

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

SANDRA MAIRA

Case No. 02-15907 K

Debtor

MEMORANDUM OF DECISION

On the record in open court on January 29, 2002, the Court granted the Chapter 7 Trustee's Motion to Compel Turnover of a 1996 Saturn automobile, and denied the Debtor's cross motion for abandonment of that vehicle. This is a memorandum explaining that decision, in the event of review by a higher court.

The Debtor scheduled the value of the vehicle at \$3500, and the Trustee valued the vehicle at the § 341 meeting at over \$5,000 based on the NADA book value supplemented by the Debtor's testimony regarding such things as "low mileage." There are no liens on the vehicle, and the Debtor is unquestionably entitled to a \$2400 exemption.

The Trustee sought turnover to liquidate the vehicle for the benefit of the estate, recognizing that the first \$2400 of any proceeds would have to be given to the Debtor as an exemption. When the Debtor refused to turn over the vehicle, the Trustee brought the motion for turnover.

The cross motion for abandonment is premised on an appraisal of the vehicle performed by a Saturn dealer, valuing the vehicle at \$2895. The Debtor argues, based on that appraisal, that if the Trustee is permitted to sell the vehicle at the auto auction and only obtains

the appraised amount, the cost and expenses of the sale plus the commissions awardable to the Trustee will eat up all of the value in excess of the \$2400 exemption. Thus the Debtor argues that the property is “of inconsequential value to the estate” under 11 U.S.C. § 554(b). And the Debtor argues that her “fresh start” will have been thwarted by losing the car to a failed effort by the Trustee to get something for creditors, even if she gets \$2400 back in cash.

There can be no doubt that assets ought not to be administered in a Chapter 7 case solely for the benefit of the Trustee and his or her appointees (auctioneers, appraisers, brokers, etc.). This is particularly true as to assets that are partly exempt. However, there is a dispositive distinction between “setting out” to accomplish that impermissible purpose, and “setting out” to do the “right thing” and having that turn out to yield only inconsequential value. There is no hint or suggestion that the case at bar is anything other than the latter - a case in which it might turn out that nothing of meaningful consequence will be yielded for the benefit of creditors.

And that sad result is mere speculation. There is sufficient evidence in the form of the NADA book value supplemented by the Debtor’s testimony as to the condition of the car and its features, that the Trustee should be permitted to administer the asset to recover perhaps even \$3000 for creditors.

A contrary ruling would require an evidentiary hearing at which the Trustee would have to establish to the satisfaction of the Court that the value over the exemption is worth administering. This is otherwise a no-asset case, and the Trustee has no money to undertake that effort beyond offering the NADA book. Moreover, to grant the Debtor a right to compel such a hearing would be to turn the Debtor’s argument into a self-fulfilling prophecy - the cost to the

estate of retaining counsel, bringing in appraisers, etc. to make that showing for the estate, would surely wipe out the non-exempt equity.

Even so, this Court would be willing to say to the creditors represented by the Trustee that “due process of law does not always come cheap” and would set an evidentiary hearing on the Debtor’s motion for abandonment, were it not for one other dispositive fact. That fact is that New York Law provides for a \$2400 exemption in a motor vehicle. The exemption law does not say that the exemption is \$2400 “plus the anticipated transaction costs of liquidating the asset.” Nor does the statute say \$2400 “plus the benefit of a supposition that the asset will fetch a lower, rather than a higher value.” Nor does the statute say \$2400 “plus the right to a judicial determination of the value in excess thereof before the Trustee may be permitted to liquidate the asset.” Nor does it say \$2400 “plus free use and control of the vehicle until the Trustee finds a way to sell it that is sure to yield a benefit for creditors.” This vehicle is clearly not entirely exempt.

The exemption statute is what it is and the Court cannot create a better one for the Debtor. As announced in open court, the turnover motion is granted and the cross motion for abandonment is denied.

SO ORDERED

Dated: Buffalo, New York
February 3, 2003

/s/ Michael J. Kaplan

U.S.B.J.