

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK02-80667
)	
BARBARA J. BROWN,)	CH. 7
)	
Debtor(s).)	Filing No. 59, 64

ORDER

Hearing was held in Omaha, Nebraska, on August 25, 2005, on Ford Motor Credit Company's motion for relief from stay (Fil. #59) and debtor's resistance (Fil. #66), and on the debtor's motion to redeem (Fil. #64) and resistance by Ford Motor Credit Company (Fil. #65). Sam Turco appeared for the debtor and Grant Forsberg appeared for Ford Motor Credit Company.

The debtor originally filed a Chapter 13 petition and, in the Chapter 13 case, agreed to a value for her vehicle. That value was less than the outstanding debt. During the Chapter 13 case, she paid several thousand dollars on the note and has therefore reduced the secured claim significantly.

The debtor has converted to Chapter 7 and desires to redeem the vehicle for what the debtor claims is the current fair market value. That amount is significantly less than the amount still due on the allowed secured claim as determined in the Chapter 13 case, less the payments which have been made and applied to principal. Ford Motor Credit Company ("Ford") resists and cites several cases for the proposition that the debtor does not get to once again reduce the value of the secured claim by converting to Chapter 7 and attempting to redeem at the now-current market value.

I agree with Ford. The United States Supreme Court in Dewsnup v. Timm, 502 U.S. 410 (1992), prohibited lien stripping in Chapter 7 cases. What the debtor is proposing to do here is exactly that.

The cases cited by Ford which deal with the fact situation of a Chapter 13 case being converted to Chapter 7 agree that the valuation of an allowed secured claim in a Chapter 13 case, even though made for purposes of reorganization, must be used when a debtor seeks to redeem in the converted Chapter 7 case. See In re Dean, 281 B.R. 912 (Bankr. W.D. Tenn. 2002); In re Davis, 300 B.R. 898 (Bankr. N.D. Ill. 2003); In re Tluscik, 122 B.R. 728 (Bankr. W.D. Mo. 1991). See also In re Cooke, 169 B.R. 662 (Bankr. W.D. Mo. 1994).

The motion to redeem (Fil. #64) at the reduced current fair market value is denied. The debtor may amend the motion to redeem by September 19, 2005, to pay the full remaining balance of the allowed secured claim, or relief will be granted. Counsel for Ford Motor Credit Company should advise the court as to whether it desires entry of relief from the stay at that time.

SO ORDERED.

DATED this 26th day of August, 2005.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Sam Turco

*Grant Forsberg

U.S. Trustee

*Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.