

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

IN RE:	)	
	)	
Johnnie Hawkins	)	Case No. 96-12424C-7
Marie Marable Hawkins	)	
	)	
Debtors.	)	

**ORDER GRANTING DEBTORS' MOTION TO REDEEM A 1991 FORD AEROSTAR**

THIS MATTER came on for hearing, after due and proper notice, before the undersigned bankruptcy judge on August 17, 2000 in Durham, North Carolina upon a Motion by the Debtors to Redeem a 1991 Ford Aerostar van from First Virginia Bank. Appearing before the Court was Edward Boltz, attorney for the Debtors .

The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons stated below, the Debtors' Motion to Redeem the 1991 Ford Aerostar pursuant to 11 U.S.C. § 722 is granted.

**FACTS**

The Debtors filed a petition for relief pursuant to Chapter 13 of the Bankruptcy Code on July 2, 1996. Prior to the filing, the Debtors had financed the purchase of a 1991 Ford Aerostar with First Virginia Bank. Pursuant to the September 16, 1996 Order Confirming the Debtors' plan, the 1991 Ford was valued at \$5,800.00. Payment on the secured portion of the claim was to be made with interest at the contract rate not to exceed 11% and any balance of the claim was to be treated as a general unsecured claim. The Plan estimated that unsecured creditors should receive a twenty-five percent (25%) dividend. First Virginia Bank did not object to the valuation of the vehicle or the treatment of its claim under the Plan. First Virginia Bank filed a proof of claim in the amount of \$9,488.29. Thus, First Virginia Bank had a secured claim in the amount of \$5,800.00 and an unsecured claim in the amount of \$3,688.29.

During the period of time that the Debtors were in Chapter 13, the Trustee disbursed to First Virginia Bank the \$5,800.00 due on the secured claim and \$1,465.00 representing all interest due on the secured claim. First Virginia Bank did not receive any monies on its unsecured claim.

The Debtors converted to Chapter 7 on May 31, 2000, and have moved to redeem the vehicle for \$0.00. The Debtors have exempted the vehicle and the time period to object to

exemptions has expired. The Trustee has filed a report of no distribution with the Court.

## DISCUSSION

An individual debtor . . . may 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 section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

11 U.S.C. § 722.

In this case, no party in interest objected to the Debtors' exemptions. The last date to object to the dischargeability of the First Virginia Bank debt was August 29, 2000, and no objections have been filed. Section 722 permits an individual chapter 7 debtor to redeem exempt personal property intended primarily for personal, family or household use by paying the lienholder the lesser of the allowed secured claim or the value of the collateral.

When a case converts from a Chapter 13 to a Chapter 7, the original valuation governs the amount of the allowed secured claim. Additionally, the amount required to pay the allowed secured claim for purposed of redemption must be reduced by the amount paid on such claim during the Chapter 13 case. See 11 U.S.C. § 348(f). Section 348(f) provides that:

(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a chase under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of the filing on the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; and

(B) valuation of property and of allowed secured claim in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan.

11 U.S.C. § 348(f).

Therefore, in as much as First Virginia Bank was paid the full amount of its secured claim during the Chapter 13 case, the amount necessary to redeem the vehicle pursuant to § 722 is \$0.00.

THEREFORE, IT IS ORDERED AND ADJUDGED that the Motion by Johnnie Hawkins and wife, Marie Marble Hawkins, to redeem the 1991 Ford Aerostar van for the sum of \$0.00 is hereby GRANTED; and

It is FURTHER ORDERED that First Virginia Bank is to turn over the title to the vehicle based upon the election of the debtors to redeem pursuant to 11 U.S.C. § 722.

This the 30<sup>th</sup> day of August, 2000.

**CATHARINE R. CARRUTHERS**

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Catharine R. Carruthers  
United States Bankruptcy Judge