IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IN RE:	§	
	§	
TOMMY J. ALLEN and	§	Case No. 03-61556
AUDIE J. ALLEN	§	
	§	
Debtors	§	Chapter 13

EOD
12/29/2003

MEMORANDUM OF DECISION[1]

This matter came before the Court for hearing of the Motion for Relief from Stay (the "Motion") filed by Oakwood Acceptance Corporation, LLC ("Movant") on September 22, 2003, and the response and objection thereto filed by the Debtors, Tommy J. and Audie J. Allen ("Debtors"). Following an agreed continuance, the final hearing was conducted on December 2, 2003, and, upon the conclusion of the hearing, the Court provided the parties with additional time within which to submit materials relating to the valuation of the collateral made the subject of the Motion. Upon the submission of those materials, the Court took the matter under advisement. This memorandum of decision disposes of all issues pending before the Court.[2]

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[1] This Memorandum of Decision is not designated for publication and shall not be considered as precedent, except under the respective doctrines of claim preclusion, issue preclusion, the law of the case or as to other evidentiary doctrines applicable to the specific parties in this proceeding.

[2] This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157(a). The Court has authority to enter a final order in this contested matter since it constitutes a core proceeding as contemplated by 28 U.S.C. §157(b)(2)(A), (G), and (O).

Background

Pursuant to a promissory note originally executed by one of the Debtors, Audie J. (McCarty) Allen on August 20, 1997,[3] the Debtors became indebted to the Movant in its capacity as the servicing agent for JP Morgan Chase Bank, as Trustee. The Debtors' amended Chapter 13 plan, filed on November 26, 2003, acknowledges a debt to the Movant in the amount of $35,657.78. It is uncontested that the obligation of the Debtors to pay the indebtedness is secured by the Debtors' interest in a certain 1994 Palm Harbor manufactured home (the "Collateral"), and that the Movant's lien is properly perfected through its notation on the "Texas Original Certificate of Ownership – Manufactured Home Document of Title" issued by the Texas Department of Housing and Community Affairs on September 30, 1997. In part to address arrearages which had arisen under the Debtors' contract with the Movant, the Debtors, on July 29, 2003, filed a petition for relief under Chapter 13 of the Bankruptcy Code.

The Movant filed its Motion for Relief from Stay on September 22, 2003, alleging a lack of adequate protection. Through the amendment of the Debtors' plan and other pre-hearing developments, the sole issue presented to the Court relates to the value of the Collateral and the sufficiency of the insurance coverage provided to the Movant based upon the Debtors' asserted value of the Collateral.

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[3] In as much as the Debtors filed a joint petition under Chapter 13 and have proposed a joint plan in which the Oakwood indebtedness is to be addressed, this memorandum will refer to the Debtors' indebtedness to Oakwood though no evidence introduced at the hearing establishes that Tommy J. Allen actually has a legal obligation to the Movant.

The valuation testimony tendered by both sides was purportedly based upon the Sept. - Dec. 2003 national edition of the NADA MANUFACTURED HOUSING APPRAISAL GUIDE (the "NADA GUIDE"). Yet the values proffered varied significantly, primarily due to the parties' inability to agree even as to the precise type and size of the mobile home which the Debtors own and upon which the Movant has a lien. There was also a significant disagreement regarding the adjustments which should properly be made to the "base structure value" of the mobile home as established by the NADA GUIDE. In order to provide greater assistance to the Court in its struggle to even define the source of the parties' disputes, the Court directed the parties to make post-hearing submissions to detail the specific criteria upon which its particular collateral valuations were based and calculated.

Discussion

11 U.S.C. §362(d) states as follows:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay —
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
>
> (2) with respect to a stay of an act against property under subsection (a) of this section, if —
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> (A) the debtor does not have an equity in such property; and
>
> (B) such property is not necessary to an effective reorganization.

Hence, there are two basic methods by which a movant may seek relief from the automatic stay.[4] Here, the parties acknowledge that there is no equity in the Collateral. However, because the Collateral serves as the Debtors' home, there is no dispute that the Collateral is necessary for an effective reorganization. Accordingly, if the Movant is entitled to any stay relief in this context, it arises "for cause" under §362(d)(1) due to a lack of adequate protection of its interest in the collateral due to the undervaluation of the Collateral in the insurance policy procured by the Debtors upon the Movant is listed as a loss payee.[5] The Debtors tendered to the Movant an insurance binder with a coverage amount of $11,252.00, which the Debtors contend is the proper value of the Collateral.[6] The Movant asserts that an insurance policy in such amount is insufficient to adequately protect its interests in the Collateral and claims that adequate protection can only be provided by an insurance coverage amount of $28,736.00, which it asserts is the proper value of the Collateral which secures the payment of its claim.

The first dispute is regarding the proper identification of the Collateral. The

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[4] There is also a third method, 11 U.S.C. §362(d)(3), which deals only with "a stay of an act against single asset real estate."

[5] This Court has routinely recognized that an actual or threatened decline in the value of a creditor's collateral, against which the creditor is precluded from protecting itself due to the existence of the automatic stay, establishes a *prima facie* case for cause for relief from the automatic stay due to a lack of adequate protection. Such a "threat" of decline could include, for example, a debtor's failure to maintain adequate insurance on the collateral. In this case, however, no such imminent threat exists since the Movant, pursuant to its rights under the applicable contract, placed adequate insurance upon the Collateral and such insurance currently remains in place. However, the Debtors are under an obligation to provide insurance coverage for the benefit of the Movant, both contractually and pursuant to the directives of this Court, but the issue remains as to the proper value of the Collateral which such policy of insurance should reflect.

[6] *See* Debtors' Ex. B.

Debtors based their valuation upon the Collateral's identification as a 28'x58' Palm Harbor "Timbercreek" model home. The Movant asserted a higher base value based upon the identification of the mobile home in the sales contract as a "1994 Masterpiece / TimberCreek 28 x 62" mobile home. If the unit were indeed a Masterpiece model and had a length of 62' instead of 58', the base value of the unit would increase by more than $6,000. However, the sales contract does not govern the proper identification of the Collateral — the certificate of title does — and the certificate of title specifically identifies the Collateral as a 1994 Palm Harbor "Timbercreek" model. The title also identifies the Collateral as a 58' mobile home, which is confirmed by the valuation standards invoked by the NADA GUIDE.[7] Accordingly, the correct "base structure value" for the Collateral was the value proffered by the Debtors — $22,405.00

In fact, the Debtors' interpretation of the NADA GUIDE directives is correct through the remainder of the valuation process through the calculation of what the Guide references as the "condition adjusted value" of the Collateral. The state location adjustment of 97% is not subject to dispute which creates a general retail value estimate for a home in "average" condition of $21,732.85. However, this Collateral is not in average condition. The Debtor, Ms. Allen, testified as to several problems currently

[7] Though the model misidentification in the contract remains a mystery, the parties at the hearing acknowledged that the additional 4' in length identified in the contract was likely derived from the inclusion of the trailer tongue in the length computation. However, not only does the title exclude this additional length, the NADA GUIDE instructs that the width and length of the structure should be measured "along the exterior perimeter at the floor level (floor size)" and that the appraiser should "not include the tow bar/hitch or side eaves in this measurement." N.A.D.A. MANUFACTURED HOUSING APPRAISAL GUIDE at 11A (Sept-Dec. 2003 national ed.)(hereafter referenced as the "NADA GUIDE").

being experienced with the Collateral and the only characterization of the condition of the Collateral was offered by the Debtors' expert, Donald E. Wilcox, who testified that in his opinion the mobile home was in "fair condition."[8] Accordingly, a condition adjustment of 82% is appropriate at this point to derive a NADA condition-adjusted value of $17,820.94.

The Debtors wish to take additional reductions of $2,569.00 for "repairs" and an additional $4,000.00 for "delivery and set-up." However, the Debtors' expert acknowledged at the hearing that any repair adjustment was improper because the Collateral's value had already been reduced through a condition adjustment of $3,911.91 in recognition of its "fair" condition. However, the proposed reduction for delivery and set-up is more problematic.

The valuation of collateral in this context seeks to determine its "replacement value." *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 964, 117 S.Ct. 1879, 138 L.Ed.2d 148 (1997). While *Rash* does not succeed in providing much guidance as to the precise means by which such replacement value is to be ascertained, it is clear that when the search for replacement value is generally centered upon the general retail price of the collateral, whether based upon information from a generally recognized source or otherwise, a downward adjustment to the general retail value must be made because "a creditor should not receive portions of the retail price, if any, that reflect the value of

[8] The Movant's representatives admitted that no inspection of the Collateral had been conducted.

items the debtor does not receive . . ." *Id*. at 1886, n.6.

In the context of the parties' presentation of evidence based almost exclusively upon the values offered by the NADA GUIDE, it is crucial to note that the retail values offered by the NADA GUIDE incorporate transportation and installation costs.[9] The only evidence in this regard was again presented by the Debtors' expert, Mr. Wilcox, who testified that $4,000.00 represented the approximate price for transportation and installation costs in this geographic area — costs which are reflected in the NADA value figures but which are clearly inapplicable to the present circumstance in which the Debtors are retaining possession of their home. Mr. Wilcox's testimony is reasonably consistent with the value estimates for such services revealed by the NADA GUIDE when pertaining to a double-width mobile home. Accordingly, the Court finds that a downward adjustment of the retail price is appropriate in this circumstance under *Rash* and the retail value of the Collateral shall be reduced by approximately $3,600.00.[10]

Conversely, the Movant asserts that the condition-adjusted value should be enhanced by additional components of the Collateral or accessories which have been added to the Collateral. The NADA GUIDE also acknowledges the legitimacy of these potential value adjustments. The Movant urges that the valuation should be increased by

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[9] The yellow NADA value charts upon which both sides rely incorporate retail values which represent "depreciated replacement value. . . in current year retail dollars . . . with traditional retailer markup . . . with transportation costs . . . [and] with installation (set-up) costs." NADA GUIDE at p. 10A.

[10] An additional adjustment could perhaps be made to adjust the provided retail value by the traditional retail mark-up; however, no evidence was tendered to the Court by which the amount of such an adjustment could be ascertained.

the sum of $1,716.00, derived from the recognition of the following components of the Debtors' mobile home: refrigerator - $240.00; dishwasher - $177.00; range - $405.00; as well as recognition of the installation of an air conditioning system as an accessory to the mobile home valued at $894.00. Though not specified in the sales contract, Ms. Allen, the Debtor, admitted the existence of these components and accessories, though without any supplemental specificity as to type or size.

However, as to any enhancement advocated by the Movant arising from the acknowledged existence of a refrigerator and range in the Debtors' mobile home, the existence of such appliances do not create a value enhancement per se. The standard values set forth in the NADA GUIDE include valuations for a 30" freestanding range and a 12-cu.ft. Refrigerator and no evidence were presented to the Court that the referenced range and refrigerator owned by the Debtors exceeds these standard sizes.[11] As a matter of going forward with the evidence, the movant had the burden of demonstrating that each of these components was of a higher standard which was not recognized in the standard valuation charts. With no such evidence in the record, any requested enhancement of the condition-adjusted value of the Collateral due to the existence of these unspecified appliances must be denied.

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[11] The base retail figures offered by the NADA yellow pages include value for the following components: (1) bath/kitchen modules; (2) drapes, curtains, and rods; (3) furnace/heating system; (4) running gear/chassis frame; (5) water heater/plumbing system; (6) 30" freestanding/drop-in range; (7) 12 cubic-feet single door refrigerator; (8) roofing/siding standard metal type; (9) windows/doors – standard type with screens; and (10) floor covering linoleum, together with average quality carpeting in the living room, hall and master bedroom only. NADA GUIDE at p. 10A.

With regard to the acknowledged existence of a dishwasher and an air-conditioning system installed in the Collateral, such additions are not recognized in the standard NADA values and, therefore, could potentially provide additional value to the condition-adjusted value of the Collateral. Again, however, no evidence was adduced at the hearing regarding the precise type, model or size of these enhancements. For the dishwasher, such details would be irrelevant in any instance, for a $177.00 upward adjustment is granted by the NADA GUIDE for the existence of a dishwasher, regardless of the specific details regarding a make, size, etc. However, for the valuation of the air-conditioning system as an accessory to the Collateral, the size of the system is significant. The mov ant asks for an $894.00 enhancement — which would be warranted if the system were demonstrated to be a 4-ton system. However, there was no evidence presented as to the size of the Debtors' air conditioning system nor any other basis upon which the Court could legitimately confirm that $894 is the legitimate adjustment to make. Again because the mov ant possessed the burden of going forward with the evidence to demonstrate that its adjustment amount was justified, the Court will acknowledge the existence of the air-conditioning system, but will assess its value at the lowest amount recognized by the Guide — at $613.00.

Therefore, the Court concludes that a component enhancement of $175.00 and an accessory adjustment of $613.00 is warranted under the NADA GUIDE based upon the evidence presented and that the NADA retail price of $18,608.94 must be reduced by approximately $3,600.00 in order to reflect the proper replacement value of the Collateral

as mandated by *Rash*. Based upon all of the evidence presented, and as assisted by the retail evaluation process endorsed by the NADA GUIDE, the Court concludes that the replacement value of the Collateral in this context is $15,000.00.

The Court accordingly finds that the Motion for Relief from Stay filed in the above-referenced case by Oakwood Acceptance Corporation, LLC is granted in part and denied in part and the continuation of the automatic stay provided under 11 U.S.C. §362(a) as to the Collateral is hereby conditioned upon the fulfillment of the following conditions by the Debtors, Tommy J. and Addie J. Allen, in order to provide adequate protection of Movant's interest in the Collateral as specified:

1. that the Debtors shall procure, on or before Friday, January 23, 2004, and shall maintain and provide to Movant, for so long as Movant possesses an interest in the Collateral, proof of current and effective casualty insurance on the Collateral, for a period not less than 3 months in duration, in a stated coverage amount of not less than $15,000 and which lists the Movant as the lienholder or loss payee;
2. that the Debtors shall, at all times hereafter, tender all payments to the Chapter 13 Trustee as such subsequent payments become due under their proposed Chapter 13 plan until such time as a Chapter 13 plan is confirmed in this case.

Should the Debtors fail to procure such insurance in the manner ordered by the Court on or before the stated deadline, then the automatic stay shall automatically terminate

without further notice, hearing, or order of this Court and the Movant shall file a certificate with the Court to evidence the termination of the stay.

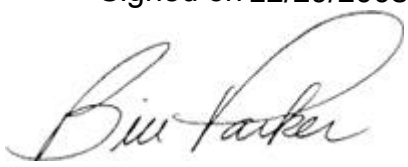
Once the insurance coverage is procured, should the Debtors fail to maintain either of the stated conditions prior to the time that they achieve confirmation of a Chapter 13 plan, then the Movant shall provide written notice of such default to the Debtors and their attorney by certified United States Mail, return receipt requested. If the Debtors fail to cure such default within ten (10) days of receipt of such notice by either the Debtors or their attorney, whichever is earlier, then the automatic stay shall automatically terminate without further notice, hearing, or order of this Court and the Movant shall file a certificate with the Court to evidence the termination of the stay. The Debtors shall be allowed only one opportunity to cure any default of the conditions set forth by this Court prior to the confirmation of a plan in this case. Upon the second incidence of default prior to the confirmation of a plan, the automatic stay shall automatically terminate without further notice, hearing, or order of this Court and the Movant shall file a certificate with the Court to evidence the termination of the stay. All other relief requested by any party is denied.

This memorandum of decision constitutes the Court's findings of fact and conclusions of law[12] pursuant to Fed. R. Civ. P. 52, as incorporated into contested matters

[12] To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. To the extent any conclusion of law is construed to be a finding of fact, it is hereby adopted as such. The Court reserves the right to make additional findings and conclusions as necessary or as may be requested by any party.

in bankruptcy cases by Fed. R. Bankr. P. 7052 and 9014. A separate order will be entered which is consistent with this opinion.

Signed on 12/29/2003



BILL PARKER
CHIEF UNITED STATES BANKRUPTCY JUDGE