

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

MICHAEL J. JANAS
MARGARET E. JANAS

CASE NO. 96-60482

Debtors

Chapter 12

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter comes before the Court in connection with the confirmation of the Chapter 12 plan ("Plan"), dated May 30, 1996, proposed by Michael J. Janas and Margaret E. Janas ("Debtors"). A hearing on confirmation was held on July 30, 1996, in Utica, New York. As a result of objections filed by Cayuga Savings Bank ("CSB") and Wilfred Glanville ("Glanville") pursuant to § 1225(a)(5)(B) of the Bankruptcy Code (11 U.S.C. §§ 101-1330) ("Code"), an evidentiary hearing on valuation of three parcels of real property owned by the Debtors was

conducted on September 13, 1996. Following testimony of several witnesses, the Court reserved decision on the matter without requiring the parties to file memoranda of law.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334(b), 157(a), (b)(1), (b)(2)(L) and (O).

FACTS

The Debtors filed a voluntary petition pursuant to Chapter 12 of the Code on February 8, 1996. The Debtors reside at 2851 Stone School Road, Fleming, New York ("Residence"), and operate a dairy farm on 303 acres ("Janas Farm") located a short distance from their Residence. Both the Janas Farm and Residence are subject to mortgages held by CSB.

On June 17, 1996, CSB filed a proof of claim in the amount of \$87,296.94 with respect to the Residence and a proof of claim in the amount of \$283,388 with respect to the Janas Farm. Debtors' Plan proposes to pay CSB \$70,000 as a secured claim with respect to the Residence and \$155,000 as a secured claim with respect to the Janas Farm. CSB filed an objection to the Plan pursuant to Code § 1225(a)(5)(B), contending that it fails to provide for payment of the mortgage debt to the extent of CSB's allowed secured claim.

Glanville holds a mortgage on a 110-112 acre parcel located at the corner of Stone School Road and Silver Street in the Town of Fleming ("Glanville Farm"). According to the testimony

of Mr. Janas, the Glanville Farm is used for growing crops.

On July 1, 1996, Glanville filed a proof of claim in the amount of \$146,802.63. Debtors' Plan proposes to pay him \$75,000. Like CSB, Glanville has filed an objection to the treatment of his claim pursuant to Code § 1225(a)(5)(B).

At the evidentiary hearing, the Court heard testimony from Mr. Janas, as well as four individuals who testified concerning the valuation of the three properties.

RESIDENCE

Gregory K. Doan ("Doan") testified on behalf of CSB that Debtors' Residence had a value, as of July 17, 1996, of \$93,500. Doan, who is a certified New York State appraiser with 18 years' experience, utilized the sales comparison approach in determining the value of the Residence. He testified that he examined four other comparable properties in the vicinity of the Residence and had made certain adjustments based on location, design, effective age, availability of public utilities and marketability. Because of what he considered significant adjustments which were necessary to be made in comparing the four other properties with the Residence, Doan concluded that the best indicator for valuation purposes was based on a price per square foot of living area. The first (#1) and third (#3) comparables were in close proximity to the Residence and were both located near farms. He calculated a price of \$61.87 per square foot for #1 and \$70.83 per square foot for #3. He then determined that \$67.50 per square foot for Debtors' Residence was within the range calculated for the two comparables and concluded that \$93,500 (\$67.50/square foot X 1,388 square feet) was an appropriate estimate of market value for the Residence.

Doan acknowledged that he had appraised the Residence at \$108,500 two years prior to this appraisal. He explained that the decrease in value was due in part to the need for deferred maintenance and the fact that the current housing market in the area was not as strong as it had been two years ago.

William Botcher ("Botcher") testified on behalf of the Debtors that he estimated the value of the Residence as of December 22, 1995, to be \$70,000. Botcher testified that he had been a real estate broker for approximately 21 years and also worked as a farmer on a part-time basis. His only training as an appraiser was a 90 hour course taken approximately 10 years ago. He is not certified by New York State as an appraiser, but has done appraisals for estate purposes and in connection with intrafamilial transfers of real property.

Botcher described the Residence as being in average condition. In his appraisal he included four comparables located in the Town of Fleming, three of which were sold in the second half of 1994. Botcher made no adjustments in the comparables for size, location, utilities, etc. and simply averaged the four sales in arriving at a value of \$70,000 for the Residence.

JANAS FARM

The Janas Farm consists of 302-303 acres, 200 acres of which is tillable. Another 90 or so acres consist of woods. There is no residence on the property although there are two barns described as being in average to poor condition. There is approximately 822 feet of road frontage on Stone School Road. The property is assessed for \$217,100 with an equalization rate of 65.75%. Mr. Janas testified that water has been a problem on the Janas Farm and he currently accesses water from a drilled well on his father's property.

John F. Havemeyer, III ("Havemeyer"), who has worked as an appraiser on a full-time basis since 1972 and is certified by the State of New York, testified on behalf of CSB that in his opinion the value of the Janas Farm as of July 12, 1996, was \$300,000. Although used by the Debtors as a dairy farm, Havemeyer indicated that he had valued the Janas Farm for the land value alone with the best use determined to be as agricultural land.

Like Doan, Havemeyer used the sales comparison method of evaluation. He selected six comparable properties based on such factors as size of the property, similar soil type, proximity to the Janas Farm and similarity of improvements, i.e. structures, on the property. Consideration also was given to proximity of the property to the City of Auburn and the number of available tillable acres.

Acreage of the comparables ranged from 117 acres to 525 acres. The sales of the comparables occurred between September 2, 1992 (P-6) and April 30, 1996 (P-1) with three of the properties having been sold in 1995. After making certain adjustments and examining the range of indicated values for the subject property, which ranged from \$850/acre to \$1,237/acre, he concluded that the Janas Farm had a value of \$1,000/acre. He did not attribute any added value to the fact that the Janas Farm was being used as a dairy farm.

Botcher, testifying on behalf of the Debtors, also considered six comparable properties within 4-8 miles of the Janas Farm. His comparables ranged in size from 37 acres to 192 acres and had been sold between December 2, 1993, and September 22, 1995. He also supplemented his appraisal of December 22, 1995, by including a 226 acre parcel adjoining the Janas Farm, which was sold on February 2, 1993, at public auction for \$115,000. Botcher testified that he felt that even though it had been sold at auction, the sale price reflected the fair market value of the

property and was inclined to give it significant weight in estimating the value of the Janas Farm.

In estimating a value of \$155,000 for the Janas Farm, Botcher testified that he arrived at the value based on his experience selling farms. He stated that \$155,000 was the price he would have listed the property for if he had to sell it on the market. He acknowledged that he did not understand the "plus" and "minus" adjustments used by the other appraisers. In fact, when questioned about why he had not considered the Chamberlain farm in Scipio, New York, which Havemeyer included in his appraisal as comparable P-3,¹ Botcher stated that he did not use it as it was more expensive and he did not want to have to make adjustments in comparing it with the Janas Farm.

GLANVILLE FARM

John Bouck ("Bouck"), a certified appraiser and a licensed broker for over 33 years, testified on behalf of Glanville that the Glanville Farm had a fair market value of \$120,000 as of August 15, 1996. He described the property as consisting of 109.9 acres of land, with 95-98 acres of it deemed to be tillable. The Glanville Farm was assessed for \$72,000, with an equalization rate of 65.75%.

Bouck compared the Glanville Farm with three other comparables, selected from 15 similar properties sold in the area. The three comparables had been sold between March 27, 1996 and May 13, 1996, and ranged in size from 181.75 acres to 519.7 acres. Bouck made adjustments to value based on the type and condition of structures on the property, as well as the percentage

¹The Chamberlain farm was sold on May 12, 1995, and consisted of 161.50 acres. The property sold for \$250,000 or \$1,547 per acre and included a single family residence and four barns.

of tillable acreage. The adjusted value per acre ranged from \$947 to \$1,128. He concluded that the Glanville Property had a value of \$120,000, which included \$110,000 for the land and \$10,000 for the two barns located on the property.

Botcher described the Glanville Farm as consisting of 112 acres and estimated a land value of \$65,000 and the value of the two barns located on the property at \$6,000, for a total appraised value of \$71,000. In making his analysis, he used the same comparables he had considered in valuing the Janas Farm.

DISCUSSION

Code § 1225(a)(5) requires that if a secured creditor objects to the terms of the plan (Code § 1225(a)(5)(A)) and the debtor is not surrendering the property securing the creditor's claim (Code § 1225(a)(5)(C)), then the plan must provide that the creditor retain the lien securing its claim (Code § 1225(a)(5)(B)(i)) and that the creditor receive property having a present value of not less than the allowed amount of its claim (Code § 1255(a)(5)(B)(ii)). *See In re Ames*, 973 F.2d 849, 851 (10th Cir. 1992). The dispute *sub judice* focuses on the treatment of the creditors' claims pursuant to Code § 1225(a)(5)(B)(ii).

A proof of claim is *prima facie* evidence of the claim's validity under Code § 502(a). Debtors have not disputed the amount of the claims asserted by the creditors herein. Rather, they dispute the extent to which the creditors' claims are to be allowed as secured based on the value of the collateral securing the claims. It is the creditors' burden to demonstrate by a preponderance of the evidence the value of the collateral securing their claims. *See In re Robertson*, 135 B.R.

350, 352 (Bankr. E.D.Ark. 1992) (citing *In re Schaumberg Hotel Owner Ltd. Partnership*, 97 B.R. 943, 950 (Bankr. N.D.Ill. 1989)). For purposes of confirmation, value is determined as of the date of confirmation. *See Robertson* at 352.

The valuation of property is not an exact science and it is expected that there will be differences of opinions between appraisers when valuing a single piece of real property. As an initial matter, however, it is expected that the appraisers will utilize accepted methods of appraisal. In this case, all the professionals who testified to the value of the real property utilized a sales comparison approach. This approach requires that the professional research the market to obtain information on sales and listings of similar properties in the area and to analyze the subject and the comparables according to certain elements of comparison, making adjustments to the sales price of each comparable as appropriate to arrive at a single value for the subject property.

In this case, Debtors' expert, Botcher, testified that he was not comfortable with the process of making certain adjustments to the sales price of each of the comparables in order to determine the value of the Debtors' properties. In fact, he eliminated at least one comparable property in valuing the Janas Farm simply because it would have required certain downward adjustments since it was a more expensive piece of real property than the Janas Farm. The Court also takes exception with his view that the sales price for real property sold at public auction was a good indicator of fair market value of the Janas Farm. As noted by Havemeyer in his report, "[m]arket value means the most probable price a property should bring in a competitive and open market under all conditions requisite to a fair sale . . . ". While a public auction is conducted based on competitive bidding, it is not to be construed as representing the "open market under

all conditions requisite to a fair sale."

In the case of Debtors' Residence, Botcher indicated that rather than make adjustments for the various comparables, he had simply averaged the sales prices to arrive at a value. It was evident from his testimony that his "methodology" was one based entirely on his experience as a real estate broker. Indeed, he testified that the values he placed on the properties were those which he would have listed them at had he intended to sell the properties. The Court does not question Botcher's experience and ability as a real estate broker. However, as the Court noted at the completion of the evidentiary hearing, in evaluating the methodology utilized by appraisal professionals it cannot give weight to what it described as Botcher's "gut reaction" based on his experience as a real estate broker.

The Court has reviewed the testimony and appraisals of the creditors' experts. All three individuals have supported their estimates of value through the use of comparable sales, making adjustments as each deemed appropriate. With respect to the Janas Farm, Debtors' counsel raised the issue of road frontage and its impact on value. Havemeyer acknowledged that road frontage of the Janas Farm was less than the other comparables. He did not, however, feel a need to make any additional adjustment for that. Botcher testified that the lack of road frontage made it difficult to access the back fields with heavy machinery and vehicles, particularly if the roads were muddy. There was also testimony that greater road frontage is a positive factor to be considered, particularly if the highest use for the property is residential development. However, in this instance, the Janas Farm was appraised as cropland by Havemeyer and the comparables he chose reflected this use as well. The Court has not been provided with any basis for disturbing the adjustments made by Havemeyer with respect to the comparables in concluding that the value

of the Janas Farm is \$300,000.

With respect to the Residence, Doan's testimony is also supported by his analysis of comparable properties. It is also clear that he took into consideration the need for deferred maintenance on the property, as well as the market conditions, by reducing his appraisal for \$108,500 two years ago to \$93,500 as of July 17, 1996. The Court concludes that CSB has met its burden by a preponderance of the evidence and accepts the value of \$93,500 estimated by Doan.

Finally, with respect to the Glanville Farm, again Bouck's valuation of \$1,000 per acre for cropland not only was supported through the use of comparables but was also consistent with the acreage figure used by Havemeyer. The Court does feel that the addition of \$10,000 to the value of the property based on the structures thereon was inappropriate. In his analysis of the comparables, he made adjustments for their value based on the type and condition of the structures on the properties. His figure of \$1,000 per acre took into account the fact that there were structures on the property. Therefore, it is the opinion of the Court that there was no need for the additional \$10,000 value placed on the buildings. However, consistent with Botcher's testimony that the Glanville Farm is comprised of approximately 112 acres², the Court concludes that the fair market value of the Glanville Farm is \$112,000.

Based on the foregoing, it is hereby

ORDERED that the objections of CSB and Glanville to Debtors' Chapter 12 Plan dated May 30, 1996 are sustained and said Plan is denied confirmation and it is further,

ORDERED that the Debtors' be afforded 30 days from the date of this Order to file a

²The deed attached to Glanville's proof of claim lists approximately 115 acres.

modified plan, consistent with the findings herein.

Dated at Utica, New York

this 2nd day of January 1997

STEPHEN D. GERLING
Chief U. S. Bankruptcy Judge