

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
METRO TOOL CENTERS, LLC,)
)
DEBTOR.)

METRO TOOL CENTERS, LLC,)
)
MOVANT)
vs.)
)
WEBSTER BANK, N.A. and)
TD BANK)
)
RESPONDENTS)

CASE NO. 13-30194 (JAM)
CHAPTER 11
ECF NO. 79, 84, 86

**ORDER ON MOTION FOR DETERMINATION OF
VALUE AND AVOIDANCE OF LIENS UNDER 11 U.S.C. § 506**

I. INTRODUCTION

Before the Court are the Debtor's Motion for Determination of Value and Avoidance of Liens Under Section 506 dated November 5, 2013 (the "Motion") (ECF No. 79), the Objection of Webster Bank N.A. to the Motion dated November 20, 2013 (the "Webster Bank Objection") (ECF No. 84), and the Objection of T.D. Bank, N.A. to the Motion (the "TD Bank Objection") (ECF No. 86). The Motion, filed in connection with the Debtor's Amended Plan of Reorganization, seeks a determination of the secured status of the claims of: (i) Webster Bank in the approximate amount of \$957,371.92, secured by a mortgage dated December 21, 2006, recorded against the Debtor's real property commonly known as 701 North Colony Road, Wallingford, Connecticut (the "Property"); and (ii) TD Bank in the approximate amount of \$573,855.66, secured by a mortgage dated August 8, 2007, also recorded against the Property.

The Debtor asserts that as of the date of the Motion, the Property has a value of \$870,000.00.

On January 23, 2014 and February 12, 2014, an evidentiary hearing was held on the Motion, the Webster Bank Objection, and the TD Bank Objection. At the hearing, certain exhibits were introduced into evidence and the Debtor and Webster Bank each called an appraiser in support of their respective positions regarding the value of the Property. The Court reviewed the exhibits and considered the testimony of both of the appraisers in reaching a decision on the Motion.

II. DETERMINATION OF VALUE

The parties agree that the Property consists of 2.30 acres, is commercially zoned, has level topography, and is improved with a one story commercial retail building built in 1955 containing 15,580 square feet. In determining the value of the Property, both appraisers used three different methods of valuation. However, the value of Property found by the Debtor's appraiser and the value of the Property found by Webster Bank's appraiser differ substantially. Since there is such a difference of opinion as to value, the Court must determine the value of the Property under the circumstances presented in this case. After reviewing the exhibits and considering the testimony of the appraisers, the Court is persuaded that the appropriate method of valuing the Property in the context of the Amended Plan of Reorganization is the sales comparison approach.

When applying the sales comparison approach, the Debtor's appraiser found the value of the Property to be \$872,000.00 (Debtor's Exhibit A) and Webster Bank's appraiser found the value of the Property to be \$1,789,000.00 (Webster Bank's Exhibit 2). Much of the difference between the values found by the appraisers is due to the fact that Webster Bank's appraiser

valued the Property by dividing it into two parcels: (1) “Parcel A–Southerly Vacant Land”, which consists of 1.1 acres of vacant land “that could support additional improvements in the future”; and (2) “Parcel B–Northerly Improved Portion”, which consists of 1.2 acres of land on which the existing building is located. Webster Bank’s appraiser found the value of Parcel A to be \$389,000.00. The Debtor’s appraiser did not ascribe any value to Parcel A, and instead valued the entire 2.3 acre parcel as one piece of property with the building located on the land.

Although Parcel A is not a legal, subdivided lot as acknowledged by the parties, the Court is persuaded that it should be given some value. The Property is located in a commercially zoned area and, if subdivided, Parcel A could be sold for value. In reaching their respective opinions of the value of the Property, both appraisers indicated that they reviewed many factors, including the location of the Property, the traffic patterns in the area, and the existence of a traffic light in front of the Property. The appraisers also based their valuation opinions on the “Highest and Best Use” of the Property. Both appraisers agree that the term “Highest and Best Use” generally means a use that provides the greatest net return over a given period of time. Since the Debtor’s Amended Plan provides that it will retain the Property and pay the claims of Webster Bank and TD Bank over time, it is appropriate to consider the value of the Property if it were to be subdivided and sold in order to achieve the greatest net return for the Debtor over a given period of time.

As noted above, Webster Bank’s appraiser found the value of Parcel A to be \$389,000. That value was reached by analyzing sales of comparable vacant commercial lots and adjusting the value down twenty percent because Parcel A is not a legal lot. Although it is difficult to determine with any certainty the time, costs, and outcome of subdividing Parcel A, a twenty

percent downward adjustment of value appears to be too modest. The parties acknowledge that to date, there have been no attempts to subdivide the Property. Therefore, as would be true in most cases in which commercial property is sought to be subdivided, fees and costs will be incurred in what is likely to be a lengthy process. It is more reasonable to adjust the value of Parcel A downward by fifty percent since the fees, costs and outcome of any attempt to subdivide the Property are not known as this time. Based upon all of the evidence submitted by the Debtor and Webster Bank, the Court finds the value of the 1.1 acres of vacant land, the portion of the Property designated by Webster Bank's appraiser as Parcel A, to be \$243,000.00.

With respect to value of the existing building and the 1.2 acres on which the building is located, the appraisers again disagree as to value. The Debtor's appraiser finds the value of the entire Property to be \$872,000. Webster Bank's appraiser finds the existing building and the 1.2 acres on which the building is located to have a value of \$1,400,000.00. While the appraisers do not agree on the value of building and the land on which it is located, both parties acknowledge that the Town of Wallingford assessed the Property on the 2012 Grand List at \$665,700.00, which results in a 100% valuation of the Property in the amount of \$950,000.00. Given the comparable sales analyzed by both appraisers, including some sales that were not within the Town of Wallingford and some that closed more than three years ago, it appears that the Town's assessment which results in a 100% valuation of \$950,000.00, is a fair representation of the current value of the Property. Furthermore, since the Court is persuaded that the value of the Property should include the potential additional value of subdividing and selling Parcel A, the Court finds the value of the Property to be \$1,193,000.00 for purposes of the Debtor's Amended Plan. The Debtor's Amended Plan proposes to retain the Property and pay the claims of Webster

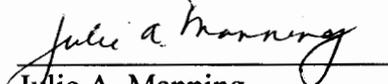
Bank and T.D. Bank over time. Therefore, the Debtor will have the benefit of time to seek to achieve the greatest net return for the Property, which could be realized by subdividing the Property and selling Parcel A.

The parties are directed to submit an Order consistent with the terms of this Order setting forth the secured and unsecured claims of Webster Bank and TD Bank for inclusion in the Debtor's First Amended Plan of Reorganization.

SO ORDERED.

At New Haven, Connecticut this 14th day of March, 2014.

BY THE COURT,


Julie A. Manning
United States Bankruptcy Judge