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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
98 JUN 19 PM 12:31  
U.S. BANKRUPTCY COURT  
DIST. OF SOUTH CAROLINA

IN RE:

Benjamin L. Hancock,

Debtor.

C/A No. 98-02561-W

JUDGMENT

Chapter 7

**ENTERED**  
JUN 22 1998  
V.A.C.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Debtor's Motion to Redeem a 1992 Acura Vigor pursuant to 11 U.S.C. §722 is granted and the value of the automobile is set for purposes of this motion at \$3750.00.

Columbia, South Carolina,  
June 19, 1998.

  
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

The undersigned clerk (or deputy clerk) of the United States Bankruptcy Court for this district hereby certifies that a copy of the document on which this stamp appears was mailed on 6/22/98, to

DEBTOR,

DEBTOR'S ATTY: *J. H. H. H.*

TRUSTEE

*H. H. H.*  
Deputy Clerk

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IN RE:

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ORDER

Chapter 7

ENTERED

JUN 22 1998

V.A.C.

THIS MATTER came before the Court on the Debtor's Motion to Redeem a 1992 Acura Vigor (the "Vehicle") pursuant to 11 U.S.C. §722<sup>1</sup>. After consideration of the pleadings before the Court, arguments of counsel, and the testimony of the Debtor and two expert witnesses, this Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

The Debtor, Benjamin L. Hancock, testified that the value of the Vehicle was \$2,500.00. He testified that the Vehicle had in excess of 200,000 miles and needed approximately \$1,000.00 worth of mechanical repairs.

A car dealer was qualified as an expert witness for the Debtor and testified that the Vehicle was worth approximately \$3,000.00. He based this opinion upon information that he had obtained from two automobile dealers. One advised that the Vehicle was worth \$2,500.00 and the other said the Vehicle was worth \$3,500.00 and that the fee for selling such an automobile would be \$300.00.

The creditor provided an expert witness who testified that the Vehicle would retail for

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<sup>1</sup> Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* shall be by section number only.

JW-1265-

\$6,000.00 and that the wholesale value of the Vehicle would be \$4,500.00. He based this opinion on the fact that two wholesalers had indicated a willingness to pay \$4,500.00 for the Vehicle.

The parties do not dispute the Debtor's ability to meet the requirements of §722 but disagree over the amount of the allowed secured claim to be paid the secured creditor.

### CONCLUSIONS OF LAW

The issue to be decided is the appropriate standard for valuation where collateral is being redeemed pursuant to §722. The Debtor argued that the appropriate valuation standard for the purpose of redemption is more closely related to a wholesale value than a retail value. The creditor posits that the appropriate valuation standard was the "replacement value standard" set forth in Associated Commercial Corp. vs. Rash, 117 S.Ct. 1879 (1997) and more closely related to a retail value.

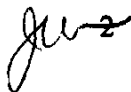
In In re Patty, 96-79572-B (Bkrcty. D.S.C. 5/23/97), a pre Rash decision, this Court had held that the collateral's wholesale value is the appropriate valuation "starting point" for redemption purposes [pursuant to §722].

Since the time of that decision, the Supreme Court in Rash adopted "replacement value" as the appropriate value in a Chapter 13 cram down.<sup>2</sup> The Court however, at footnote 6, noted that this standard:

... leaves to bankruptcy courts, as triers of fact, identification of the best way of ascertaining replacement value on the basis of the evidence presented. Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property.

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<sup>2</sup> The Rash decision verified the valuation standard used by this Court in Chapter 13 cramdown cases. See In re Coates, 180 B.R. 110 (Bkrcty D.S.C. 1995).



The issue before the Court is whether the Supreme Court's decision in Rash compels a replacement value standard in the instance of a redemption.

In re Donley, 217 B.R. 1004 (Bkrtcy. S.D. Ohio 1998) is the only published post-Rash redemption case which this Court has found that has considered this issue. The Donley court held that the valuation standard to be applied when a debtor seeks to redeem collateral is not the Rash 'replacement value standard' but that the collateral should be valued by determining what the creditor would receive if redemption did not occur and if it were forced to repossess and sell the collateral in the most beneficial manner it could. In reaching this conclusion, the Donley court set forth several reasons to "believe that application of the replacement value standard does not reflect the 'purpose of the valuation and proposed disposition or use of property' in the context of redemption under Chapter 7." In re Donley, supra.

The court in Donley wrote that:

... the legislative history of Section 722 supports a valuation standard different from that of replacement value. According to the House report, "Redemption . . . "amounts to the right of first refusal on a foreclosure sale in property involved. It allows the debtor to retain his necessary property and avoid high replacement costs, and does not prevent the creditor from obtaining what he is entitled to under the terms of his contract." H. Rep. #95-595 at 127 (1977, Reprinted in 1978 U.S.C.C.A.N. 5787, 5913). These comments strongly suggest that Congress, in enacting Section 722 as part of the Bankruptcy Reform Act of 1978, intended to place the creditor in the same position it would have been in had the property not been redeemed and the creditor had repossessed and caused the sale of such property.

In re Donley, supra. In support of this position, the Donley court referred to an article by commentators Mitch and Crutchfield which states:

At first, one might suppose that the value assigned to collateral in a



722 redemption in a Chapter 7 case would be "replacement" value also. However, in that context, the debtor is now removing the double risks of default and depreciation that occur when the debtor keeps the property under a Chapter 13 plan. Therefore, "replacement" value in a 722 redemption is probably inappropriate.

*The Rash Decision: A question of Value and Context*, 16 Aug. Am. Bank. Inst. J. 18 (July/August 1997). Considering these authorities, it appears that the nature and purpose of the redemption process in a Chapter 7 liquidation case is fundamentally different from the nature and purpose of a valuation in a Chapter 13 (or other type of reorganization case) and therefore distinguishable from the valuation standard set forth in the Rash decision and this Court's earlier ruling in In re Coates, 180 B.R. 110 (Bkrtcy. D.S.C. 1995).

In a Chapter 7 case, unlike a Chapter 13 cramdown, the debtor is not seeking to retain the property subject to the creditor's security interest and over the creditor's objection. The Debtor is not proposing to pay in installments over time.

As the Supreme Court noted, retention and use of the collateral by a debtor in a Chapter 13 cramdown exposes a secured creditor to a double risk of future default by a debtor and the deterioration of the property from extended use. Redemption involves neither of these risks and also provides a mechanism for the creditor to receive the value of the collateral without any delay. Therefore, as a standard, imposition of a replacement value more closely related to a retail value is inappropriate in redemption cases.

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Consistent with this reasoning, in this case, the Court finds the value of the car for purposes of redemption is \$3750.00.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
June 19, 1998.

  
UNITED STATES BANKRUPTCY JUDGE

*gas*

CERTIFICATE OF MAILING

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DEBTOR,

DEBTOR'S ATTORNEY,

TRUSTEE

[Signature]  
Deputy Clerk

*[Handwritten signature]*