

Filed at 2 O'clock & 15 min. P.M.

Date: 1-11-91

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>90-11111</u>
GARY AROWOOD)	
)	
Debtor)	
_____)	
GARY AROWOOD)	
)	
Movant)	
)	
vs.)	
)	
GENERAL MOTORS ACCEPTANCE)	
CORPORATION)	
)	
Respondent)	

ORDER

Gary Arowood, debtor in this Chapter 13 case objects to the unsecured claim of General Motors Acceptance Corporation ("GMAC") in the amount of Three Thousand Five Hundred Sixty-Five and 93/100 (\$3,565.93) Dollars. The claim arose from a deficiency resulting from the prebankruptcy repossession and sale of the debtor's automobile pursuant to applicable State law. Debtor objects to the amount of claim contending that the sale was not conducted in a commercially reasonable manner, and that an

inadequate price was received. The debtor contends that the notice given did not provide reasonable notification of the debtor's right to demand public sale and that as a result of this failure the collateral was sold at a private auction at a value considerably less than reasonably attainable.

At the hearing GMAC put forth evidence of the notice given debtor. This notice dated February 15, 1990, the date of repossession, informed the debtor of GMAC's intent to sell the motor vehicle at private sale after 9:00 a.m. on February 27, 1990. Evidence was introduced in the form of a certified mail receipt reflecting acceptance of the letter by the debtor on February 21, 1990. GMAC further introduced evidence that the car was sold at a wholesale auction at Hill Top Auto Auction, North Augusta, South Carolina, and the price obtained of Eight Thousand Seven Hundred and No/100 (\$8,700.00) was more than the average wholesale value for a similar vehicle based upon the NADA book value for March, 1990, the month of sale.

When the reasonableness of sale of collateral pursuant to O.C.G.A. §11-9-504(3) is challenged, the seller has the burden of proving that the sale was commercially reasonable. A creditor who fails to meet this burden is barred from recovering any deficiency between the sale price and the debt. Harrison v. Massey-Ferguson Credit Corp., 175 Ga. App. 752, 334 S.E.2d 352 (1985). The mere fact that a better price for collateral could

have been obtained by a sale at a different time or in a different manner will not itself

make the sale commercially unreasonable so as to bar recovery of a deficiency judgment. Id. In this case, the evidence supports a finding of a sale in a commercially reasonable manner. The notice required under O.C.G.A. §11-9-504(3) and §10-1-36 was issued on the date of repossession and provided a 12-day period prior private sale for debtor to demand a public auction. The debtor received the notice and took no action. Accord, Hill v. Federal Employees Credit Union, 193 Ga. App. 44, 386 S.E.2d 874 (1989).

From the evidence presented, the method of private sale, at wholesale auto auction and the price received represented a commercially reasonable disposition of the collateral for a reasonable price. See generally, Calcote v. Citizens and Southern National Bank, 179 Ga. App. 132, 345 S.E.2d 616 (1986). The sale of the collateral after the debtor's default complied with applicable Georgia law and the disposition of the collateral was in a commercially reasonable manner resulting in the recovery of the value of the collateral at sale.

It is therefore ORDERED that debtor's objection to the amended unsecured proof of claim of GMAC in the amount of Three Thousand One Hundred and 81/100 (\$3,100.81) Dollars is overruled and the amended proof of claim is allowed.

JOHN S. DALIS

UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 11th day of January, 1991.