



**SO ORDERED,**

A handwritten signature in blue ink that reads "Katharine M. Samson".

**Judge Katharine Samson  
United States Bankruptcy Judge  
Date Signed: January 22, 2014**

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE: DARRELL L. BUNNEY AND  
DIANE D. BUNNEY**

**CASE NO. 13-50780**

**DEBTORS**

**CHAPTER 13**

**MEMORANDUM OPINION**

This matter came before the Court for hearing on September 26, 2013 (the “September Hearing”) on the Motion for Relief From Stay and to Compel Abandonment (“Motion for Relief”), (Dkt. No. 31), filed by creditor Farm Service Agency, United States Department of Agriculture (“Farm Service”), and the response, (Dkt. No. 50), and Amended Response, (Dkt. No. 51), filed by debtors Darrell L. Bunney and Diane D. Bunney (the “Bunneys”). The September hearing was reconvened on November 21, 2013 (the “November Hearing”). At both hearings, Al Shiyou appeared on behalf of the Bunneys and Crockett Lindsey appeared on behalf of Farm Service. At the September Hearing, Farm Service presented expert testimony regarding the value of the farm equipment they claim secures part of the debt the Bunneys owe it. At the November Hearing, both parties presented expert testimony regarding the value of the land securing the rest of the debt owed to Farm Service. This Memorandum Opinion only establishes the value of the equipment and land: final ruling on Farm Service’s Motion for Relief

is held in abeyance pending the filing of an amended plan based on the Court's valuation of the collateral. After considering the expert testimony presented; the appraisals in evidence; and counsels' arguments at both hearings, the Court accepts Farm Service's valuation of the equipment actually present during the appraisal and the Bunneys' valuation of the real property. Accordingly, the Court finds that the value of the equipment is \$19,175.00, and the value of the real property is \$26,580.00 and states the following.

### **I. JURISDICTION**

The Court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A), (G), & (O).

### **II. FINDINGS OF FACT**

On April 10, 2007, the Bunneys obtained a loan from Farm Service in the amount of \$85,000.00. (Dkt. No. 31, Exh. A). They signed a promissory note in connection with the loan. (*Id.*). Additionally, to secure the loan, the Bunneys signed a Real Estate Deed of Trust, which conveyed a priority mortgage lien on real property located in Covington County, Mississippi, (*Id.* at Exh. B), and a Security Agreement that granted Farm Service a lien on their farm equipment. (*Id.* at Exh. C). Farm Service perfected its lien on the Bunneys' equipment by filing a UCC-1 Financing Statement (the "Financing Statement") on March 30, 2007, and a continuation on March 22, 2012. (*Id.* at Exh. D).

On January 5, 2011, the Bunneys filed for relief under Chapter 7 of the bankruptcy code. (No. 11-50015-KMS, Dkt. No. 1). They received a discharge on May 4, 2011. (*Id.* at Dkt. No. 20). On June 30, 2011, the Bunneys moved to reopen their case. (*Id.* at Dkt. No. 23). The Court granted the motion on August 16, 2011. (*Id.* at Dkt. No. 27). On December 16, 2011, the

Bunneys moved to convert their case from Chapter 7 to Chapter 11. (*Id.* at Dkt. No. 29). The Court initially granted the motion to convert, (*Id.* at Dkt. No. 30), but later withdrew its order, (*Id.* at Dkt. No. 65), in light of the United States Trustee's Motion to Reconsider. (*Id.* at Dkt. No. 49). The Chapter 7 case was closed on June 7, 2012. (*Id.* at Dkt. No. 69). On March 18, 2013, Farm Service sent the Bunneys an acceleration notice, informing them of its intent to foreclose on and liquidate the collateral securing the loan. (Dkt. No. 31, at 4 ¶13). The Bunneys filed for relief under Chapter 13 on April 19, 2013. (Dkt. No. 1). Farm Service filed a claim in the amount of \$88,171.40, \$73,300.00 of which they claim is secured. (Claim 5-1). In their schedules, the Bunneys list USDA (Farm Service) as having a claim in the amount of \$73,300.00 with an unsecured portion in the amount of \$49,300.00. (Dkt. No. 4 at 12). Farm Service filed its Motion for Relief on June 13, 2013. (*Id.* at 1).

Farm Service argues that it has a perfected security interest in all of the Bunneys' farm equipment, including equipment acquired after the Security Agreement was executed. (Dkt. No. 31 at 2 ¶3). It values that equipment at \$19,800.00. (*Id.* at 4 ¶12; Sept. 26, 2013 Tr. at 31). The Bunneys argue that Farm Service only has a security interest in the farm equipment set out in the Financing Statement—not any after-acquired or substituted equipment. (Sept. 28, 2013 Tr. at 15). Farm Service also argues that it has a security interest in two separate tracts of real property located in Covington, Mississippi and values that property at \$34,500.00 for the first eight-acre tract and \$19,000.00 for the second 4.42-acre tract for a total of \$53,500.00. The Bunneys do not dispute Farm Service's interest in the real property but they disagree with its valuation. The Bunneys value the eight-acre tract at \$20,000.00 and the 4.42-acre tract at \$6,580.00 for a total of \$26,580.

### **III. CONCLUSIONS OF LAW**

The Bunneys seek to invoke the “cram down” provision contained in § 1325(a)(5)(B) to retain the land and equipment over Farm Service’s objection.<sup>1</sup> Their Chapter 7 discharge relieved them from any personal obligation on the Farm Service loan, but Farm Service’s right to foreclose survived the Chapter 7 bankruptcy and is considered a claim against the estate. 11 U.S.C. § 522(c)(2); *Johnson v. Home State Bank*, 501 U.S. 78, 82–83 (1991). This claim is subject to inclusion in the Bunneys’ Chapter 13 plan, which allows them to modify Farm Service’s rights as a secured creditor. *Id.* at 82; 11 U.S.C. § 1322(b)(2). Thus, the Bunneys may “cram down” the original \$85,000.00 loan from Farm Service to the present-day value of the collateral securing it and pay that value over the life of their plan. Valuation of collateral pursuant to § 1325(a)(5) is governed by § 506(a), which provides that “value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property . . . .” 11 U.S.C. § 506(a)(1). When a debtor proposes to retain the collateral, courts value it in light of that proposal and generally ascribe to it its fair market value for the purposes of § 1325(a)(5). *In re Rash*, 62 F.3d 685, 686 (5th Cir. 1995) (citing *In re Arnette*, 156 B.R. 366, 368 (Bankr. D. Conn. 1993)). With respect to the equipment, the Bunneys object to the scope of Farm Service’s lien, not the value it places on the equipment. With respect to the real property, the Bunneys object to the valuation Farm Services places on it, not the scope of its lien. The Court addresses its valuation of each category of collateral in turn.

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<sup>1</sup> Section 1325(a)(5) provides that a plan shall be confirmed if, with respect to secured creditors:

(B)(i) the plan provides that (I) the holder of such claim retain a lien securing such claim . . . (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the amount of such claim; and (iii) if (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts . . .

11 U.S.C. § 1325(a)(5).

## A. Valuation of the Equipment

A written security agreement is required to create an effective security interest under the UCC. *First Bank v. Eastern Livestock Company*, 837 F. Supp. 792, 797 (S.D. Miss. 1993) (citing *Federal Land Bank of St. Paul v. Bay Park Place, Inc.*, 412 N.W. 2d 222, 224 (Mich. 1987)). To perfect its security interest, the creditor files a financing statement. *Id.* Under the Uniform Commercial Code, “a financing statement is sufficient only if it: (1) Provides the name of the debtor; (2) Provides the name of the secured party [or its representative]; and (3) Indicates the collateral covered by the financing statement.” Miss. Code. Ann. § 75-9-502 (2012). But “[a] financing statement does not create a security interest and cannot extend a security interest beyond what is described in the security agreement.” *First Bank*, 837 F. Supp. at 797. Thus, the financing statement “cannot add collateral not described in the security agreement. *Id.* (quoting *In re Mann*, 318 F. Supp. 32, 36 (W.D. Va. 1970)). With regard to the sufficiency of the description necessary to perfect the security interest, the majority of courts have held that the financing statement “need not specifically identify the property which is the subject of a security interest; rather, it is sufficient if the description would put a reasonably prudent prospective lender or buyer on notice that the collateral . . . might be the subject of a preexisting security interest.” *Id.* at 799–800 (collecting cases); *Bryan Brothers Cattle Company v. Glenbrook Cattle Company, LLC*, No. 2:4CV139SAA, 2005 WL 2250832, at \*6 (N.D. Miss. Sept. 5, 2005). Inquiry notice is sufficient: “a description that is unclear or susceptible to more than one distinct meaning [is] sufficient [if it] would put other creditors on notice of the need for further inquiry.” *Id.* at 801 (citing *In re Tri-State Equipment, Inc.*, 792 F. 2d 967 (10th Cir. 1986)).

## 1. Validity of Farm Service's Lien on the After-Acquired Equipment

At the September Hearing, Farm Service presented expert testimony regarding the value of the equipment they are claiming a security interest in. Steven Wade (“Wade”) performed an appraisal of the Bunneys’ farm equipment and was permitted to testify as an expert over the Bunneys’ objections. (Sept. 26, 2013 Tr. at 28). His appraisal, which includes sixteen pieces of equipment, was also admitted into evidence.<sup>2</sup> The Financing Statement lists “All Equipment” as collateral and also enumerates ten specific pieces of equipment.<sup>3</sup> The Security Agreement between the Bunneys and Farm Service specifies that Farm Service’s loan is secured by “[a]ll farm and other equipment . . . and inventory, now owned or hereafter acquired by Debtor, together with all replacements, substitutions, additions, and accessions thereto, including but not limited to . . . [the same ten pieces of equipment specifically listed in the Financing Statement].” (Dkt. No. 59 at Exh. C). In their objection to Farm Service’s secured claim, the Bunneys claim that the liens asserted on the six pieces of equipment not listed in the Financing Statement are void due to “prior bankruptcy discharges of the Debtors, the time of the filing and[] assertion of the liens, [and] the incompleteness of the liens asserted . . . .” (Dkt. No. 65).

As discussed above, the Bunneys’ Chapter 7 discharge relieved them from any personal liability on the Farm Service loan, but Farm Service’s lien on the collateral survived the discharge. *Johnson v. Home State Bank*, 501 U.S. 78, 82–83 (1991). Further, the Financing Statement does not attempt to expand the collateral covered in the Security Agreement because the Security Agreement provides that “[a]ll farm and other equipment . . . now owned or

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<sup>2</sup> (Dkt. No. 59 at Exh. F). The equipment listed in the appraisal includes: one backhoe; one disc; one post hole digger; one rotary cutter; one box blade; two generators; one pump; one 4x4 utility vehicle; one harrow; one pallet fork; one middle buster; one roto tiller; one ridger; one tractor; and one front end loader. (Dkt. No. 59, Exh. F).

<sup>3</sup> (*Id.* at Exh. D). The equipment listed in the financing statement includes: one backhoe; one disc; one post hole digger; one rotary cutter; one box blade; two generators; one pump; one 4x4 utility vehicle; and one harrow. (*Id.*).

hereafter acquired by Debtor,” serves as collateral securing the loan. (Dkt. No. 59 at Exh. C). And the phrase “All Equipment” in the Financing Statement is sufficient to put any other creditors on notice that the farm equipment is subject to a possible security interest.<sup>4</sup> Finally, “[a] financing statement may be filed before a security agreement is made or a security agreement otherwise attaches.” Miss. Code. Ann. § 75-9-502(d). Thus, it is not problematic that the Financing Statement was filed on March 30, 2007, while the Security Agreement was executed on April 10, 2007.

Accordingly, Farm Service has a valid, perfected lien on all of the Bunneys’ equipment; including the additional six pieces acquired after the filing of the Financing Statement and execution of the Security Agreement. The Court now turns to Wade’s appraisal.

## **2. Wade’s Appraisal**

Wade valued all sixteen pieces of equipment at \$19,800. And he testified at the September Hearing that all of the appraised equipment was on the Bunneys’ property at the time of his appraisal with the exception of one of the generators and one section harrow, valued at \$375.00 and \$250.00 respectively. (Sept. 26, 2013 Tr. at 33–34; Dkt. No. 59 at Exh. F). When asked about the location of the missing collateral, Wade testified that the generator “was owned by someone else or was somewhere else, I can’t remember exactly,” and the section harrow was “sold sometime in the past.” (*Id.* at 34). The Bunneys did not testify at the hearing, and it is unclear whether the equipment was broken or sold. And if the equipment was sold, it is unclear whether the proceeds were used to purchase any of the six after-acquired pieces of equipment

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<sup>4</sup> The Court notes that the location of the collateral is not specified in either the Security Agreement or the Financing Statement. But there is no requirement that a description of the location of the equipment is required; the description need only “put a reasonably prudent prospective lender or buyer on notice” that the collateral may be subject to a security interest. *First Bank*, 837 F. Supp. 799–800. In fact, the financing statement at issue in *First Bank* specified the whereabouts of the collateral, which was no longer located at the address listed. *Id.* at 798. The Court found that the additional language describing the location of the collateral rendered the statement ambiguous as to whether it covered all cattle owned and after-acquired by the debtor or only the cattle located at the specified address. *Id.*

securing Farm Service's loan. It is clear, however, that the equipment was not present when Wade conducted his appraisal. Without the benefit of an actual visual inspection of the generator and section harrow to determine each piece's appearance and working condition, the Court finds it unlikely that Wade was able to conduct an accurate appraisal of the equipment. Therefore, the Court rejects Wade's appraisal with respect to the values placed on the missing generator and section harrow and accepts the rest of the appraisal.

Accordingly, the Court finds that the value of the equipment is \$19,175.00 and turns now to its valuation of the real property securing the loan.

### **B. Valuation of the Real Property**

Property valuation "outside the actual marketplace is inherently inexact" and courts must often assign weight to conflicting appraisal testimony in accordance with the credibility and qualifications of the parties' expert witnesses. *In re Grind Coffee & Nosh, LLC*, No. 11-50011-KMS, 2011 WL 1301357, at\*6 (S.D. Miss. Apr. 4, 2011) (quoting *Rushton v. Commissioner*, 498 F.2d 88, 95) (5th Cir. 1974)). But a "bankruptcy court is not bound by valuation opinions or reports submitted by appraisers" and may: (1) "form its own opinion as to the value of property in bankruptcy proceedings"; (2) "accept an appraisal in its entirety"; or (3) "choose to give weight only to those portions of an appraisal that assist the Court in its determination." *Id.* (internal citations omitted).

At the November Hearing, both Farm Service and the Bunneys presented expert testimony regarding the value of the real property securing the loan. Each party hired its own appraiser to value the two parcels of land and both appraisals were admitted into evidence at the November Hearing. (Dkt. No. 69, Exhs. K-N). Farm Service hired Bill J. Morris ("Morris") and the Bunneys hired Tommy R. Thornton ("Thornton"). (*Id.*). Both appraisers were qualified as



experts at the November Hearing. (Nov. 11, 2013 Tr. 36). Though the Court finds both experts were credible witnesses and that both appraisals were conducted properly under the uniform standards of the profession, it accepts Thornton's valuation of the property.

Both Morris and Thornton performed market value appraisals on the tracts of land. (*Id.* at 44, 72). Morris appraised the parcels twice: first in 2010 and most recently in November 2012. (*Id.* at 36, 37). Thornton appraised the parcels on October 20, 2013. (Dkt. No. 69, Exhs. M, N). All of Thornton's comparable sales took place within eight months of his appraisal, while one of Morris's comparable sales took place more than a year prior to his appraisal. (*Id.* at Exhs. K–N). Further, because Morris most recently appraised the parcels in November of 2012, all of his comparable sales took place more than one year prior to the hearing. And Morris used comparable sales in the Seminary school district, where—according to Thornton—property has a higher value than the property in the Collins school district, which is where the parcels are located. (November 11, 2013 Tr. at 78–79). Thornton used comparable sales in the Collins school district. (*Id.* at 77–79; Dkt. No. 69 at Exhs M, N). Finally, Thornton adjusted for the lack of paved, public road frontage on the 4.42 acre tract, while Morris did not.<sup>5</sup> Given the timing of Thornton's appraisal and his use of recent comparables in the appropriate school district, the Court accepts Thornton's appraisal and finds the value of the real property is \$20,000.00 for the eight-acre tract and \$6,580.00 for the 4.42-acre tract for a total of \$26,580.00.

#### **IV. CONCLUSION**

For the reasons set forth above, the Court finds that the value of the collateral securing Farm Service's loan is as follows: \$19,175.00 for the equipment and \$26,580.00 for the real

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<sup>5</sup> (November 11, 2013 Tr. at 77; Dkt. No. 69, Exhs. K, M). Thornton reduced the estimated market value of the 4.42-acre tract by \$1,000.00 per acre because the comparables he used all had access provided by a public road. (*Id.* at Exh. M). Morris did not make any such adjustment for lack of legal access and listed the street type for the 4.42-acre tract as "Dead-end Co. Asphalt" in his report. (*Id.* at Exh. K).

property for a total of \$45,755.00. Final ruling on Farm Service's Motion for Relief is held in abeyance pending the filing of an amended Chapter 13 plan based on this valuation of the collateral.

**## END OF OPINION ##**