## UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF NORTH CAROLINA WINSTON-SALEM DIVISION

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## **ORDER**

This matter came on for hearing before the court on August 28, 2002, upon a motion by the Debtors to redeem a 2001 Isuzu Rodeo automobile from Household Automotive Finance Corporation. Aleta B. Kiser appeared on behalf of the Debtors and John Meadows appeared on behalf of Household Automotive Finance Corporation. The court, after hearing the arguments of counsel and reviewing the record, finds and concludes as follows:

- 1. The Debtors filed a petition under Chapter 7 on May 17, 2002.
- 2. On the petition date, the Debtors were the owners of a 2001 Isuzu Rodeo automobile which was subject to a lien and security interest securing dischargeable consumer indebtedness owed to Household Automotive Finance Corporation ("Household").
- 3. The 2001 Isuzu Rodeo automobile was claimed as exempt property by the Debtors in the Debtor's Claim for Property Exemptions which was filed in this case on May 28, 2002.
- 4. The 2001 Isuzu Rodeo 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 Debtors are entitled to redeem the 2001 Isuzu Rodeo by paying Household the amount required under § 722, which is the lesser of the allowed secured claim or the value of



the collateral. Household is owed approximately \$21,000.00.

The issue raised by Household is whether the Debtors must pay retail or wholesale value in order to redeem the 2001 Isuzu Rodeo. The United States Bankruptcy Appellate Panel of the Sixth Circuit and the United States Bankruptcy Court of the Middle District of North Carolina have both ruled that what is required to be paid by the debtor under § 722 is the wholesale (also termed "liquidation" or "trade-in") value of the exempt property. See Triad Financial Corp. v. Weathington (In re Weathington), 254 B.R. 895 (B.A.P. 6<sup>th</sup> Cir. 2000); In re Murray, Ch. 7 Case No. 00-10603C-7G (Bankr. M.D.N.C. June 23, 2000). In Triad Financial Corp., the court concluded, after examining prior case law and the legislative history of § 722, that "a creditor should be paid the same amount that it would have been paid if the property were repossessed and sold." Triad Financial Corp. at 900. Judge Stocks, when addressing this issue in Murray, came to the same result. Murray at 5. It is important to note that the valuation for redemption purposes is different in a Chapter 7 case than in a Chapter 13 case. The Supreme Court found that replacement value is the appropriate value in Chapter 13 cases due to the "double risks" creditors are exposed to in Chapter 13; another default by the debtor and depreciation of the collateral. Associated Corp. v. Rash, 520 U.S. 953, 117 S. Ct. 1879, 138 L.Ed.2d 148 (1997). These conditions do not exist in a Chapter 7 case, and thus replacement value is not appropriate. Section 722 requires redemption by a lump sum cash payment and there is no further risk to the creditor.

6. In the present case, the wholesale value presented by the Debtors is \$12,101.00. The appropriate value in this case for the purposes of Debtors' redemption of the 2001 Isuzu Rodeo is its wholesale value or \$12,101.00.

Based upon the foregoing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Debtor may redeem the 2001 Isuzu Rodeo by paying the sum of \$12,101.00 to Household Automotive Finance Corporation within thirty days from the entry of this Order.

This the \_\_\_\_\_ day of September, 2002.

"CATHARINE R. CARRUTHERS

Catharine R. Carruthers U. S. Bankruptcy Judge