

1 strip motion. The issue is not free from doubt, but the Court
2 is persuaded that the better approach in routine consumer cases
3 is to utilize the date of filing of the petition because it is
4 the seminal date as of which the claim relationships of debtor
5 and creditor are fixed for purposes of the bankruptcy case.
6 In re Johnson, 165 B.R. 524 (S.D. GA. 1994). Section 502 of
7 Title 11, United States Code, is illustrative. In subpart(b) it
8 provides that upon objection to a creditor's claim, the court
9 . . . shall determine the amount of such claim in lawful currency
10 of the United States as of the date of the filing of the
11 petition. . ."

12 In the instant case, the Debtor testified without
13 controversion that the payoff amount of the senior loan on the
14 property was \$250,321.77 as of October 1, 2009. Consequently,
15 if the value of the debtor's property as of the petition date is
16 less than the amount, then Creditor's lien is wholly unsecured
17 and may be avoided in a Chapter 13 plan pursuant to 11 U.S.C.
18 § 1322(b)(2). Conversely, if the property value is in excess of
19 the senior debt, then no part of Creditor's lien may be avoided
20 because of the prohibition of § 1322(b)(2) and In re Nobelman,
21 508 U.S. 324 (1993).

22 Debtor's appraiser testified that her opinion of value as of
23 July 31, 2009 was \$220,000, while Creditor's appraiser testified
24 he thought it was worth \$263,000 as of December 10, 2009. As
25 noted, the bankruptcy petition was filed September 10, 2009.
26 Both appraisers utilized the sales comparison approach, adjusting

1 various factors by dollar amounts to reconcile the subject
2 property with the compared sale. The Creditor's appraisal
3 adjusted 5 of 6 of his comparables upwards \$5,000 in recognition
4 that the seller was the bank, which he testified had an effect on
5 the market. The Court disagrees, for two reasons. First, that
6 is the market. Second, most of those sales resulted in bidding
7 competition with the final sales price exceeding the asking
8 price.

9 Only one comparable was used by both appraisers. Debtor's
10 appraiser used three comps with lot sizes more than 2000 square
11 feet less than the subject (which is 7841). One adverse impact
12 of smaller lot size is greater density of housing on a street.
13 The Court is persuaded by the testimony that the location of the
14 subject in a small subdivision adjacent to the Sweetwater
15 Reservoir is desirable.

16 Based on the testimony and photos, the Court finds the
17 condition of the subject property to be average, not below
18 average, although it was overflowing with personal property.
19 There was no evidence of discoloration, no holes in walls,
20 carpets not stained. Debtor's appraiser deducted \$10,000 for
21 difference in one level of condition, while Creditor's used
22 \$5,000. The Court is persuaded that \$10,000 is a more accurate
23 adjustment for a 3 bedroom 1 story home of about 1,500 square
24 feet of living area.

25 Debtor's appraiser testified that she reviewed the
26 comparables used by Creditor's appraiser and made her own

1 adjustments to five of them. Her assessment of his Comp 1,
2 adjusted, was \$242,650; Comp 2, \$254,000; Comp 3, \$246,000; Comp
3 4, \$243,400; Comp 5, \$231,700. Then she testified that she
4 examined overall sales trends in the area over the second, third
5 and fourth quarters of 2009. The numbers are relevant only in
6 relation to each other and not the specific subject house, but
7 they are significant. For the second quarter the average was
8 \$216,250; the third quarter jumped to \$267,000; and the fourth
9 quarter settled to \$254,000. Debtor's appraiser also testified
10 that she adjusted her opinion of value based on the date of
11 valuation of September 10, 2009, and when she did so her value
12 increased to \$240,000 - \$245,000.

13 Based on all the foregoing, and having adjusted the value
14 because of the Court's finding concerning the condition of the
15 subject property, thereby increasing the value of the subject by
16 \$10,000, the Court finds and concludes that the value of the
17 subject property on September 10, 2009 was approximately
18 \$253,000.

19 Accordingly, because the value of the subject property is
20 determined to be \$253,000, which is more than the debt owed to
21 the senior lienholder, the junior lien of Ronald M. Smith,
22 Trustee of the RMS Living Trust dated 08/17/04 is partially
23 secured. Because it is partially secured, no part of it may be
24 stripped down. 11 U.S.C. § 1322(b), In re Nobelman, 508 U.S. 324
25 (1993).

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1 Further, the lien of the Trust is not adequately protected
2 either by the value of the property or by regular monthly
3 payments to the Trust. Therefore, relief from the automatic stay
4 of 11 U.S.C. § 362 is warranted under both subpart (d)(1) and
5 (d)(2), and is hereby granted.

6 Counsel for the Trust shall prepare and lodge a separate
7 form of order consistent with the foregoing within fifteen (15)
8 days of the date of entry of this Memorandum Decision.

9 DATED: APR - 2 2010

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12 PETER W. BOWIE, Chief Judge
13 United States Bankruptcy Court
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