

In the United States Bankruptcy Court

for the Northern District of Iowa

JOHN G. SPECHT, CAROL C. SPECHT
Debtors.

Bankruptcy No. 96-21022KD
Chapter 12

ORDER RE HEARING ON VALUATION

On February 5, 1997, the above-captioned matter came on for confirmation hearing on Debtors' Chapter 12 Plan of Reorganization. However, valuation of Debtors' farm is in controversy and is an integral part of the reorganization process. The valuation was also scheduled for this date. As the Court concludes that the valuation is integral to the reorganization, the matter proceeded forward on a hearing on valuation and the confirmation process was postponed in a manner which will be subsequently discussed in this opinion.

Debtors appeared in person with Attorneys Brian Peters and Douglas Pearson. Farm Service Agency appeared by Assistant U.S. Attorney Martin McLaughlin. New Vienna Savings Bank was represented by Attorney Joseph Peiffer. Evidence was presented after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(K).

STATEMENT OF THE CASE

Debtors filed their Chapter 12 Petition on April 26, 1996. They have filed a Plan of Reorganization which, as previously discussed, has not been confirmed. A significant issue in the Plan confirmation process is the value to be placed on Debtors 119 acre farm located in Concord Township, Dubuque County, Iowa located in the far northeast corner of Iowa.

Debtors presented the testimony of Mr. Gary Conrad of Gary Conrad Realty located in Dubuque, Iowa. Mr. Conrad is a real estate broker whose business consists of approximately 50% farm sales and 50% residential sales. Mr. Conrad is not a certified real estate broker. He has attended no schools and has had no formal training in appraising other than on-the-job experience from his previous employer.

Mr. Conrad, in his report (Debtors' Exhibit 1), valued the property as of April 26, 1996. In making this evaluation, he considered primarily the corn suitability rating of this farm as well as comparable properties. Mr. Conrad did not use an income analysis approach nor did he use a cost analysis approach to value of this property. His valuation was based on a market value analysis. In making this analysis, Mr. Conrad relied primarily on the corn suitability rating of this ground as well as the sales of comparable properties.

Mr. Conrad, using his own analysis, gave this farm a 65 or 66 corn suitability rating. He testified, in this area, the value of a farm is generally based upon \$20 per point of corn suitability rating. As of April, 1996, he valued this farm at approximately \$1,500 per acre for a total value of \$178,500. He further testified that the value has not increased substantially since that time and the value would be the same at this time as it was in April of 1996.

Debtor, John Specht, testified concerning the value of this farm. As the owner of property, he is entitled to provide an opinion as to the value of this farm land. Mr. Specht testified that, in his opinion, the present value of the farm is between \$175,000 and \$180,000. He bases this opinion upon his experience as a farmer and the sales prices of one or two farms in the immediate vicinity where Debtors reside. On cross-examination, Mr. Specht testified that he has valued the farm substantially higher on financial statements provided to New Vienna Savings Bank in the past years. The testimony establishes that in December, 1994, February, 1995, and December, 1995, Debtors valued the farm at \$194,700. Mr. Specht testified that this may reflect a fair gross sales price but does not include other costs including sale

cost.

New Vienna Savings Bank presented appraiser Thomas Kane to provide expert testimony on the value of this farm. Mr. Kane is a State certified appraiser with an office in Dubuque, Iowa. He appraises approximately two or three farms per month. He testified that the average corn suitability rating for Dubuque County is approximately 62. He testified that he did an analysis on Debtors' farm and concluded that it provided a corn suitability rating of 71 which is somewhat above average for Dubuque County.

Mr. Kane testified that he did an income approach analysis, a cost approach analysis, and a market approach analysis and concluded that the market approach was the most applicable in this instance. Using the market approach, Mr. Kane first did a valuation on this property as of June 2, 1996. At that time, he concluded that the market value of the property was \$183,500. Mr. Kane did an updated report as of November 4, 1996. Mr. Kane testified that land values had appreciated substantially during 1996 and that the appreciated market value as of November, 1996 was \$1,750 per acre or a total market value of \$207,000.

Also introduced into evidence was a farmland value survey dated January, 1997. This survey reflects that land value increased State wide 15.6% for calendar year 1996. More specifically, land values in northeastern Iowa increased from \$1,423 to \$1,585 for medium grade farmland. Values in northeast Iowa for high grade farmland increased from \$2,015 to \$2,210 during 1996. This survey also reflects that the average value per acre for Dubuque County farmland increased from \$1,428 to \$1,624 between November 1, 1995 and November 1, 1996.

CONCLUSIONS OF LAW

The parties are seeking valuation of Debtors' farm pursuant to §506(a). The first sentence in this section states, in relevant part, that an allowed claim is a secured claim "to the extent of the value of the creditor's interest in the estate's interest in the property." 11 U.S.C. §506(a). The second sentence states that "Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property." *Id.*

In making this valuation, the Court relies on existing 8th Circuit case authority which holds that the proper analysis is to value the property as a going concern and not under a liquidation analysis when the debtor anticipates retaining the property in question. The 8th Circuit has stated as follows:

We adopt the reasoning of the Fifth Circuit in *In re Rash*, and other courts that have focused on the second sentence of Section 506(a) and we now conclude that the value of [the] lien interest is properly based on the retail value of the collateral without deduction for costs of sale. We agree with the Fifth Circuit that the retail valuation method is the only method that gives full effect to the entire language of Section 506(a). "If the first sentence of §506(a) were interpreted to mean that the value must be fixed at the amount which the creditor would receive on foreclosure, then the last sentence of the statute which provides that the value should be determined in light of the purpose of the valuation and of the proposed disposition or use of the property, would be surplusage." *In re Rash*, 31 F.3d at 329 (quoting *In re Courtright*, 57 B.R. 495, 497 (Bankr. D. Or. 1986)). Under the wholesale valuation method, the creditor's interest would always be valued at the amount the creditor would receive upon disposition of the collateral, regardless of the purpose of the valuation or of the proposed disposition or use of the property. The wholesale method would not be affected by whether the debtor intended to release the property or intended, instead, to retain and use the property. Rather, where a debtor intends to retain and use the collateral, the purpose of the valuation is to determine the amount an undersecured creditor will be paid for the debtor's continued possession and use of the collateral, not to determine the amount such creditor would receive if it hypothetically had to repossess and sell the collateral. Such an interpretation ignores the express dictates of Section 506(a).

In re Trimble, 50 F.3d 530, 531-32 (8th Cir. 1995).

The Court has reviewed all of the evidence presented in this case on valuation of Debtors' farmstead. The farm must be valued as a going concern without a reduction for costs of sale. Debtor himself concludes that \$194,700 may be an approximate value as of the date of the financial statements in December, 1995 if associated costs are not considered.

The testimony of Mr. Kane appears to be the most accurate based upon his analysis which comports closely with market forces and market prices reflected in the Iowa farmland value survey. The testimony establishes that the CSR rating for this particular farm is somewhat higher than the average CSR rating in Dubuque County. The value placed upon this farm by Mr. Kane is based upon the analysis of the average price per acre in northeast Iowa between medium and high grade farmland. Based on this analysis, the Court accepts the estimate of value of present value of Debtors' farmstead in the amount of \$1,750 per acre in a total market value of \$207,000.

WHEREFORE, for the reasons set forth herein, the Court finds that Debtors' farmstead located in Dubuque County, Iowa has a value of \$207,000.

FURTHER, the confirmation hearing which was set for February 5, 1997 was canceled.

FURTHER, Debtors shall have until February 17, 1997 within which to amend and file an Amended Plan.

FURTHER, final confirmation hearing on this Amended Plan is hereby set for

March 13, 1997 at 10:00 a.m.

in the Bankruptcy Court Room, Eighth Floor, The Center, 425 Second Street SE, Cedar Rapids, Iowa.

SO ORDERED this 6th day of February, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge