

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

In re:

Case No. 3:14-bk-4766-PMG

John Riley O'Steen,  
d/b/a Riley O'Steen Dairy,  
Ashley Koon O'Steen,

Debtors.

Chapter 11

**ORDER ON MOTION TO VALUE SECURED CLAIM  
OF LAFAYETTE STATE BANK**

**THIS CASE** came before the Court for a final evidentiary hearing to consider the Motion of the Debtors, John Riley O'Steen and Ashley Koon O'Steen, to Value Secured Claim of Lafayette State Bank (the Bank). (Doc. 31).

Where a debtor proposes to retain and use his property, a valuation of the property under §506(a) of the Bankruptcy Code should represent the amount a willing buyer in the debtor's situation would pay for "like property."

In this case, the Debtors are dairy farmers who intend to retain and use their equipment, real property, and livestock in the operation of their dairy farm. Based on the evidence of value presented by the Debtors and the Bank, the Court determines that the value of the Debtors' equipment is \$122,500.00, the value of the Debtors' real property is \$1,107,001.00, and the value of the Debtors' livestock is \$766,950.00, for a total value of the collateral securing the Bank's claim in the amount of \$1,996,451.00.

### **Background**

The Debtors filed a petition under Chapter 12 of the Bankruptcy Code on September 30, 2014, and the case has been converted to a case under Chapter 11 of the Bankruptcy Code. (Docs. 1, 93).

The Debtors operate a dairy farm located in Lafayette County, Florida.

On the schedule and amended schedule of assets filed in the bankruptcy case, the Debtors listed their homestead real property in Mayo, Florida, and "3 contiguous parcels of farmland for dairy cows and dairy operations." On their schedule of liabilities, the Debtors listed the Bank as a creditor holding a secured claim on the real property and other collateral.

On November 17, 2014, the Bank filed a secured Proof of Claim in the amount of \$3,673,639.70 in the Debtors' bankruptcy case. (Claim No. 7-2). According to the Claim, the debt owed to the Bank was secured by a lien on the Debtors' real estate, equipment, dairy cattle, and other assets.

The Debtors filed a Motion to Value the Bank's secured claim, and asserted that "the replacement value of the aforementioned security interest of Lafayette State Bank is \$1,000,000.00 as of the date of the filing of the Petition." (Doc. 31).

The Bank filed a written Response to the Motion, and asked the Court to "determine the value of Lafayette State Bank to be at least \$2,611,200.00." (Doc. 52).

### **Discussion**

The Motion to Value Secured Claim was filed pursuant to §506(a) of the Bankruptcy Code. Section 506(a)(1) provides:

#### **11 U.S.C. §506. Determination of secured status**

(a)(1) An allowed claim of a creditor secured by a lien on property in which an estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest

in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff 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)(1). "Section 506(a)(1) bifurcates a secured creditor's allowed claim into secured and unsecured portions based on the underlying collateral's value." In re Brown, 746 F.3d 1236, 1239 (11<sup>th</sup> Cir. 2014).

Under §506(a)(1), "the 'proposed disposition or use' of the collateral is of paramount importance to the valuation question." Associates Commercial Corporation v. Rash, 520 U.S. 953, 962 (1997). Where a debtor proposes to retain and use a creditor's collateral, the Supreme Court has applied a "replacement-value standard" to the determination under §506(a).

"*Rash* held that the proper standard was replacement value, not foreclosure value, in the retention context." In re Brown, 746 F.3d at 1239-40.

In *Rash*, the Court held that in a reorganization case in which the debtor proposes to retain and use the property being valued under §506(a) . . . , the value must be based on the "replacement value" of the secured property. 520 U.S. at 960, 965, 117 S.Ct. 1879. The Court defined replacement value as "the price a willing buyer in the debtor's trade, business, or situation would pay to obtain like property from a willing seller." *Id.* at 960, 117 S.Ct. 1879.

In re Henry, 457 B.R. 402, 406 (Bankr. E.D. Penn. 2011)(Emphasis supplied). Further, the replacement value in non-consumer cases is determined "from the perspective of the debtor," meaning that the value of retained property "is the cost the debtor would incur to obtain a like asset for the same 'proposed . . . use.'" Rash, 520 U.S. at 965(quoted in In re Henry, 457 B.R. at 407.)

Such valuations are fact-intensive determinations, however, and the Supreme Court provided only general guidance as to how "replacement value" should be determined in specific cases.

Our recognition that the replacement-value standard, not the foreclosure-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.

Rash, 520 U.S. at 965 n. 6. In other words, Bankruptcy Courts must determine the appropriate valuation methodology based on the parties' evidence of the debtor's situation and the property's characteristics. In re Henry, 457 B.R. at 407.

#### **A. The Collateral**

In this case, the Debtors are dairy farmers who propose to retain their property and continue to operate the dairy. (See Docs. 31, 51).

Specifically, the Debtors propose to retain and use three types of property that secures the Bank's claim: their equipment, their real property, and their livestock.

##### **1. The Equipment**

The equipment subject to the Bank's lien is described in the UCC Financing Statements attached to the Bank's Proof of Claim No. 7-2.

The Debtors and the Bank stipulated that the value of the equipment is \$122,500.00. (Transcript, p. 6).

##### **2. The Real Property**

The Debtors' home and dairy farm are located on a total of 213.34 acres of real property in Lafayette County, Florida.

The Debtors' homestead is located at 364 NE Thalia Road, Mayo, Florida, and consists of a residence situated on 5.03 acres of real property. The residence is of fairly new construction (five years old), and is a 2,872 square foot home with five bedrooms and a swimming pool.

The remaining 208.31 acres of the Debtors' real property is contiguous to their homestead, and is described as including four tracts: (1) "74.97 acres with Dairy operation;" (2) a 28.75 acre tract, (3) a 37.78 acre tract, and (4) a 66.81 acre tract. (Doc. 52).

The non-homestead property includes approximately 193 acres of pasture land. (Debtors' Exhibit 2).

A milk barn complex, a feed-cooling barn, and a grain bin are among the improvements that are situated on the property. The milk barn is a 10,179 square foot concrete structure with fixtures that include a milk refrigeration system, vacuum pumps, and milking machines.

The feed-cooling barn is a 10,560 square foot facility that is used to feed the cattle and lower their body temperatures. (Transcript, pp. 27-28). It includes a concrete feed bunker, cooling fans and a misting system, concrete water troughs, and a feed bin.

Other improvements on the property include a number of wells, septic tanks, pumps, fences, irrigation pipe, concrete paving, and wastewater infrastructure. (Debtors' Exhibit 2, p. 9; Transcript, p. 27).

### **3. The Livestock**

On their schedule of assets filed in the bankruptcy case, the Debtors listed "400 Holstein Dairy cows." (Doc. 1). In the Motion to value the Bank's secured claim, the Debtors assert that they are "in possession of their Holstein cows." (Doc. 31). The actual number of cattle on the Debtors' farm appears to exceed the number listed in their schedules. (Transcript, pp. 22, 24).

**B. The Debtors' Appraisal**

Lawrence Saucer (Saucer) performed an appraisal of the real property and livestock on behalf of the Debtors. Saucer was recognized by the Court as an expert in business and real property appraisals. (Transcript, p. 12).

Saucer evaluated the property as a complete 213-acre dairy operation. (Transcript, pp. 15, 20, 26). In performing his evaluation, Saucer considered the age of the structures on the property, and the production scale of the dairy. (Transcript, pp. 16, 18).

According to Saucer, the sales comparison approach provided the best estimate of the property's market value as a full dairy farm. (Transcript, p. 14). Specifically, Saucer considered the sale of five complete dairy farms that had characteristics similar to the Debtors' property. The five comparison sales occurred in Lafayette County and neighboring counties between 2004 and 2012. (Debtors' Exhibit 2). Saucer testified that the price of the comparison dairy properties ranged from \$802,000.00 to \$993,000.00, after adjustments were made for differences in the land and improvements. (Transcript, p. 20).

Based on the sales comparison approach, Saucer determined that the market value of the Debtors' dairy property was \$900,000.00. (Debtors' Exhibit 2; Transcript, pp. 15, 20).

Saucer's valuation of the Debtors' livestock is a separate component of his appraisal. Saucer testified that he was instructed to value 400 head of cattle, as the number of cattle in the Debtors' herd on the valuation date. (Transcript, p. 22). According to Saucer, he appraised the livestock based on their value "in use," or as part of the dairy operation, and considered factors such as the cattle's production history, age, somatic cell count, pregnancy, and general appearance. (Transcript, p. 22).

Based on these factors, Saucer determined that the value of the livestock was \$1,550.00 per head, or a total of \$620,000.00 for a 400-head herd. (Transcript, pp. 22-23, 33).

In summary, the Debtors assert that the value of their equipment is \$122,500.00, the value of their real property is \$900,000.00, and the value of their livestock is \$620,000.00, for a total value of the Bank's secured claim in the amount of \$1,642,500.00.

### **C. The Bank's Appraisals**

William O'Connor (O'Connor) performed an appraisal of the Debtors' real property on behalf of the Bank. O'Connor was recognized by the Court as an expert in the valuation of real estate. (Transcript, p. 45).

In performing his appraisal, O'Connor applied the "cost approach." Under this approach, he considered market sales for the land, and then added the cost to replace or build the Debtors' improvements, and applied a depreciation factor. (Transcript, pp. 55-57, 59).

O'Connor valued the Debtors' real property as five separate tracts, as follows:

- 74.97 acres with dairy improvements - \$785,000.00
- 5.03 acres with dwelling (homestead) - \$225,000.00
- 66.81 acres - \$187,000.00
- 37.78 acres - \$105,000.00
- 28.75 acres - \$80,000.00

Based on the five separate parcels, O'Connor appraised the Debtors' 213 acres of real property at a total value of \$1,382,000.00. (Bank's Exhibit 4; Transcript, pp. 47, 50).

Lewis Harrison (Harrison) separately performed an appraisal of the Debtors' livestock on behalf of the Bank. Harrison was recognized by the Court as an expert in cattle valuations. (Transcript, p. 36).

In performing the appraisal, Harrison considered the cattle's production, age, lactation cycles, somatic cell count, breeding, and physical appearance, among other factors. (Transcript, p. 37).

According to Harrison, the "cash value" of the Debtors' herd was \$766,950.00 as of January 20, 2015. The appraisal was based on an actual head count of 414 cattle on the Debtors' property, at a value of \$1,850.00 per head. (Bank's Exhibit 2; Transcript, pp.37-40).

In summary, the Bank asserts that the value of the equipment is \$122,500.00, the value of the real property is \$1,382,000.00, and the value of the livestock is \$766,950.00, for a total value of its secured claim in the amount of \$2,271,450.00.

### **Application**

Under Rash, the appropriate value for the Debtors' retained property is the amount that a willing dairy farmer would pay to buy property like the Debtors' property from a willing seller. Rash, 520 U.S. at 960 (The value of a debtor's property is "the price a willing buyer in the debtor's trade, business, or situation would pay to obtain like property from a willing seller.").

In this case, the Debtors' expert and the Bank's experts each presented credible evidence of the value of the Debtors' property. "The appraisers have credibility, and as is usual in valuation of property, the differences are based on an honest difference of opinion as to the value." In re Robinson Ranch, Inc., 75 B.R. 606, 610 (Bankr. D. Mont. 1987) (quoted in In re Standley, 2012 WL 6091267, at 12 (Bankr. D. Mont.)). The Court is left to determine the property's value based on the evidence introduced by the experts. Rash, 520 U.S. at 965 n. 6.

#### **A. Real property**

Upon consideration of the opinions presented by each of the experts, the Court determines that the value of the Debtors' real property is \$1,107,001.00.

### **1. Initial value**

According to Saucer, the sales comparison approach provided the best method to determine the market value for property like the Debtors' property, and he used the sale of five complete dairy operations to appraise the Debtors' dairy. (Transcript, pp. 14, 15).

The comparison dairies were located in Lafayette County and neighboring Suwanee County, and had milking barns and cooling barns as characteristics similar to the Debtors' property. (Transcript, p. 19). Comparison Sale Number 3, for example, involved the sale in 2012 of a 155.5-acre dairy farm in Suwanee County for the sale price of \$500,000.00, and Comparison Sale Number 4 involved the sale in 2011 of a 200-acre dairy farm in Suwanee County for the sale price of \$640,000.00. (Debtors' Exhibit 2).

After making adjustments for differences in property traits such as land size, the age of the improvements, and the presence or absence of a residence, Saucer determined that the sale prices for the comparison dairies ranged from \$802,000.00 to \$993,000.00. (Transcript, p. 20).

Based on the comparable sales, Saucer determined that the value of the Debtors' property was \$900,000.00. (Debtors' Exhibit 2; Transcript, p. 20).

Saucer's appraisal is based on actual sales of farms that are similar in nature to the Debtors' dairy, and that are not too remote in place or time. For these reasons, the Court will treat Saucer's appraisal of \$900,000.00 as the initial value for the Debtors' property.

### **2. Feed-cooling barn**

Based on the evidence presented by both parties, however, the Court finds that the property's initial value should be increased by the amount of \$200,312.00 to account for the experts' assessments regarding the value of the feed-cooling barn.

In Saucer's Appraisal Report, the feed-cooling barn was described as a 10,560 square-foot structure with dimensions of 48 feet by 220 feet.

The building was composed of open loafing area with a concrete feed bunker positioned longitudinally in the center nearly the length of the barn. The structure had approximately 24 – 36" circular Schaefer cooling fans with a misting system. There was a steel flush tank located near the southeast corner of the building with an approximate height of 25' and an approximate diameter of 8'. Approximately eight concrete water troughs were positioned on the east and west sides of the structure. The feed-cooling barn also had a Chore-Time five-ring metal feed bin with a diameter of 12'. The barn had an automated feeding system that was sourced by a 24-ton feed bin (on the east side of the building) via an auger and deposited into a hopper that hovers the length of the concrete feed bunker.

(Debtors' Exhibit 2, p. 46). According to the Report, the feed-cooling barn was fifteen years old, as both an actual and an effective age.

The Bank's appraiser, William O'Connor, valued the feed-cooling barn at \$211,312.00. O'Connor testified that he consulted Marshall & Swift Valuation Service and determined that the replacement value for the barn was \$24.50 per square foot, including the concrete slabs, posts, roofing, cooling fans, and other components of the structure. For the 10,560 square-foot barn, therefore, O'Connor's initial value was approximately \$281,000.00. He then applied a depreciation factor to the initial value, and reached his final valuation of \$211,312.00. (Transcript, pp. 48-49).

Saucer, on the other hand, valued the feed-cooling barn at \$11,000.00, which amounts to the sum of \$1.04 per square foot. Saucer acknowledged at trial, however, that his valuation does not represent the replacement cost for that type of barn, and that the replacement cost typically would approximate \$16 per square foot, or \$168,960.00 for a 10,560 square foot structure. (Transcript, pp. 28-29).

The Court has considered the evidence, and determines that O'Connor's valuation of the feed-cooling barn should be afforded greater weight on this aspect of the appraisals. The feed-cooling barn

is a large, long-term structure that includes specialized fixtures and equipment used in the dairy operation. O'Connor provided a reasonable explanation of his valuation methodology, and Saucer recognized that his valuation of \$1.04 per square foot does not represent the replacement cost for a barn similar to the Debtors' barn.

The difference between O'Connor's value of the feed-cooling barn and Saucer's value of the feed-cooling barn is \$200,312.00. ( $\$211,312.00$  minus  $\$11,000.00 = \$200,312.00$ ). Accordingly, the amount of \$200,312.00 should be added to the initial value of the Debtors' real property as determined by Saucer.

### **3. Homestead**

Based on the evidence presented by both parties, the Court also finds that the property's initial value should be increased by the sum of \$6,689.00 to account for the experts' assessments regarding the value of the homestead.

The homestead consists of a residence situated on 5.03 acres of real property. In Saucer's Appraisal Report, the residence is described as a 2,872 square-foot ranch home with five bedrooms and 2.5 bathrooms. According to the Report, the residence is five years old as both its actual age and its effective age. (Debtors' Exhibit 2, p. 47). The homestead property also includes a swimming pool and a detached shelter on the 5.03-acre site.

Saucer attributed a total value of \$218,311.00 to the homestead property. The total value was obtained by adding his separate values for the residence, the acreage, the swimming pool, a well and septic tank, and the shed. (Transcript, pp. 29-30).

O'Connor valued the residence and 5.03-acre homestead property at \$225,000.00. (Bank's Exhibit 4; Transcript, p. 46). O'Connor's value was obtained by "strictly the cost approach."

(Transcript, p. 59). In other words, O'Connor considered the market sales on the land, then determined how much it would cost to replace the residence and related improvements, and applied a depreciation factor to arrive at the "as-is" value. (Transcript, pp. 55, 59).

The Court has considered the evidence, and determines that O'Connor's valuation of the homestead property should be afforded greater weight on this aspect of the appraisals. The 2,872 square-foot residence is of fairly new construction, and is in good condition. O'Connor explained the basis for his valuation, and the methodology appears appropriate for property of the same age and with the same characteristics as the Debtors' residence.

The difference between O'Connor's valuation of the homestead property and Saucer's valuation of the homestead property is \$6,689.00. ( $\$225,000.00$  minus  $\$218,311.00 = \$6,689.00$ ). Accordingly, the sum of \$6,689.00 should be added to the initial value of the Debtors' real property as determined by Saucer.

#### **4. Total value of real property**

The Court has determined that the initial value of the Debtors' real property is \$900,000.00, based on Saucer's appraisal of the Debtors' entire 213-acre dairy farm under the sales comparison approach. The sum of \$200,312.00 should be added to the initial value, however, to account for the Bank's evidence regarding the value of the feed-cooling barn located on the property. Further, the sum of \$6,689.00 should also be added to the initial value to account for the Bank's evidence regarding the value of the homestead portion of the property.

For purposes of §506(a) of the Bankruptcy Code, therefore, the Court determines that the total value of the Debtors' real property is \$1,107,001.00 ( $\$900,000.00 + \$200,312.00 + \$6,689.00 = \$1,107,001.00$ ).

**B. Livestock**

Lewis Harrison (Harrison) appraised the Debtors' livestock on behalf of the Bank. Harrison has been engaged in the auction and dairy cattle business for more than fifty years, and was recognized as an expert in cattle valuations. (Transcript, pp. 35-36).

Harrison testified that he appraised the Debtors' livestock on January 20, 2015, and evaluated 414 head of cattle on the Debtors' property based on their physical appearance, production, age, lactation cycle, somatic cell count, and breeding. After considering these and other factors, Harrison determined that the value of the cattle was \$1,850.00 per head, and that the total herd value was \$766,950.00. (Bank's Exhibit 2; Transcript, p. 37).

Saucer appraised the livestock on behalf of the Debtors. According to Saucer, he was instructed to appraise 400 head of cattle, and generally used the same criteria that Harrison used in performing the appraisal. As a result of his inspection, Saucer determined that the cattle were valued at \$1,550.00 per head, for a total herd value of \$620,000.00. (Transcript, pp. 22-23).

The Court has considered the evidence, and accepts Harrison's appraisal of the livestock as the value of the Debtors' cattle. Although Saucer demonstrated very credible knowledge of dairy operations, Harrison appears to have special expertise in the area of dairy cattle valuations, and to have continuous personal experience with the week-to-week market for cattle sales. (Transcript, p. 39). His valuation was based on an actual head count of the cattle located on the Debtors' property, and on a close-range inventory and grading of the herd. (See Transcript, pp. 41-44, Testimony of Tyson Waddell, who performed the head count for Harrison.).

For these reasons, the Court accepts Harrison's appraisal of the cattle, and determines that the value of the Debtors' livestock is \$766,950.00.

**C. Total value of secured claim**

The Bank filed a Proof of Claim in the Debtors' bankruptcy case, and asserted that the claim was secured by the Debtors' equipment, real property, and livestock. The Debtors filed a Motion to Value the Bank's Secured Claim pursuant to §506(a) of the Bankruptcy Code.

The Debtors are dairy farmers who intend to retain and use the equipment, real property, and livestock in the operation of their dairy farm. The valuation under §506(a), therefore, should represent the amount that a willing buyer in the Debtors' situation would pay for "like property." Rash, 520 U.S. at 960.

In this case, the Debtors and the Bank stipulated that the value of the equipment is \$122,500.00. Additionally, the Court determined that the value of the Debtors' real property is \$1,107,001.00, based on the evidence of value presented by the Debtors and the Bank. Finally, the Court determined that the value of the Debtors' livestock is \$766,950.00, based on the evidence of value presented by an expert in cattle valuations.

For purposes of the valuation under §506(a), therefore, the Court finds that the total value of the Bank's secured claim is \$1,996,451.00 ( $\$122,500.00 + \$1,107,001.00 + \$766,950.00 = \$1,996,451.00$ ).

Accordingly:

**IT IS ORDERED** that:

1. The Motion of the Debtors, John Riley O'Steen and Ashley Koon O'Steen, to Value Secured Claim of Lafayette State Bank, is granted as set forth in this Order.

2. The secured claim of Lafayette State Bank (Claim No. 7-2) is valued at \$1,996,451.00.

DATED this 29 day of April, 2015.

**BY THE COURT**

*Paul M. Glenn*  
PAUL M. GLENN  
United States Bankruptcy Judge