In the United States Bankruptcy Court

for the Northern District of Iowa

MORK BROTHERS GENERAL PARTNERSHIP *Debtor(s).*	Bankruptcy No. 99-03289-W Chapter 12

ORDER RE VALUATION OF REAL ESTATE AND MACHINERY

This matter came before the undersigned for hearing on valuation of real estate and machinery. Attorney Dale Putnam represented Debtor Mork Brothers General Partnership. Attorney Jeff Clement represented First National Bank of West Union. Carol Dunbar appeared as Chapter 12 Trustee. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (K), (L).

STATEMENT OF THE CASE

First National Bank asserts Debtor has undervalued its collateral, including machinery and equipment, livestock and real estate. The parties now agree that the value of the machinery and equipment is $17,450 and the value of the livestock is $20,450. The Bank and Debtor continue to dispute the value of the real estate.

FINDINGS OF FACT

Debtor filed its Chapter 12 petition on December 17, 1999. Schedule A lists farm real estate located in Section 27 and 28, Dover Township, Fayette County, Iowa with a value of $186,900. The Bank is listed as a secured creditor on Schedule D with a lien on the real estate. The Bank filed a Proof of Claim in the amount of $356,412, secured by Debtor's real estate and other farming assets. Debtor's Chapter 12 plan proposes to pay the Bank $210,820 based on a collateral value of $222,820 minus in $12,000 exemptions.

Debtor's farm has 179 total acres, 100 of which are tillable, the remainder being pasture and woods. A three-acre building site includes a house and garage, as well as hog and cattle buildings and a silo which are not currently being used. Debtor purchased the farm in 1992 for $180,000. The total assessed value is $146,210. Tax records indicate 157 acres have a corn suitability rating ("CSR") of 65.57 and 22 acres have a CSR of 23.55, for an average CSR rating for the entire farm of 60.

Appraiser John Kerndt, Jr. prepared an appraisal of the farm real estate and testified for Debtor. He concludes the value of the real estate is $186,900. Mr. Kerndt is certified as a residential appraiser but not as a general appraiser. He testified that land prices have declined in value in the area where the farm is located over the last several years. Mr. Kerndt uses a "sales price per CSR point" valuation, exclusively, to appraise the property. He assigns a CSR rating of 49 to the property. With a CSR rating of 49, Mr. Kerndt determines the property is worth $21 per CSR point per acre. This figure was reached by extrapolating sales prices, CSR ratings and total number of acres from the sales of eight farms in the general vicinity of Debtor's farm. Under this valuation, the farm is worth $1,040 per acre. Mr. Kerndt does not separately value the house and other buildings, but includes them in his total valuation of $186,900.

Jill Jirak and Jerald Jorgensen prepared an appraisal of Debtor's farm real estate for the Bank. Ms. Jirak testified that they determined the value of the real estate is $232,000. They primarily used a sales comparison approach. Ms. Jirak did not rely exclusively on the CSR rating to value the land. She used a combination of Cost Approach, Income Approach and Sales Comparison Approach. Both Ms. Jirak and Mr. Jorgensen are certified as General Real Property Appraisers. The Bank's appraisal shows an average CSR rating of 65, resulting in a per acre price of $1,000, or a total of $180,000. The house and remainder of the building site is separately valued at $52,000, for a total value of the property of $232,000.

CONCLUSIONS OF LAW

The parties are seeking valuation of Debtor's farm pursuant to §506(a) to determine the extent of the Bank's secured claim. Under §1225(a)(5)(B), the Bank is entitled to receive the value of its secured claim through Debtor's Plan if Debtor elects to retain the Bank's collateral. The first sentence §506(a) 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: "Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property." Id.

The Supreme Court holds that the value of property retained through a Plan for purposes of "cram down" is "the cost the debtor would incur to obtain a like asset for the same 'proposed use'". Associates Commercial Corp. v. Rash, 520 U.S. 953, 964 (1997) (applying 11 U.S.C. §1325(a)(5)(B)). Thus the replacement-value standard governs in cram down cases. Id.n.6. A debtor's current and prospective use of the property is the correct basis for an appraisal in determining the amount of a creditor's secured claim. In re Watkins, 240 B.R. 735, 741 (Bankr. C.D. Ill. 1999) (applying Rash in Chapter 12 case). Replacement value is equivalent to fair market value, or the value a willing purchaser in the debtor's business would pay for a like property. Id.(finding comparables valuation appropriate method of determining replacement or fair market value).

In a pre-Rash case, one court noted that real estate has seldom been capable of being valued based solely upon its ability to produce. In re Eisenbarth, 77 B.R. 228, 232 (Bankr. D.N.D. 1987) (valuing farm real estate in Chapter 11 case). The court accepted the creditor's value, stating its appraisal was much more thorough and complete than the debtors'. Id.at 231. It also noted that the contributory value of the house and farm buildings cannot be totally ignored as the debtors' appraiser had. Id. The court concluded: "Simply put, land is worth what the market will bear." Id.at 232.

Based on the foregoing, the Bank's appraisal is more representative of the mandate of Rash that property be valued at replacement cost for purposes of cram down. The Bank's appraisers valued the property with a comparables approach, supported by cost and income analyses. Debtor's appraiser valued the property solely through consideration of the farm's corn suitability rating. Debtor's appraisal inappropriately ignores the contributory value of the house and farm buildings. The Bank's appraisal is much more thorough and complete than Debtor's.

The Bank's appraisal includes a valuation of the house and buildings as if it were a separate property. This appears contrary to Rash in that Debtor's current and prospective use of the property includes the house and buildings as part of its entire farm parcel. The Court will adjust the value of the house and farm buildings downward in order to recognize that it is not a separate parcel for valuation purposes. The Bank's appraisal uses a CSR of 65. The record does not support such a figure. The Court will also adjust the value of the farmland downward to provide for a more realistic CSR value.

The Court concludes the Debtor's farm real estate, including the farmland and building site, has a total value of $210,000. As stated previously, the parties agree the value of machinery and equipment is $17,450 and the value of livestock is $20,450. Thus, the total value of the Bank's secured claim under §506(a) is $247,900.

WHEREFORE, Debtor's farm real estate has a total value of $210,000 under §506(a).

FURTHER, the parties agree the value of Debtor's machinery and equipment is $17,450 and the value of Debtor's livestock is $20,450.

FURTHER, the total value of the Bank's secured claim under §506(a) is $247,900.

SO ORDERED this 24th day of March, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge