

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

IN RE:

JOSEPH PATRICK MCINTOSH and
MELISSA ANNE MCINTOSH

CASE NO. 09-22790

DEBTORS

MEMORANDUM OPINION AND ORDER

This matter having come before the court on 21st Mortgage Corporation's Objection to Confirmation of Chapter 13 Plan (DOC 22), and a valuation hearing having been held on May 11, 2010, and the court having taken the matter under submission, the court hereby issues this memorandum opinion and order.

The court must determine the value of a 1999 mobile home.

Debtors' chapter 13 plan values the mobile home at \$10,000.00, but has filed an appraisal valuing the property in an amount of \$12,000.00 to \$14,000.00. 21st Mortgage Corporation objects to those values as being too low, and has filed an appraisal valuing the property at \$23,000.00.

The Debtors' Appraisal

The Debtors filed an affidavit of Nicholas Beck. He is licensed to perform appraisals in Kentucky, and he holds a Certificate with the Kentucky Real Estate Appraisers Board. The court finds that he is an expert witness.

In his appraisal, he states that he contacted mobile home dealers to obtain a value of the mobile home. He testified that those dealers did not view the mobile home. One of those dealers said that if the

mobile home was in average condition that the asking price would be \$12,000.00 to \$15,000.00. Another dealer said that if the mobile home was in average condition that the asking priced would be \$15,000.00.

The appraisal also contains a NADA Value Report giving a value of \$14,503.00. That report is based on the mobile home being in fair condition. The appraiser also testified that the mobile home was in fair condition, and that it was average to average minus. He testified that the mobile home needed cosmetic repair.

21st Mortgage Corporation's Appraisal

21st Mortgage Corporation filed an affidavit of Tom Allen. He is a Certified General Real Property Appraiser who has had significant appraisal experience and education. The court finds that he is an expert witness.

In his appraisal he states that value based on a cost approach is \$19,000.00 to \$23,000.00; while value based on a direct sales comparison approach is \$23,000.00. In determining this value, he used his own database of information, the NADA price guide, the MH Village price guide and his own files.

The appraisal also contains a NADA Value Report giving a value of \$19,120.36. That report is based on the mobile home being in good condition. The appraiser also testified that the mobile home was in good condition. He did not testify as to what the term "good" means. He did testify that the term "fair" means "excessive wear and tear." In determining the condition of the property, he testified that he did not get on the roof and perform an inspection.

John Patrick McIntosh's Testimony

One of the debtors testified. He testified that the roof leaks, and that he has an estimate stating that it would take approximately \$8,000.00 to replace the roof. He also testified that he has tried to repair the roof to no avail. He testified that he thought the mobile home was in fair condition. The court finds that although he is not an expert witness, he is a very credible witness.

Conclusions of Law

"A bankruptcy court is not bound to accept the values contained in the parties' appraisals; rather, it may form its own opinion considering the appraisals and expert testimony." In re Bennett, 2008 WL 4489139 (Bankr. M.D. Tenn. 2008) citing In re Abuzzo, 249 B.R. 78, 86 (Bankr. E.D. Pa. 2000).

The court finds that the roof needs replacement and based on the testimony of 21st Mortgage Corporation's appraiser that means that the mobile home has "excessive wear and tear." Thus, the Court finds that the mobile home is in "fair" condition. The debtors' appraisal contains a NADA Value Report giving a value of \$14,503.00 based on the mobile home being in fair condition. The court finds that \$14,503.00 is the value of the mobile home.

For that reason, 21st Mortgage Corporation's Objection to Confirmation of Chapter 13 Plan (DOC 22) is sustained. Debtors are hereby ordered to amend the plan in conformity with this memorandum opinion and order within 10 days. The chapter 13 trustee shall file a proposed order continuing the confirmation hearing to the June docket.

Copies to:

Debtors
Eric A. Steiden, Esq.
Christopher M. Hill, Esq.
Beverly M. Burden, Esq.

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Tracey N. Wise**  
**Bankruptcy Judge**  
**Dated: Monday, May 17, 2010**  
**(tnw)**