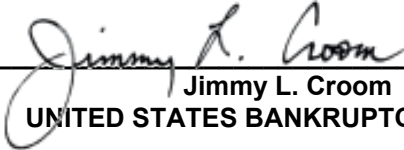




Dated: May 15, 2017
The following is SO ORDERED:



Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In re)
)
REBECCA REED,) Case No. 16-12548
)
Debtor.) Chapter 13
)

**MEMORANDUM OPINION RE 21ST MORTGAGE CORPORATION'S
OBJECTION TO CONFIRMATION**

At issue in this proceeding is the value of a mobile home the Debtor proposes to include in her Chapter 13 repayment plan. The Debtor asserts that the value is \$30,000.00. The lienholder asserts that the value is equal to the amount of its claim, \$48,189.19.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western

District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. Thus, the Court may enter a final order in this matter. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052 and 9014.

A. FACTS

The facts in this case are essentially undisputed. Rebecca Reed ("Debtor"), purchased a 2007 Clayton double-wide mobile home on March 13, 2007, for \$72,680.99. She paid \$30,000 of the purchase price as a down payment and financed the remaining \$42,680.99 with 21st Mortgage Corporation ("21st Mortgage") at 12.07% interest. The Debtor purchased the mobile home with the intention of using it as a group home for mentally challenged adults; however, she has encountered various issues with bringing the home into compliance with state regulations for group housing. Because of this, the mobile home has remained unoccupied since its purchase in 2007. Thus far, the Debtor has made approximately \$20,000.00 in improvements to the mobile home to make it suitable for use as a group home. These modifications include a professionally installed fire suppression system. The Debtor has also maintained the mobile home in good condition since purchasing it. The Debtor testified at the hearing in this matter that she anticipates being able to open the group home for use in the next month or so.

The Debtor filed her chapter 13 petition on December 6, 2016. She valued the mobile home at \$30,000.00 on schedule D of her petition. The Debtor filed a proposed chapter 13 plan contemporaneously with her petition. Pursuant thereto, she valued the mobile home at \$30,000.00 and proposed a monthly payment of \$575.00 at 5.25%.¹

21st Mortgage filed a secured claim in this case on December 27, 2016, in the amount of \$48,189.19. (Claim 3-1).

¹ In a prior bankruptcy case, case number 14-13317, the Debtor valued the mobile home at \$52,900.00 on her bankruptcy schedules. She amended her schedules on December 29, 2015, to reduce the value of the mobile home to \$39,345.00. The Court dismissed this prior case on April 27, 2016, based on the Debtor's failure to make her chapter 13 plan payments.

On January 4, 2017, 21st Mortgage Corporation filed an objection to confirmation of the Debtor's plan. 21st Mortgage objected to the Debtor's valuation of the mobile home and the proposed reduction of the interest rate to 5.25%. It also objected to the feasibility of the Debtor's plan based on the amount of her disposable income.

The Court conducted a hearing on 21st Mortgage's objection to confirmation on May 4, 2017. At the conclusion of the hearing, the Court took the issue of valuation under advisement and continued the objection as to the remaining issues.

At the outset of the hearing, the attorney for 21st Mortgage stated that the creditor no longer objects to the Debtor's proposed reduction of the interest rate to 5.25%. It does, however, still object to the Debtor's proposed valuation of the mobile home. At the outset, the parties also stated that they agree that the Debtor does not use the mobile home as her residence. As such, the parties agree that the debt on the mobile home is not subject to the anti-modification provisions of § 1322(b)(2).

In support of her proposed valuation of the mobile home, the Debtor introduced a letter from Darrell Ridgely ("Ridgely") with Ridgely Auction & Realty into evidence. (Tr. Ex. 3). In this one-paragraph letter, Ridgely estimated that the mobile home "would bring \$27,500.00 at fair market value." He stated that his opinion of value is affected by "transportation costs to relocate, exterior deferred maintenance and interior modifications which would limit potential use to mainly commercial applications – fire suppression/sprinkler system." Ridgely did not state how he arrived at his opinion of value for the mobile home, nor did he state whether he used any comparable sales in determining the value. At the conclusion of the letter, Ridgely stated that his qualifications include "15 years experience, numerous [sales] of mobile homes and personal property appraisals." Ridgely did not appear at the hearing in this matter as a witness.

21st Mortgage introduced an appraisal report by Robert Keck ("Keck") into evidence at the hearing in this matter. (Tr. Ex. 5). The appraisal report included numerous photos of the mobile home in its current condition. Keck also appeared at the hearing to testify about his appraisal as an expert witness. Keck worked for Clayton Mobile Homes in the quality assurance field for 30 years and has been board-certified in the field of Manufactured Housing Valuation by the American Association of Real Estate

Schools and Colleges since 2013. (Tr. Ex. 4). Keck testified that over the course of his career he has inspected over 67,000 manufactured homes and has appraised over 100 manufactured homes.

Keck began his valuation by consulting the NADA Guide for a mobile home of this brand, age, size, and geographical location. The NADA Guide provided a value of \$46,652.23 for this mobile home. (Tr. Ex. 6). Keck testified that this value did not take into account the improvements the Debtor has made to the property to make it suitable for use as a group home. In light of that, Keck increased the NADA value of the mobile home as follows:

- a. adjusted value to \$52,300.00 based on mobile home's good condition;
- b. adjusted value in amount of \$16,575.00 for the foundation system;
- c. added \$8,500.00 for sprinkler system that Debtor had professionally installed in home;
- d. added \$2,500.00 for carbon and fire detectors Debtor had professionally installed in home;
- e. added \$300.00 for auto door closers on bedroom doors.

(Tr. Ex. 5). Keck made the following deductions from the value of the mobile home:

- a. \$432.00 for a missing wheel with tire;
- b. \$124.00 for a missing tow bar;
- c. \$980.00 for a missing axle; and
- d. \$1,315.00 for the cost of minor repairs.

(Tr. Ex. 5). Taking these improvements and deductions into account, Keck arrived at a final value of \$69,200.00 for the mobile home. Keck did not use any comparable sales in setting his opinion of value.

21st Mortgage also submitted the declarations page from an insurance policy for the mobile home into evidence at the hearing. (Tr. Ex. 7). According to this page, the mobile home is insured for \$70,000.00, "Other Structures" are insured for \$14,000.00, and "Personal Property" is insured for \$5,000.00. (*Id.*). The declarations page did not

contain a definition for “Other Structures” or “Personal Property.” When questioned about the insurance value by 21st Mortgage’s attorney, the Debtor stated that the \$70,000.00 in coverage includes the contents.

Although its expert valued the mobile home at \$69,200.00, 21st Mortgage is only asking the Court to determine that the secured portion of its claim is at least as much as the amount listed in its proof of claim -- \$48,189.19.

II. ANALYSIS

Section 506(a)(1) of the Bankruptcy Code provides that

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, ..., is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, ..., and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim. Such value 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.

Section 506(a)(2) provides that if the debtor is an individual in a chapter 13 case, the

value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

11 U.S.C. § 506(a)(2).

Prior to enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) in October 2005, § 506(a) contained only the language that is now found in subparagraph (1). As such, there was no statutory guidance on how to determine value under §506(a) prior to BAPCPA. In 1997, the Supreme Court determined that when a chapter 13 debtor proposed to cramdown the value of property pursuant to 11 U.S.C. § 1325, value of the collateral pursuant to § 506(a) was “the price a willing buyer in the debtor’s trade, business or situation would pay to obtain like property from a willing seller.” *Associates Commercial Corporation v. Rash*, 520 U.S. 953, 117 S. Ct. 1879, 1886 (1997).

The valuation method set forth in *Rash* came to be known as the “replacement value” standard. *In re Knowles*, 253 B.R. 412, 414 (Bankr. E.D. Ky. 2000). Since BAPCPA went into effect, “most courts have interpreted the first sentence of § 506(a)(2) as codifying the Supreme Court’s decision in *Rash*.” *In re Scott*, 437 B.R. 168, 172–73 (Bankr. D.N.J. 2010). Thus, the “replacement value” methodology is still the proper means of setting value under the first sentence of § 506(a)(2). *In re Jude*, No. 15-10330, 2016 WL 3582133, at *2 (Bankr. E.D. Ky. June 24, 2016). When the property at issue is acquired by the debtor for personal, family, or household use, the second sentence of § 506(a)(2) provides that “a retail value or retail price is the appropriate standard by which to determine replacement value.” *In re Brown*, No. CIVA 06-00197JW, 2006 WL 3692609, at *3 (Bankr. D.S.C. Apr. 24, 2006); 11 U.S.C. § 506(a)(2).

The determination of “replacement value” under § 506(a) is highly fact-specific and must be decided on a case-by-case basis. *Huntingdon Nat’l Bank v. Pees (In re McClurkin)*, 31 F.3d 401, 403 (6th Cir. 1994) (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 356 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6312); see also *Rash*, 117 S. Ct. at 1886, n.6 (noting that “Our recognition that the replacement-value standard, ... governs in cram down cases leaves to bankruptcy courts, as triers of fact, identification of the best way of ascertaining replacement value on the basis of the evidence presented. Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property.”) The determination of retail value “under the second sentence of § 506(a)(2) [is] subject to a trial court’s discretion, predicated on the unique condition of the ... property.” *In re Scott*, 437 B.R. at 173 (citation omitted). As the plan proponent, “the debtor bears the burden of proof on the issue of valuation under § 506(a).” *In re Wcislak*, 417 B.R. 24, 28 (Bankr. N.D. Ohio 2009) (citing *Sovereign Bank, F.S.B. v. Finnegan (In re Finnegan)*, 358 B.R. 644, 649 (Bankr. M.D. Pa. 2006).

“Bankruptcy courts have not established a uniform method of calculating the retail value of ... personal property.” *In re Zambuto*, 437 B.R. at 180 (citation omitted). However, courts tasked with determining a mobile home’s value under § 506(a) have used various methods. The methodology used first depends on whether the mobile home

is treated as real or personal property under state law. See *In re Neace*, Case No. 16-60861, 2017 WL 75747 (Bankr. E.D. Ky. Jan 6, 2017). “In Tennessee, mobile homes are generally considered personal property when not permanently affixed to land.” *Shepherd v. EMC Mortg. Corp. (In re Shepherd)*, 381 B.R. 675, 680 (E.D. Tenn. 2008). In the case at bar, neither party asserted that the mobile home at issue should be treated as anything other than personal property.

In determining “replacement value” for a mobile home that has not been converted to real property, “NADA valuations ... are utilized with increasing [frequency] in bankruptcy courts and are generally accepted.” *In re Eaddy*, 2016 WL 745277, at *7 (Bankr. D.S.C. Feb. 23, 2016) (citing *In re Gensler*, Case No. 15–10407–ta113, 2015 WL 6443513, at *4 (Bankr.D.N.M. Oct. 23, 2015) (collecting cases)); *In re Neace*, 2017 WL 75747; *In re Kollmorgen*, No. 11-10904, 2012 WL 195200 (Bankr. D. Kan. Jan 20, 2012); *In re Cline*, 275 B.R. 523, 524 (Bankr. S.D. Ohio 2001). As the bankruptcy court in *In re Eaddy* recognized, “[s]ome courts have criticized the NADA process as being too automated, thus lacking flexibility to consider property-specific issues.” *In re Eaddy*, 2016 WL 745277, at *7. These courts tend to favor use of comparable sales as a better valuation method. See e.g., *In re Arendarczyk*, 2014 WL 6629770, at *5 (Bankr. S.D. Ga. Nov. 21, 2014); *In re Meredith*, 2013 WL 4602966, at *3 (Bankr. MD. Pa. Aug. 29, 2013).

When using the NADA cost approach method, courts often use the NADA value as a starting point and then make adjustments thereto based on a variety of factors. *In re Eaddy*, 2016 WL 745277; *In re Kollmorgen*, 2012 WL 195200 at *4 (finding adjustments to the NADA guide value for condition, the costs of any necessary repairs, and the value of added components and accessories appropriate); *In re Prewitt*, 525 B.R. 790, 798-99 (Bankr. E.D. Texas 2015) (concluding that the use of the adjusted NADA value that is adjusted for condition, repairs, etc., along with comparative sales in the general area to be the appropriate “replacement value” formula); *In re Thornton*, Case No. 15-6762-RLM-13, 2016 WL 3092280 (Bankr. S.D. Ind. May 23, 2016). The majority of courts that use the NADA cost approach specifically exclude the costs of moving and setting up the mobile home from the “replacement value” under § 506(a) when the collateral at issue is not being relocated. *In re Thornton*, 2016 WL 3092280, at *4; *In re Eaddy*, 2016 WL

745277, at *8. As the bankruptcy court in the Western District of Washington explained, “the ‘retail value’ does *not* take into consideration moving costs. Rather, deducting the moving costs from the retail value results in the ‘wholesale value.’” *In re Carlson*, No. 06-40402, 2006 WL 4811331, at *2 (Bankr. W.D. Wash. Dec. 8, 2006).

In the case of *In re Hardy*, Case No. 15-05431-5-JNC, 2016 WL 3549078 (Bankr. E.D.N.C. 2016), the debtor relied on the NADA Guide to establish the value for her manufactured home pursuant to § 506(a). The Court recognized the evidentiary weight such values have:

In the typical case, the NADA Guide listing prevails, but that general average value is subject to further adjustment based upon evidence concerning the actual condition and need for repairs of the item. See *In re Marshall*, 181 B.R. 599 (Bankr.N.D.Ala.1995). The NADA Guide therefore does not give an end number, but instead provides a presumptive baseline or “starting point” for use in determining the correct retail value of personal property for plan cram down purposes under 11 U.S.C. § 1325(a)(5).

Id. at *2. When expert testimony is not presented, the *Hardy* court further recognized that “the court would ordinarily start with the NADA value less adjustment for costs of necessary repairs, and plus the value of additions to the vehicle or mobile home.” *Id.* at *3. When parties cannot agree on the issue of “replacement value,” a court must “assess the retail value of the property at issue based upon the testimony, exhibits, and other evidence presented at an evidentiary hearing.” *Id.* Oftentimes, this assessment will require a court to weigh competing testimony and opinions as to value. *Id.*

In the case at bar, the Debtor asserts the mobile home is worth \$30,000.00, while 21st Mortgage asserts that the value is equal to the amount of its \$48,189.19 claim. Thus, the Court must determine whether the debtor or the creditor presented more credible evidence of the mobile home’s replacement value.

The only proof of the mobile home’s value that the Debtor presented was the one-paragraph letter from Darrell Ridgely. Although Ridgely estimated the fair market value of the mobile home at \$27,500.00, he explicitly stated that his opinion of value was affected by “transportation costs to relocate, exterior deferred maintenance and interior modifications which would limit potential use to mainly commercial applications – fire

suppression/sprinkler system.” (Tr. Ex. 3). Unfortunately, Ridgely did not state how much each factor affected his assessment of the mobile home’s value. As stated above, the costs of moving the mobile home may not be deducted when determining value under § 506(a)(2). Ridgely also failed to state how he calculated his value for the mobile home. How did he arrive at a starting place for value? What precise deductions did he make for the moving and maintenance costs? What deductions did he make for the interior modifications that limit use of the mobile home? How did he determine how the modification affected the value? Did he use comparable sales? Without answers to these questions, the Court has no way of assessing the accuracy of his valuation.

On the other hand, 21st Mortgage Corporation presented a detailed appraisal of the property and called the appraiser as a witness at the hearing. Keck has a great deal of experience and expertise in the mobile home industry. He thoroughly explained how he arrived at a value of \$69,200.00 for the mobile home. He presented the Court with the NADA guidebook value for the mobile home at issue in this case given its age, size and geographical location. He explained why he made the specific monetary additions and deductions he made in assessing the mobile home’s value. He did not deduct any costs for moving or setting up the mobile home.

Given the strength of the creditor’s evidence, the Court finds it to be a better indicator of the replacement value of the Debtor’s mobile home. The facts that the Debtor has insured the mobile home itself for \$70,000.00 and valued it at a higher dollar amount in her prior chapter 13 case weigh in favor of this decision.

Although Keck appraised the mobile home at \$69,200.00, the Court is limiting the § 506(a) replacement value of the mobile home to \$48,189.19 for two reasons. First, Keck testified that he did not use any comparable sales in arriving at his opinion of value. Accordingly, the Court concludes that there is no way to ensure that \$69,200.00 accurately reflects the true value of the mobile home in its present market. Second, counsel for 21st Mortgage stated at the hearing in this matter that 21st Mortgage was only asking the Court to determine that the secured portion of its claim was at least as much as the amount of its \$48,189.19 claim.

III. CONCLUSION

The Court concludes that pursuant to 11 U.S.C. § 506(a) the 2007 Clayton mobile home that serves as collateral for 21st Mortgage Corporation's claim has a replacement value of \$48,189.19. As such, the Court will sustain 21st Mortgage Corporation's objection to confirmation of the Debtor's plan on the issue of the mobile home's value for purposes of confirmation under 11 U.S.C. § 1325.

An order will be entered in accordance herewith.

Mailing List

Debtor

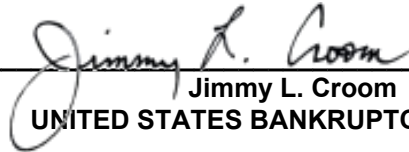
C. Jerome Teel, attorney for Debtor

Sharon Fewell, attorney for 21st Mortgage Corporation

Tim Ivy, Chapter 13 Trustee



Dated: May 15, 2017
The following is SO ORDERED:



Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In re)	
)	
REBECCA REED,)	Case No. 16-12548
)	
Debtor.)	Chapter 13
)	

**ORDER SUSTAINING IN PART 21ST MORTGAGE CORPORATION'S
OBJECTION TO CONFIRMATION**

For the reasons set forth in the Court's Memorandum Opinion entered contemporaneously herewith, it is hereby **ORDERED**:

1. 21st Mortgage Corporation's Objection to Confirmation as to the Debtor's proposed valuation of the 2007 Clayton mobile home is **SUSTAINED**. Pursuant to 11 U.S.C. § 506(a), the mobile home at issue has a replacement value of \$48,189.19.
2. 21st Mortgage Corporation's Objection to Confirmation as it relates to all other matters is **CONTINUED** to May 18, 2018, at 10:00 a.m.

IT IS SO ORDERED.

Mailing List
Debtor
C. Jerome Teel, attorney for Debtor
Sharon Fewell, attorney for 21st Mortgage Corporation
Tim Ivy, Chapter 13 Trustee