6)\$11,995.00 for a vehicle with 46,091 miles from a dealer in Columbia City, IN.

Centrix presented the testimony and written appraisal [Exhibit 1] of Dan Stevens. Mr. Stevens' opinion is that the retail value of the car is \$13,405. This opinion was based on his view of the vehicle, which he determined to be in average condition with no damage found and mileage of 37,715, and reliance on the average of the NADA retail value (\$13,925), the Red Book value (\$13,400) and two quotes from dealers in Garden City (\$13,000) and Ann Arbor (\$13,295.00) Michigan.

Stevens provided valuable input to the court based on his personal inspection of the vehicle as to the age, condition, mileage and features of Debtor's car. The court does not, however, find Mr. Stevens' opinion of retail value conclusive or particularly persuasive, as it is essentially based on a combination of outside sources readily available to anybody and not on his own independent experience or expertise in the business. The court finds that Stevens' opinion is unreasonably high.

First, *none* of the actual dealer asking prices for similar vehicles that are in evidence, which range from a low of \$10,995 (Debtor's evidence) to a high of \$13,295.00 (Centrix's evidence) are as much as his opinion of retail value. Where the codified test is now defined as the price a retail merchant would charge, these values are right on target with the actual statutory test. This is a different situation than deciding a fair market value where the predominant method of disposal is auctions and the prevailing valuation standard necessitates an evidentiary prediction from the best available information as to what similar property is likely to sell for at an auction. Here, the standard

is what retail merchants would charge; there is evidence in the record of what retail merchants in the business of selling cars are actually charging for actual similar vehicles in this general geographic area. The evidence shows that Debtor buy a similar car from a retail merchant in this general geographic area for much less than \$13,405.00.

Second, a substantial component of the Stevens opinion is the NADA guide retail value. While the NADA guide is certainly an important source and component of valuation evidence for courts and parties, including this one, courts also often recognize that NADA guide values tend to skew high and therefore need to be discounted. *See, e.g., In re McElroy*, 339 B.R. 185, 189 (Bankr. C.D. Ill. 2006)(finds that “the NADA retail values proffered by Ford may be too high” and applies a 5% discount to arrive at replacement value in a chapter 13 case); *In re Mitchell*, 320 B.R. 687, 689 (Bankr. E.D. Mo. 2004)(court local rule that value of vehicle is 95% of NADA retail value for first three years of age if no conflicting evidence is presented); *In re Brown*, 324 B.R. 769, 771 (Bankr. E.D. Mo. 2005)(same court applies sliding scale of reduction of 5% to 15% from NADA retail values depending on age of vehicle). *In re Mayland*, Bankr. No. 06-10283, 2006 Bankr. LEXIS 967, at 5 (Bankr. M.D.N.C., May 26, 2006) (starting point for determining replacement value under § 506(a)(2) is 90% of the retail value of the vehicle listed by the NADA Guide, explaining that adjustments may need to be made to the prices printed in the NADA Guide, such as for reconditioning costs incurred to put a vehicle into a saleable condition);

Third, the court finds that for purposes of establishing retail prices under the BAPCPA valuation, actual retail price offerings, over the Internet and otherwise, are relevant and persuasive, perhaps even moreso than composite estimates of retail value. Debtors are no longer limited to physically shopping for vehicles at local (in this case Toledo) car dealerships and reading classified ads in the local newspaper. The Internet has opened up a broad array of information sources and retail offerings on a broader basis equivalent to classified ads in the newspaper that individual

consumers now routinely rely upon and actually shop with.

For the foregoing reasons, the court will average the eight prices (six reported by Debtor and two reported by Centrix) in the record at which car dealers are actually offering for sale cars similar to Debtor's 1993 Pontiac Grand Am 2DR V6 Coupe. The result of that average is a retail price of \$12,095.63. Under § 506(a), this is the replacement value that measures Centrix's secured claim and is thus the amount that Debtor must pay Centrix in a lump sum to redeem his car from Centrix's lien under 11 U.S.C. § 722.

The court will enter a separate order granting Debtor's motion to redeem as provided in this memorandum of decision.