

SO ORDERED



Robert A. Gordon

**ROBERT A. GORDON
U. S. BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Baltimore**

In Re:	*		
Timothy James Burek, Sr.	*	Case No.	06-15732-RAG
	*	Chapter	7
	*		
Debtor	*		
*****	*		
Timothy James Burek, Sr.	*		
	*		
	*		
Movant	*		
vs.	*	Motion	Dkt. Nos. 13 & 15
General Motors Acceptance Corp.	*		
and	*		
Bay Country Consumer Finance Inc.	*		
	*		
Respondents	*		

**ORDER GRANTING MOTION TO REDEEM
AND SETTING REDEMPTION AMOUNT**

On October 11, 2006, General Motors Acceptance Corporation (hereafter "GMAC") filed a Motion for Relief from Stay (dkt. 11) regarding its security interest in a 2002 Chevrolet Malibu (hereafter "Malibu") that is in the possession of Debtor. On October 17, 2006, Debtor filed a Motion to Redeem (dkt. 13) the Malibu. GMAC filed a Response to the Motion to Redeem (dkt. 15) on October 25, 2006 and Debtor filed his Opposition to Motion for Relief from Stay (dkt. 20)

on November 1, 2006. Bay Country Consumer Finance, Inc., though duly served, did not respond to Debtor's Motion to Redeem. The Court conducted a hearing on these matters on November 17, 2006, at the conclusion of which the Court placed them under advisement. As GMAC did not prosecute its Motion for Relief from Stay at the hearing, the Court will deny that Motion without prejudice by separate order.

As for the Motion to Redeem, Debtor seeks to redeem the Malibu and to secure the release of the first priority purchase money security interest of GMAC and the second priority lien of Bay Country Consumer Finance by paying the amount of \$3,985 to GMAC in a lump sum within 30 days of the Court's approval of Debtor's Motion. In support of his proffered redemption valuation, Debtor relied upon the Kelley Blue Book Private Party Value of \$3,985 for a 2002 Chevrolet Malibu with 90,000 miles in fair condition. At the hearing, Counsel for Debtor did not dispute that retail value, including any attendant retail mark-up, was the appropriate measure, but stated that he believed that the private party value more accurately accounted for the Malibu's condition.

GMAC argues that the proper measure of retail value for purpose of redemption is more accurately measured by the Kelly Blue Book Suggested Retail Value, which sets the value for a 2002 Chevrolet Malibu with 90,000 miles in excellent condition at \$6,755. GMAC also asserts that under 11 U.S.C. § 506(a)(2) (a provision added to the Bankruptcy Code by the 2005 Amendments (hereafter "BAPCPA")), the value must be determined as of the petition date. GMAC notes that while Debtor claims that the Malibu had 90,000 miles as of the date of the filing of the Motion to Redeem, Debtor scheduled the Malibu with mileage of 80,000 as of September 18, 2006, only one month earlier. The Kelley Blue Book Suggested Retail Value for this lower mileage figure is \$6,980.

Under Section 722, an individual debtor in a Chapter 7 case may redeem personal property from a lien securing consumer debt by paying the lienholder the amount of the allowed secured

claim in full at the time of redemption. Section 506(a)(1) provides that a claim secured by a lien on property is a secured claim to the extent of the value of the property and is unsecured as to any amount by which the allowed claim exceeds the value of the collateral. New Section 506(a)(2) provides specific guidance for such valuation. The value of personal property is fixed at the replacement value without deduction for cost of sale or marketing. For property "acquired for personal, family, or household purposes", replacement value is the retail price adjusted for age and condition. The Parties agree in principle and the Court concludes that in order to redeem the Malibu, Debtor must pay GMAC the fair-market, retail value of the collateral. Because of their differing interpretations of Section 506(a)(2), however, the Parties disagree as to the time at which the valuation should be made. Debtor contends the second sentence of Section 506(a)(2) requires the court to value the Malibu as of the date of the hearing and to take into account any post-petition reduction in value.

Debtor, a mechanic by trade, testified that the Malibu was involved in an accident with a deer one week prior to the hearing. Debtor's insurer estimated damages for this recent accident at \$1,129.60 and will issue a check to Debtor for that amount. Debtor additionally testified that the Malibu needs a series of other repairs unrelated to the accident, including the rebuilding of the transmission at a cost of between \$800-\$1,500, replacement of the front brake pads and rotors at a cost of \$140, replacement carpeting at a cost of \$360, and installation of four new tires at a cost of \$300. Debtor seeks to include the higher post-petition mileage number¹ and accident-related damages as well as the routine repair expenses in determining the present value of the Malibu².

¹ At the hearing, Debtor testified that the Malibu's present mileage was 96,000.

² At the hearing, Debtor did not attempt to further adjust downward his proffered value of \$3,985, despite the fact that the accident occurred after Debtor filed the Motion to Redeem. Counsel for Debtor did suggest that Debtor was under no obligation to use his insurance recovery to repair the Malibu and restore its value to its pre-accident state.

Counsel for GMAC acknowledged that these routine repair expenses were reasonable and constituted acceptable downward adjustments to the value of the Malibu. Counsel for GMAC instead focused his objection on the attempted inclusion of the post-petition accident damage and any post-petition mileage expense above the 80,000 miles scheduled by Debtor as of the petition date as additional factors functioning to reduce the value of the Malibu. In short, Counsel argued that Section 506(a)(2) prevented the consideration of these additional factors in determining value, as the accident and any additional mileage occurred post-petition.

Section 506(a)(2), added to the Bankruptcy Code by BAPCPA, provides:

If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

In construing this provision, the Court concludes that the plain meaning of Section 506(a)(2) requires that the redemption value of the collateral (i.e. the retail price) must be determined as of the date the petition is filed. The first sentence of Section 506(a)(2) unequivocally requires replacement valuation *as of the date of the filing of the petition*. The second sentence of 506(a)(2) only provides a specific formula for calculating the replacement value for consumer goods. Indeed, this second sentence, *inter alia*, serves to remind the Court that it must take two adjustment factors, age and condition, into account in setting the retail value of the property. The phrase *at the time value is determined*, while somewhat superfluous, is not entirely inconsistent with the demarcation included in the first sentence. To the extent there is a hint of inconsistency, the general should yield to the specific. To achieve integration, the final phrase of the second sentence can easily be subordinated to the specific legislative directive included in the first sentence. It would be illogical to conclude that within one subsection of the Bankruptcy Code two distinct time standards for

valuation purposes exist.

Under normal circumstances, the replacement value of consumer goods as of the date of the filing of the petition should closely approximate the replacement value of such goods as the date of the filing of a motion to redeem or value collateral or the date of the hearing thereon. However, when valuations diverge, secured creditors, already subject to bifurcation of their claims, should not be subject to additional detriment due to post-petition actions or events that further depreciate the collateral. This concern is particularly apparent in this case as GMAC is being asked to bear the cost of a post-petition accident which decreases the value of the collateral and for which the Debtor has recovered insurance proceeds. When Section 722 redemption is sought, debtors will normally retain possession of the subject consumer goods until a hearing is held. Secured creditors should not bear the risk of a sudden loss in value in this context. Viewed in this light, the first sentence of Section 506(a)(2) is based upon sound policy judgment.

Therefore, the Court will sustain GMAC's limited objection to Debtor's Motion, will determine the redemption amount as of the petition date, and will exclude any amounts attributable to the post-petition accident or mileage from the redemption value of the collateral. However, as noted above, Section 506(a)(2) does allow the Court to consider the age and condition of the property as of the petition date. Indeed, Counsel for GMAC has stated that he has no objection to the inclusion of the necessary repair expenses in calculating the redemption value.

Thus, in conclusion, the Court will set the redemption amount at \$4,680, determined by subtracting the necessary, routine repairs totaling \$2,300 from GMAC's asserted retail value of \$6,980.

It is, therefore, by the United States Bankruptcy Court for the District of Maryland,
ORDERED, that the Motion to Redeem is granted in part; and it is further
ORDERED, the Debtor is authorized to redeem a 2002 Chevrolet Malibu, VIN No.

1G1ND52JX2M659771, and that the value of the secured claim of the Creditors (the redemption amount) is \$4,680. Debtor shall pay to GMAC the lump sum amount of \$4,680 within 30 days of the date of entry of this Order; and it is further

ORDERED, upon tender of such payment, GMAC and Bay Country Consumer Finance, Inc. are ordered to release their liens of record.

cc: Timothy James Burek, Sr., Debtor
Jay L Jensen, Esq., Counsel for Debtor
General Motors Acceptance Corporation
Stephen A. Hecker, Counsel for General Motors Acceptance Corporation
Bay Country Consumer Finance Inc.
Michael G. Rinn, Chapter 7 Trustee

End of Order