

DOCKET NO.: NNH-CV-17-6072389-S : SUPERIOR COURT
 ELIYAHU MIRLIS : J. D. OF NEW HAVEN
 v. : AT NEW HAVEN
 YESHIVA OF NEW HAVEN, INC.
 FKA THE GAN, INC. FKA THE GAN :
 SCHOOL, TIKVAH HIGH SCHOOL AND
 YESHIVA OF NEW HAVEN, INC. : FEBRUARY 24, 2020

CHIEF CLERK'S OFFICE
 FEB 24 2020
 Judicial District of New Haven
 SUPERIOR COURT
 FILED

**MEMORANDUM OF DECISION:
 HEARING ON VALUATION**

I. BACKGROUND AND PROCEDURAL HISTORY

This matter came before the court on a hearing for valuation of the property at issue in this foreclosure action. The issue before the court is the determination of the fair market value of the property at issue and that is the subject of this judgment lien foreclosure action, Yeshiva of New Haven, 765 Elm Street, New Haven, CT.

The Hearing was held before the Court on October 28, 2019, and December 9, 2019. Both parties were present and had and the opportunity to present their case. Each party called one witness, their respective appraisers, and submitted one exhibit each, the reports of their respective appraisers. The parties simultaneously submitted post trial briefs on January 27, 2020 (Defendant's post trial brief #131, Plaintiff's post trial brief #132). The record was closed upon the filing of these post-trial briefs.

The following facts are not in dispute. This judgment lien foreclosure action arises from a judgment that entered in the action captioned *Eliyahu Mirlis v. Daniel Greer et al., No. 3:16-cv-00678 (MPS)*. This action was directed against the defendants Daniel Greer and Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School,

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Tikvah High School and Yeshiva of New Haven, Inc. ("Defendant"). That underlying action involved claims of sexual abuse of a minor by the defendant, Daniel Greer, an attorney and rabbi and the president and member of the board of the defendant entity Yeshiva of New Haven. On June 6, 2017, the United States District Court for the District of Connecticut entered a judgment in the underlying action in favor of Plaintiff against defendant and Greer in the amount of \$21,749,041.10. The Judgment remains substantially unsatisfied, plaintiff having been able to collect \$277,124.51 on account of the Judgment from Defendant and Greer.

In this action, Plaintiff seeks to foreclose the judgment lien encumbering the subject property in order to collect some of the funds owed to him by Defendant.

On November 8, 2017, Plaintiff filed his Motion for Summary Judgment as to liability and supporting memorandum (Doc. Nos. 104, 105). The defendant did not object. The motion was granted by court order of January 16, 2018 (Doc. No. 104.10).

The defendant filed a the Motion for Discharge of Judgment Lien on Substitution of Bond (Doc. No. 106) on January 16, 2018, seeking to have the Court substitute a cash bond for the Property in the amount of the fair market value of the Property. Thereafter, on June 5, 2019, Plaintiff filed his Motion for Judgment of Strict Foreclosure (Doc. No. 113) and the Appraisal Report of Valbridge Property Advisors conducted by Craffey (Doc. No. 114; Plaintiff's Exh. 1).

In response, Defendant filed an objection to motion for judgment of strict foreclosure, motion to discharge judgment lien and substitute bond, and motion to continue hearing on motion for judgment of strict foreclosure (Doc. No. 115). The plaintiff requested an evidentiary hearing to address the valuation dispute. Thereafter,

in accordance with the July 22, 2019 court order of simultaneous disclosure of experts (#120.10), on August 2, 2019, the parties' each disclosed their experts. (Defendant's #123, Plaintiff's #124). After motions for continuance, which were granted, and as noted above, this valuation hearing proceeded before the Court on October 28, 2019, and December 9, 2019, with post trial briefs thereafter filed on January 27, 2020.

II. DISCUSSION

In reaching its conclusions, the court has carefully and fully considered and weighed all of the evidence received at the hearing; evaluated the credibility of the witnesses; assessed the weight, if any, to be given specific evidence and measured the probative force of conflicting evidence; reviewed all exhibits, relevant statutes, and case law; and has drawn such inferences from the evidence, or facts established by the evidence, that it deems reasonable and logical. Upon said full consideration, the court makes the following findings and reaches the following conclusions.

A. VALUATION

The evidence presented consisted only of the reports and testimony of the parties' respective appraisers. Each of the appraisal reports were admitted by agreement. (Plaintiff's Exhibit 1 and Defendant's Exhibit A.). The conclusion of the appraisers were significantly divergent from each other.

The plaintiff's appraiser, Patrick Craffey of Valbridge Property Advisors, testified consistently with his report and concluded that the fair market value of the subject property, Yeshiva of New Haven, was \$960,000. (See Plaintiff's Exhibit 1). The defendant's appraiser, Patrick Wellspeak of Wellspeak, Dugas and Kane, LLC, testified

consistently with his report and concluded that the fair market value was \$390,000. (See Defendant's Exhibit A.)

While the conclusions of fair market value were significantly at odds with each other, there was much upon which the opposing appraisers agreed.

The property at issue, located at 765 Elm Street, is over 100 years old and was used for many years as a "yeshiva" or school of Jewish learning. Both appraisers agreed that the building was in relatively poor condition with substantial deficits in the physical facility including HVAC, plumbing, restroom and other concerns throughout the facility. Both appraisers also agreed that there was a substantial inventory of vacant school buildings on the market due to consolidation and closure of a number of schools. Although each attorney takes issue with the manner of the appraisal by the other's appraiser, both appraisers utilized the sales comparison method to determine fair market value of the subject property. Both agreed that one of the potential comparable sales, the former, St. Peter's School, was not an appropriate comparable because of the specific nature of that sale.

Also, both appraisers agreed, at least generally, that the highest and best use of the property was as a school. The plaintiff's appraiser, Mr. Craffey, testified that adaptive use to a multi family residence was not the highest and best use because of various problems with the facility that would reduce the feasibility of the property for that use. The defendant's appraiser, Mr. Wellspeak, agreed that the highest and best use was as a school, but also testified with the caveat that the market may have an impact on ultimately which would yield the higher sale price.

As noted, Mr. Craffey and Mr. Wellspeak, while employing the same comparative sales method for valuation, each took different approaches in doing so. Most significantly at issue between the parties were two factors. First, the parties each took issue with the properties chosen by the other appraiser in determining the comparative sales. Additionally, the question of environmental problems with the property, related to potential lead and asbestos contamination, was raised. Mr. Craffey did not take into account any environmental impact on the fair market value. Mr. Wellspeak did.

Mr. Craffey testified that he did not take into account any environmental contamination concerns, and he did not review any environmental assessment. He includes in his report and testimony based thereon that his appraisal is "predicated on the extraordinary assumption that hazardous substances do not exist at the subject premises." See Plaintiff's Exhibit 1, p 2. Although he testified that the issues would not "necessarily" effect the market value, Mr. Craffey acknowledged in his testimony that contamination could certainly effect the sale price for the property. The distinction between the two is unclear from the testimony and evidence as it relates to the witness's opinion as to fair market value.

Mr. Wellspeak, as demonstrated through his testimony and report, considered environmental contamination on the property. As part of the appraisal process, the defendant retained licensed environmental professionals (LEP), who were disclosed as an expert as well and who prepared a Phase I environmental assessment and performed testing relating to lead paint and asbestos.

The plaintiff takes issue with Mr. Wellspeak's reliance on the findings of the LEP.

As plaintiff's counsel correctly acknowledges in his post-trial brief, however:

The acceptance or rejection of the opinions of expert witnesses is a matter particularly within the province of the trier of fact and its determination will be accorded great deference by [the Connecticut Supreme] Court.... The credibility and weight of expert testimony is judged by the same standard [as that used to evaluate lay witness testimony], and the trial court is privileged to adopt whatever testimony [it reasonably believes to be credible...

Lapointe v. Comm'r of Corr., 316 Conn 225, 383 (2015).

Taking into account the environmental concerns, the defense appraiser, Mr. Wellspeak, applied a discount to the fair market value found prior to the application of consideration of the impact of environmental concerns. Accordingly, prior to the application of the calculated discount, Mr. Wellspeak found the gross fair market value to be \$500,000. After applying a deduction of \$110,000, the rationale for which he provided through his testimony, he provided an opinion that the fair market value is \$390,000.

The ultimate opinions regarding valuation were at considerable variance. Both parties take issue with the comparable sales considered by the other, and each takes issue with the other's treatment of environmental concerns. Both appraisals and appraisers' testimony are taken into account and relevant in determining the fair market value of the property. In considering the same, the findings for which the witnesses are in agreement as well as those where they diverge are relevant.

"The determination of [a property's] value by a court is the expression of the court's opinion aided ordinarily by the opinions of expert witnesses, and reached by weighing those opinions in light of all the circumstances in evidence bearing upon value and its own general knowledge of the elements going to establish it. *Appeal of Cohen*,

117 Conn. 75, 85, 166 Atl. 747 [1933]. *Lomas & Nettleton Co. v. Waterbury*, 122 Conn. 228, 233, 188 A. 433 (1936). *Hartford Federal Savings & Loan Assn. v. Tucker*, 196 Conn. 172, 183, 491 A.2d 1084, cert. denied, 474 U.S. 920, 106 S.Ct. 250, 88 L.Ed.2d 258 (1985). [T]he determination of the credibility of expert witnesses and the weight to be accorded their testimony is within the province of the trier of facts, who is *privileged* to adopt whatever testimony [s]he reasonably believes to be *credible*.... *Id.* When confronted with conflicting evidence as to valuation the trier may properly conclude that under all the circumstances a compromise figure most accurately reflects fair market value. *New Haven Savings Bank v. West Haven Sound Development*, [190 Conn. 60, 70, 459 A.2d 999 (1983)]; *Bennett v. New Haven Redevelopment Agency*, 148 Conn. 513, 515–16, 172 A.2d 612 (1961); see also *Whitney Center, Inc. v. Hamden*, [4 Conn.App. 426, 429, 494 A.2d 624 (1985)].(Emphasis in original; internal quotation marks omitted.) *Eichman v. J & J Building Co.*, 216 Conn. 443, 451–52, 582 A.2d 182 (1990).” (internal quotation marks omitted) *Bank of Southeastern Connecticut v Nazarko Realty Company*, 49 Conn.App. 452, 457, 714 A.2d 722 (1998).

In considering all of the evidence presented, the court concludes that the fair market value of the property is \$620000.

**B. DEFENDANT’S REQUEST TO SUBSTITUTE BOND
FOR THE FAIR MARKET VALUE OF THE PROERTY
IN LIEU OF A JUDGMENT LIEN**

The defendant seeks to substitute a cash bond as security for the judgment in lieu of a judgment lien on its property. The defendant relies on Connecticut General Statutes §52-380e, which provides:

When a lien is placed on any real or personal property pursuant to section 52-355a or 52-380a, the judgment debtor may apply to the

court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount secured by the lien. The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution. The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52-380d by first class mail, postage prepaid, to the judgment debtor.

Conn. Gen. Stat. § 52-380e.

The plaintiff objects to this request, raising concerns about the sufficiency, specificity and nature of the proposed bond. Plaintiff also objects on the basis that evidence was introduced at the hearing regarding the proposed bond.

The defendant, through counsel, represents that the defendant seeks to “substitute a cash bond for the property in the amount of the fair market value of the property, thereby providing the same security with respect to plaintiff’s judgment as that provided by the property.” Plaintiff’s post trial brief, page 6. This statement provides a representation to the court that the defendant is seeking to provide bond in the form of cash equal to the value of the property.

The C.G.S. §52-380e does, indeed, require a “determination after hearing of the sufficiency of the substitution,” the defendant has made the express representation that the proposed substitution is of “cash in the amount of the fair market value of the property.” See defendant’s post trial brief page 6. Based on that representation there is no ambiguity in the “other property” or its value proposed by the defendant.

Where the proposed substitute is of equal or greater value to the judgment lien, it should be allowed. There is no prejudice to the plaintiff where the substitution proposed is of equal or greater value, and the purpose of the security is fulfilled. “The transfer of a judgment lien to property *of equal or greater equity value* is a matter of right under the

statute. *Feuser v. Lampron*, 6 Conn.App. 350 (1986); see *Brainard v. Smyth Manufacturing Co.*, 178 Conn. 250, 253 (1979) ("The purpose of the statute is to make attachment security for a claim, not a weapon over the head of defendant")." (Emphasis added/Internal quotation marks omitted) cases cited in *R.S. Silver Enterprises, Inc. v. Pascarella*, 2016 WL 785418, *1 (Conn. Super. Ct. Feb. 9, 2016).

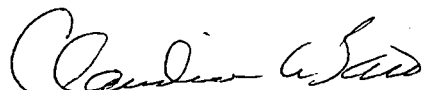
Accordingly, the defendant's request to substitute a cash only bond for the full fair market value of the property is granted. The lien on the property may be discharged by a cash only bond deposited with the court in the amount of \$620,000.

III. CONCLUSION

The fair market value of the property is found to be \$620,000. (six hundred and twenty thousand dollars).

The defendant's Motion to substitute is granted to the extent that the defendant seeks to substitute a cash only bond in the amount equal to the fair market value of the property. The plaintiff's objection to the motion to substitute the cash bond is overruled.

BY THE COURT


CLAUDIA A. BAIO, JUDGE