

United States Bankruptcy Court
District of Delaware
824 N. Market Street
Wilmington, DE 19801

CHIEF JUDGE BRENDAN LINEHAN SHANNON

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October 19, 2015

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Re: George R. Welch, Sr. And Dehra L. Welch
Case No. 11-13424 (BLS)
George R. Welch, Sr. And Dehra L. Welch v. Sun National Bank
Adv. Pro. No. 14-50777 (BLS); Adv. Docket No. 1

Dear Counsel:

Before the Court is Debtor's Complaint to cram down Sun National Bank's ("Sun National") security interest on the Debtors' mobile home. The Debtors and Sun National Bank disagree on the appropriate valuation methodology that should be used to value the Debtors' mobile home under 11 U.S.C. § 506(a).

The material facts are not in dispute. Debtors own a mobile home located in Smyrna, Delaware. They reside in the mobile home, and Sun National holds a security interest in the mobile home in the amount of \$115,844.

Relying on the NADA Retail Value Guidebook for Manufactured and Mobile Homes ("NADA"), the Debtors valued their mobile home at \$30,862.65. The Debtors propose to use this amount to cramdown Sun National in their chapter 13 plan. Under paragraph 5 of the Debtors' chapter 13 plan, they also seek to assume the ground lease where the mobile home sits and pay \$300.50 per month to Lenape Properties. Using an appraisal (the "Appraisal") prepared by a licensed real property appraiser, Sun National values the mobile home at \$80,000.

The parties agree the sole issue is whether the Debtors' mobile home should be valued using NADA or the "in-place" methodology articulated in the Appraisal. The Debtors argue that NADA is the most appropriate method because it provides a value report based on the specifications of a particular manufactured home and closely approximates the "replacement value" approach that the Supreme Court adopted in *Associates Commercial Corp. v. Rash*, 520 U.S. 953 (1997) as the standard under 11 U.S.C. § 506(a). Sun National asserts that the "in-place" value based on the Appraisal should be used because it gives the "most fulsome depiction of value" of the mobile home. Sun National stresses that the Appraisal best accounts for the Debtors' decision to assume the underlying ground lease and use the mobile home as their residence.

The Court concludes that the Debtors' mobile home should be valued using NADA. *In re Henry*, 457 B.R. 402, 408-409 (Bankr. E.D. Pa. (2011)) (collecting cases holding that NADA is the starting point in determining value under § 506(a)(2)). Under governing Delaware law, the

Debtors' mobile home is considered a motor vehicle and requires a Certificate of Title. The record reflects that the Debtors intend to use the mobile home as their residence. Section 506(a)(2) codifies the *Rash* decision and requires the use of the replacement-value standard. Importantly, the second sentence of section 506(a)(2), which was enacted post-*Rash* and along with the BAPCPA amendments, establishes a statutory definition of replacement value when the property was acquired for consumer purposes as the "price a retail merchant would charge for property of that kind considering the age and condition of the property . . ." 11 U.S.C. § 502(a)(2). NADA provides the Court with a neutral and independent source that approximates value, and importantly, assigns a value that is based on the perspective of a retail merchant—the operative inquiry under section 506(a)(2). For instance, NADA uses general specifications of the subject home and considers a "Depreciated Replacement Cost in Retail Dollars," which is the cost to replace the item less accrued depreciation. *In re Kollmorgen*, No. 11-10904, 2012 WL 195200, at *3 (Bankr. D. Kan. Jan. 20, 2012) (observing that the NADA guide for mobile homes is especially instructive because it provides what the mobile home will actually sell for). NADA valuations should be subject to reasonable adjustments depending on the evidence presented regarding the condition, retail market, and other relevant factors. *E.g., In re Scott*, 437 B.R. 168, 173 (Bankr. N.J. 2010); *In re Morales*, 387 B.R. 36, 45 (Bankr. C.D. Ca. 2008)

Sun National's contention that the "in-place" or "foreclosure value" is the most appropriate methodology under section 506(a)(2) suffers from two principal infirmities. First, Sun National contends that the mobile home's value should reflect the location of the mobile home park because under applicable state law Sun National could foreclose at the mobile home's current location. This valuation approach ignores the prescriptions of section 506(a)(2) and the *Rash* decision. *In re Young*, 367 B.R. 183, 187-89 (Bankr. N.D. Ca. 2007) (rejecting the "in-place" valuation methodology). The Supreme Court in *Rash* expressly rejected the use of a foreclosure value and adopted the replacement value. 520 U.S. at 956 (observing that using a "foreclosure-value standard when the cram down is invoked attributes no significance" to the debtor's choice to surrender the property or retain it). The Supreme Court explained that the replacement-value standard accounts for a debtor's continued use of the collateral and "the creditor's interest in the collateral in light of the proposed reality" that there will not be a foreclosure sale. *Id.* at 962. Moreover, the second sentence of section 506(a)(2) is directly applicable in this case and provides that replacement value "mean[s] the price a retail merchant would charge . . ." Sun National's position is therefore at odds with both *Rash* and section 506(a)(2).

Second, Sun National's security interest in the Debtors' mobile home is limited to the mobile home itself. The extent of Sun National's security interest in the mobile home is defined by the loan agreement between the parties. While we do not have this agreement, Sun National did provide its TILA disclosure. The TILA disclosure states that the "[l]ender is getting a security interest in 2006 Marlette Mfg. [the mobile home]." There is a box titled "Real Estate" that is not checked; instead, Sun National checked the "Other" box and described the mobile home. Furthermore, the Debtors' plan proposes paying \$300.50 per month for a ground lease where the mobile home sits. Sun National does not have a security interest in either the ground lease or the land where the mobile home is located.

Nonetheless, Sun National seeks to use the Appraisal, which relies on comps in the area and the location of the mobile home, to justify a valuation of \$80,000. Using the Appraisal to

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value the mobile home in this case ignores the economic realities. Unlike in a mortgage context, Sun National's security interest extends only to the mobile home and not to the underlying land. By permitting Sun National to use the location of the mobile home to its economic advantage vis-à-vis favorable comps allows Sun National to include the value of the ground lease (i.e. the location) without an interest in either the lease or the land and when the Debtors are responsible for the ground lease payments.

Based on the foregoing, judgment will be entered in favor of the Debtors, and the mobile home is valued at \$30,000. The Court requests that the parties confer and submit an appropriate order consistent with the above ruling.

Very truly yours,



Brendan Linehan Shannon
Chief United States Bankruptcy Judge

BLS/jmw

cc: Michael B. Joseph, Esquire
Chapter 13 Trustee