

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

A & K INVESTMENTS, CO.,

Case No. 6:10-bk-20625-ABB

Chapter 11

Debtor.

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ORDER

This matter came before the Court on the Motion for Valuation of Collateral filed by the Debtor A & K Investments, Co. (Doc. No. 39). The final evidentiary hearing was held on April 18, 2011 at which the principal of the Debtor, Kamal Chadeesingh, Debtor's counsel, counsel for RREF RB Acquisitions FL, LLC ("RREF"), and counsel for the United States Trustee appeared. The Court, in open Court, directed the parties to file post-hearing briefs summarizing their competing valuation evidence within fourteen days. They each filed briefs (Doc. Nos. 79, 80). The Debtor filed a Motion to Strike (Doc. No. 83) requesting RREF's brief be stricken because it was not timely filed.

The Debtor's Motion to Strike is due to be denied, even though RREF filed its post-hearing brief three days late. The Court makes the following findings and conclusions after reviewing the pleadings and exhibits, hearing live testimony and argument, and being otherwise fully advised in the premises.

Competing Appraisals

The Debtor owns a commercial strip center located in Osceola County at 4137 W. Vine Street, Kissimmee, Florida 34741 (the "Property") known as Gator Plaza which is located fifteen miles east of Disney World and is in the Highway 192 tourist corridor. The Property consists of a mix of retail and office space and is approximately 82%

leased. The Property is encumbered by two mortgages formerly held by Regions Bank and now held by RREF. Mr. Chadeesingh and his wife personally guaranteed the underlying cross-collateralized loan obligations. Regions Bank obtained a Foreclosure Judgment against the Property, Mr. Chadeesingh, and his wife setting a foreclosure sale date of November 18, 2010.

The Debtor filed this case on November 17, 2010 (“Petition Date”) thereby staying the foreclosure sale pursuant to the automatic stay of 11 U.S.C. Section 362(a). Regions Bank filed a secured proof of claim, Claim No. 1-1, for \$1,442,984.40, which was transferred to RREF on April 18, 2011 (Doc. No. 71). RREF is the holder of the notes and mortgages which form the basis of the claim.

The Debtor seeks to value Claim No. 1-1 pursuant to 11 U.S.C. Section 506(a).¹ “Section 506(a) defines the secured and unsecured components of debts according to the value of the underlying collateral.” Tanner v. FirstPlus Fin., Inc. (In re Tanner), 217 F.3d 1357, 1358 (11th Cir. 2000). The Debtor and RREF disagree as to the value of the Property and presented competing appraisal evidence. The Debtor contends RREF is oversecured; RREF contends it is undersecured.

The Debtor presented Kathryn B. Edmundson as its expert appraiser. Ms. Edmundson conducted an appraisal of the Property and prepared a valuation report with

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

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.

11 U.S.C. § 506(a).

an effective date of October 21, 2010. She testified the Property has a fair market value of \$2,000,000.00 using the sales comparison approach and it has a fair market value of \$2,400,000.00 using the income approach.² Her reconciled value of the Property using the two valuations is \$2,300,000.00.³

RREF presented Tom Cowart as its expert appraiser and a rebuttal expert witness who asserted Ms. Edmundson's appraisal failed to comply with the Uniform Standards of Professional Appraisal Practice. Mr. Cowart conducted appraisals of the Property and prepared a report dated May 3, 2010, which he revised on January 24, 2011. Mr. Cowart valued the Property as follows:

- (i) Sales Comparison Approach: He valued the Property as of May 3, 2010 at \$1,215,500.00 and at \$1,878,500.00 as of January 24, 2011.⁴
- (ii) Income Approach: He valued the Property as of May 3, 2010 at \$1,095,000.00 and \$1,185,000.00 as of January 24, 2011.⁵

He concluded the Property, in weighing both the income approach and sales approach valuations in both reports, had a reconciled value of \$1,200,000.00 on the Petition Date.⁶

The appraisers, in arriving at their various valuations, utilized and relied upon different factors: (i) square footage calculations; (ii) capitalization rates; (iii) comparable asking rental rates versus actual rental rates; (iv) triple net rental rates versus gross rental rates. The appraisers agree the income approach is the more reliable approach for valuing the Property.

² Apr. 18, 2011 Hr'g Tr. p. 14 (Doc. No. 83).

³ Id.

⁴ Id. at pp. 48, 56.

⁵ Id. at pp. 56-57, 58.

⁶ Apr. 18, 2011 Hr'g Tr. pp. 58-59.

The appraisers' valuations are lacking in various respects. Neither appraiser was convincing. Their appraisals do not take into account the true status of the Property as is reflected in the Debtor's monthly operating reports.⁷ The monthly operating reports reflect a continual decrease in the Property's rental income since the Petition Date. Monthly rental income was approximately \$22,000.00 on the Petition Date and is now less than \$16,000.00 per month. The Debtor's average rents are approximately \$6.00 per square foot for certain units and \$16.00 or \$17.00 per square foot for larger units. The Debtor's principal testified he received some calls of interest for renting vacant units, but has no concrete tenant prospects. His marketing efforts have been minimal.

The commercial property market in the Highway 192 corridor where the Property is located has been in significant decline for the past four years with no signs of recovery. It is uncertain whether the market has reached a bottom point. The tourism industry is concentrated further west of the Property. Based upon the market conditions and all of the evidence presented, the Property's value is \$1,300,000.00.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion to Strike (Doc. No. 83) is hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that the Property has a present market value of \$1,300,000.00; and it is further

⁷ Doc. Nos. 59, 68, 69, 73, 74.

ORDERED, ADJUDGED and DECREED that RREF has an allowed secured claim in the amount of \$1,300,000.00 and the balance of Claim No. 1-1 is unsecured; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor is hereby directed to file and serve a Disclosure Statement and Plan within fourteen (14) days of the date of entry of this Order.

Dated this 26th day of May, 2011.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge