

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE: PAMELA A. WATKINS,)	
)	
)	CASE NO. 7-04-74730
Debtor)	
)	ORDER
)	

PAMELA A. WATKINS,)	
Plaintiff)	
)	
v.)	CONTESTED MATTER
)	
AMCORE BANK, N.A.)	
Defendant)	

ORDER

For the reasons noted in this Court's contemporaneous Memorandum Decision in this case, it is

ORDERED

that the value of the Debtor's 1999 Suzuki Vitara is hereby set at \$2,300 and the Debtor has 30 days from the entry of this order to effect the proposed redemption by payment to the creditor of the value of its secured claim in a lump sum.

The Clerk is directed to send copies of this order and the Memorandum Decision to the Debtor, Debtor's counsel, Amcore Bank, N.A.'s counsel, Mark L. Esposito, Esq., the Trustee and the Office of the United States Trustee

ENTER this 30th day of March, 2005.

William F. Stone

 UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE: PAMELA A. WATKINS,)	
)	CHAPTER 7
DEBTOR.)	
)	CASE NO. 7-04-74730
)	

PAMELA A. WATKINS,)	
Plaintiff)	
)	
v.)	CONTESTED MATTER
)	
AMCORE BANK, N.A.)	
Defendant)	MEMORANDUM DECISION
)	

The matter before the Court is the Debtor's motion to value a 1999 Suzuki Vitara motor vehicle for the purpose of redeeming the same pursuant to 11 U.S.C. § 722. The parties disagree as to the proper standard of value, trade-in or liquidation value versus retail value, and as to the proper valuation of this particular vehicle under whichever standard of value is chosen. In her motion the Debtor asserts that the correct value of the vehicle as of the filing date is \$810, based on a trade-in value, while in its response Amcore Bank asserts that the Suzuki should be valued at its purported retail value of \$5900. The motion was heard before the Court on March 22, 2005 and taken under advisement so that the Court could review the exhibits which were admitted in to evidence at that time.

The Court advised counsel that it had previously held in line with the weight of authority that the proper standard of value to be applied in a redemption motion under 11 U.S.C. § 722 is the liquidation value of the property in question, at least in the absence of any evidence

from the creditor that it could expect to obtain a higher value if permitted to enforce its security interest against such property. See In re Hawkins, 136 B.R. 649, 651 (Bankr. W.D. Va. 1991); In re Zell, 284 B.R. 569, 573 (Bankr. D. Md. 2002); and Lawrence P. King, et al., 6 Collier on Bankruptcy ¶ 722.05[1] at p. 722-9 (15th ed. rev. 2004). The Court further advised that counsel that it was certainly willing to hear argument intended to persuade it that its prior ruling on the issue was mistaken. While counsel for the secured creditor stated his client's position, he did not undertake to present argument on the matter or offer evidence that his client could reasonably expect to obtain something more than trade-in value for the vehicle if allowed to repossess the same. Accordingly, the Court will adhere to its prior ruling that the liquidation value of the asset is the proper standard. The Debtor bears the burden of proving that the value of the secured creditor's collateral is less than the amount of the debt secured thereby. In re Brown, 244 B.R. 603 (Bankr. W.D. Va. 2000).

FINDINGS OF FACT

The vehicle in question is a 1999 Suzuki Vitara, JX 2 door soft top model with the smaller 1.6 liter engine, having manual transmission, owner installed but not factory installed air conditioning and just under 117,000 miles of recorded usage. The Debtor testified that she thought its value was in the range of \$1,100 to \$1,200 but did not testify as to her basis for arriving at such a value. Accordingly, the Court will accord little weight to her opinion. She did testify that the vehicle had an abnormally loud fan belt and that its "check engine" light stayed on regularly, which she had been unable to have corrected. Both parties introduced standard valuation service reports for the make and model of the vehicle in question. The Debtor's exhibit, which is a November 2004 valuation, the time of the bankruptcy filing, begins with an average trade-in value of \$3,900, less deductions of \$350 for lack of factory installed air

conditioning, \$275 for manual transmission, and \$1,300 for high mileage (115,001 to 130,000) to arrive at a “book” value of \$1,975. The deduction for miles between 100,001 to 115,000 miles would have been \$900. The Bank’s valuation report was as of March 18, 2005 and started with an average trade-in figure of \$3,850 with deductions of \$1,175 for 116,000 miles, \$375 for “W/out air conditioning”, and \$275 for “W/out Automatic Trans.” Counsel argues that because the vehicle had air conditioning, although not factory installed, the \$375 amount should be added back. Doing so would yield a value of \$2,400, although counsel urged the Court to adopt a \$2,500 trade-in valuation for the vehicle. Debtor’s counsel objected to the admission of the Bank’s exhibit because it was dated as of the approximate time of the hearing rather than the petition filing date. While the Court agrees with Debtor’s counsel that the proper valuation date is the filing date¹, in the absence of any suggestion that vehicles of this kind have increased in value over the last several months, the Court believed that any discrepancy would likely be adverse to the secured creditor rather than the debtor and accordingly overruled the objection.

As a beginning point the Court will use the average trade-in value for November 2004 contained in the Debtor’s exhibit of \$3,900. From this figure it will deduct \$50 for the fact that the air conditioning is not factory installed. The Court believes that such fact would be taken into account in the market place in valuing the vehicle but that it would not have a very material effect. Both valuation services stipulate a deduction of \$275 for manual transmission and the Court will adopt that figure as an additional deduction. Because the vehicle’s mileage is less than 2,000 miles over the 115,000 mile dividing point between a \$900 deduction and a \$1,300

¹ In re Allen, 240 B.R. 231 (Bankr. W.D. Va. 1999). But see In re King, 75 B.R. 287 (Bankr. S.D. Ohio 1987)(valuation should be determined as of the date of the redemption proceeding); and Lawrence P. King, et al., 6 Collier on Bankruptcy ¶ 722.05[1] at p. 722-10 (15th ed. rev. 2004) and cases cited therein.

deduction for high mileage and the range between dividing points is 15,000 miles, the Court has greater confidence that the \$1,175 deduction contained in the Bank's exhibit is a more accurate indication of the effect of the actual amount of this vehicle's miles on its value. Finally, the Court will make another deduction of \$100 to reflect the issues raised by the Debtor in her testimony concerning the fan belt and dashboard "check engine" light. On the basis of this rationale a figure of \$2,300 is derived and the Court finds that this is the liquidation value of the Suzuki on the petition filing date.

CONCLUSIONS OF LAW

This Court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. The Court further concludes that the determination of the valued of a secured claim upon property of the bankruptcy estate for the purpose of determining a redemption motion pursuant to 11 U.S.C. § 722 is a "core" bankruptcy proceeding on several grounds, namely, 28 U.S.C. § 157(b)(2)(B), (K), and (O). As noted previously in the second paragraph of this Decision, the Court concludes that the liquidation value is the proper standard to be applied in considering a redemption motion in the absence of any evidence that the secured creditor might reasonably expect to obtain a higher value if permitted to enforce its security rights. Counsel for the parties are agreed that a period of thirty days is a reasonable period of time for the Debtor to effect the proposed redemption by payment to the creditor of the value of its secured claim in a lump sum. An order in accordance with the provisions of this decision will be entered contemporaneously with the latter's signing.

This 30th day of March, 2005.

William F. Stone, Jr.

United States Bankruptcy Judge