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IT IS SO ORDERED.



Burton Perlman
Burton Perlman
United States Bankruptcy Judge

Dated: September 02, 2011

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:)	Case No. 10-16397
)	
James Childress)	Chapter 13
Amy Childress)	
)	
Debtors)	Judge Burton Perlman

DECISION AND ORDER ON OBJECTION TO CONFIRMATION

The matter before the Court arises in a Chapter 13 case filed by the above identified debtors. Debtors own and operate Edgewater Mobile Home Park (hereafter "Park"). The Park serves as collateral to secured creditor Geauga Savings Bank (hereafter "Bank").

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and the General Order of Reference entered in this district. This is a core proceeding arising under 28 U.S.C. § 157.

Debtors have filed a chapter 13 plan. The plan proposes a one percent distribution to unsecured creditors. At para. 8(3) debtors list the Bank as a secured creditor in the

amount of \$105,000.00. The plan further says at para. 30:

Debtors to bifurcate claims of Geuga Savings Bank and National Wastewater Industries pursuant to 11 U.S.C. 506 and pay the secured portion of the claims based upon the fair market value of real property located at 4665 E. Miami River, Cleves, OH 45002 consisting of Debtor's principal residence and 4.5 acre parcel of property used as mobile home park inside of Chapter 13 bankruptcy, as such mortgage is secured by more than Debtor's principal residence and therefore not subject to 11 U.S.C. 1322(b)2(2) limitations of non-modification for debts secured solely by "debtor's principal residence." Creditors to release lien upon Debtor's residence and 4.5 acre parcel of property following issuance of discharge.

The Bank has objected to confirmation of debtors' plan, asserting that debtors' valuation is too low. A confirmation hearing was held, confirmation turning on the outcome of the determination of the valuation of the Park.

On August 29, 2006, debtors executed a Note and Mortgage, in the amount of \$365,000.00. The Bank had an appraisal done by a qualified appraiser, Edward M. Douglas, who testified at the hearing. Douglas in his appraisal report says that the Park consists of approximately 4.5 acres of land improved with one mobile home on a permanent foundation and twenty-eight improved mobile home pads. The property is best described as a mobile home park. The records of the county auditor indicate that the Park was constructed in or about 1972 with renovations and expansions over the years. The site has been improved with an EPA approved waste water sewage system designed and reportedly approved for a fifty lot capacity. The Park functions adequately as a manufactured home park for the existing older dated manufactured homes. Debtors, owners of the Park, live in and use a double-wide manufactured home as an office. All of the manufactured homes in the Park are estimated to be over thirty years old, and this limits the attractiveness of the Park to

potential renters. Douglas said that four of the homes in the Park are not habitable because of substandard conditions, and the Park has four pads that are out of service because of needed upgrades. Douglas appraised the Park at \$358,000.00.

Debtors presented an appraisal by appraiser Ron Sears, who also testified at the hearing. In his report, Sears says that the site area is 4.3 acres, and the zoning is classified mobile home park. Sears was retained to report on the value of land and owners' home only. Sears says that his search for comparable sales in the area revealed no sales in the last two years. Due to the lack of comparable sales in the Park's immediate area, Sears was forced to exceed normal distance limitations and so Sears expanded his search to include Clermont and Brown Counties. In his page entitled Summary Appraisal Report, Sears shows sales of three properties. In each case it is apparent that each of the comparable sales is not only remote from the subject property, but is also for a single residence. Sears' appraisal is \$105,000.00.

Debtor Amy Childress (hereafter "Amy") testified at the hearing. Debtors have operated the Park since 1998. Amy is the manager/operator of the Park. Debtors reside in a double-wide unit in the Park. Otherwise, the Park contains twenty-eight pads, each pad intended to be the site of a mobile home. At the time of purchase all pad units were revenue producing. Of the twenty-eight pads at the Park, Amy said that seven are now vacant and not income producing.

DISCUSSION

This Court has laid out the ground rules for a decision such as this in In re Muncy,

2010 Bankr. Lexis 1718:

Creditors as the objectors have the burden of proof in this matter. The law to that effect is well settled. In re Sneijder, 407 B.R. 46, 55 (Bankr. S.D.N.Y. 2009) (“[A creditor] bears the burden of proof with respect to the amount and extent of its lien under § 506(a)”); Boyer v. Simon (In re Fort Wayne Telsat, Inc.) 403 B.R. 590 (Bankr. N.D. Ind. 2009) (“[T]he party who creates the need for the valuation determination bears the burden of proving what the appropriate value is.”); In re Buick, Inc., 126 B.R. 840, 851 (Bankr. E.D. Pa. 1991) (“Throughout the [Bankruptcy] Code, the burden of proving the 'validity, priority, and extent' of security interest lies upon the Creditors asserting such interest.”); In re Petrella, 230 B.R. 829, 832 (Bankr. N.D. Ohio 1999) (“[A] party [*6] objecting to confirmation bears the burden of proof as to the objection.”).

* * *

Determining the value of collateral is a question of fact. 11 U.S.C. § 506(a) deals with the basis to be used in valuation determination.

11 U.S.C. § 506 Determination of secured status.

...[V]alue shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Thus, the statute requires that value be determined in accordance with “the proposed disposition or use of such property.” Here it is a fact that debtors intend to continue the operation of their business. Valuation must therefore, be based on going concern rather than liquidation value.

Douglas arrived at his appraisal of the Park of \$358,000.00 utilizing a capitalization

approach. The Court recognizes that other approaches should be considered. Douglas rejected the cost approach, as he should, because of the age of the mobile homes in place, and the inherent inaccuracies involved in estimating depreciation for this type and age of property. The comparable sales approach cannot be used because there have been no sales of properties similar in use and utility. Both appraisers agreed on this. Douglas arrived at his valuation based upon actual net operating income divided by an appropriate capitalization rate. To develop the appropriate numbers, he utilized information from debtors as to income for the Park. The number which he arrived at is supported by Debtors' Exhibit 1. He used operating expenses also provided by debtors. Income was \$69,500.00. Expenses were \$26,577.00. Net operating income was \$42,923.00.

A rational capitalization rate must be used in utilizing this method. Douglas reviewed rates at currently functioning parks, which ranged from 6.9% to 10.65%. His opinion was that the size and condition of the subject mobile home park is significantly inferior to those parks where the foregoing numbers were obtained. He concluded that an overall capitalization rate of 12% was reasonable. By dividing the net operating income of \$42,923.00 by a 12% capitalization rate, he arrived at an appraisal of \$358,000.00.

The capitalization approach has been found to be appropriate where income producing property is to be appraised. In re Tamarack Trial Co., 23 B.R. 3, *5 (Bankr. S.D. Ohio 1982). In fact, in the Southern District of Ohio, "the most appropriate method for valuing income-producing property is the income capitalization method." In re Rivers End Apartments, Ltd., 167 B.R. 470, 480 (Bankr. S.D. Ohio 1994) (citing In re Montgomery Court Apartment of Ingham County Michigan, Ltd., 141 B.R. 324, 338 (Bankr. S.D. Ohio 1992)). This appears to be the majority view in case law outside the Sixth circuit, as well.

In appraising the park, the Court cannot utilize the appraisal by Sears. This is because he has appraised only debtors' residence, and has not taken into account the fact that the property comprises a mobile home park.

The Court concludes that the appraisal by Douglas offered by the Bank is amply supported and is adopted by the Court.

Debtor argues for a different outcome, citing the Muncy case for support. The Muncy case, however, is distinguishable on its facts. The decision in Muncy turned on the fact that the appraisal offered by the creditor was "based on a value of debtors' business rather than the specific assets which comprise Creditors' collateral". Creditors' security documents extended only to collateral consisting of personal property, and an appraisal of the business was therefore improper. In the case at hand, however, the Bank's mortgage expressly states the following:

14. Business Loan. Borrower hereby expressly acknowledges and represents that the indebtedness evidenced by this Note is a 'business loan' within the meaning of Chapter 1343 of the Ohio Revised Code.

Ohio Revised Code Chapter 1343 includes the following:

(6)(A) the loan is a business loan to a business association or partnership, a person owning and operating a business as a sole proprietor; any persons owning and operating a business as joint venturers, joint tenants, or tenants in common; any limited partnership. . .

It is therefore entirely appropriate for valuation to be based upon the value of debtors' going business.

The foregoing constitutes our findings of fact and conclusions of law. Accordingly, confirmation of debtors' chapter 13 plan is denied.

SO ORDERED.

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