

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Discussion

In re:

Case No. 04-06148  
Chapter 7

NIGEL G. POULTON  
SHARON E. POULTON

Debtors.

**ORDER ON DEBTORS' VERIFIED SECOND  
AMENDED MOTION TO VALUE AND  
REDEEM AND SUNCOAST SCHOOLS  
MOTION FOR SUMMARY JUDGMENT ON  
THE LEGAL STANDARD TO DETERMINE  
REDEMPTION VALUE**

**THIS CASE** came before the Court for hearing to consider the Debtor's Verified Second Amended Motion to Value and Redeem and Suncoast Schools Motion for Summary Judgment on the Legal Standard to Determine Redemption Value.

**Background**

The Debtors, Nigel G. and Sharon E. Poulton, filed their Chapter 7 petition on March 30, 2004. In their Verified Second Amended Motion to Value and Redeem, the Debtors sought to obtain an order whereby a 2000 Hyundai Sonata 4D Sedan (VIN No.: KMHWF25SOYA151761) would be valued at \$1,900.00, and the Debtors would be authorized by the Court to redeem such property by paying that amount to Suncoast Schools Federal Credit Union ("Suncoast Schools FCU") pursuant to 11 U.S.C. §722. In its Response to the Motion to Value and Redeem Collateral, Suncoast Schools FCU disputed the value placed on the vehicle by the Debtors, and requested an opportunity to inspect and appraise the vehicle. Subsequently, Suncoast Schools FCU filed a Motion for Summary Judgment on the Legal Standard to Determine Redemption Value.

Pursuant to 11 U.S.C. §722, individual debtors have the right to redeem specified collateral by paying their creditors the amount of the allowed secured claim:

**11 USC §722. Redemption**

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

Accordingly, the Debtors may redeem (a) tangible personal property intended primarily for personal, family, or household use, (b) from a lien securing a dischargeable consumer debt, (c) if the property is exempted under section 522 or has been abandoned under section 554, (d) by paying the holder of such lien the amount of the allowed secured claim of the holder that is secured by the lien.

**(a) tangible personal property intended primarily for personal, family, or household use . . .**

In their motion the Debtors state that they are the owner of "certain personal property" more particularly described as a 2000 Hyundai Sonata sedan. In Schedule B of their Chapter 7 bankruptcy petition, the Debtors list two items under subsection 23 "Automobiles, trucks, trailers, and other vehicles and accessories" – a "Nissan 240 SX" and a "Leased car." The 2000 Hyundai Sonata sedan is not listed in Schedule B. In fact, there is no mention of a 2000 Hyundai Sonata in any of the Debtors' bankruptcy filings except in the motion to redeem. The schedules were signed under penalty of perjury. They have not been amended. Although the Debtors state in their verified motion that they own a 2000 Hyundai

Sonata, they state that they do not know when they entered the loan agreement with Suncoast Schools FCU: "The Debtors entered into an installment sales agreement with Suncoast Schools Federal Credit Union on a date unknown to the Debtors." ¶3, Debtors' verified motions to value and redeem, Docket nos. 9, 10, 11). Apparently, at the time the bankruptcy case was filed, the Debtors did not own a 2000 Hyundai Sonata sedan.

**(b) from a lien securing a dischargeable consumer debt . . .**

Suncoast Schools FCU is not listed as a secured creditor in the Debtors' Schedule D, the schedule of Creditors Holding Secured Claims. There is a listing in Schedule D of a 2000 Toyota Solara with a value of \$0 and Fifth Third Bank as the secured creditor. In "Schedule F. Creditors Holding Unsecured Nonpriority Claims" Suncoast Schools FCU is listed with an unsecured consumer debt of \$2,500. The schedules were signed under penalty of perjury. They have not been amended. Apparently, at the time the bankruptcy case was filed, Suncoast Schools FCU did not hold a lien securing a dischargeable consumer debt.

**(c) if the property is exempted under section 522 or has been abandoned under section 554 . . .**

Section 722 requires that the property to be redeemed "...is exempted under section 522 of this title or has been abandoned under section 554 of this title..." See *In re Lopez*, 224 B.R. 439, 441-2 (Bankr. C.D. Cal. 1998)(Section 722 only applies if the debtor's interest in the property is exempt or has been abandoned...property is not exempted by operation of law under §522 unless it is included on a list of property claimed as exempt...)

The only vehicle listed in "Schedule C. Property Claimed As Exempt" in the Debtors' bankruptcy petition is the Nissan 240 SX noted above. The schedules were signed under penalty of perjury. They have not been amended. Accordingly, no 2000 Hyundai Sonata sedan has been exempted under section 522.

Additionally, there is no notice in this file that the trustee has abandoned a 2000 Hyundai Sonata pursuant to §554. Further, the only property that is abandoned by law upon the closing of a case is

property that has been scheduled by the debtor. 11 U.S.C. §554(c). Otherwise, the property remains property of the estate. 11 U.S.C. §554(d).

**(d) by paying the holder of such lien the amount of the allowed secured claim of the holder that is secured by the lien.**

The trustee filed a report of no distribution in this case, and did not administer any assets. No claims bar date was set in the case, and no proofs of claim have been filed by any creditor. No secured claim of Suncoast Schools FCU was scheduled. Accordingly, there is no allowed secured claim of Suncoast Schools FCU in the case.

In summary, according to the Debtor's schedules that were signed under penalty of perjury, the 2000 Hyundai Sonata was not owned by the Debtors at the time they filed the case, Suncoast Schools FCU did not hold a lien on any of the property they owned at the time they filed the case, and a 2000 Hyundai Sonata was not exempted from assets of the estate. Further, no 2000 Hyundai has been abandoned by the trustee, and there is no allowed secured claim of Suncoast Schools FCU.

Clearly, this is a situation where it is not appropriate to consider the question of value of the allowed secured claim in a motion to redeem. There is no actual controversy, as basic elements of §722 have not been met. A controversy does not exist in this case which would allow the Court to determine the Motion for Summary Judgment on the Legal Standard to Determine Redemption Value. As noted by the Third Circuit Court of Appeals in *In re Surrick*, 338 F.3d 224, 229 (3d Cir. 2003), *cert. denied* 540 U.S. 1219 (2004), the existence of a case or controversy requires three factors:

1. a legal controversy that is real and not hypothetical,
2. a legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for reasoned adjudication, and

3. a legal controversy with sufficiently adverse parties so as to sharpen the issues for judicial resolution.

### **Conclusion**

Debtors may redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt if the property is exempted under section 522 or has been abandoned under section 554 by paying the holder of such lien the amount of the allowed secured claim of the holder that is secured by the lien.

However, in this case, according to the Debtor's schedules that were signed under penalty of perjury, the Debtors did not own a 2000 Hyundai Sonata at the time they filed the case, Suncoast Schools FCU did not hold a lien on any property owned by the Debtors at the time they filed the case, and a 2000 Hyundai Sonata was not exempted from assets of the estate. Additionally, no 2000 Hyundai Sonata has been abandoned by the trustee, and there is no allowed secured claim of Suncoast Schools FCU.

Accordingly, it is appropriate to deny the Debtors' Verified Second Amended Motion to Value and Redeem. It is also appropriate to deny Suncoast Schools' Motion for Summary Judgment on the Legal Standard to Determine Redemption Value, since none of the three factors establishing the existence of a case or controversy are met in this instance and "nothing of practical consequence [in this case] turns on the outcome..." (See *In re Inn on the Bay, Ltd.*, 154 B.R. 364, 367 (Bankr. S.D. Fla. 1993), *citing In re Smith*, 921 F.2d 136, 138 (8th Cir. 1990).

The Court recognizes the interest of counsel for the creditor Suncoast Schools FCU to determine a legal standard for valuing tangible personal property in certain cases where a debtor files a motion to redeem pursuant to 11 U.S.C. §722. However, as explained above, this is not an appropriate instance to decide such matters as a case or controversy simply doesn't exist with regard to the motion filed by the Debtors.

Accordingly:

### **IT IS ORDERED** that

1. The Verified Second Amended Motion to Value and Redeem filed by the Debtors with regard to the 2000 Hyundai Sonata is denied.

2. Suncoast Schools Motion for Summary Judgment on the Legal Standard to Determine Redemption Value is denied.

**DATED** this 4th day of March, 2005.

### **BY THE COURT**

/s/ Paul M. Glenn  
PAUL M. GLENN  
Chief Bankruptcy Judge