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JUN 23 00

U.S. Bankruptcy Court
Greensboro, NC
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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
Benjamin Russell Murray, Jr.,) Case No. 00-10603C-7G
)
Debtor.)
)

ORDER

This case came before the court on June 13, 2000, for hearing upon a motion by the Debtor to redeem a 1995 Eagle Talon automobile from Glaxo Welcome Credit Union. Sandra J. Pickering appeared on behalf of the Debtor and Meredith P. Ezzell appeared on behalf of Glaxo Welcome Credit Union. Having considered the evidence offered at the hearing and the arguments of counsel, the court finds and concludes as follows:

1. This case was filed on March 13, 2000.
2. On the petition date, the Debtor was the owner of a 1995 Eagle Talon automobile which was subject to a lien and security interest securing dischargeable consumer indebtedness owed to Glaxo Welcome Credit Union ("Glaxo").
3. The 1995 Eagle Talon automobile was claimed as exempt property by the Debtor in the Debtor's Claim for Property Exemptions which was filed in this case on March 13, 2000.

4. The 1995 Eagle Talon automobile constitutes tangible personal property intended primarily for personal, family, or household use and is property which may be redeemed pursuant to § 722 of the Bankruptcy Code.

5. The Debtor is entitled to redeem the 1995 Eagle Talon by paying to Glaxo in a lump sum the amount required under § 722.

6. The first issue raised by Glaxo regarding the amount which the Debtor must pay in order to redeem the 1995 Eagle Talon involves the fact that the collateral for the Glaxo indebtedness consists of the 1995 Eagle and a 1998 Harley Davidson motorcycle. Glaxo argues that the amount of its secured claim is the value of both the automobile and the motorcycle and that the Debtor therefore must pay the combined value of both vehicles in order to redeem one of them under § 722. This argument is not consistent with the language or intent of § 722 and must be rejected. Section 722 does not direct that the entire secured claim be paid in order to redeem. Rather, § 722 requires that the debtor pay "the amount of the secured claim that is secured by such lien." The meaning of this language is that the debtor must pay the portion of the secured claim that is secured by the lien on the property which is being redeemed. The amount of the indebtedness which is secured by "such lien" is determined under § 506(a), which

provides that 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" In applying § 506(a) in the context of a redemption under § 722, the "lien on property in which the estate has an interest" refers to the creditor's lien on the property being redeemed, and it is the value of that property which must be paid in order to redeem it. Section 722 thus enables the Chapter 7 debtor to redeem property which is subject to a single lien¹ by paying the creditor the full amount of the indebtedness or the value of the property which is being redeemed, whichever is less. See In re Edwards, 901 F.2d 1383, 1385 (7th Cir. 1990). This result is consistent with the language of § 722, as well as the intent and purpose of that section. The legislative history of § 722 reveals that the legislative intent was for redemption to provide a "right of first refusal" for the debtor to purchase consumer goods that might otherwise be repossessed. Collier on Bankruptcy, 15th Ed. ¶ 722.01; In re Cruseturner, 8 B.R. 581, 586-87 (Bankr. D. Utah 1981) (discussing

¹The amount, if any, which would have to be paid to the holder of a second priority lien on property which is being redeemed under § 722 is not presented in this case.

the legislative history and the debtor's "right of first refusal"). Redemption was intended to allow the debtor to retain property and avoid the high replacement cost that might be required if the secured creditor repossessed. Collier, supra, at 722.01. The intended benefit to debtors under § 722 would be unduly limited and frustrated if § 722 were applied in the manner advocated by Glaxo in this case. The court concludes, therefore, that the Debtor in this case may redeem the 1995 Eagle Talon by paying to Glaxo the value of that vehicle alone. The remaining issue involves the valuation standard which should be used in determining the value of the 1995 Eagle Talon for purposes of redemption.

7. In Associated Corp. v. Rash, 520 U.S. 953, 117 S. Ct. 1879, 138 L.Ed.2d 148 (1997), the Supreme Court adopted "replacement value" as the appropriate value in a chapter 13 case involving cram down under § 1325 of the Bankruptcy Code. Because of the significant difference between cram down under § 1325 and redemption in a chapter 7 case under § 722, the court concludes that the Rash case does not require that replacement value be used in the context of a redemption under § 722.

8. In Rash, the court explained that in the cram down situation, the creditor "is exposed to double risks: The debtor may again default and the property may deteriorate from extended use."

117 S.Ct. at 1885. The Court read § 506(a) as directing that a valuation be selected that accurately gauged the cram down situation, and chose the replacement value standard. With redemption under § 722, the situation is very different because the creditor is not exposed to either of the risks mentioned in Rash. Instead, the creditor is paid in full in cash when the property is redeemed. The legislative history to § 722 reflects that § 722 was intended to place the secured creditor in the position equivalent to having repossessed and sold the collateral. See In re Donley, 217 B.R. 1004, 1007 (Bankr. S.D. Ohio 1998). Considering the intent behind § 722 and the purpose of the valuation and the proposed disposition or use of the property in that context, the court concludes that the appropriate standard is one in which the value is what the secured creditor would receive if it repossessed the collateral and sold it in a commercially reasonable manner. See In re Dunbar, 234 B.R. 895 (Bankr. E.D. Tenn. 1999); In re Williams, 228 B.R. 910 (Bankr. N.D. Ill. 1999); In re Williams, 224 B.R. 873 (Bankr. S.D. Ohio 1998); In re Donley, 217 B.R. 1004 (Bankr. S.D. Ohio 1998).

9. The collateral in the present case is an automobile which is the subject of widely accepted publications such as the N.A.D.A. Official Used Car Guide or "blue book", which value automobiles at

both retail and trade-in or wholesale values. To the extent that such publications are used in the context of a § 722 redemption in a Chapter 7 case, the court concludes that the wholesale value rather than the retail value is the appropriate value to use. In the present case, the evidence included the N.A.D.A. blue book values for a 1995 Eagle Talon automobile indicating that on the petition date, the retail value was \$5,500.00 and the wholesale value was \$3,750.00, after taking into account the equipment and high mileage factors involved with Debtor's vehicle. The appropriate value in this case for purposes of Debtor's redemption of the 1995 Eagle Talon is its wholesale value or \$3,750.00.

It is, therefore, ORDERED that Debtor may redeem the 1995 Eagle Talon referred to in Debtor's motion by paying the sum of \$3,750.00 to Glaxo Welcome Credit Union within thirty days from the entry of this order.

This 23 day of June, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge