

SO ORDERED.

SIGNED this 18th day of October, 2012.



*Catharine R Aron*

UNITED STATES BANKRUPTCY JUDGE

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**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION**

<b>In re:</b>	)	
<b>Leslie Annette Garrett,</b>	)	<b>Case No. 12-10776</b>
	)	
<b>Debtor.</b>	)	<b>Chapter 13</b>
	)	

**ORDER DETERMINING VALUATION OF VEHICLE**

THIS MATTER came on for hearing before the undersigned bankruptcy judge on the Objection to valuation filed by BMW Bank of North America, Inc. ("BMW Bank"). Appearing before the Court was Attorney John Meadows on behalf of Leslie Annette Garrett (the "Debtor"), and Attorney Pamela P. Keenan on behalf of BMW Bank. The court having reviewed the evidence presented and the arguments of counsel finds as follows:

1. On or about February 19, 2008, the Debtor and Kevin Andrew Watson (the "Co-Debtor") jointly purchased a 2005 BMW Z4 (the "Vehicle") pursuant to the terms of an installment sales contract of even date (the "Contract"). The Contract was subsequently assigned to BMW Bank and BMW Bank is now the sole owner and holder of the Contract. The title to the Vehicle is held by the Debtor.
2. Under the terms of the Contract, BMW Bank has a senior perfected first lien on the Vehicle.
3. The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on May 31, 2012.
4. As of the petition date, the net payoff due and owing to BMW Bank under the Contract was \$13,444.16, plus interest.
5. The Debtor's proposed a Chapter 13 Plan in which they valued the vehicle at \$7,000.00. The Debtor proposed to pay this amount plus 5.25% interest and treat the balance of the claim as a general unsecured claim.
6. BMW Bank filed a timely objection to the proposed value of the vehicle, contending

that the retail value of the Vehicle as listed in the online N.A.D.A. Guide for May, 2012, is \$15,525.00 and that based on this Court's practice of allowing secured claims to collateralized lenders at 90% of retail value as of the petition date, BMW Bank should receive a fully-secured claim in the Chapter 13 Plan.

7. It is the Court's practice to use 90% of N.A.D.A. clean retail as a starting point for the value of a vehicle. However, evidence can be considered to determine if a different value is more appropriate. In this case, evidence of a past collision involving the Vehicle and subsequent repair estimates support the Debtor's uncontested position that the car now has salvage title.<sup>1</sup>

8. N.A.D.A. definitions for "clean" and "average" vehicle condition require a clean title history. The Vehicle does not have a clean title history. The Vehicle only qualifies for the N.A.D.A. condition category as "rough" because it has a branded title.

9. The N.A.D.A. lists a rough trade-in value for the Vehicle at \$9,000.00. This value is a starting point for the fair market value of the Vehicle. No evidence established a more appropriate value.<sup>2</sup>

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<sup>1</sup> In North Carolina, a salvage motor vehicle is "[a]ny motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the N.A.D.A. Pricing Guide Book or other publications approved by the Commissioner." N.C. Gen. Stat. § 20-4.01(33)(d).

<sup>2</sup> There are several approaches to allocating the burden of proof in proceedings for the valuation of collateral to decide the extent to which a claim is secured pursuant to § 506(a). The burden-shifting framework is appropriate in this case of collateral valuation. This Court finds the framework established in the Court of Appeals for the Third Circuit persuasive:

The initial burden should be on the party challenging a secured claim's value, because 11 U.S.C. § 502(a) and Bankruptcy Rule 3001(f) grant prima facie effect to the validity and amount of a properly filed claim. It is only fair, then, that the party seeking to negate the presumptively valid amount of a secured claim—and thereby affect the rights of a creditor—bear the initial burden. If the movant establishes with sufficient evidence that the proof of claim overvalues a creditor's secured claim because the collateral is of insufficient value, the burden shifts. The creditor thereafter bears the ultimate burden of persuasion ... to demonstrate by a preponderance of the evidence both of the extent of its lien and the value of the collateral securing its claim—and thereby affect the rights of the creditor—bear the initial burden. If the movant establishes with sufficient evidence that the proof of claim overvalues a creditor's secured claim because the collateral is of insufficient value, the burden shifts. The creditor thereafter bears the ultimate burden of persuasion ... to demonstrate by a preponderance of the evidence both the extent of its lien and the value of the collateral securing its claim.

*In re Heritage Highgate, Inc.*, 679 F.3d 132, 140 (2012) (alterations in original)(citations and internal quotations omitted).

Based on the foregoing, the Court finds that the most appropriate value of this car is \$9,000.00. BMW Bank will have a secured claim in the amount of \$9,000.00 to be paid at the Till rate of interest and the balance of the claim will be treated as a general unsecured claim.

**END OF DOCUMENT**

## **SERVICE LIST**

Leslie A. Garrett  
Debtor

John Meadows  
Attorney for Debtor

Pamela Keenan  
Attorney for BMW

Anita Jo Kinlaw Troxler  
Trustee