

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
CANAL ROAD HOMES, LLC,) Bankruptcy No. 15-00712
)
Debtor.)

SCHEDULING ORDER

The debtor's proposed plan which is set for a confirmation hearing on May 16, 2016 provides for an auction of the debtor's real property pursuant to Bankruptcy Code §§ 363(b), 363(f), and 1123(b)(4). Code § 363(k), allowing for credit bids, applies to sales under § 363(b). At the hearing on the debtor's disclosure statement, the parties and the Court discussed whether there was a need for a valuation hearing and whether secured creditor Orange Tide, LLC would be able to include in any credit bid the full amount of its debt.

The Court's preliminary research indicates that the majority of courts hold that a secured creditor may credit bid up to the full amount of its debt even though the collateral securing its claim may be valued under Bankruptcy Code § 506(a) at less than the face amount of the debt. See, e.g., Cohen v. KB Mezz Fund II (In re Submicron Sys. Corp.), 432 F.3d 448, 459-60 (3d Cir. 2008) ("It is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k). In fact, logic demands that § 363(k) be interpreted in this way; interpreting it to cap credit bids at the economic value of the underlying collateral is theoretically nonsensical.") (internal citations omitted); 3 COLLIER ON BANKRUPTCY ¶ 363.09 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) ("The creditor may bid-in an amount up to its entire claim; the offset is not limited to any previously determined secured claim. Thus, the right is unaffected by any prior valuation under Section 506(a) or lack of a valuation that may have divided an allowed claim into an allowed secured

claim and an allowed unsecured claim due to a perceived lack of collateral value.”). The amount that the secured creditor may credit bid pursuant to § 363(k) includes accrued and unpaid postpetition interest, fees, and expenses. See, e.g., In re KLCG Prop., LLC, 2010 WL 2745977 at *6 (Bankr. D. Del. Mar. 25, 2010); In re Radnor Holdings Corp., 353 B.R. 820, 846 (Bankr. D. Del. 2006).

The Court thus preliminarily concludes (1) that there is no need for a valuation determination before confirmation and (2) that Orange Tide, LLC is entitled to credit bid up to the full amount of its debt, including postpetition interest, fees and expenses. That amount, if in dispute, will be determined at the confirmation hearing set for May 16, 2016. Any party which contends that Orange Tide, LLC is not entitled to credit bid the full amount of its debt shall file a brief with supporting authorities by May 6, 2016. Any responses shall be filed by May 12, 2016.

If an evidentiary hearing on the amount of the debt owed to Orange Tide, LLC or any other factual issue will be required at the plan confirmation hearing, then the following shall apply:

1. Witness and exhibit lists shall be filed by May 12, 2016. Witnesses and exhibits not listed may not be used at the hearing except for impeachment.
2. Parties shall bring to trial sufficient copies of their exhibits to exchange with all parties and to give to the Court 3 sets (original, judge and law clerk). All exhibits should be pre-marked prior to the day of the hearing. If there are more than a few exhibits, please use exhibit notebooks.

Dated: April 22, 2016


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE