UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

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In re:

MATTHEW R. BOMBACH, MEMORANDUM TO ORDER OF
d/b/a Bombach Distribution, SEPTEMBER 30,
1994
d/b/a Royal Premier and Five
Star Delivery,

Debtor. BKY 3-94-696

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This is a Chapter 7 case, in which the Debtor made a motion for redemption of personal property collateral pursuant to 11 U.S.C. Section 722.(1) On September 30, 1994, the Court entered an order granting the motion, subject to certain terms and conditions. This memorandum contains the findings and conclusions on which that order was based, pursuant to Fed. R. Civ. P. 52(a), as incorporated by Fed. R. Bankr. P. 9014.

Via his motion, the Debtor sought to redeem a 1992 Isuzu pickup truck from the lien of American Credit Corporation ("American Credit"). American Credit did not dispute that the remedy was available to the Debtor; the sole issue between the parties was "the amount of the allowed secured claim" in question. Counsel for both parties presented fairly involved arguments for their clients' respective positions.

As the relevant provisions of the Bankruptcy Code(2) and their legislative history(3) make clear, this was an issue of fact, to be determined on the circumstances of each case. Ultimately, in the case of a redemption by a Chapter 7 debtor the amount of the allowed secured claim is the value of the collateral to the particular secured creditor under the circumstances--that is, the amount that it would realize after repossession and a lawful post-repossession sale of the very collateral in question, net of its expenses of repossession and sale, if any. In re Hawkins, 136 B.R. 649, 651 (Bankr. W.D. Va. 1991); In re Waters, 122 B.R. 298, 301-303 (Bankr. W.D. Tex. 1990); In re King, 75 B.R. 287, 290-291 (Bankr. S.D. Ohio 1987).(4)

The framers of the Bankruptcy Code recognized that value is not a constant in a changing market economy. In re Kellogg Square Partnership, 160 B.R. 343, 348 n. 6 Bankr. D. Minn. 1993). Value, of course, depends largely upon the particular characteristics of the asset in question. In the case of a motor vehicle, a very important characteristic is its actual condition. While the Official Used Car Guide of the National Automobile Dealers Association ("NADA guide") proffered by the parties can be an indicant of the prevailing average market valuation of a particular vehicle with a certain combination of features in a particular regional market, it is just

that: the result of a statistical analysis of many comparable sales in the recent past. As such, it can afford some guidance as to the value of a specific vehicle. However, it cannot constitute conclusive evidence. The benchmark indication of value in it can be thrown off by such circumstances as fluctuations within a specific sector of the NADA guide's regional markets; actual damage, abnormal wear and tear, or other particularized factors that have caused unusual physical depreciation to the subject vehicle; or to opposite effect, customized enhancements that increase value.

Needless to say, the very most probative evidence of value for the purposes of Sections 506(a) and 722 is an individual appraisal by a qualified expert. Here, however, the parties refused to incur the cost of obtaining appraisals; they stipulated to allow the Court to use the June, 1994 NADA guide's entries for a truck of comparable features as conclusive evidence of value. This "evidentiary" submission really did not meet the requirements of the law. However, if the parties were willing to live with it for the purposes of this case, the Court was also.

The issue, as framed by the parties' stipulation, was whether the amount of American Credit's claim was the "wholesale"/"loan" value set forth in the NADA guide, the "retail" value, or--as American Credit argued--some intermediate position adjusted from these two. Even so limited, this was an issue of fact. Ultimately, the choice among the possible methods must be governed by the means through which the particular secured creditor disposes of its inventory of repossessed vehicles. American Credit established by its employee's affidavit that, as its standard practice in the Twin Cities metropolitan region, it places repossessed vehicles onto dealer lots on a consignment basis, for sale at the NADA guide's prevailing retail value. Its net realization is that value, reduced only by the dealer's charge under the consignment arrangement.

This, then, was the measure of American Credit's secured claim. While the Debtor's counsel argued at length that the Court should apply the NADA guide's "wholesale" or "loan" value, this could not be done absent proof that American Credit disposed of its repossessed-vehicle inventory by outright sale at wholesale to a dealer or other purchaser. The decisions that the Debtor's counsel cited to urge such an approach(5) mistakenly assume that the Bankruptcy Court has the power to deem this to be the only proper way for secured parties to dispose of their inventory, regardless of the particular practice of the secured party in question.

Since the parties fixed the possible findings as to gross sale values via their stipulation, American Credit was entitled to a finding that the gross realization from its disposition of the pickup would be $6,275.00. The record, however, was not quite complete enough to establish the amount of its "allowed secured claim," in that American Credit's employee did not attest in any detail in his affidavit to the terms of its consignment arrangements. This, then, was why the Court ordered

American Credit to file a supplementary affidavit detailing the amount it would pay to its consignee-dealer to sell its collateral. Once it does that, the Court will enter a final order requiring the Debtor to very promptly tender $6,275.00, less American Credit's expense of consignment and less the Debtor's post-petition payment of $208.38, in redemption of the pickup truck.

BY THE COURT:

GREGORY F. KISHEL
U.S. BANKRUPTCY JUDGE
At St. Paul, Minnesota,
this 11th day of October,
1994.

(1) This statute reads as follows:

An individual debtor may, whether or not the debtor has waived the right to redeem under . . . [the Bankruptcy Code], redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under [11 U.S.C. Section] 522 . . . or has been abandoned under [11 U.S.C. Section] 554 . . . , by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

(2) Specifically, Section 722, quoted earlier at n. 1, and the section of the Code that delimits the phrase "allowed secured claim:"

An allowed claim of a creditor secured by a lien on property in which the [bankruptcy] 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.

11 U.S.C. Section 506(a).

(3) The pertinent legislative history for Section 722 is:

The redemption is accomplished by paying the holder of the lien the amount of the allowed claim secured by the lien. The provision amounts to a right of first refusal for the debtor in consumer goods that might otherwise be repossessed. H.R. REP. No. 595, 95th Cong. 1st Sess. 381 (1977). In turn, that for Section 506(a) is [11 U.S.C. Section 506(a)] separates an undersecured creditor's

claim into two parts--he has a secured claim to the extent of the value of his collateral; he has an unsecured claim for the balance of his claim. "Value" does not necessarily contemplate forced sale or liquidation value of the collateral; nor does it always imply a full going concern value. Courts will have to determine value on a case-by-case basis, taking into account the facts of each case and the competing interests in the case. Throughout the bill, references to secured claims are only to the claim determined to be secured under this subsection, and not to the full amount of the creditor's claim.

H.R. REP. No. 595, 95th Cong. 1st Sess. 356 (1977)

(4) In In re Siegler, 5 B.R. 12 (Bankr. D. Minn. 1980), the late Judge Kenneth G. Owens identified the amount of the creditor's allowed secured claim for redemption purposes as "that amount which the creditor would be able to apply to the debt secured by the lien after deliberate sale and deduction of sale or foreclosure expenses." 5 B.R. at 13. Limited to this formulation, this decision would appear to support the conclusion noted. However, after making the quoted pronouncement Judge Owens went on to consider various indications of value relied on in the automobile sales industry, and the results of no fewer than four different appraisals of the vehicle in question. He then extensively adjusted a composite conclusion as to "value" by a number of expenses and other deductions for which he did not cite any evidentiary support. Siegler being as nebulous as this in its fact-finding, the Debtor was ill-put to cite it for any purpose--particularly to establish some sort of guideline or rule of thumb for making valuations of motor vehicles for redemption under Section 722.

(5) Specifically, In re Malody, 102 B.R. 745 (Bankr. 9th Cir. 1989); In re Redding, 34 B.R. 971 (Bankr. M.D. Pa. 1983); In re Van Holt, 28 B.R. 577 (Bankr. W.D. Mo. 1983); In re Clark, 10 B.R. 605 (Bankr. C.D. Ill. 1981); and In re Crockett, 3 B.R. 365 (Bankr. N.D. Ill. 1980). The Debtor cites numerous other cases, but they are not on point. Most of these decisions are from Chapter 13 cases, where the considerations driving the choice between retail and wholesale valuations are much different. The remainder do not explicitly adopt a "wholesale" valuation as such, but rather a retail valuation subject to numerous adjustments, some arguably proper and many not.