UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re: Bk. No. 99-12287-JMD
Chapter 11

CGE Shattuck, LLC,
Debtor

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MEMORANDUM OPINION AND ORDER

I. BACKGROUND

Before the Court is a Motion To Determine Value Of Secured Claim Of Banc Of America Commercial Finance Corporation (the "Motion"), filed by CGE Shattuck, LLC (the "Debtor") on March 27, 2000. Banc of America Commercial Finance Corporation, f/k/a NationsCredit Commercial Corporation ("NCC"), holds a disputed claim against the Debtor, which is purportedly secured by a mortgage on real property owned by the Debtor that includes, inter alia, an eighteen-hole golf course that sits upon approximately 356 acres of land.[1] At issue before the Court is the value of the real property that secures NCC's claim; i.e., the value of the land that the eighteen-hole golf course sits upon, the

[1] Both the validity of NCC's mortgage and its relative priority are not at issue in the present matter. Such questions were expressly reserved by the parties for future proceedings.

associated golf course operations, and that portion of the 356 acres of land that could be used for residential development (the "Property").[2] On April 18, 2000, the Court held a hearing on the Motion and subsequently took the matter under advisement.

On September 22, 1999, NCC filed a motion for relief from the automatic stay. A final hearing on NCC's motion for relief was held over the course of several days, with closing arguments being heard on December 15, 1999 (the "Relief Hearing"). At the Relief Hearing, both NCC and the Debtor presented extensive evidence regarding the value of the Property. The Court denied NCC's motion for relief, a denial that is currently under appeal. Despite the extensive valuation evidence presented by the parties during the Relief Hearing, the Court did not make any determination of value at that time because the parties had agreed, for purposes of the Relief Hearing, that NCC was undersecured. Accordingly, a determination of the value of the Property was not necessary to the decision on stay relief. However, the presentation of the extensive valuation evidence was not a fruitless exercise, as all parties have agreed that the Court may rule on the Motion based upon the evidentiary record submitted at the Relief Hearing.

The Court has jurisdiction of this subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. DISCUSSION

A. The Legal Standard

The question of valuing property in the context of a Chapter 11 case is a fact-sensitive one; valuation is done on a case-by-case basis. See Financial Security Assurance, Inc. v. T-H New Orleans Ltd. Parnership. (In re T-H New Orleans Ltd. Partnership), 116 F.3d 790, 799 (5th Cir. 1997); In re Melgar Enter., Inc., 151 B.R. 34, 39 (Bankr. E.D.N.Y. 1993) ("[V]aluation is to be determined on a case-by-case

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[2] The parties agreed at the hearing that certain personal property would not be included in valuing the Property.

basis."). As a general rule, property is to be valued in a manner consistent with its highest and best use. See Melgar, 151 B.R. at 39. Accordingly, if the possibility of reorganization is credible, then an appropriate valuation will turn on the subject property's going-concern value. See id. Finally, it is generally agreed that in a proceeding like the instant matter, property should be valued as it stands at the time of the proceeding to determine value. See, e.g., In re Tamarack Trail Co., 23 B.R. 3, 5-6 (Bankr. S.D. Ohio 1982).

The parties do not dispute that to appropriately value the Property, the Court must divine its going-concern value. Both appraisers' conclusions employ such a valuation. The Court will determine the Property's going-concern value as it stands today.

B. The Valuation Evidence

At the Relief Hearing, each party offered an appraisal and supporting testimony by the relevant appraiser. NCC submitted the testimony of its appraiser, Thomas W. Connery, MAI of Golf & Recreation Consultants, Inc., and his appraisal report dated August 20, 1999, valuing the Property as of August 2, 1999 (the "1999 Connery Appraisal").[3] See Ex. 105, Real Estate Appraisal dated August 20, 1999. In his report and testimony, Mr. Connery valued the Property at $2,780,000, which included an assumption that the Debtor owned $200,000 of golf course maintenance equipment. The Debtor leases, but does not own such equipment, and the parties have agreed that for purposes of the Court's consideration of the Motion, the valuation of the Property in the 1999 Connery Appraisal is $2,580,000.[4] Mr. Connery had previously appraised the Property for the Debtor in connection with the Debtor's acquisition of the Property in 1996. In an appraisal report dated January 15, 1996, Mr. Connery valued the Property at $3,200,000 as of November 17, 1995 (the "1996 Connery Appraisal"). See Ex. 102, Real Estate Appraisal dated January 15, 1996. NCC relied on the 1996 Connery Appraisal when it financed the Debtor's acquisition of the Property.

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[3] All exhibits referred to in this opinion and order are exhibits submitted by the parties at the Relief Hearing and admitted into evidence at that hearing.

[4] The parties have agreed that the portion of the Property available for residential development is valued at $80,000. The 1999 Connery Appraisal separately values the golf course and associated golf course operations at $2,500,000 and the residential development property at $80,000.

The Debtor presented the testimony of its appraiser, Robert G. Bramley, MAI, SRA of R.G. Bramley & Co., Inc., and his appraisal report dated November 22, 1999, valuing the Property as of July 16, 1999 (the "1999 Bramley Appraisal"). See Ex. 106, Appraisal dated November 22, 1999. In his report and testimony, Mr. Bramley valued the property at $1,000,000.[5] Mr. Bramley had previously appraised the Property for the Debtor in connection with a tax abatement request in 1996. In an appraisal report dated February 19, 1997, Mr. Bramley valued the Property at $2,125,000 as of April 1, 1996 (the "1996 Bramley Appraisal"). See Ex. 103, Appraisal dated February 19, 1997. Mr. Bramley also performed one other appraisal for the Debtor. The purpose of that appraisal is not disclosed in the record, but it would appear to be for a tax abatement request. In an appraisal report dated February 26, 1999, Mr. Bramley valued the Property at $1,100,000 as of April 1, 1998 (the "1998 Bramley Appraisal"). See Ex. 104, Appraisal dated February 26, 1999.

In addition to the appraisals discussed above, NCC argued that the Court should consider certain pro-forma projections the Debtor included as exhibits to its third amended disclosure statement, which was filed on April 12, 2000. NCC argues that the projections that the Debtor is attempting to use to confirm its plan of reorganization show substantially greater net operating income ("NOI") than the NOI projected in the 1999 Bramley Appraisal. The Debtor, on the other hand, argues that the information contained in the pro-forma projections attached to its disclosure statement are outside of the record, contain arithmetic errors

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[5] The Debtor has argued that pursuant to the stipulation regarding the residential development property, the 1999 Bramley Appraisal should be deemed to value the golf course and associated operations at $920,000. However, the appraisal is based upon a discounted cash flow analysis of projected income streams and the appraiser did not ascribe any income to the residential development property. On page 44 of the 1999 Bramley Appraisal, the appraiser specifically qualifies his appraised value of the Property by stating:

> [T]here is no evidence to suggest that the market would recognize the potential of future residential development, given the physical and political difficulties likely to be encountered in the pursuit of subdivision/development approvals, as well as the relatively sluggish nature of the new housing market in the Jaffrey area.

Ex. 106, Appraisal dated November 22, 1999 at 44. Accordingly, the Court finds that Mr. Bramley ascribed no value to the residential development property and that the $1,000,000 appraisal value on page 44 of the 1999 Bramley Appraisal represents the appraiser's valuation of the golf course and associated golf course operations.

that are in need of correction and, therefore, should not be considered by the Court. The projections included in the Debtor's third amended disclosure statement are not accompanied by a description of the source of the data or the basis for assumptions in the projections that are similar in detail to any of the appraisal reports discussed above. In addition, the Debtor's disclosure statement has not been approved by this Court, no testimony has been presented regarding the projections in the disclosure statement, and the person who prepared the projections has not testified or been subject to examination. In short, the projections have not been presented nor admitted as evidence in any proceeding that has come before the Court as of the date of this opinion and order. Accordingly, the projections shall not be considered by the Court.

C. Analysis of the Valuation Evidence

The values assigned to the Property by the appraisers in 1999 are significantly less than their respective 1995-96 valuations. In addition, the appraisers' valuations differ significantly from one another at comparable times. In order to better understand how each appraiser's view of the Property has changed over time, and how their views differ, the Court has carefully reviewed the 1996 and 1999 appraisal reports by both appraisers. A summary of that review is contained in Exhibits A and B to this opinion. Exhibit A compares a variety of factors utilized in the 1999 Connery Appraisal and the 1996 Connery Appraisal. Exhibit B compares a variety of factors utilized in the 1999 Bramley Appraisal and the 1996 Bramley Appraisal.

A review of the 1999 appraisal reports from each appraiser shows that both appraisers utilized a discounted cash flow analysis in the 1999 appraisals. Mr. Connery did not have access to actual income and expense data. For the most part, he determined the range of values reported in the golf industry, and used his knowledge of the Property and personal judgment to select specific numbers within those ranges. Mr. Bramley had access to the Debtor's actual income and expense data for the 1996-98 calendar years and ten months of 1999. He determined that the 1999 results were unusually low due to weather related factors and therefore did not use them. He utilized a three-year average for 1996-98 with adjustments in a few areas based upon his knowledge of the Property and his personal judgment. The Court's analysis of the

1999 appraisals identified three major differences in assumptions or data used to complete the discounted cash flow analysis.

The first area is the significant difference in the number of rounds projected to be played in future years. Mr. Connery has not changed his estimate of the number of rounds projected to be played from his 1996 estimate. His estimated number of rounds has not changed from 22,000 rounds per year despite the fact that during the past four years the Debtor has never achieved anything close to that number. The 1999 Bramley Appraisal indicates that the approximate number of rounds over the past four years are as follows:

1996	18,000 rounds
1997	17,000 rounds
1998	16,900 rounds
1999	15,000 rounds

In his 1996 appraisal, Mr. Bramley projected that the number of rounds would start at 18,000 in 1996 and increase by 2,000 rounds per year, stabilizing at 24,000 rounds per year in the year 2000. In his 1999 appraisal, he did not project the number of rounds of golf, but his valuation is based upon the average total revenues for 1996-98. Implicit in that estimate is average annual rounds of 17,300.

The second item of significant difference is the computation of the value of the property at the end of the discounted cash flow period. Mr. Connery utilized a five-year period and a 10.5 percent exit capitalization rate with selling expenses of 2.0 percent. Mr. Bramley utilized an eleven-year period and a 14 percent exit capitalization rate with selling expenses of 5 percent. The third item of significant difference is the amount of real estate taxes. Mr. Connery “projected” real estate taxes in year one at $32,600, while Mr. Bramley utilized the actual 1999 taxes of $36,834.

An analysis of the impact of the above differences in assumptions or data utilized by the appraisers in their final opinions of value is not a simple exercise. A valuation of the Property by the discounted cash flow method involves at least five different income sources and five different expense (or cost of goods sold) categories, all of which vary both directly with and independently from each other. In addition, the nature of the golf course operations requires relatively large fixed costs for the maintenance of the golf course itself, irrespective of the number of rounds played, while other expenses will vary in a direct relationship to the number of rounds played. Due to the lack of detail regarding actual expenses available to Mr. Bramley, the 1999 Bramley Appraisal does not readily lend itself to modification to test alternate hypothetical scenarios based upon changes in assumptions or data. The discounted cash flow model employed by Mr. Connery does lend itself to that type of "what if" analysis. However, before utilizing the Connery model in any such analysis, it is necessary to determine if the pro-forma data and other assumptions employed in that model are an accurate predictor of the Debtor's actual future operating results.

The Court constructed a discounted cash flow model based upon the assumptions utilized in the 1999 Connery Appraisal. The Court then changed the assumptions to reflect the number of rounds implicit in the 1999 Bramley Appraisal (17,300) and the discount rate and selling expense assumptions and the real estate tax data utilized in the 1999 Bramley Appraisal. The results of that analysis are contained in Exhibit C. When the Connery discounted cash flow model is changed by using the three key differences between it and the Bramley model, a valuation of $1,042,633 emerges, a result that is remarkably close to the $1,000,000 reached in the Bramley model. Accordingly, the Court finds the Connery model to be consistent with the actual income and expense data utilized in the 1999 Bramley Appraisal and will use the Connery discounted cash flow model in determining the value of the Property.

D. Determination of Value

The two 1999 appraisals in this case have both striking similarities and differences with respect to the data and assumptions utilized by the appraisers. The similarities include using only the discounted cash flow method to determine value, the same inflation rate (3.0 percent), and the same discount rate (16.0 percent). The differences include the source of income and expense projections (actual versus pro-forma), the number of rounds played per year (17,300 versus 22,000), the exit capitalization rate (14 percent versus 10.5 percent), the selling expenses (5.0 percent versus 2.0 percent) and the real estate tax expense (actual versus estimated). Based upon the discussion in section II.C above, the Court has determined that the differences in the source of income and expense projections is not significant and that the two appraisals are, in fact, consistent with each other when the other major differences are held constant. Accordingly, the

Court will examine each of the major differences in light of the two 1999 appraisal reports, the testimony of the appraisers, and the other evidence in the record.

There is no evidence in the record to support the 22,000 annual rounds utilized in the 1999 Connery Appraisal, other than Mr. Connery's statement that the Property, if operated properly, would achieve such a level of play. Both appraisers testified that the Property is a long distance from major population centers, is a very difficult course for the average golfer, and needs capital improvements in the form of banquet and overnight accommodations to increase its market area and its attractiveness to groups. However, Mr. Connery maintained that additional advertising and offering "free" golf balls would increase the rounds of play. The Court does not find his justification for his assumed number of rounds to be persuasive. It may be that the Debtor's management has not been as good at marketing as it should have been. It may be that management cut marketing expenses since 1996 due to income shortfalls, leading to further marketing cuts, further income shortfalls, and a death spiral scenario. In any event, there is no evidence in the record to demonstrate that the Property has ever achieved even 20,000 rounds of play per year. While the number of rounds implicit in the 1999 Bramley Appraisal (17,300) may be closer to the mark, the Court finds that utilization of a three-year average during a period leading to the near collapse of the Debtor's operations in 1999 is too pessimistic for purposes of valuation in this context. The plan proponents may indeed make significant capital investments to bolster the level of play at the Property. However, any such investment and corresponding increase in the level of play is speculative and uncertain. The Court believes that the proper level of play for the determination of value at this time is the level reasonably attainable by the Property in its current condition. The record shows that the Debtor achieved 18,000 rounds of play in its first year, 1996. The Court believes that after a transition year, the Debtor should be able to return to those levels within two years. Both appraisers testified to the strength of the market for golf in the northeast and there is no reason why the Debtor should not be able to achieve its past operating results. Accordingly, the Court will use 17,000 rounds in year one, 17,500 rounds in year two, and 18,000 rounds in years three through five in its valuation.

The two appraisers collectively developed a range of capitalization rates from 10.5 percent to 15 percent. Mr. Connery was at the low end of the range (10.5 percent) based upon the quality of the Property, the market niche it fills for challenging play, and the fact that it is a tested entity within the competitive market. Mr. Bramley did not provide any analysis for his assumed discount rate in the 1999 Bramley Appraisal. However, in the 1998 Bramley Appraisal, he developed a range of discount rates from 12.0 percent to 15.0 percent and selected the upper end of the range (15.0 percent). He based the use of a high discount rate upon the nature of the future benefits, quality of the appraised property, prevailing market conditions, and apparent trends. In the 1999 Bramley Appraisal, Mr. Bramley used a discount rate of 14.0 percent. Both appraisers testified that the market for the sale of golf courses in the northeast is "hot" due to the difficulty of siting and building new courses and a lack of turnover of ownership for existing courses. Both appraisers testified that the demand for rounds of golf in the northeast, and nationwide, is growing. Accordingly, the Court finds that both appraisers have gravitated to the opposite ends of the range of discount values without sufficient evidence to support such extreme views. Accordingly, the Court finds the use of a discount rate in the middle of the range to be appropriate and will therefore use 12.75 percent.

Neither appraiser presented any evidence to support their assumptions on the expense of selling the Property at the end of the discounted cash flow period. The Court finds the assumption utilized in the 1999 Bramley Appraisal to be more in line with the costs observed by the Court in the sale of properties of comparable value. Accordingly, the Court will use 5.0 percent as the selling expense for the Property. The Court will also use the actual 1999 real estate tax expense from the 1999 Bramley Appraisal because it provides a better starting point than the assumed real estate tax expense in the 1999 Connery Appraisal.

When the above determinations are used in the Connery discounted cash flow model the value of the golf course and associated operations equals $1,224,815. See Exhibit D to this Opinion and Order. The Court will round this result to $1,220,000. When added to the stipulated value for the residential development property ($80,000), the final value of the Property is equal to $1,300,000.

III. ORDER

For the reasons set forth above, it is hereby ORDERED that the going-concern value of the Property, as of today, equals $1,300,000.

This opinion and order constitute the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

DONE and ORDERED this 24th day of April, 2000, at Manchester, New Hampshire.

J. Michael Deasy
Bankruptcy Judge