

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 11-12041  
)  
WARREN S. DOYLE and ) Chapter 7  
WENDIE L. DOYLE, )  
) Judge Pat E. Morgenstern-Clarren  
Debtors. )  
) **MEMORANDUM OF OPINION**  
) **AND ORDER**

The debtors Warren and Wendie Doyle move to redeem a 2007 Saturn Aura XE from a lien held by AmeriCredit Financial Services. The parties disagree as to the amount that the debtors must pay to the secured creditor to redeem the car. The court held an evidentiary hearing on this issue, at which time both parties presented evidence from appraisers and the debtor Warren Doyle testified. For the reasons stated below, the debtors' motion to redeem is granted subject to payment of \$10,950.00 to AmeriCredit.<sup>1</sup>

**JURISDICTION**<sup>2</sup>

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K) and (O). This decision is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

**OVERVIEW**

About three months before the debtors Warren and Wendie Doyle filed their chapter 7 case, they purchased a 2007 Saturn Aura XE (V-6 engine) for \$15,363.89 from Classic Buick-

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<sup>1</sup> Docket 19.

<sup>2</sup> This opinion is not intended for publication, either in print or electronically.

Pontiac-GMC in Painesville, Ohio, signing a note and giving the dealer a security interest in the car. The dealer transferred the note and security agreement to AmeriCredit Financial Services. The debtors seek to redeem the car in the range of \$9,500.00. AmeriCredit opposes the motion, arguing that the amount of its secured claim is \$14,000.00.

### **BANKRUPTCY CODE § 722**

Under Bankruptcy Code § 722, an individual chapter 7 debtor may redeem a family car from a secured creditor by paying “the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.” 11 U.S.C. § 722; *see also* FED. R. BANKR. P. 6008. The amount of the creditor’s allowed secured claim for this purpose is governed by § 506(a). 11 U.S.C. § 506(a). Under § 506(a), the claim is “a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property[.]” 11 U.S.C. § 506(a)(1). In a case such as this where the individual debtors acquired the car for family use, the 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 . . . [and] 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 value is determined.

11 U.S.C. § 506(a)(2).<sup>3</sup>

The statute does not specify the methodology that the court should use for determining the value. And “no consensus has emerged in the case law interpreting § 506(a)(2) as to how

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<sup>3</sup> Although there is a split in the case law as to whether the filing date or the valuation date should be used for determining the value, the court does not need to address that because both parties focused on the value of the vehicle closer to the time of the hearing than to the filing date.

replacement value for motor vehicles should be determined [and] [t]he results reached ultimately seem to depend . . . on the overall record a court is presented with in a particular case.” *In re Pearsall*, 441 B.R. 267, 270 (Bankr. N.D. Ohio 2010). While courts often refer to Kelley Blue Book and the NADA Used Car Guide as starting points, this court agrees that “the best evidence of a vehicle’s value is the testimony of an independent qualified appraiser who bases his [or her] opinion on an actual inspection of the mechanical condition and the interior and exterior of the vehicle.” *In re Redpath*, No. 09-80972, 2009 WL 3242107 at \*3 (Bankr. C.D. Ill. Sept. 30, 2009).

The debtor, as the party seeking to redeem the property, has the burden of proving the car’s value by a preponderance of the evidence. *In re Herrera*, 454 B. R. 559, 561 (Bankr. E.D. N.Y. 2011) (collecting cases for that position).

### **THE EVIDENTIARY HEARING**

The debtor Warren Doyle testified as to the circumstances surrounding the debtors’ car purchase, and also testified as to the car’s condition. Wendie Doyle needed a car to get to work and the debtors had dealt with this dealer before. They paid the price that the dealer quoted because they had poor credit and felt it was either “buy it or walk home.” After filing their bankruptcy case and learning more about car values, they decided that the dealer overcharged them and/or took advantage of them. There is a rust spot on the hood that is about the size of a pencil eraser. The tires need to be replaced and there is a problem with the brakes and the electrical system (flickering lights). The debtor did not testify as to any specifics of these problems, or what it would cost to repair them.

Both parties presented expert testimony to support their positions. The debtors offered the testimony of Georgene Cooper and Cheryl Cooper who work as a team to appraise vehicles

for Third Party Auto Appraiser Co., a company owned by Georgene Cooper. They are both experienced appraisers. In this case, Cheryl Cooper inspected the car, Georgene Cooper did the research, and they then combined their information to arrive at an appraised value.

Cheryl Cooper started with a visual inspection, making these findings: the car was in fair condition, with dents in the passenger doors, some rust on the hood, and stains on the interior seats and carpet. She also noted that the debtor said that a mechanic told him the car needed new tires and brakes. On the plus side, the car had low mileage, power windows and door locks, and heated front seats, among other things.

With that report in hand, Georgene Cooper did her research, which included reviewing the values in the Kelley Blue Book, the Black Book, and the NADA, as well as calling some dealers in the area. From those conversations, she estimated the cost to do the repairs at \$1,100.00-\$1,500.00. Additionally, she considered that the Saturn Aura XE is no longer being built and that soon the only repair parts for this make and model will have to come from stockpiles, which may make this a less attractive vehicle to some buyers. The Coopers did not do a mechanical inspection. The Kelley Blue Book value for this make and model car in fair condition is \$9,500.00.

The Coopers concluded that a dealer would buy this car from an individual seller by paying a “current fair market value” of between \$7,800.00 and \$7,900.00. They opined that a dealer could not re-sell the car without repairing it. The price that a dealer would charge on resale would be the purchase price plus repair costs of about \$1,100.00-\$1,500.00 plus about \$2,000.00 for the dealer’s profit. On cross-examination, Georgene Cooper acknowledged that the NADA “clean retail” price for a similar make and model car as of November 2011 is \$12,300.00, but pointed out that this car is not in a clean retail condition.

AmeriCredit presented the testimony of Clarence Eckfeld, who is also an experienced appraiser. Like the Coopers, he did a visual but not a mechanical inspection of the car, and consulted sources that he considered authoritative in the field. He felt that the car was in excellent condition; he did not see dings in the doors, rust on the hood, or stains on the seats. When asked to review a photograph of the car that showed rust, he testified that a dealer would fix a rust spot the size of a pencil eraser by sanding it down and touching it up with about \$4.00 worth of paint.

Mr. Eckfeld does not use the Black Book for appraisals because it is only for wholesalers. In his experience, most dealers use the NADA for value, making necessary adjustments up and down for mileage, condition, and extra features. After doing the visual inspection and consulting the NADA, Mr. Eckfeld came at the appraisal from a slightly different angle than did the Coopers. Rather than calling dealers in the Cleveland area, he went on line and checked the asking price for this make and model car in excellent condition offered for sale by dealers who do business in the debtors' zip code. He took the highest and lowest with similar mileage and averaged them to arrive at \$13,762.00 as what the dealers in this area would have set as an asking price in July 2011. After consulting the NADA value, Mr. Eckfeld adjusted this number upward to arrive at a retail value of \$14,000.00. He testified that a dealer typically includes \$2,000.00–\$4,000.00 potential profit in the price, leaving room for the dealer to negotiate. If the buyer does not negotiate, the dealer makes a bigger profit.

All three appraisers answered questions about whether this make and model car is going up or down in value. The court finds the testimony inconclusive and for that reason will not further recount it.

The Coopers described the car as in fair condition, while Mr. Eckfeld described it as in excellent condition. They did not, however, explain if they were using these words in a general conversational sense or in the technical sense that the trade books use them. For example, Mr. Eckfeld looked to the NADA based on his decision that the car was in excellent condition. The NADA, however, uses these three categories: rough, average, and clean. The definition of “clean” is “no mechanical defects and passes all necessary inspections with ease; paint, body and wheels may have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history; vehicle will need minimal reconditioning to be made ready for resale.”<sup>4</sup> Mr. Eckfeld could not have been using this definition in describing the car’s condition as excellent because he did not do a mechanical inspection to determine whether there were defects. This reduces the value of his testimony. Similarly, the Coopers must have been basing their opinion that the car is in fair condition on the visual inspection plus the debtor’s information because they did not do a mechanical inspection either.

### **DISCUSSION**

The court returns to the question: what is the price that a retail seller would charge for this car? Although the debtors purchased their car less than a year before the hearing, no one argued that the car’s value is anywhere near the \$15,363.89 that the debtors paid. In closing argument, the debtors urged the court to accept the Kelley Blue Book value of \$9,500.00. And, as noted, AmeriCredit argues for a finding of \$14,000.00, more than the NADA value.

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<sup>4</sup> Available at <http://www.nada.com/b2b/Support/Glossary.aspx>.

The first issue is the car's condition, because the appraisal numbers flow from that. The debtor is the only witness who has driven in the car, and the court believed his testimony that the car needs brake and electrical work, as well as a new set of tires. Additionally, the court believed the debtor and the Coopers' testimony (taken together) that the car is in fair condition, in light of these issues and the body work needed. The court gives less weight to Mr. Eckfeld's conclusion that the car is in excellent condition because he did not show that he had any basis for evaluating the mechanical condition. While the mileage is low, there was no evidence that low mileage automatically equates with being in excellent condition.

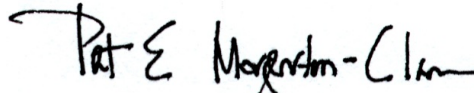
On the other hand, the Coopers' estimate of \$400.00 to repair a small rust spot is too high. It is more likely than not that a very small rust spot could be repaired quite easily by an experienced dealer.

Having considered all of the evidence, including the evidentiary gaps discussed above, the court finds the Coopers' testimony to be credible in all respects except for the \$400.00 rust repair amount. Because the Coopers gave a repair estimate of between \$1,100.00 and \$1,500.00 which included the \$400.00 rust repair, and because the court concludes that the rust spot could be repaired with little time or expense, the court will use the \$1,100.00 repair number for the cost to repair the car. The court then calculates the amount that a dealer would charge in this fashion: Purchase price paid by retailer to individual seller \$7,850.00 (the average of \$7,800.00—\$7,900.00); plus \$1,100.00 in repairs; plus \$2,000.00 dealer profit, for a total of \$10,950.00.

**CONCLUSION**

The debtors' motion to redeem is granted. The debtors may redeem the car on payment to AmeriCredit of \$10,950.00.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Pat E. Morgenstern-Clarren". The signature is written in a cursive, flowing style. The "P" is large and loops around the "at". The "M" is also large and loops around the "orgenstern". The "Clarren" part is written in a more straightforward cursive.

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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge