UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF NORTH CAROLINA WINSTON-SALEM DIVISION

IN RE:)	
Jerry Gray Moore,) Case No. 02-522	71 13
)	
Debtor.)	

ORDER

THIS MATTER came on for hearing on March 5, 2003, after due and proper notice, before the undersigned bankruptcy judge in Winston-Salem, North Carolina upon Objection by American General Finance to Valuation. Appearing before the court was John Meadows, attorney for American General Finance, Thomas Anderson, attorney for Jerry Gray Moore ("Debtor") and Kathryn L. Bringle, Chapter 13 Trustee. After consideration of the record, the evidence submitted on behalf of the parties, and the arguments of counsel, the court makes the following findings of fact and conclusions of law.

BACKGROUND

The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on August 28, 2002. On Schedule A of his petition, the Debtor listed a 1987 single wide mobile home located on approximately .90 acres at 325 Gaylon Street, Mount Airy, North Carolina (hereinafter "the property"). Two liens were listed on the property: a first deed of trust in favor of HomEq in the amount of \$22,442.85, and a second deed of trust in favor of American General Finance in the amount of \$7,245. The Debtor valued the property at \$20,866, based upon both the tax value and the Debtor's opinion.

On September 30, 2002, American General Finance filed a secured proof of claim in the

amount of \$7,658.89. On October 3, 2002, HomEq filed a secured proof of claim in the amount of \$22,953.36. The Order Confirming Plan was entered on December 18, 2002.

The Plan treats the first lienholder, HomEq, as a secured lienholder with a long-term nondischargeable debt, with monthly payments and arrearages paid inside the Plan. The second lienholder, American General, is treated as an unsecured creditor due to lack of value above the first lien on the property. The Plan lists a value for the property of \$20,866 and gives American General sixty days to object to valuation. On February 7, 2003, American General timely filed an objection to valuation.

At the hearing on March 5, 2003, Trudy Solomon, an appraiser for American General, testified as to her credentials and methodology in conducting the appraisal of the Debtor's real property. As to Ms. Solomon's credentials, she testified that she has been licensed to conduct real estate appraisals in North Carolina and Virginia since 1993. Ms. Solomon also stated that she conducts approximately five appraisals per week in the Surry, Stokes, Carroll and Patrick County areas, and that ten percent of the appraisals she has conducted have been mobile home appraisals. The court qualified Ms. Solomon as an expert in the field of real estate appraisals.

Ms. Solomon testified that she determined the fair market value of the property to be \$30,000 by using a market approach to valuation. The market approach utilizes "comparables", or recent sales of similar realty. For this appraisal, Ms. Solomon used three comparables, all mobile homes with land situated within ten miles of the subject real property. Two of the three comparables were mobile homes and land sold within the last year. Ms. Solomon testified that comparable sales were difficult to find given the subject property's age, location, and type (a single-wide mobile home versus a double-wide mobile home). As a result, of the three comparables chosen, two violated the guidelines for sales comparison and would thus not

normally be used by an appraiser and the third was more than one year old. The first comparable violated the guidelines due to excess square footage compared to the subject property. The second comparable violated the guidelines due to excess acreage compared to the subject property. The ages of the comparable properties were six, twelve and five years old. The subject mobile home is fifteen years old and has 800 square feet. Ms. Solomon testified that she made adjustments to the sales prices of each of the comparables in the amount of \$3,000 to account for the age. She further testified that information on comparables for mobile homes was difficult to obtain and that these were the best and only comparables at that time. The adjusted sales prices of the comparables were \$30,300, \$31,160 and \$30,296.

Ms. Solomon testified that while she did drive out to the subject property, she did not go inside the mobile home. Ms. Solomon's appraisal notes the condition of the exterior of the home as "average". The appraisal also states that depreciation was taken on the mobile home at an effective age of eight years, despite the fact that the unit was fifteen years old, and that the mobile home's remaining economic life is thirty-two years. According to the appraiser, the single-wide mobile home would have an economic life of forty-seven years. Ms. Solomon admitted that a new single-wide mobile home would sell for \$27,648 and she valued the land at \$1800. The Debtor does not dispute the value of the land.

At the hearing, the Debtor testified as to the subject property and the condition of the housing market in the Mount Airy/Pilot Mountain area, where the subject property is located. The Debtor stated that he purchased the mobile home in 1987 as new for \$15,000. At that point, the Debtor paid rent for the land upon which the mobile home is situated. In 1996, the Debtor obtained a loan in the amount of \$20,000 to refinance the original mortgage on the mobile home. In 1997, the Debtor bought the land for \$4,000. Counsel for the Debtor submitted tax documents

evidencing a tax value of the subject property (mobile home and land) of \$20,866.

As to the condition of the mobile home, the Debtor testified that the mobile home has a broken window that has been taped up, and has significant water damage to the roof and floors in the kitchen and bathroom. Photographs of this damage were tendered to the court. The Debtor also stated that his neighborhood is not safe and that drugs are bought and sold outside his home.

The Trustee filed Supplement Information Relating to Mobile Home Value on March 14, 2003. In this pleading, the Trustee informs the court that she has reviewed the N.A.D.A. Manufactured Housing Appraisal Guide and is of the belief that the N.A.D.A. value of an average 1987 single-wide mobile home is \$9,353. She also submitted pages from the N.A.D.A. Guide relevant to the appraisal of a 1987 Crescent, Model 6683 Redman Mobile home.

DISCUSSION

To determine the value of the mobile home and land, the court must apply 11 U.S.C. § 506(a). Section 506(a) provides:

Any allowed claim of a creditor secured by a lien on property in which the estate has an interest, where that is subject to setoff under § 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and 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.

The legislative history of § 506(a) indicates that "courts will have to determine value on a case-by-case basis, taking into account the facts of each case and the competing interests in the case." H.R. Rep. No. 595, 95th Cong., 1st Sess. 356 (1977), represented in 1978 U.S. Code Cong. and Admin. News 5787, 6312. Valuation is to be determined in light of the purpose of the

valuation and the proposed disposition or use of the collateral. An asset to be retained by the debtor in a Chapter 13 should be valued at the price the debtor could get for it in a free and open market. See In re Arnette, 156 B.R. 366 (Bankr. D. Conn. 1993); In re Arpaia, 143 B.R. 587 (Bankr. D. Conn. 1992). N.A.D.A. guidebooks are widely used by courts and Chapter 13 Trustees in order to value collateral, although they are not considered a standard for measuring compliance with the Bankruptcy Code. See In re Johnson, 165 B.R. 524 (Bankr. S.D. Ga. 1994); see also In re Chrapliwy, 207 B.R. 469 (Bankr. M.D.N.C. 1996) (published price lists, including N.A.D.A. guidebooks, should serve as a starting point for valuation of collateral); In re Phillips, 161 B.R. 824 (Bankr. W.D. Mo. 1993) (court valued mobile home at a price approximately equal to N.A.D.A. value when presented with three sources of evidence of value, including two conflicting appraisals). The court is not bound by any one particular method of valuation.

In this case, the court is presented with two methods of valuation for the subject property, those being the appraisal conducted for American General and the N.A.D.A. value for the mobile home as proposed by the Trustee. After listening to the testimony and reviewing the written appraisal, evidence and pleadings submitted, the court finds that the more competent and accurate evidence for valuing the mobile home is a value based upon the N.A.D.A. guidelines.

The value asserted by American General's appraiser must be discounted for a few reasons. First, the fact that two of the three comparables violate appraisal guidelines due to excess square footage or acreage and the third comparable is over a year old indicates that it is difficult to gauge correctly the market value of a single-wide mobile home in the Mount Airy area using the approach utilized by the appraiser. The appraiser's value must be further reduced due to her failure to carefully assess the exterior condition of the mobile home and inability to assess its interior condition. The Debtor presented clear documentation to support a finding that

the condition of the mobile home is below average.

More importantly, the testimony of the appraiser was simply inconsistent and illogical. While the appraiser certainly has training and experience enough to be an expert in the area of real estate appraisal, her testimony indicates that she is less experienced in the subcategory of single wide mobile home appraisals. The appraiser indicated that ten percent of her work is in mobile home appraisals, and even less in single wide mobile homes. It appears that the appraiser is using the same method to value this single wide mobile home as she would use to value a home built on a foundation. The appraiser provided no evidence or reasonable explanation for her assertion that the mobile home appreciates in value. The appraiser's assertion that the retail value of the Debtor's mobile home exceeds its purchase price is not credible. In addition, the appraiser utilized a standard \$3000 discount for age on the sales prices of comparables that range from six to twelve years. The only explanation provided by the appraiser for this standard discount was that all of the comparables were in average condition. Finally, even upon crossexamination, the appraiser was unable to provide any competent explanation for her premise that the 15 year old mobile home had an effective age of eight years, particularly in light of the numerous photos in evidence which clearly reflect extensive wear and damage to the home. A mobile home, like a motor vehicle, has a limited economic life and depreciates, not appreciates, each year. Ms. Solomon valued this home and land at \$30,000, or \$28,200 after deducting the value of the land. It is inconceivable that the value of a fifteen-year-old, "average" condition mobile home is \$28,200 when the cost of a new mobile home is \$27,648.

The Trustee's valuation of the mobile home, applying the January 2003 - April 2003

N.A.D.A. Manufactured Housing Appraisal Guide to this particular mobile home, is \$9,353. This method finds a value for the mobile home utilizing its manufacturer and model and depreciates

the mobile home from the model year. Upon adding the value of the real property provided by the appraiser of \$1,800 for the acreage, the court finds that the total value of the mobile home and land is \$11,153.

Therefore, for the purposes of the Chapter 13 Plan, the value of the mobile home and land which serves as collateral for the liens in favor of HomEq and American General is hereby established as \$11,153, and accordingly American General will be allowed a general unsecured claim as set forth in the order confirming the plan.

IT IS SO ORDERED.

This the _____ day of April, 2003.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers United States Bankruptcy Judge