

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

LUIGIA FERRERA

Case No. 01-10575

Debtor

LUIGIA FERRERA

Plaintiff

-against-

Adv. Pro. No. 01-90142

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

Defendant

APPEARANCES:

FEIN SUCH & CRANE
Attorneys for Defendant
7 Century Road, Suite 201
Parsippany, New Jersey 07054

Gregory S. Lesko, Esq.

ENGLERT COFFEY & McHUGH
Attorneys for Plaintiff
224 State Street
POB 1092
Schenectady, New York 12305

Peter B. McHugh, Esq.

Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

The current matter before the court is the valuation of certain real property in the City of Schenectady (“City”) commonly known as 1835 - 1841 Van Vranken Avenue (“premises”). The court has jurisdiction via 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2)(k), and 1334(b).

BACKGROUND

By Memorandum-Decision and Order dated October 11, 2002 (“Modification Decision”),

this court determined that the claim of Mortgage Electronic Registration Systems, Inc., secured by a mortgage on the premises, is subject to modification.¹ The court granted the parties until October 25, 2002 to advise it of their intention to submit additional memoranda/briefs on the valuation question. Neither side provided additional submissions.

FACTS

In addition to the facts contained in the Modification Decision, the court finds the following additional facts based on expert reports admitted into evidence:

- 1) The Creditors' appraiser, Mr. Scott L. Bellcourt, opined the premises' value was \$242,000.
- 2) The Debtor's appraiser, Mr. Kevin S. Fiore, testified the premises' value was \$110,000.

DISCUSSION

The court heard the testimony about the valuation of the premises and finds it conflicting. However, after careful deliberation, the court concludes the value of the premises is \$181,500, for the following reasons:

Mr. Fiore is certified only as to residential property and merely did a limited appraisal. He did not physically inspect or measure the entire property, thus the court does not find his estimate of 5,775 square feet for the premises to be credible. Also, his comparable #3, 1751 VanVranken Avenue, is not a mixed use property, therefore the court does not find it instructive as to valuation of the subject premises. Finally, Mr. Fiore's comparable #2, 1505 VanVranken Avenue, is approximately 50% the size of the subject premises. The court does not find it instructive as to valuation of the subject premises.

In contrast, Mr. Bellcourt is fully qualified to conduct mixed use appraisals and he physically inspected and measured the subject premises. His valuation is far more in line with the

¹ The court presumes familiarity with the decision.

City's 100% tax assessment on the premises of \$230,300. However, the court does not agree with his comparable sales involving upper Union Street properties and the adjustments made thereon.

However, in the totality of circumstances, Mr. Bellcourt is the more persuasive of the experts and the court has reduced his valuation of \$242,000 by 25% to compensate for the inconsistencies of his upper Union Street testimony, to arrive at a final valuation of \$181,500.

It is so ORDERED.

Dated:

Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge