

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-33174

MARK AILEY
MARGARET AILEY
a/k/a MARGARET NOE

Debtors

MEMORANDUM ON MOTION TO REDEEM

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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

Presently before the court is the Debtors' Motion to Redeem filed on October 1, 2001. The Debtors seek to redeem a 1996 Ford Ranger pickup truck (the Ford) that is subject to security interest held by Pioneer Credit Company (Pioneer).

Pioneer previously filed a Motion to Lift Automatic Stay on August 2, 2001. That matter was heard on September 24, 2001, and, by Order entered that same day, the court directed that the automatic stay would remain in effect as to Pioneer through October 24, 2001. In the event that the Debtors and Pioneer do not negotiate a reaffirmation agreement pursuant to 11 U.S.C.A. § 524(c) or the Debtors are not allowed to redeem the Ford pursuant to 11 U.S.C.A. § 722 and E.D. Tenn. LBR 6008-1, the Order provides that the automatic stay will be vacated on October 25, 2001, to permit Pioneer to take possession of, and foreclose on, the Ford.

Each party has briefed its position to the court. A hearing was held on the Debtors' Motion to Redeem on October 22, 2001.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(O) (West 1993).

I

On December 9, 1999, the Debtors executed an Itemization, Promissory Note, and Security Agreement (Note) in favor of Pioneer. The Note, in the principal amount of \$5,606.76, is secured by the Ford. On Schedule D to their Chapter 7 Petition, the Debtors value Pioneer's claim at \$5,600.00. Pioneer filed a claim for \$6,056.39, including attorney fees.

The Debtors propose to redeem the Ford for no more than \$3,225.00,¹ based on an adjusted valuation obtained from the NADA Southeast Region Official Used Car Guide, July 2001 edition.² The Debtors cite a NADA trade-in value of \$4,700.00 from which they subtract \$375.00 for manual transmission, \$400.00 for a four-cylinder engine, and \$700.00 for high mileage.

Conversely, through the testimony of its Manager Don Milks, Pioneer urges a higher valuation. Mr. Milks opined that the Ford would bring \$6,000.00 if repossessed and sold on Pioneer's lot. Alternatively, he advanced a "Black Book" wholesale value of \$4,700.00,³ based on positive and negative adjustments for a four-cylinder engine, manual transmission, toolbox,

¹ At paragraph 23 of their Statement of Financial Affairs and on Schedule D to their Voluntary Petition filed under Chapter 7 on June 26, 2001, the Debtors placed a \$4,997.03 value on the Ford.

² The most common sources of evidence and argument of [automobile] value are the compilations by the National Automobile Dealers Association (NADA). These compilations take the form of 'books,' small pamphlets published monthly or quarterly on a regional basis, listing, for each model year, virtually every make and model of vehicle with the then current average trade-in, loan and retail values for each. The NADA books also contain information with regard to the appropriate increase or decrease in value which should be applied due to the presence or absence of specified optional equipment, unusually low or high mileage, and other variable factors." *In re Myers*, 178 B.R. 518, 519 (Bankr. W.D. Okla. 1995).

³ Mr. Milks did not give the full name of the "Black Book," nor were copies of the relevant pages introduced into evidence. The court presumes that the "Black Book" in question is that published by the National Auto Research Corporation and described as follows:

The Black Book publishes the average of the sales in several weekly regular auctions of the various vehicles classified by year, models and condition. Auto dealers are the only permitted purchasers. This publication reflects only actual public sales at auction, and is perhaps the truest and most accurate reflection of wholesale market value in each state or region.

Chrysler Credit Corp. v. Cooper (In re Cooper), 7 B.R. 537, 540 (Bankr. N.D. Ga. 1980).

bedliner, XLT,⁴ high mileage, and sport wheels. Lastly, Mr. Milks testified that the Ford has an NADA XLT wholesale value of \$3,825.00.

II

Section 722 of the Bankruptcy Code governs a debtor's redemption of property. That section 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.A. § 722 (West 1993).⁵

⁴ Debtor Mark Ailey testified that the Ford is not an XLT model. XLT is a more expensive line of Ranger trucks, offering "the widest selection of Ranger bodystyles . . . [f]rom Regular Cab or SuperCab with 6- or 7-foot pickup box to the 4-door, 4-wheel drive SuperCab with 2- or 4-doors[.]" *Ranger* (visited October 23, 2001) <<http://www.fordvehicles.com/trucks/ranger/xlt/#>>. An Auto Appraisal Report submitted by Pioneer contains a photo of the Ford. The photo does not appear to be that of an XLT model, but no conclusive evidence was submitted by either party on this issue.

⁵ On September 18, 2001, John P. Newton, Jr., the Chapter 7 Trustee, filed a Notice of Abandonment, thereby abandoning the estate's interest in the Ford. See 11 U.S.C.A. § 554(a) (West 1993) ("After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.").

Pioneer does not contest that the Ford is property eligible for redemption under § 722. Instead, the sole issue before the court is the valuation of Pioneer's "allowed secured claim"⁶ to be paid by the Debtors.

This court has previously held that a foreclosure value standard is appropriate for determining the amount of an allowed secured claim under § 722. See *In re Dunbar*, 234 B.R. 895, 899 (Bankr. E.D. Tenn. 1999). Foreclosure value is the amount that the secured creditor "could obtain through foreclosure sale of the property." *Id.* at 897 (quoting *Associates Commercial Corp. v. Rash*, 117 S. Ct. 1879, 1882 (1997)). In a subsequent opinion, the Sixth Circuit Bankruptcy Appellate Panel has held that a court should look to a "liquidation" or "wholesale" valuation which, similarly, is "the secured creditor's expected recovery upon repossession and sale by auction or other *wholesale* means." *Triad Fin. Corp. v. Weathington (In re Weathington)*, 254 B.R. 895, 899 n.1 (B.A.P. 6th Cir. 2000) (emphasis added).

The court accepts the Debtors' NADA evidence as a starting point for valuation of the Ford. See *In re Roberts*, 210 B.R. 325, 330 (Bankr. N.D. Iowa 1997) (NADA value is a "good guidepost" but is "not necessarily conclusive."). However, the court should not rely solely on

⁶ The phrase "allowed secured claim" is defined by the Bankruptcy Code as follows:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off 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.A. § 506(a) (West 1993).

NADA figures and has a duty under § 506(a) to value the specific collateral in the case before it.” *Id.* at 330-31.

The court cannot give weight to Pioneer’s proffered \$6,000.00 retail valuation. In addition to being unsubstantiated by any evidence of similar recent sales, the court must look to wholesale, and not retail, values. *See Weathington*, 254 B.R. at 899 n.1. In addition, Mr. Ailey’s testimony that the Ford is not an XLT model casts doubt upon Pioneer’s NADA and Black Book figures.

Nonetheless, there is evidence to support an increased valuation of the Ford.⁷ There are sport wheels, a tool box, and a bed liner, the latter of which was characterized by the Debtors as a significant improvement to the vehicle. Mr. Milks testified that these features add \$200.00 to the wholesale value. Adding that amount to the Debtors’ proffered NADA trade-in value the court finds the redemption value of the Ford to be \$3,425.00.

For the above reasons, the Debtors will be allowed to redeem the Ford from Pioneer’s lien upon payment to Pioneer, within 15 days, of the sum of \$3,425.00. Upon payment of the redemption value, Pioneer will deliver the Ford’s certificate of title to the Debtors with the lien released.⁸

⁷ As noted, the Debtors themselves previously valued the Ford at \$4,997.03. *See* footnote 1. The basis of that valuation is, however, unknown.

⁸ Pursuant to the court’s September 24, 2001 Order, the automatic stay will remain in effect pending expiration of the 15-day redemption period. If the Debtors do not timely pay the redemption value, the automatic stay will be modified pursuant to that Order.

An order consistent with this Memorandum will be entered.

FILED: October 24, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
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Debtors

ORDER

For the reasons stated in the Memorandum on Motion to Redeem filed this date, the court directs the following:

1. The Debtors' Motion to Redeem filed October 1, 2001, is GRANTED.
2. The Debtors will be allowed to redeem their 1996 Ford Ranger pickup truck from the lien of Pioneer Credit Company upon payment to the creditor, within fifteen (15) days, of the sum of \$3,425.00.
3. Upon payment of the redemption price by the Debtors, Pioneer Credit Company will deliver the 1996 Ford Ranger pickup truck's certificate of title to the Debtors with the lien released.

SO ORDERED.

ENTER: October 24, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE