

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**EMMA GREER,**

**CASE NO. 07-00218-NPO**

**DEBTOR.**

**CHAPTER 13**

**ORDER GRANTING IN PART AND DENYING IN PART  
OBJECTION TO SECURED CLAIM(S) AND OTHER RELIEF**

On March 6, 2007, there came on for hearing (the “Hearing”) the Objection to Secured Claim(s) and Other Relief (Dk. No. 8) (the “Objection”) filed by Emma Greer (the “Debtor”) and the Response to Objection to Secured Claim (Dk. No. 13) (the “Response”) filed by GMAC. The Court, having considered the matter, finds that the Objection should be granted in part and denied in part for the following reasons:

On January 23, 2007, the Debtor filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code.<sup>1</sup> Subsequently, the Debtor filed the Objection to the proof of claim filed by GMAC. In the Objection, the Debtor asserts that the value of the collateral securing her debt to GMAC, a 2004 Pontiac Sunbird (the “Vehicle”), is \$7,965. She proposes to pay that value, plus 12% interest,<sup>2</sup> to GMAC through her chapter 13 plan. In its Response, GMAC contends that the value of the Vehicle is \$10,450.92. Although neither party states in their respective pleading how the value of the Vehicle was determined, Counsel for GMAC stated at the Hearing that GMAC

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<sup>1</sup> Hereinafter, all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code, unless otherwise noted.

<sup>2</sup> GMAC does not contest the proposed interest rate of 12%.

relied upon the N.A.D.A. Official Used Car Guide (the “NADA Guide”). The issue before the Court is the proper valuation standard to be applied when determining the value of the Vehicle.

This case was filed after the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”). BAPCPA amended § 506 to add a new paragraph, (a)(2), which is applicable to this case. Section 506(a)(2) 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.

Thus, pursuant to § 506(a)(2), the amount of allowed claims secured by personal property which is utilized for personal, family, or household purposes shall be determined by using a replacement value. Moreover, replacement value is defined as the price that a retail merchant would charge for similar property.

Recently, the court in In re Mayland, 2006 WL 1476927 (Bankr. M.D.N.C. May 26, 2006), addressed whether the NADA Guide provides a method of determining the replacement value of a vehicle in accordance with § 506(a)(2). The Mayland court stated that while the NADA Guide “is meant to provide information about the amount for which a retail automobile dealer would sell a given vehicle,” the “values listed by the NADA Guide assume that the vehicle has been cleaned, repaired, reconditioned, and otherwise prepared for sale as an automobile dealer would normally do.” Id. at \*1, \*2. The court in Mayland then reasoned that because a debtor normally would not have “cleaned, repaired, reconditioned, or otherwise prepared for sale” a vehicle he or she is using on a day-to-day basis, a 10% deduction from the NADA Guide retail value was necessary to account

for “the fact that automobiles are rarely, if ever, maintained in peak condition by debtors in bankruptcy.” Id. at \*1. Consequently, the Mayland court determined that using ninety percent (90%) of the NADA retail value of a vehicle as a starting point for valuing the vehicle was consistent with § 506(a)(2). *See also* Jean Braucher, *Rash and Ride-Through Redux: The Terms for Holding on to Cars, Homes and Other Collateral Under the 2005 Act*, 13 ABI Law Review 457, 466 (2006) (“For vehicles that are consumer collateral, bankruptcy courts could presume a percentage discount from retail book value, for example of 10 percent, to reflect the value of reconditioning and the difference between asking prices and actual sales prices.”).

As in Mayland, this Court finds that in chapter 13 cases, the starting point for determining the “replacement value” of a vehicle is the NADA Guide retail value, less 10%. *Accord* Amended Order, In re Lewis, No. 06-10378 (Bankr. N.D. Miss. August 29, 2006) (NADA retail valuation is likely an incorrect starting point for valuation analysis). Furthermore, and as also determined in Mayland, “if there are particular characteristics of the vehicle in question that would affect its value, such as high mileage or special features, then evidence of same may be introduced and may affect the value ultimately determined by the Court.” Id.

At the Hearing, the parties did not dispute that the Debtor is an individual in a chapter 13 case or that the Vehicle was purchased for personal, family, or household purposes. Consequently, the presumptive value of the Vehicle is the NADA retail value as of date of the petition, less 10%, plus 12% interest, to be paid over the course of the Debtor’s chapter 13 bankruptcy plan. However, as noted in Mayland above, should any particular characteristics of the Vehicle affect its value, the parties may request a hearing within ten (10) days of the date of this Order to offer evidence for an adjustment to this calculation.

Based on the foregoing, the Debtor's Objection is granted in part and denied in part.

SO ORDERED, this the 19<sup>th</sup> day of March, 2007.

/s/ Neil P. Olack

NEIL P. OLACK

UNITED STATES BANKRUPTCY JUDGE