

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

In re:

Case No. 3:11-bk-3352-PMG

Sugarleaf Timber, LLC,

Debtor.

Chapter 11

ORDER ON CONFIRMATION OF CHAPTER 11 PLAN

THIS CASE came before the Court for a final evidentiary hearing to consider confirmation of the Debtor's Chapter 11 Plan, as amended. (Doc. 211). Farm Credit of North Florida, ACA (Farm Credit) filed a written Objection to Confirmation of Debtor's Chapter 11 Plan of Reorganization. (Doc. 216).

Section 1129(a) of the Bankruptcy Code lists the requirements for confirmation of a Chapter 11 plan. All of the requirements of §1129(a), except §1129(a)(8), must be satisfied for a Chapter 11 plan to be confirmed. If §1129(a)(8) is not satisfied, §1129(b) provides that the plan may nevertheless be confirmed if it is fair and equitable with respect to each class of dissenting creditors. For a plan to be fair and equitable with respect to a dissenting secured creditor, the creditor must receive the value of its claim or the indubitable equivalent of its claim. 11 U.S.C. §1129(b)(2)(A)(iii).

In this case, the Debtor owns approximately 7,060 acres of real property in Clay County, Florida. Pursuant to its Chapter 11 Plan, the Debtor proposes to transfer the Property to Farm Credit either in full satisfaction or in partial satisfaction of Farm Credit's secured claim.

The Court has considered the evidence, and determines that the highest and best use of the Debtor's Property is for mixed-use development. Based on its highest and best use, the evidence establishes that the value of the Property is \$30,330,000.00 as of November 29, 2012. The total amount of Farm Credit's claim was \$25,676,994.78 as of March 14, 2013. Consequently, the transfer of the Property to Farm Credit will provide the creditor with the indubitable equivalent of its secured claim, and the Plan is fair and equitable with respect to Farm Credit. The Debtor's Plan may be confirmed pursuant to §1129 of the Bankruptcy Code.

Background

The Debtor, Sugarleaf Timber, LLC, was formed as a Florida limited partnership on April 13, 2007. (Doc. 60, p.5; Adv.P.11-ap-243 Doc. 60, p. 15).

On May 11, 2007, the Debtor acquired approximately 7,981 acres of real property in Clay County, Florida, for the purchase price of \$42.3 million. Farm Credit financed a portion of the purchase price. The loan from Farm Credit is evidenced by three Notes. One Note was in the maximum principal amount of \$20.45 million, and the other two Notes were in the maximum principal amount of \$5 million each. The Notes are secured by three separate mortgages on the real property, and by security interests in virtually all of the Debtor's assets. (Doc. 60, p.5,6; Adv.P.11-ap-243 Doc. 60, p. 16).

Between September 10, 2007, and May 8, 2011, the Debtor sold approximately 288.61 acres of the property in sixteen separate sales. (Adv.P.11-ap-243 Doc. 60, pp. 16-17).

On May 8, 2011, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code.

Since the filing of the bankruptcy petition, the Debtor has sold approximately 631.26 acres of the property in three additional sales. (Adv.P.11-ap-243 Doc. 60, pp. 16-17).

The Debtor currently owns approximately 7,060 acres of the property in Clay County, Florida (the Property). The northeastern portion of the Property is generally known as the Rayonier property and the Residential property, and the southwestern portion of the Property is generally known as the Gibbs Bay property. (Adv.P.11-ap-243 Doc. 60, p. 16). There are no significant improvements on the Property. (Transcript, p. 200).

Farm Credit filed a secured proof of claim in the Debtor's Chapter 11 case in the amount of \$27,310,618.40. (Claim Number 10). The amount of the claim was \$25,676,994.78 as of March 14, 2013. (Doc. 216, p. 5). According to Farm Credit, a total amount of approximately \$26 million is currently owed on the three mortgages on the Property. (Transcript, p. 31).

On March 1, 2013, the Debtor filed a Second Amended and Restated Modification to Amended Chapter 11 Plan of Reorganization Dated October 31, 2011. (Main Case, Doc. 211). The Plan "identifies five classes of creditors, of which only two classes are impaired. The impaired classes are Class 1, consisting of the claims of Farm Credit under the Farm Credit Notes, and Class 4, consisting of general unsecured creditors. The Ballot Tabulation [Doc. No. 135] shows that Class 1 rejected the Plan and Class 4 accepted the Plan." (Adv.P.11-ap-243 Doc. 60, p. 19).

Discussion

Section 1129 of the Bankruptcy Code governs the confirmation of plans of reorganization in Chapter 11 cases. Section 1129(a) lists the requirements for confirmation of a plan, and all of the requirements of §1129(a), except §1129(a)(8), must be satisfied for a Chapter 11 plan to be confirmed. Under §1129(a)(8), each class of claims must either accept the plan or remain unimpaired under the plan. 11 U.S.C. §1129(a)(8).

If §1129(a)(8) is not satisfied, confirmation may nevertheless be considered pursuant to §1129(b) of the Bankruptcy Code. In re JRV Industries, Inc., 344 B.R. 679, 682-83 (Bankr. M.D. Fla. 2006); In re Proud Mary Marina Corporation, 338 B.R. 114, 122 (Bankr. M.D. Fla. 2006). If all of the requirements of §1129(a) are met, other than §1129(a)(8), §1129(b) provides for confirmation of a plan if it does not discriminate unfairly and is fair and equitable with respect to each class of claims that is impaired and has not accepted the plan. 11 U.S.C. §1129(b)(1).

In this case, the parties agree that all of the requirements of §1129(a) are satisfied, except §1129(a)(3), §1129(a)(8), and §1129(a)(10). (Transcript, p. 108).

I. Section 1129(a)(3)

Section 1129(a)(3) of the Bankruptcy Code provides that the Court shall confirm a plan only if it “has been proposed in good faith and not by any means forbidden by law.” 11 U.S.C. §1129(a)(3). The good faith inquiry under §1129(a)(3) is whether the plan “will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.” In re American Capital Equipment, LLC, 688 F.3d 145, 156 (3d Cir. 2012)(Citations omitted). The primary objectives and purposes of Chapter 11 are preserving the going concern value of businesses, and maximizing the property available to satisfy creditors. In re American Capital Equipment, LLC, 688 F.3d at 156-57(quoting Bank of Am. Nat’l Trust and Sav. Ass’n v. 203 N. LaSalle St. P’ship, 526 U.S. 434, 453, 119 S.Ct 1411, 143 L.Ed.2d 607 (1999)).

In this case, the centerpiece of the Debtor’s Plan is its tender of a special warranty deed transferring all of its interest in the Property to Farm Credit. (Doc. 211). Farm Credit asserts that the Plan was filed

in bad faith because the guarantors of the Farm Credit indebtedness will receive a benefit from the Plan by virtue of a release or restructuring of the debt. (Doc. 216, pp. 15-17).

Farm Credit's objection to the Plan under §1129(a)(3) should be overruled. "[T]he fact that a debtor proposes to turn over collateral to a creditor on a debt guaranteed by non-debtors does not by itself necessarily justify" a finding of bad faith. In re Park Forest Development Corporation, 197 B.R. 388, 394-95 (Bankr. N.D. Ga. 1996)(The creditor asserted that confirmation should be denied because the plans were "only filed for the benefit of the non-debtor guarantors."). See also In re New Towne Development, LLC, 410 B.R. 225, 229 (Bankr. M.D. La. 2009)(A plan that results in the release of non-debtors is not filed in inherent bad faith.).

For a Court to find that a plan does not comply with §1129(a)(3), there must be "misconduct in bankruptcy proceedings, such as fraudulent misrepresentation or serious non-disclosures of material facts to the court." In re Draiman, 450 B.R. 777, 804 (Bankr. N.D. Ill. 2011)(quoting In re River Vill. Assocs., 161 B.R. 127, 140 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995)). See also In re American Capital Equipment, LLC, 688 F.3d at 158-59, and In re Proud Mary Marina Corporation, 338 B.R. 114, 126-27 (Bankr. M.D. Fla. 2006).

Absent such wrongful conduct, Courts do not generally find that a plan for the "deed-back" of collateral inherently lacks good faith, so long as the plan is fair and equitable within the meaning of §1129(b) of the Bankruptcy Code. In re Bath Bridgewater South, LLC, 2013 WL 968154, at 4 (Bankr. E.D.N.C.); In re Park Forest Development Corporation, 197 B.R. 388, 396 (Bankr. N.D. Ga. 1996).

II. Section 1129(a)(8) and §1129(b)

For a Chapter 11 plan to be confirmed, §1129(a)(8) of the Bankruptcy Code requires that each class of claims must either accept the plan or remain unimpaired under the plan. 11 U.S.C. §1129(a)(8).

In this case, the parties agree that Class 1 of the Debtor's Plan consists of the claim of Farm Credit, that the claim is impaired, and that Farm Credit rejected the Plan. (Doc. 60, p. 19). Accordingly, the Debtor's Plan does not satisfy the confirmation requirement set forth in §1129(a)(8).

Section 1129(b)(1) of the Bankruptcy Code, however, provides as follows:

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. §1129(b)(1)(Emphasis supplied). In other words, §1129(b)(1) "requires that a plan be fair and equitable with respect to a dissenting class." In re Cottonwood Corners Phase V, LLC, 2012 WL 566426, at 22 (Bankr. D. N.M.).

Section 1129(b)(2) contains specific requirements that must be met for a plan to comply with the "fair and equitable" condition of §1129(b)(1). With respect to a class of secured claims, for example, the plan must provide for cash payments totaling the allowed amount of the claim, or "the realization by such holders of the indubitable equivalent of such claims." 11 U.S.C. §1129(b)(2)(A).

In this case, the Debtor proposes to tender a special warranty deed transferring all of the Debtor's interest in the Property to Farm Credit in satisfaction or partial satisfaction of Farm Credit's claim. (Doc. 211). The Plan is a "dirt for debt" plan, or one in which "a chapter 11 debtor proposes to convey to a secured creditor its own collateral" in satisfaction of the creditor's claim. "In a 'dirt for debt' context, the 'fair and equitable' treatment issue turns on whether the secured creditor is deemed to

receive the ‘indubitable equivalent’ of its secured claim.” In re All Land Investments, LLC, 468 B.R. 676, 679 n.2 (Bankr. D. Del. 2012).

In “dirt for debt” plans, courts use §506 of the Bankruptcy Code to value property and determine whether property to be surrendered provides the “indubitable equivalent” of a secured claim. . . . Section 506 permits a bankruptcy court to establish the value of property in a bankruptcy case. (Citation omitted). That value “shall be determined in the light of the purpose of the valuation and of the proposed distribution 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)(1).

In re Investors Lending Group, LLC, 489 B.R. 307, 312-13 (Bankr. S.D. Ga. 2013). Where the purpose of a §506 valuation is to determine whether the surrender of property will provide a creditor with the “indubitable equivalent” of its claim, the Court must find that there is “no doubt” that the secured creditor will receive consideration equal to its claim. In re Clarendon Holdings, LLC, 2011 WL 5909512, at 2 (Bankr. E.D. N.C.)(Citations omitted).

A. Three appraisals

At the confirmation hearing in this case, three appraisers presented their opinions regarding the value of the Debtor’s Property.

According to Michael C. Roy (Roy), the total value of the Property as of November 29, 2012, was \$30,330,000.00. Roy’s appraisal was divided into three parts: The Gibbs Bay property (3,432.07 acres) was valued at \$4,250.00 per acre; the Rayonier property (3,212.485 acres) was valued at \$4,250.00 per acre; and the Residential property (415.884 acres) was valued at \$5,000.00 per acre. (Debtor’s Exhibits 6A, 6B, and 6C; Transcript, pp. 247, 249, 262).

According to Heyward Messer Cantrell (Cantrell), the total value of the Property as of November 30, 2012, was \$38,840,000.00. Cantrell’s appraisal evaluated the Property as two parcels (the

Rayonier/Residential parcel, and the Gibbs Bay parcel) with a total land size of 7,062 acres, and with the same “per unit” value of \$5,500.00 per acre. (Debtor’s Exhibit 7; Transcript, pp. 456, 494).

According to Stuart Tyler Nelson (Nelson), the total value of the Property as of September 22, 2012, was \$9,100,000.00. Nelson’s appraisal was divided into three parts: The Gibbs Bay property (3,392 acres) was valued at \$1,025.00 per acre; the Rayonier property (3,238 acres) was valued at \$1,400.00 per acre; and the Residential property (410 acres) was valued at \$2,600.00 per acre. (Farm Credit’s Exhibits 33, 34, 35; Transcript, pp. 714, 721, 729).

B. Highest and best use

The appraisers agree that the valuation of a property is predicated on a determination of its highest and best use. “Because the highest and best use is the crux of the appraisal, if the highest and best use is wrong, then you’re not going to be gathering the data that’s appropriate for solving the appraisal problem.” (Testimony of Roy, Transcript, p. 222). “The first step in deciding on what data to collect is you’ve got to determine what is the highest and best use of the property.” (Testimony of Cantrell, Transcript, p. 467). In order to estimate a property’s market value, an appraiser must determine the property’s highest and best use. (Testimony of Nelson, Transcript, pp. 754-55, 756).

According to Roy, the highest and best use of the Property in this case is for mixed-use development. (Transcript, p. 223). In his appraisal report, Roy concludes that the highest and best use of the Residential property is for rural residential development. (Debtor’s Exhibit 6A). With respect to the Rayonier property and the Gibbs Bay property, Roy concludes in his appraisal report that the highest and best use is for silvicultural and agricultural purposes, and sales of smaller industrial and residential tracts within the Property. In reaching this conclusion, Roy notes (1) that the legally

permissible uses of the Property include a “combination of commercial, residential, industrial and conservation uses,” (2) that the Property has “sufficient shape, size and developable lands to permit a wide variety of uses,” and (3) that “there appears to be a demand for smaller acreage tracts and some large sites for individual residential use or industrial development.” (Debtor’s Exhibit 6B, pp. 21-22; Debtor’s Exhibit 6C, pp. 19-20).

Roy acknowledges that the Property is not ready for immediate development, because the zoning, utilities, and other entitlements are not in place. (Transcript, pp. 212, 224). Nevertheless, Roy considered the location of the Property, the site preparation that has occurred, and the available traffic capacity, among other factors, and determined that the Property has the potential for industrial, commercial, and residential use. (Transcript, pp. 213-16, 223, 225).

According to Cantrell, the highest and best use of the Property is to hold it as an investment for the future re-sale of smaller individual parcels. (Debtor’s Exhibit 7; Transcript, p. 472). In his appraisal report, Cantrell concludes (1) that the size and shape of the Property allow “development potential for a wide range of uses,” (2) that the land use classifications permit “a variety of uses including commercial, residential, industrial and agricultural,” and (3) that the Property “is rurally located, but considered to be in the path of future growth.” Cantrell also concludes, however, that “there is limited current demand for significant development of the site. Therefore, given the physical possibility, legally permissible and financially feasible uses,” the highest and best use of the Property is to hold it as an investment for the future re-sale of smaller individual parcels. (Debtor’s Exhibit 7, pp. 19-20).

Like Roy, Cantrell recognizes that the Property is “not ready to be vertically developed today.” (Transcript, p. 467). Because the Property is influenced by the Jacksonville metropolitan area, is in the

path of growth, and has certain permissible land uses and transportation access, however, Cantrell determined that “most likely this property would sell at \$5,500 an acre to someone who had a vision of land investing in North Florida.” (Transcript, p. 495).

According to Nelson, the highest and best use of the Property is for timber production and recreation. (Farm Credit’s Exhibits 33, 34, 35; Transcript, pp. 706-07, 716, 725). In his appraisal report, Nelson concludes (1) that the physical aspects of the Property allow for use as timberland and a recreational tract, or for conversion into a limited commercial/residential development, and (2) that the legally permissible uses include rural residential development, timber production, and other agricultural uses. Nelson also concludes, however, that the “demand for new residential development appears to be fairly limited,” and that “intensive residential development would not be financially feasible on the subject at the current time.” (Farm Credit’s Exhibit 33, pp. 40-42; Farm Credit’s Exhibit 34, pp. 41-43; Farm Credit’s Exhibit 35, pp.46-48).

Nelson had conducted a timber inventory on the Property in January of 2012. (Transcript, pp. 701-02). Based on his view that the long-term market for large-tract properties is too volatile to forecast, Nelson’s consideration of the Property primarily as timber land reflects a “current” highest and best use determination for the Property, and not a “potential future” highest and best use determination. (Transcript, p. 707).

C. Mixed-use development

The Court has considered the evidence, and concludes that the highest and best use of the Property is for mixed-use development. Specifically, the “reasonably probable and legal use” of the Property, as defined by the Appraisal Institute, is for mixed-use development primarily because (1) the Debtor has

obtained certain site preparation determinations that are required for the development process; and because (2) the Property is located in the path of economic and transportation growth. For these reasons, the evidence shows that a high probability exists that the Property will be developed for industrial, commercial, and residential uses.

1. Site preparation

Since acquiring the Property in 2007, the Debtor has spent approximately \$300,000.00 to \$400,000.00 to prepare the Property for development. (Transcript, p. 74).

First, the Debtor obtained a Formal Wetland Determination from the St. Johns River Water Management District on August 5, 2010. (Exhibit 20A). The Determination identifies the portions of the Property that are developable, and the portions that are designated as wetlands. (Transcript, p. 73). According to the Determination, for example, the Gibbs Bay section of the Property is 65% uplands, and the Residential section of the property is 89% uplands. (Transcript, pp. 240, 259). The Wetland Determination is expressly transferable to any new owner of the Property. (Exhibit 20A; Transcript, p. 73).

In addition to the Formal Wetland Determination, the Debtor also obtained a Cultural Resource Assessment Survey, and a Phase 1 Environmental Assessment for the Property. (Exhibits 20C, 20D). The Cultural Resource Survey determined that no historically significant sites are located on the Property that would inhibit its development, and the Phase I Environmental Assessment found little likelihood of any environmental concerns on the Property. (Transcript, pp. 71-72, 213-14).

The determinations and reports are significant because they represent the initial steps in the ultimate development of the Property. By completing the initial steps, the Debtor has enhanced the Property's value by absorbing the cost associated with the studies, and by eliminating any future delay that would be involved in commencing and concluding the administrative processes. (Transcript, pp. 213-15). In other words, the Debtor's site preparation activities benefit the Property because the

determinations are part of the regulatory entitlement that has already been performed. (Transcript, pp. 1204-05).

Additionally, the Debtor obtained a Comprehensive Land Use Plan in August of 2010 as a result of the adoption of Ordinance No. 2010-31 by the Board of County Commissioners of Clay County. (Debtor's Exhibit 59). The Ordinance provides that designated areas of the Property may be used for rural residential, industrial, and commercial purposes. (Debtor's Exhibit 59, p. 2, Section 2; Transcript, pp. 79-80). Specifically:

The ordinance changed the land use designations on the property. And in conjunction with that, it gave them the ability to develop the property with several different types of uses. There are 700 – the rural residential portion of the property was allocated 705 dwelling units.

The commercial portion, which is along U.S. 17, was granted 130,000 square feet of retail space. There's 3 million square feet of industrial space for development throughout the property.

The remaining agricultural land has a much lower density, and that portion of the property was estimated – well, it was granted development rights for 327 units.

(Debtor's Exhibit 7, p. 14; Transcript, pp. 210-11). The designations reflect the "permissible uses according to the comprehensive plan of the county." (Transcript, p. 459). The land use changes will allow the owner or any future purchaser "to move quicker to the eventual development of the property." (Transcript, p. 211).

2. The path of growth

In addition to the site preparation that has been performed on the Property, the evidence shows that the highest and best use of the property is for mixed-use development because the Property is in the path of economic and transportation growth.

First, the Property is located in southern Clay County. The Property is approximately 30 to 35 miles from downtown Jacksonville in Duval County, and within the Jacksonville Metropolitan Service Area. (Transcript, p. 59). “Clay County is considered to be part of the First Coast, a northeastern Florida region that includes the Jacksonville Metropolitan Statistical Area (MSA).” (Farm Credit’s Exhibit 33, p. 27). “Clay County’s proximity to Jacksonville has a beneficial effect on its Per Capita Income.” (Debtor’s Exhibit 6A, p. 7). The Property’s location within the Jacksonville MSA is a “large economic influence” on the Property. (Transcript, p. 468).

Second, the Property is not isolated, but instead has a realistic “connectivity” to the existing and future transportation system in the area. (Transcript, p. 64). The Rayonier and Residential portion of the Property currently “has access to and borders U.S. 17 in part,” and the Gibbs Bay portion of the Property “has frontage on Warner Road and Sungarden Road and borders Putnam County.” (Adv.P.11-ap-243 Doc. 60, p. 16).

Significantly, a transportation project known as the First Coast Outer Beltway is presently in process that is projected to extend the road system from I-10 to an area “just north” of the Property. (Transcript, p. 207). The Outer Beltway “is a proposed limited access, four-lane and six-lane expressway to connect I-95 to I-10, running through St. Johns, Clay and Duval counties.” (Transcript, p. 653). The northern portion of the project, from Blanding Boulevard in Clay County to I-10, is “set in stone,” meaning that it is fully funded and the acceptance of a contractor is imminent. (Transcript, pp. 654, 662). The middle portion of the expressway is projected to extend from Blanding Boulevard south to U.S. 17, which borders the Debtor’s Property. The projected middle segment is a “preferred alignment,” with partial funding in a five-year estimated work program. (Transcript, pp. 655, 657).

The Outer Beltway project, when completed, will substantially improve the access and travel time to the Property. (Transcript, pp. 206, 224, 464, 1191).

Finally, the Property is positioned to satisfy the demand for growth in Clay County that will result from an anticipated increase in the County's population. Specifically, it is projected that the population of the four-county area that includes Clay County will "grow at about 1 ½ percent over the next 13 years." (Transcript, p. 1181). The increase in population will create a corresponding demand for residential units that should reach "equilibrium" in approximately 2015. (Transcript, pp. 1187-88). According to Douglas C. Miller, a civil engineer who was engaged to issue a planning opinion on the Property's highest and best use, the Debtor's Property is well-situated to meet the demand for development, based on its proximity to jobs and the projected road system. (Transcript, pp. 1175, 1189-91, 1194).

In view of the Property's location, accessibility, and ability to satisfy the future demands of Clay County's population, it is probable that the Property will be developed for residential, commercial, and industrial purposes. (Transcript, pp. 1196, 1200). These purposes are legally permissible uses under Clay County's Comprehensive Land Use Plan (Debtor's Exhibit 59), and represent the Property's highest and best use.

D. Valuation

As discussed above, the appraisers who testified in this case agree that a determination of the highest and best use of a property is a fundamental factor in establishing the property's market value. (Transcript, pp. 222-23, 467, 754-56).

The appraisers also agree that the Sales Comparison Approach is the appropriate method to establish the market value of the Property. (Debtor's Exhibits 6A, 6B, 6C, 7; Farm Credit's Exhibit 33, 34, 35). Other approaches were not applied because there are no improvements on the Property, and because the Property would not be purchased for its income-producing ability. (Transcript, pp. 200, 709-710).

"In order to estimate the value of the subject it was necessary to locate and analyze sales of similar type properties that occurred close to the effective date of valuation of the subject." (Debtor's Exhibit 6A, p. 24; Debtor's Exhibit 6B, p. 23; Debtor's Exhibit 6C, p. 21). The Sales Comparison Approach "involves the process of gathering information from similar properties that have sold, and with an analysis of that data, an indication of the subject's market value is estimated through direct comparisons." (Debtor's Exhibit 7, p. 21).

For the reasons discussed in the preceding section, the highest and best use of the Debtor's Property is for mixed-use development. Consequently, to establish the value of the Property under the Sales Comparison Approach, it was necessary to analyze the sale of properties that were likely to be developed for residential, commercial, and industrial uses, since such property was a "similar type property" to the Debtor's Property.

At trial, Michael C. Roy testified that he had determined that the highest and best use of the Property was for mixed-use development. (Transcript, p. 223). According to Roy, the highest and best use of the Residential Property is for rural residential development (Debtor's Exhibit 6A, p. i), and the highest and best use of the Rayonier and Gibbs Bay Property is for silvicultural and agricultural

purposes, and for the marketing and sale of smaller industrial and residential tracts within the property. (Debtor's Exhibit 6B, pp. 21-22; Debtor's Exhibit 6C, pp. 19-20).

Roy's appraisal was divided into three parts, and each part examined the sale of property that was competitive to the corresponding section of the Debtor's Property. (Debtor's Exhibits 6A, p. 46, 6B, p. 49, 6C, p. 47; Transcript, pp. 226-31).

With respect to the Residential Property, for example, Roy evaluated the Property in relation to nine comparable sales of large-tract properties. All of the comparable properties except one were "zoned for agricultural or low intensity residential use." In his appraisal report, Roy notes that the Debtor's Residential property is also zoned for agricultural use, that "additional densities have been acquired," and that "a greater number of residential units" are therefore possible. (Debtor's Exhibit 6A, pp. 47-48). Based on the nine comparable sales, Roy concluded that the value of the Residential property was \$5,000.00 per acre, for a total rounded value of \$2,080,000.00 (415.884 acres X \$5,000.00 per acre = \$2,079,420.00, rounded to \$2,080,000.00).

With respect to the Rayonier Property, Roy evaluated the Property in relation to nine comparable sales of similar large-tract properties in the Jacksonville area. In examining the comparable sales, Roy noted that the land use designation for the Rayonier tract "has been changed to permit a variety of residential, commercial and industrial uses," and that recent sales indicate that the market price for such properties has stabilized. Roy also noted that the Property's underlying zoning has not been changed, and makes appropriate adjustments to account for the Property's agricultural zoning. (Debtor's Exhibit 6B, pp. 49-55). Based on the nine comparable sales, Roy concluded that the value of the Rayonier

Property was \$4,250.00 per acre, for a total rounded value of \$13,650,000.00 (3,212.485 acres X \$4,250.00 per acre = \$13,653,081.00, rounded to \$13,650,000.00).

With respect to the Gibbs Bay Property, Roy evaluated the Property in relation to nine comparable sales of large-tract properties in the Jacksonville market area. As with the Rayonier Property, Roy's examination of the comparable sales included his consideration of the change in the Property's land use designation "to permit a variety of residential, commercial and industrial uses," and the recent indication that the market price for such properties had stabilized. As with the Rayonier property, Roy also made appropriate adjustments to account for the continued agricultural zoning of the Gibbs Bay Property. (Debtor's Exhibit 6C, pp. 47-53). Based on the nine comparable sales, Roy concluded that the value of the Gibbs Bay property was \$4,250.00 per acre, for a total rounded value of \$14,600,000.00 (3,432.07 acres X \$4,250.00 per acre = \$14,586,298.00 rounded to \$14,600,000.00).

According to Roy, therefore, the total value of the Debtor's Property as of November 29, 2012, was \$30,330,000.00 (\$2,080,000.00 plus \$13,650,000.00 plus \$14,600,000.00 = \$30,330,000.00). The Court accepts Roy's determination of value because it is based on the sales comparison approach as the recognized method of appraising unimproved property, and because it accounts for the highest and best use of the Property as mixed-use development.

E. Indubitable equivalent

Farm Credit is a secured creditor of the Debtor, and is the holder of three mortgages on the Debtor's Property. (Adv.P.11-ap-243 Doc. 60, p. 16).

The Debtor's Plan provides for alternative treatments of Farm Credit's secured claim, and enables the Debtor to elect the treatment of the claim under any of the proposed options. (Doc. 211).

Treatment Option 1 provides for the Debtor to transfer all of the Property, and all of the Debtor's cash except for the sum of \$400,000.00 identified as the "Set Aside Proceeds" and certain sums identified as the "Hunting Lease Proceeds," to Farm Credit in full satisfaction of Farm Credit's claim. Treatment Option 2 provides for the Debtor to transfer all of the Property and all of its cash, including the Set Aside Proceeds and the Hunting Lease Proceeds, to Farm Credit in full satisfaction of Farm Credit's claim. (Doc. 211, pp. 1-2).

The Plan is a "dirt for debt" plan. "In 'dirt for debt' plans, courts use §506 of the Bankruptcy Code to value property and determine whether property to be surrendered provides the 'indubitable equivalent' of a secured claim." In re Investors Lending Group, LLC, 489 B.R. at 312-13. In performing the "indubitable equivalent" analysis, "the Court must find that there is 'no doubt' that the secured creditor will receive consideration equal to its claim." In re Clarendon Holdings, LLC, 2011 WL 5909512, at 2. "[A]n equivalent is 'indubitable' if no reasonable doubt exists that the creditor will be paid in full." In re Riddle, 444 B.R. 681, 685 (Bankr. N.D. Ga. 2011).

"What constitutes the 'indubitable equivalent' of a creditor's secured claim depends on the amount of the creditor's lien and the current value of the secured asset." In re River Road Hotel Partners, LLC, 651 F.3d 642, 650 (7th Cir. 2011).

In this case, Farm Credit filed a Proof of Claim (Claim Number 10) in the Debtor's case in the amount of \$27,310,618.40. The amount of the Claim represents the balance asserted by Farm Credit as of May 8, 2011, the date that the Debtor filed its Chapter 11 bankruptcy petition. Since the petition date, the Debtor sold three parcels of the Property for the aggregate sales price of \$3,893,325.00. The parties stipulated that "[a]ll of the net proceeds of those sales have been turned over to Farm Credit"

and, with the exception of \$400,000.00 held as collateral, that Farm Credit has applied the proceeds of the sales to the loans. (Adv.P.11-ap-243 Doc. 60, p. 17).

As of March 13, 2013, Farm Credit's claim totaled the sum of \$25,676,994.78. (Doc. 216, p. 5). At trial, Farm Credit represented that a total amount of approximately \$26 million is currently owed on the claim. (Transcript, p. 31).

As shown above, the market value of the Debtor's Property as of November 29, 2012, was \$30,330,000.00. The value was based on a determination that the highest and best use of the Property was for mixed-use development, and a comparison of the sales of "similar type" properties to the Debtor's Property.

The Court finds that the tender of the Property under either Treatment Option 1 or Treatment Option 2 of the Plan will provide Farm Credit with the indubitable equivalent of its secured claim. The Plan provides for the Debtor to tender a special warranty deed transferring its interest in all of the real Property to Farm Credit. The Plan does not propose the transfer of only a portion of the real Property that secures Farm Credit's claim. The value of the Property is \$30,330,000.00 as of November 30, 2012, and the amount of Farm Credit's claim was \$25,676,994.78 as of March 14, 2013. Accordingly, Farm Credit will receive property valued at approximately \$4,653,005 more than the debt. The value of the equity gives Farm Credit a significant amount of time to realize the value of the property.

Under these circumstances, the Court finds that the value of the Property is sufficient to ensure that Farm Credit's secured claim will not be jeopardized, and that Farm Credit will realize the value of its claim. In re May, 174 B.R. 832, 838-840 (Bankr. S.D. Ga. 1994)(cited in In re CRB Partners, LLC,

2013 WL 796566 (Bankr. W.D. Tex.)). There is no reasonable doubt that Farm Credit's claim will be paid in full pursuant to the transfer of the Property pursuant to the Plan.

III. Section 1129(a)(10)

The Debtor's Plan identifies two classes of impaired claims. "The impaired classes are Class 1, consisting of the claims of Farm Credit under the Farm Credit Notes, and Class 4, consisting of general unsecured claims. The Ballot Tabulation [Doc. 135] shows that Class 1 rejected the Plan and Class 4 accepted the Plan." (Adv.P.11-ap-243 Doc. 60, p. 19).

Section 1129(a)(10) of the Bankruptcy Code provides that the Court shall confirm a plan only if at least one class of impaired claims has accepted the plan. 11 U.S.C. §1129(a)(10).

Farm Credit asserted that the Debtor's Plan did not comply with §1129(a)(10) because the value of the Debtor's Property was less than the amount of its secured claim. According to Farm Credit, therefore, it was the holder of an unsecured deficiency claim, and was entitled to accept or reject the Debtor's Plan as a member of the class of unsecured creditors. Since its deficiency claim would control the class of unsecured creditors, and since Farm Credit would reject the Debtor's Plan, Farm Credit contended that the Plan could not be confirmed because the Debtor did not have the vote of at least one class of impaired claims. (Doc. 216, pp. 8-13).

As shown above, however, the value of the Debtor's Property has been determined under §506 of the Bankruptcy Code, and the transfer of the Debtor's Property pursuant to the Plan will provide Farm Credit with the indubitable equivalent of its secured claim. Based on the valuation, Farm Credit is not the holder of an unsecured deficiency claim, and is not entitled to accept or reject the Debtor's Plan as a member of the class of unsecured creditors. Accordingly, the Ballot Tabulation reflects that Class 4

accepted the Plan, and the Plan satisfies the confirmation requirement of §1129(a)(10) of the Bankruptcy Code.

Conclusion

Section 1129(a) of the Bankruptcy Code lists the requirements for confirmation of a Chapter 11 plan. All of the requirements of §1129(a), except §1129(a)(8), must be satisfied for a Chapter 11 plan to be confirmed. If §1129(a)(8) is not satisfied, §1129(b) provides that the plan may nevertheless be confirmed if it is fair and equitable with respect to each class of dissenting creditors. For a plan to be fair and equitable with respect to a dissenting secured creditor, the creditor must receive the value of its claim or the indubitable equivalent of its claim. 11 U.S.C. §1129(b)(2)(A)(iii).

In this case, the Debtor owns approximately 7,060 acres of real property in Clay County, Florida. Pursuant to its Chapter 11 Plan, the Debtor proposes to transfer the Property to Farm Credit either in full satisfaction or in partial satisfaction of Farm Credit's secured claim.

The Court has considered the evidence, and determines that the highest and best use of the Debtor's Property is for mixed-use development. Based on its highest and best use, the evidence establishes that the value of the Property is \$30,330,000.00 as of November 30, 2012. The total amount of Farm Credit's claim was \$25,676,994.78 as of March 14, 2013. Consequently, the transfer of the Property to Farm Credit will provide the creditor with the indubitable equivalent of its secured claim, and the Plan is fair and equitable with respect to Farm Credit's claim. The Debtor's Plan may be confirmed pursuant to §1129 of the Bankruptcy Code.

Accordingly:

IT IS ORDERED that:

1. The Second Amended and Restated Modification to Amended Chapter 11 Plan of Reorganization Dated October 31, 2011, filed by the Debtor, Sugarleaf Timber, LLC, satisfies the requirements for confirmation set forth in §1129 of the Bankruptcy Code.

2. A hearing will be conducted in this case on December, 2013, at 9:30 o'clock a.m. at 300 North Hogan Street, 4th Floor – Courtroom 4A, Jacksonville, Florida, 32202, before the Honorable Paul M. Glenn, United States Bankruptcy Judge, for the purpose of considering the Debtor's election of the alternative treatments proposed for Farm Credit's secured claim pursuant to Article V of the Plan.

DATED this 22 day of November, 2013.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN

United States Bankruptcy Judge