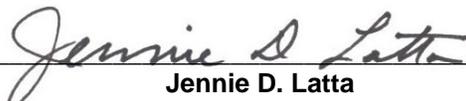


Dated: December 06, 2004
The following is ORDERED:





Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

JAMES EDWARD HARRIS,

Debtor.

Case No. 00-33690-L
Chapter 7

ORDER GRANTING MOTION FOR REDEMPTION

BEFORE THE COURT is the motion of the Debtor, James Edward Harris, to redeem his 1996 Dodge Ram pickup truck from the first lien holder, First South Credit Union ("First South"), for zero dollars. First South objects that the Debtor should be compelled to pay the full retail value of the truck in order to redeem it. The dispute was submitted to the court on a written stipulation of facts on November 3, 2004. For the following reasons, the court will grant the motion. This is a core proceeding. 28 U.S.C. § 157(b)(2)(K).

FACTS

The following facts were stipulated by the parties:

1. On or about April 24, 1997, the debtor purchased a 1996 Dodge Ram pickup truck, VIN 2B6HB21X7TK124598, and financed the purchase with First South, giving First South a first lienhold interest on the vehicle. A co-signer on the loan was Lisa Harris, the Debtor's wife. The title states that the vehicle is owned by James Harris or Lisa Harris. The Certificate of Title shows that the first lienholder is First South and the security interest attached on April 20, 1997.
2. Lisa Harris filed a Chapter 13 plan in Memphis on May 21, 1998, under case number 98-27034-JDL, and received a discharge December 27, 2002. First South was not listed in that plan and the Trustee's records do not include First South.
3. The Debtor filed a Chapter 13 plan under the instant case in Memphis, listing First South and Lisa Harris, and the vehicle. The confirmed plan provided a secured value of \$9,737.50 and contract interest of 8.75 percent. The proof of claim filed by First South was for \$15,090.90. The secured portion was paid in full by the Trustee and the unsecured split claim of \$5,353.40 was reduced to \$4,995.36 at the time of conversion.
4. The Debtor filed the Motion to Redeem the vehicle for zero dollars.

5. First South filed an objection to that Motion to Redeem since there is a non-filing co-maker and co-owner of the collateral.

The parties provided no stipulation or evidence concerning the value of the truck, either at the time of the filing of the petition, or the time of conversion, or the time of the filing of the Debtor's motion. There apparently has been no determination of whether the obligation of Lisa Harris to First South was discharged in her Chapter 13 case.

ANALYSIS

Section 722 of the Bankruptcy Code provides:

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, 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. The amount of an "allowed secured claim" is determined pursuant to section 506(a) as follows:

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 . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a).

The parties have not disputed that the vehicle is intended primarily for personal, family or household use, or that the lien of First South secures a consumer debt, or that the collateral has either been exempted by the Debtor or abandoned by the case trustee. The only dispute raised by the parties relates to the amount the Debtor must pay to redeem the truck. First South asserts in its objection that the Debtor should be compelled to pay full retail value. The Bankruptcy Appellate Panel for the Sixth Circuit has held that the appropriate valuation standard for determining the value of collateral in the context of a debtor's motion for redemption is the liquidation, rather than the replacement value. *Triad Financial Corp. v. Orlando Weathington (In re Weathington)*, 254 B.R. 895, 901 (B.A.P. 6th Cir. 2000).

It is the Debtor's position that the value of the secured claim of First South was determined when the case was administered under Chapter 13, and that he has fully paid the secured claim through his Chapter 13 plan. Presumably, the value used for purposes of the Chapter 13 plan was the higher replacement value rather than the liquidation value called for in the context of redemption. *See Associates Commercial Corp. v. Rash*, 520 U.S. 953, 117 S. Ct. 1879 (1997) (holding that the appropriate standard of value for collateral that is to be retained by a debtor in the context of a Chapter 13 plan is replacement value). Nevertheless, First South asserts that, because there is a non-filing co-maker, it is entitled to be paid the full retail value of its collateral before the Debtor is permitted to redeem the truck. It has offered no legal authority for its position, nor has it indicated whether "full retail value" is the same as or different from replacement value.

There is no indication in section 722 that the analysis of the amount a debtor must pay to redeem collateral from a secured lender depends upon the presence or absence of a co-maker. Section 722 simply incorporates section 506(a), which likewise makes no reference to the presence or absence of a co-maker. While the court is not bound by the decisions of the Bankruptcy Appellate Panel, the court nevertheless finds the reasoning of *Weathington* persuasive and holds that the value for purposes of redemption is the liquidation value of the collateral to be redeemed. *See also In re Ballard*, 258 B.R. 707, 709 (Bankr. W.D. Tenn. 2001) (Boswell, B.J.) (following *Weathington* in adopting liquidation value as the valuation standard in the context of redemption).

The parties have not addressed the time at which the value of collateral is to be determined, and there is no clear authority on this issue from the Bankruptcy Code and Rules or from precedential decisions of the Supreme Court or Court of Appeals. The court believes that for most purposes, determinations of value should be made as of the date of the filing of the bankruptcy petition. *See, e.g., In re Smith*, 313 B.R. 785, 794 (Bankr. N.D. Ind. 2004) (holding that valuation should be made as of date of filing petition because that is date that “risk” is incurred by secured creditor as the result of the implementation of the automatic stay). It is generally to the creditors’ advantage that values be determined at the petition filing date, especially when the values of collateral are expected to depreciate over the life of the bankruptcy case.

Again, the court presumes that the parties agreed upon a valuation of the Debtor’s truck when the case was being administered under Chapter 13 and presumes that this was the replacement value, rather than the liquidation value. The Debtor has fully paid the replacement value of his truck

through his Chapter 13 plan. There is nothing in the Bankruptcy Code or Rules to suggest that a new valuation should be performed when a case is converted from Chapter 13 to Chapter 7, and there is nothing to suggest that the Debtor should not be given full credit for payments made in his Chapter 13 case after the case is converted to Chapter 7. Further, there is nothing to suggest that the liquidation value of this motor vehicle has risen during the context of the Chapter 13 case, or that it exceeds the replacement value of the truck. Based upon the stipulations of the parties, the Debtor is entitled to redeem his truck without paying any additional amount to First South.

That the Debtor may redeem his truck without paying the balance of the claim owed to First South does not mean, however, that the claim of First South against Lisa Harris is extinguished. Indeed, Lisa Harris was not made a party in the present contested matter, and the court has not been asked to determine whether her obligation to First South was extinguished by virtue of the discharge she received December 27, 2002. In order to make this determination, either First South or Mrs. Harris might seek permission to reopen Mrs. Harris's prior Chapter 13 case for the purpose of filing a complaint pursuant to section 523(a)(3) of the Bankruptcy Code to determine whether the obligation was discharged notwithstanding the alleged failure of Mrs. Harris to give notice to First South of the filing of her bankruptcy case. In the alternative, First South might file suit against Mrs. Harris in any court of competent jurisdiction to recover the balance of the claim owed to it, at which point Mrs. Harris could defend on the basis of discharge in bankruptcy. This procedure also would bring the issue of discharge before a court for determination.

In re James E. Harris
Chapter 13 Case No. 00-33690-L
Order Granting Motion for Redemption

CONCLUSION

For the foregoing reasons, the motion of the Debtor to permit redemption of his truck for no additional payment is **GRANTED**.