

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:)
)
LENARD J. DYKES)
d/b/a L. J. Dykes Construction)
)
 Debtor)
)
)
)
FIRST CITIZENS BANK)
)
 Movant)
)
v.)
)
LENARD J. DYKES)
)
 Respondent)

Chapter 11 Case

Number 97-43042

FILED
at 1 O'clock & 58 min P.M
Date 6/6/00

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia *JB*

INTERIM ORDER ON MOTION FOR RELIEF FROM STAY

First Citizens Bank filed a Motion for Relief from Stay on January 26, 2000. The matter was continued and assigned for a hearing on May 25. After consideration of the evidence and the argument of counsel, I concluded that the Motion should be denied.

Movant's burden at the outset is to prove lack of equity under 11 U.S.C. § 362(d) in order to obtain relief from stay. It was stipulated that principal, accrued

interest, and attorney's fees owing to the Bank as of the date of the hearing totaled \$301,861.44 and that interest continues to accrue at a rate of \$2,103.35 per month. The property which is the subject of the Motion consists of 20 lots in Midway, Liberty County, Georgia, located in the Edgewater Subdivision currently under development and a five acre tract of commercial property fronting on a four lane highway running between Midway and Hinesville.

Testimony concerning the 20 subdivision lots suggested values ranging from a low of \$11,500.00 each to a high of \$25,000.00 each. Some of the lots front on a man-made lake, some front a wooded area bisected by a canal that feeds the lake and two of the lots are classified as interior lots. The lots are currently served by city water, but no city sewer has yet been run to the individual lots, although that is part of the development plan. Liberty County governmental units are providing much of the cost for bringing that infrastructure to the individual lots being developed by the Debtor. Nevertheless, because sewer is not currently available to the lots, because the access road and the interior subdivision street are not yet paved, and because of a somewhat uncertain real estate market at present in Liberty County, I concluded that the 20 lots were worth, on average, at least \$13,500.00 each, at present.

The commercial property was valued by the Movant's representative at \$30,000.00; by an expert employed by The Heritage Bank which holds the second mortgage on the property at \$100,000.00; and by the Debtor at \$250,000.00. None of

these figures were based on sufficiently specific comparable sales for the Court to feel comfortable in establishing a final value. Nevertheless, I concluded that, based on the evidence that was available at the hearing, the value of the five acres of commercial property was at least \$50,000.00.

Since the total value of \$320,000.00 exceeds the Bank's total principal, interest, and attorney's fees, I concluded, on an interim basis, that the Motion should be denied and **IT IS THEREFORE DENIED** on an interim basis. Before the Court can establish any final valuation for this real estate it will be necessary to have additional expert testimony concerning (1) the value of the commercial property based on actual recent comparable sales; (2) testimony concerning the amount and availability of additional capital which will be necessary to complete sewer connections and paving of the interior subdivision street; (3) competent evidence of the precise timetable for the paving of the access road known as Edgewater Drive; and (4) a reliable estimate of the time that will be required to sell-out 20 individual lots based on their earliest availability to actually sustain building activity, coupled with a pricing and marketing plan realistically designed to generate immediate and sustainable sales activity.

The Debtor, through counsel, stated his intention to file a disclosure statement and plan in this case within 30 days. In light of this anticipated timetable, the Court will continue this Motion for consideration at the same date and time as any hearing on disclosure statement or at such earlier time as may be assigned by the Court in the event

Debtor fails to comply with his self-imposed target of 30 days for the filing of such a disclosure statement and plan.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 5th day of June, 2000.