

In the United States Bankruptcy Court

for the Northern District of Iowa

DONALD J. BOYCE
JERI ROSE BOYCE

Bankruptcy No. 95-20057KD

Debtor(s).

Chapter 7

ORDER

On June 7, 1995, the above-captioned matter came on for hearing pursuant to assignment on a Motion for Redemption and Objection thereto. Appearing were Attorney Thomas McKay for Dupaco Community Credit Union and Attorney James A. O'Brien for Debtors who appeared personally.

Dupaco has a security interest in a 1988 Dodge Daytona owned by Debtors. Debtors seek to redeem the car under § 722 by paying Dupaco the amount of its allowed secured claim. The only issue is the extent of Dupaco's secured claim as determined by valuation of the car. Evidence was presented. Both Debtors testified about hail damage to the vehicle and other problems including a bad muffler and a bad clutch which cost \$300 to repair. Debtors then presented testimony of Merlin Wilgenbush who is a used car dealer licensed since 1981. He has many years experience making repair estimates on cars. He provided an affidavit of value which was introduced as an exhibit.

Dupaco also submitted an appraisal and testimony from Mr. Jeff Hennessey who is a leasing account rep. His credentials are similar to Mr. Wilgenbush's. He sold cars for a period of time, he now leases for Care-Free Leasing and he has appraised many vehicles over the years.

Both parties' appraisals are very similar as to their use of NADA blue book value. The correct NADA value is \$3725. They also both deduct the amount of \$1,025 for high mileage. The only real controversy arises from the fact that this vehicle had hail damage when there was a bad hail storm in Dubuque a year or two ago. Debtors say that the hail damage was almost \$2,200 which reduces the effective existing value of this car to \$500. Dupaco's appraiser, however, says that by using a paintless repair system, the cost of repairs is significantly less. Dupaco asserts that the cost of repairs and replacement of worn tires in the total amount of only \$575 should be deducted from the blue book value, leaving a value of the car of \$2,125.

Section 722 gives debtors the right to redeem certain tangible personal property from liens securing dischargeable consumer debts if the property is exempt by paying the holder of the lien the amount of the "allowed secured claim". This right to redeem amounts to a right of first refusal in favor of the debtor on consumer goods that might otherwise be repossessed. In re Waters, 122 B.R. 298, 300 (Bankr. W.D. Tex. 1990).

The section allows the debtor to retain necessary property, avoiding the high replacement cost that might be required if the secured creditor were to repossess the property. It also discourages creditors from threatening repossession to force debtors to pay in full for otherwise worthless collateral.

Id. (citations omitted).

A redemption claim is valued through application of § 506(a) which defines "allowed secured claim" as "the value of the creditor's interest in the . . . property". In re Penick, 170 B.R. 914, 917 (Bankr. W.D. Mich. 1994). The determination of that value is to be made "in light of the purpose of the valuation and of the proposed disposition or use of" the property. Id.; 11 U.S.C. § 506(a).

In determining the value of collateral, the recent trend in the courts is to use as a touchstone the standard of commercially reasonable disposition of the property by the lender. Waters, 122 B.R. at 301. This standard contemplates a gross sales price less costs to repair the collateral and other costs required to produce a sale. Id. at 302. Courts look at such factors as book values, the debtor's opinion, expert opinions and appraisals, the value listed in the debtor's schedules, the condition of the collateral and costs of repairs to determine value. In re King, 75 B.R. 287, 291 (Bankr. S.D. Ohio 1987); Waters, 122 B.R. at 301. Utilizing this standard permits courts to consider factors affecting the property itself as well as the position of the creditor and its market access. Penick, 170 B.R. at 919. This standard also allows the court to balance the competing interests of the debtor in avoiding the high cost of replacement and of the creditor in protecting its property interest. Id. at 918. The amount recovered under a commercially reasonable disposition best represents the creditor's legal claim on the property which is the amount recoverable outside of bankruptcy pursuant to provisions of the UCC. Waters, 122 B.R. at 302.

The main contention between Debtors and Dupaco is the effect of the hail damage on the car's value. Dupaco deducts \$450 for "light hail damage"; Debtors deduct \$2,200 from the value of the car for existing hail damage. In the Court's opinion, the hail damage would not effect the value of the car to the extent of \$2,200. The Court also believes that Dupaco's estimate comes in too low. Pursuant to the law set out above, the value should be determined in light of the purposes of § 722 to allow Debtors to retain collateral and avoid high replacement costs balanced with Dupaco's constitutionally protected property rights. In light of the entire record, the Court concludes that the 1988 Dodge Daytona, having high mileage and hail damage, has a value of \$1,250. Debtors may redeem the car from Dupaco under § 722 by paying that amount.

WHEREFORE, Debtors' Motion for Redemption is GRANTED.

FURTHER, Debtors may redeem the 1988 Dodge Daytona by paying Dupaco Community Credit Union \$1,250.

SO ORDERED this 16th day of June, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge