

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: BKY 3-89-432
Bruce Allen Reeve, ORDER
Debtor.

This matter came before the Court on Debtor's motion objecting to allowance of Citicorp National Services' (Citicorp) claim by the Debtor. Michael Hoverson appears on behalf of Debtor. John Crawford appears on behalf of Citicorp. Based upon the files, records and arguments of counsel, the Court makes this Order pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

This dispute concerns the disposition of a repossessed mobile home by Citicorp pursuant to its security interest and the resulting allowable amount of its deficiency claim in the estate. The Debtor purchased a used, unfurnished 1983 Moduline Gibraltar 14' x 66' mobile home from Home Plus Listing Company, Inc., on March 21, 1986, under a Retail Installment Sales Contract and Security Agreement for \$20,000, which contract was subsequently assigned to Citicorp. Debtor filed for Chapter 13 on February 3, 1989, and valued his mobile home at \$14,000.00 on his schedules. Citicorp filed an Amended Proof of Claim on April 4, 1989, in the total amount of \$16,972.33, \$11,659.20 secured and \$5,313.13 unsecured. On May 4, 1989, Citicorp obtained relief from the stay valuing the mobile home at \$11,659.20.

After relief from stay was granted, the mobile home was damaged by fire on May 26, 1989.(FN1) Citicorp, through its agent, James Cox,(FN2) had someone inspect and review the condition of the mobile home. Based on the detailed inspection, a worksheet was created and NADA book wholesale and retail valuations were determined on for the mobile home.(FN3) Citicorp determined that the NADA values were \$7,156 wholesale and \$10,524 retail. With the fire damage as well as the other repairs, Mr. Cox determined that the mobile home would require approximately \$2,900 in repairs to restore it to retail condition. Mr. Cox estimated that the realizable wholesale value of the mobile home was \$5,000, retail value was \$8,419. In his opinion, the mobile home had a fair market value of between \$4,500 to \$5,500. He also concluded that the monthly carrying charges would be \$741 wholesale; \$941 retail.(FN4)

After analyzing the entire situation, Mr. Cox determined that the most appropriate manner to dispose of the mobile home would be wholesale and by the bidding process. To market the mobile home, he followed these procedures: advertised three consecutive Sundays

in the Minneapolis Star Tribune; contacted the mobile home park where the home was situated and offered park management an incentive to find a purchaser; sent notice to Debtor's attorney of the sale; and generated 50 bid packs which were sent to brokers, mobile home dealers and individuals. Ultimately, Citicorp received four bids in the following amounts: \$5,597, \$6,056, \$7,131, and \$7,225. Mr. Cox accepted the highest bid, which was from MobilHome Minnesota, Inc., (MHM).(FN5) Mr Cox testified that, in his opinion, the mobile home was sold in a commercially reasonable manner pursuant to industry standards. After the sale, Citicorp filed an Amended Proof of Claim on April 18, 1990, in the amount of \$11,377.49 which represented the deficiency balance owing.

Reed Beckler, president of MHM, testified that, in his opinion, the Debtor's mobile home could not have been sold on a retail basis because of the fire damage. He testified that there are state regulations which required that the mobile home be repaired prior to placing the home on the retail market. MHM had sold approximately 15 to 20 repossessed mobile homes on consignment for Citicorp prior to this transaction. Additionally, it provided a service to Citicorp, cleaning as well as re-keying the locks on repossessed mobile homes prior to resale. MHM had limited access to the mobile home in connection with these services prior to receipt of the bid pack from Citicorp.

Mr. Beckler also testified that there is always a business risk involved in selling used mobile homes, especially fire damaged homes. After making the necessary repairs, MHM sold the mobile home for \$14,300 retail.(FN6) Mr. Beckler testified that, based on his experience, Citicorp sold the mobile home in a commercially reasonable manner, in that, the usual manner, in his opinion, is to market a damaged mobile home by wholesale rather than retail.

Debtor argues that Citicorp's claim is excessive and the wholesale sale of the mobile home was commercially unreasonable. The Debtor testified that the fair market value of the mobile home, with the limited fire damage, was \$13,000. In his opinion, repairs from the fire damage would total approximately \$1,000 including materials and labor. To support this assertion, he points to the fact that MHM did not complete all of the restoration listed on Citicorp's repair estimate, yet sold the mobile home for \$14,300. Also, the Debtor argues that the sale was commercially unreasonable because Citicorp did not receive the maximum return available to it. To accomplish a maximum return, the Debtor asserts that Citicorp was required to sell the mobile home through an authorized dealer on a retail basis because, he argues, collateral financed on a retail basis must be sold at retail. The Debtor did not try to sell or refinance his mobile at any time. Nor did he attempt to repair the damaged mobile home.

Citicorp argues that its claim is valid, in that, it resold the mobile home in a commercially reasonable manner; and therefore, its claim should be allowed in its entirety.

II.

Bankruptcy Rule 3001(f) provides: "A proof of claim executed and filed in accordance with these rules shall constitute a prima facie evidence of the validity and amount of the claim. Therefore,

the party objecting to the proof of claim has the burden of producing evidence rebutting the claim. If evidence rebutting the claim is produced, then the claimant must produce additional evidence to prove the validity of the claim by a preponderance of the evidence. *Gran v. IRS (In re Gran)*, 964 F.2d 822, 827 (8th Cir. 1992), citing *In re Fidelity Holding Co.*, 837 F.2d 696, 689 (5th Cir. 1988). Therefore, unless the Debtor has provided sufficient evidence to overcome the claim's presumption of validity, Citicorp's claim should be allowed as filed.

The Debtor asserts that the mobile home was sold in a commercially unreasonable manner; and, therefore, Citicorp's claim should be disallowed in its entirety and the Debtor awarded damages. MINN. STAT. Section 336.9-504 (1986) provides in relevant part:

(1) A secured party after default may sell, lease, or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing.

...

(3) Disposition of the collateral may be by public or private proceedings ... but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. ... (emphasis added).

MINN. STAT. Section 336.9-507 (1986) provides in relevant part:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property he has sold in a commercially reasonable manner. ...

Comment 2 provides: One recognized method of disposing of repossessed collateral is for the secured party to sell the collateral to or through a dealer--a method which in the long run may realize better average returns since the secured party does not usually maintain his own facilities for making such sales. ... However, none of the specific methods of disposition set forth in subsection (2) is to be regarded as either required or exclusive ... (emphasis added).

MINN. STAT. Section 336.9-504 allows a secured creditor significant leeway in disposing of repossessed collateral as long as every aspect of the disposition was commercially reasonable. *Elk River Ford v. Hoecherl*, 428 N.W.2d 857, 858 (Minn. Ct. App. 1988). MINN. STAT. Section 336.9-504, Subd. 1, allows for the sale of the collateral in "its then condition or following any commercially reasonable preparation." Thus, a creditor may, but is not required to, repair, improve, enhance, or spruce-up the collateral before it is sold. *C.I.T. Corp. v. Duncan Grading and Constr.*, 739 F.2d 359, 361 (8th Cir. 1984).

The fact that a better price could have been obtained by a sale at a different time or under different circumstances is not of itself sufficient to establish that the sale was commercially unreasonable. *Karlstad State Bank v. Fritsche*, 374 N.W. 2d 177, 181 (Minn. Ct. of App. 1985); *C.I.T.*, at 361.

Here, Citicorp, after assessing the fire damaged mobile home as well as the other necessary repairs, determined that the best method to resell its collateral was by wholesale through the bidding process. It advertised the mobile home through the *Minneapolis Star Tribune* three consecutive Sundays; it solicited the trailer park's management for help in the sale; it notified the Debtor; and it sent out 50 bid packs to dealers, brokers, and individuals. In response to these marketing efforts, Citicorp received four bids. It accepted the highest bid and determined this was a reasonable bid based on its valuations. The fact that a better price may have been received after repair of the collateral does not make the sale commercially unreasonable as Citicorp is under no obligation to repair the damaged collateral. Citicorp determined that the method it chose to sell the mobile home was the least expensive manner available under the circumstances. It did not wish to incur costs of repair or carrying costs.(FN7)

As Mr. Beckler of MHM testified, Citicorp could not sell a damaged mobile home on the retail market without repairing it. Absent restoration, Citicorp had no other alternative but to sell the mobile home wholesale. The fact that MHM did not make all of the improvements which Citicorp determined were necessary for retail sale, and received more money for the mobile home on the retail market at a different time and under different conditions, does not make the previous sale commercially unreasonable.

Accordingly, it does not appear that Citicorp sold the mobile home in a commercially unreasonable manner. The Debtor has not produced evidence sufficient to rebut the prima facie validity and amount of Citicorp's claim.

NOW, THEREFORE, IT IS ORDERED: The claim objection by the Debtor is overruled. Citicorp's claim, Claim No. 13, in the amount of \$11,377.49 is allowed in its entirety as an unsecured claim.

Dated this ____ day of May, 1993.

(FN7)Had Citicorp sold by retail rather than wholesale, it would have incurred costs of repair in the approximate amount of \$2,900 together with possible total monthly carrying costs of \$5,646 for up to six months. This \$8,546 amount does not include costs of sale. Therefore, if Citicorp would have obtained \$14,300 at retail, the amount of its deficiency claim would be approximately \$11,218, excluding costs of resale. Although MHM sold the unit much sooner, no evidence was offered that it was willing to accept the damaged home for repair and sale at retail on consignment, or that Citicorp could have obtained a quick sale on its own.

Dennis D. O'Brien
United States Bankruptcy Judge

(FN1)The fire was below the rear bathroom. There was water damage well as six to seven slats of the back siding. Plumbing and electrical lines in the same area were also damaged. Additionally, there was smoke damage. Apart from the fire damage, there were other interior problems which required restoration. There were water stains on the ceilings, a door needed to be replaced as well as other general repairs.

(FN2)Mr. Cox is currently employed at the Miles Company as vice-president of operations. However, he was employed with Citicorp from 1981 to 1992. In his capacity as northeastern regional sales manager for Citicorp, his responsibilities included liquidation of repossessed inventory, which included mobile homes, either by retail or wholesale disposal. Procedures he ordinarily employed were: review of each account; review of inspection reports; determination of market strategy for each mobile home; and, he oversaw the entire process from repossession through to sale. He resold approximately 900 mobile homes a year.

(FN3)There was some confusion as to whether valuations were based on a 1982 or 1983 mobile home. The date plate on the mobile home indicated 1982. However, Mr. Cox testified that the valuations would increase by \$500 on a 1983 mobile home.

(FN4)Reed Beckler of MobilHome Minnesota testified that the time required to sell repossessed mobile homes is usually at least six months. Carrying costs attributable to this period include interest accrual, park rent, maintenance on the mobile home and insurance.

(FN5)After receiving the bid, Mr. Cox concluded that it represented 101 percent of the NADA wholesale value without damage. With the damage, the bid represented 144 percent of the wholesale value and 86 percent of the retail value.

(FN6)Before selling the mobile home, MHM did not make all of the repairs which Citicorp had listed on its repair estimate. It did not replace the refrigerator, refurbish the mobile home or replace the drapes. This would have lowered Citicorp's repair estimate by approximately \$1,350.

(FN7)Had Citicorp sold by retail rather than wholesale, it would have incurred costs of repair in the approximate amount of \$2,900 together with possible total monthly carrying costs of \$5,646 for up to six months. This \$8,546 amount does not include costs of sale. Therefore, if Citicorp would have obtained \$14,300 at retail, the amount of its deficiency claim would be approximately \$11,218, excluding costs of resale. Although MHM sold the unit much sooner, no evidence was offered that it was willing to accept the damaged home for repair and sale at retail on consignment, or that Citicorp could have obtained a quick sale on its own.

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