

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

---

**In re:**

**ANGELA MAYE,**

**Debtor.**

**CASE NO. 99-23947**

**DECISION & ORDER**

---

**BACKGROUND**

On December 20, 1999, Angela Maye (the “Debtor”) filed a petition initiating a Chapter 13 case. On the Schedules and Statements required to be filed by Section 521 and Rule 1007, the Debtor indicated that: (1) she was the owner of a 1997 Chevrolet Blazer 4x4 (39k miles) (the “Blazer”), which she believed had a current fair market value of \$13,000.00; and (2) Flagship Credit Corporation (“Flagship”) had a purchase money security interest in the Blazer to secure a loan with a current balance of \$19,381.00. The Debtor’s Chapter 13 Plan (the “Plan”) proposed to pay Flagship: (1) as a secured creditor, the \$13,000.00 fair market value of the Blazer with interest; and (2) as an unsecured creditor, the deficiency between the amount owed on its loan and the Blazer’s asserted \$13,000.00 fair market value.

On January 25, 2000, Flagship filed an objection to the confirmation of the Plan, which alleged that: (1) the Official N.A.D.A. Used Car Guide (the “NADA”) retail value of the Blazer was \$18,500.00; (2) the NADA trade-in or wholesale value (the “Wholesale Value”) of the Blazer was \$15,850.00; (3) Flagship would consent to \$17,175.00 as a secured valuation for purposes of a plan, which represented the midpoint between the NADA retail and wholesale values; and (4) should the

**BK. 99-23947**

Debtor fail to accept the \$17,175.00 secured valuation, Flagship requested an opportunity to inspect and appraise the Blazer and have the Court conduct a valuation hearing.

On February 29, 2000, after the Debtor failed to consent to the \$17,175.00 secured valuation, Flagship filed an appraisal prepared by Wahl Appraisal Service, Inc. (the "Wahl Appraisal") which set the value of the Blazer at \$19,100.00. The Wahl Appraisal attempted to determine the "Replacement Value" of the Blazer in accordance with the Decision of the United States Supreme Court in *In re Rash*, 530 U.S. 953 (1997) ("Rash"). The Appraisal: (1) set forth the average NADA and Red Book retail values for a 1997 Blazer; (2) increased the average retail values by various special features and accessories (the "Accessories") of the Blazer, which included leather seats, alloy wheels, luggage Rack and a LT trim package;<sup>1</sup> and (3) averaged the resulting retail values and subtracted a total of \$950.00 for the estimated restoration costs (the "Restoration Costs") that would be incurred by a retail dealer in order to prepare the Blazer for a retail sale, which included the installation of four new tires, steam cleaning the engine, shampooing the interior and repairing a bumper.

When the Debtor continued to assert that the proper secured valuation for the Blazer was \$13,000.00, the Court placed the matter on its evidentiary hearing calendar for a valuation hearing, and advised the parties that on the valuation hearing date they should: (1) have the Blazer available near the Courthouse so, if necessary, the Court and the parties' appraisers could inspect the vehicle; and (2) advise their respective appraisers that as part of the valuation hearing they should be prepared to critique the other party's appraisal.

---

<sup>1</sup> These Accessories added \$2,075.00 to the NADA average retail value.

At the valuation hearing the Court heard the testimony of Patrick H. Crough (“Crough”), the appraiser who inspected the Blazer and prepared the Wahl Appraisal. The Debtor failed to produce an appraiser at the hearing, but did submit various documents at the time of the hearing and as part of a post-hearing submission, which the Debtor believed provided some evidence of the value of the Blazer. These documents included: (1) a Used Car Appraisal Report obtained from Durfee Chevy-Olds, Inc., dated January 31, 2000, which appraised the Blazer at \$12,500.00, and indicated that it needed four new tires at an estimated cost of \$450.00; (2) a Used Vehicle Appraisal obtained from Dorschel Automotive Group (“Dorschel”), dated January 31, 2000, for \$12,000.00; (3) a copy of a printout of GM cars sold at the State Line Auto Auction in Waverly, New York on Thursday, May 11, 2000, which indicated that a number of 1997 blazers were sold that day for wholesale prices ranging from between \$11,800.00 and \$14,200.00; and (4) a copy of the sales agreement (the “Sales Contract”) entered into between the Debtor and Dorschel on June 12, 1998, which showed that the Debtor paid a basic list price of \$19,995.00 for the Blazer with 20,806 miles.

During the examination of Crough by the attorneys for the parties, he testified that: (1) for the last four years he had been employed exclusively as an appraiser, but before that he had owned various used car dealerships and body shops, so that he had been appraising motor vehicles for more than forty years; (2) he estimated that he had performed in excess of 40,000 appraisals of motor vehicles; (3) he had physically inspected the Blazer to determine any damage, rust and wear and tear; (4) the \$950.00 in Restoration Costs which he included in the Wahl Appraisal were the likely items that a dealer would address in order to make the Blazer a “front-line used car” on the dealer’s lot; (5) the Restoration Costs were at their cost price to the dealer; (6) he had used the Eastern States Edition of the NADA Guide for his appraisal; (7) there was a dealer profit and cost of warranty

**BK. 99-23947**

included in the appraised retail value of \$19,100.00; (8) the reason the Debtor's attorney had found seven 1997 Chevy Blazers advertised in the previous weekend's newspaper for prices generally between \$16,000.00 and \$17,000.00 was that: (a) he had appraised the vehicle in the winter when four-wheel drive vehicles were more expensive to obtain; and (b) NADA values changed every thirty days, based upon wholesale and retail transactions in the prior period, so that in three months the NADA values for a used car can change dramatically; (9) with the Accessories, the NADA Wholesale Value of the Blazer was approximately \$17,900.00; and (10) he believed that if the Debtor had sold the Blazer privately on the date of the Wahl Appraisal, February 16, 2000, she could have sold it for \$18,000.00.

#### **DISCUSSION**

We know from the Decision of the United States Supreme Court in *Rash* that: (1) when a debtor in Chapter 13 proposes to retain a motor vehicle and pay the "cramdown" value of the vehicle through a plan pursuant to Section 1325(a)(5)(B), the Section 506(a) value of the secured claim is the price that a willing buyer in the debtor's trade, business, or situation would pay to obtain like property from a willing seller; (2) this "Replacement Value," which must be determined on a case-by-case basis, is not the foreclosure value of the property, since the debtor will be retaining and using it, nor is it midpoint between the foreclosure and retail values; (3) whether Replacement Value is the equivalent of retail value, wholesale value or some other value will depend upon the type of debtor and the nature of the property; and (4) where the proper measure of the Replacement Value of the vehicle is the retail value, an adjustment to that value may be necessary so that a creditor does

receive portions of the retail price that reflect the value of items which the debtor does not receive when he retains the vehicle, including warranties, inventory storage charges and reconditioning costs.

For administrative convenience, in the Rochester Division of the Western District of New York, the Chapter 13 Trustee, secured creditors and debtors typically use the midpoint between the NADA wholesale and retail values to establish the “cramdown” value of a motor vehicle for purposes of Section 1325(a)(5)(B).

The Valuation Hearing for the Blazer was the first one required in the last eight and one-half years because the Chapter 13 Trustee, secured creditor and debtor could not agree to a Section 1325(a)(5)(B) valuation for purposes of a plan.

It is unfortunate that the Debtor did not, as requested by the Court, present an appraiser at the Valuation Hearing.<sup>2</sup> With an expert witness for each party, the Court could have learned even more about the private sales of used automobiles and the market for the Blazer.

In this case, although all of the documents presented by the Debtor constitute some evidence of the value of a 1997 blazer, the most significant evidence presented by the Debtor of the value of her Blazer is the Sales Contract. This showed that she purchased the Blazer for \$19,995.00 approximately fourteen months before the Wahl Appraisal was performed. To now suggest that, only fourteen months later and after she had driven the Blazer only an additional 19,000 miles, as a willing private seller she would accept \$13,000.00 for it is not credible.

Crough testified that in his opinion, a private seller, such as the Debtor, who offered the Blazer for sale “as is” through a newspaper ad at the time of the Wahl Appraisal would have been

---

<sup>2</sup> One of the reasons that Chapter 13 debtors generally negotiate the “cramdown” value for a vehicle is to avoid the cost of an expert witness at an evidentiary hearing.

**BK. 99-23947**

able to sell it for \$18,000.00. This opinion of Replacement Value is credible and within the reasonable range of Replacement Values for the Blazer given: (1) an estimated NADA Wholesale Value of \$17,900.00; (2) the \$19,995.00 purchase price paid by the Debtor in June, 1998; and (3) the Wahl Appraisal value of \$19,100.00 after a deduction for Restoration Costs, which included a dealer profit and warranty.

Based upon the evidence presented, I believe that the Replacement Value of the Blazer, the price that a willing buyer in the Debtor's trade business or situation would pay to obtain the Blazer from a willing seller, such as the Debtor, is the \$18,000.00 as testified to by Crough. Although I believe that it is on the high side of the range of Replacement Values for the Blazer, especially given the apparent condition of its tires, the \$18,000.00 value is supported by the credible evidence presented.

**CONCLUSION**

The "cramdown" value of the Blazer for purposes of the Debtor's Plan is \$18,000.00.

**IT IS SO ORDERED.**

\_\_\_\_\_/s/\_\_\_\_\_  
**HON. JOHN C. NINFO, II**  
**CHIEF U.S. BANKRUPTCY JUDGE**

**Dated: August 14, 2000**