

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In Re:

COLE JUDE RIVET and
KATIE ARCENEUX RIVET,

Case No. 19-12547

Debtors.

ORDER GRANTING MOTION TO REDEEM (DOC. 10)

This is the court's ruling on the debtors' motion to redeem and the objection by secured creditor Neighbors Federal Credit Union. The court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the order of reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(k), and the court has authority to enter a final order.

The debtors here seek to redeem a 2016 Dodge Caravan automobile pursuant to Bankruptcy Code § 722 and Bankruptcy Rule 6008. Creditor Neighbors Federal Credit Union objects to the debtors' proposed redemption value of \$9,172.00 and contends that the redemption value should be \$14,187.00.

Debtor Katie Rivet was the only witness at the redemption motion hearing. She said that she has three children ages 12, 7, and 3 and that the stained interior reflects her usage in carrying those small children around. She testified that the back bumper is slightly off and that the paint is damaged on the side panel that connects to the bumper. There is also paint damage on the other side. She said that there was damage to the front bumper which cost about \$500.00 to repair. There are dings in the windshield and the hood is very faded. The tires have about 50% wear and the brakes need to be changed.

Pursuant to Bankruptcy Code § 506(a)(2), the value of personal property securing an allowed claim in an individual chapter 7 case is determined based upon the replacement value of such property as of the date of the filing of the petition without deduction for costs, sale, or marketing. With respect to property acquired for personal, family, or household purposes, replacement value means the price a retail merchant would charge for the property of that kind considering the age and condition of the property at the time value is determined.

The petition here was filed on July 25, 2019. After the hearing, the creditor's counsel provided to the court and debtor's counsel copies of an online NADA report dated August 1, 2019 for this particular vehicle. The court is making this printout the court's exhibit 1. The mileage listed on the printout is 57,500 miles, which the court assumes is accurate in the absence of any other evidence. The effective date is only four days after the filing and the court will consider it as evidence of valuation as of the petition date.

This court has traditionally used an average of clean retail and average trade-in as a benchmark for determining automotive value under Bankruptcy Code § 506. In this case, the base clean retail value is \$15,350.00 and the average trade-in is \$11,950.00. Both those numbers should be reduced by \$375.00 for mileage, yielding values of \$14,975.00 clean retail and \$11,575.00 average trade-in, respectively. The NADA valuation which is the court's exhibit 1 suggests that the average trade-in value should be increased by \$1,725.00 and the clean retail value by \$2,100.00 to adjust for options. However, pursuant to Mrs. Rivet's testimony the court is going to deduct or adjust some of those option values. Mrs. Rivet testified that the vehicle's Bluetooth did not work, so the court will deduct \$75.00 from the retail and \$50.00 from the trade-in value. She testified that the navigation system was broken and would cost \$160.00 to reset, so the court will deduct \$160.00 from both the retail and trade-in values. She testified that

the vehicle did not have a parking aid system, so the court will deduct \$125.00 off the retail and \$100.00 off the trade-in. She testified that the vehicle did not have a rear entertainment system, which is a \$600.00 retail adjustment and \$525.00 trade-in adjustment. She also testified that the vehicle did not have a luggage rack, which is \$50.00 on both the retail and trade-in values. These adjustments result in a clean retail value of \$16,040.00 and average trade-in value of \$12,415.00. The split between those two figures is \$14,227.50.

The court's inquiry does not end there. The court finds that value needs to be adjusted downward based upon the relatively rough condition of the vehicle as described by Mrs. Rivet. The court notes that the difference between average trade-in and rough trade-in on the NADA values provided by the credit union is approximately \$1,200.00, and the court finds that to be an appropriate adjustment for condition in this case. The court will thus deduct \$1,227.50 and comes up with a retail replacement value at the petition date of \$13,000.00. To summarize, the court took the average between clean retail and average trade-in, adjusted for some missing or broken options, and then adjusted downward \$1,227.50 for the relatively rough condition of the vehicle. A table of the court's valuation calculations is as follows:

	<u>Clean retail</u>	<u>Average trade-in</u>
Base	15,350	11,950
Mileage	-375	-375
Climate control	+125	+100
Backup camera	+125	+100
Navigation system	+215	+165
Garage door opener	+50	+25
Fog lights	+75	+50
Power seats	+300	+250
Synthetic leather seats	+175	+150
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	\$16,040	\$12,415

Average of clean retail and average trade-in = \$14,227.50

After adjustment for rough condition = \$13,000.00

The court thus grants the debtors' motion to redeem on the condition that the amount to be paid is \$13,000.00 to be paid within thirty days from the date of this order. The court also approves the proposed financing and payment of attorney's fees as set out in the motion to redeem.

Dated: December 30, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE