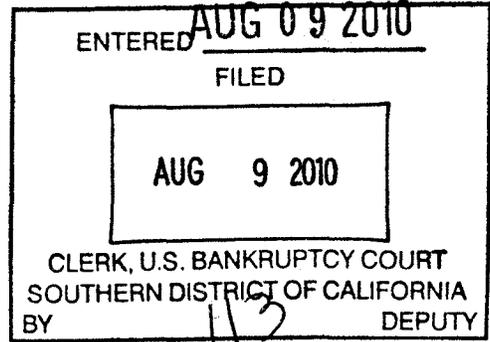


WRITTEN DECISION - NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 09-14453-JM13
)	
OSCAR FRANCISCO ZAMORA and)	
SILVIA ANDRIANA VASQUEZ,)	
)	
Debtors.)	
_____)	ORDER ON MOTION TO
)	VALUE COLLATERAL
OSCAR FRANCISCO ZAMORA and)	
SILVIA ADRIANA VASQUEZ,)	
)	
Movants,)	
)	
v.)	
)	
WELLS FARGO BANK, N.A.)	
)	
Respondent.)	
_____)	

Debtors filed their bankruptcy petition under Chapter 13 on September 25, 2009. The unpaid principal balance on their senior lien as of August 31, 2009 was \$254,568.13. They have a second and a third position lien against their residence, as well, both held by Wells Fargo. Wells Fargo concedes there is no equity to which the third note and trust deed currently

1 attaches so that lien is amenable to treatment pursuant to
2 11 U.S.C. § 1322(b) within the debtors' Chapter 13 plan. The
3 disagreement in this case is whether there is any equity to
4 secure any part of the second note and trust deed. Debtors'
5 appraiser, Mr. King, says he values the property at \$250,000
6 as of his date of inspection, December 4, 2009. The appraiser
7 called to testify by Wells Fargo, Mr. Wessling, opined that
8 the property was worth \$315,000 as of the petition date.

9 Both appraisers testified competently, although they
10 disagreed on a number of points. Most of Mr. King's actual
11 sales comps were of smaller properties, with one less bedroom
12 and half-bath. One of Mr. King's comps was identical in size
13 to the subject property, although the subject has a slightly
14 larger lot by 380 square feet. Mr. King believed that the
15 comp on Corte Nacion had a more desirable location, a superior
16 view, it is in better condition, and has superior upgrades.
17 It sold quickly for \$363,000. Because of the differences
18 listed above, Mr. King adjusted the price downward \$51,500
19 and concluded that so adjusted, the Zamora house would be
20 worth \$311,500. Corte Nacion sold in late October, 2009 so
21 Mr. Wessling did not use it as a comp because the sale closed
22 after the date of value, September 25.

23 Mr. Wessling's third comp, on E. Millan, sold on June 30
24 for \$315,000. He felt it had a superior view but was in inferior
25 condition compared to the Zamora's, which he assessed as average.
26 Because of that he made an upward \$20,000 adjustment. Mr. King

1 said he would not make that adjustment. Mr. King also
2 testified he finds no difference in value between 3 bedrooms
3 and 4 bedrooms, and he believes a \$5,000 upward adjustment for
4 a half-bath is too high. Mr. Wessling testified he believes
5 an additional bedroom warrants a \$5,000 upward adjustment, as
6 does the half-bath. Further, he thought Mr. King's third comp,
7 on Corte Nacion was a "great" comp, but he could not use it
8 because the sale date was a month after the petition date.

9 After reviewing the competing comps, the Court finds and
10 concludes that the Corte Nacion and E. Millan comps are the
11 two best. Even assuming E. Millan's condition was roughly the
12 same as the Zamora's thus eliminating Mr. Wessling's upward
13 adjustment, its adjusted value would be around \$300,000.
14 Accepting all of Mr. King's adjustments - all \$51,500 of them,
15 Corte Nacion's adjusted value was \$311,500. The Court is
16 persuaded, and finds, that the value of the Zamora property as
17 of September 25, 2009, the petition date, was in the \$295,000 -
18 \$305,000 range. For present purposes, the Court need not
19 pinpoint a specific dollar amount because the value is well in
20 excess of the balance of the senior lien. Accordingly, debtors'
21 motion, which seeks to find that there is no equity over the
22 amount of the senior lien to which Wells Fargo's second lien
23 can attach, shall be, and hereby is denied because pursuant to
24 11 U.S.C. § 1332(b) if any portion of that second lien is

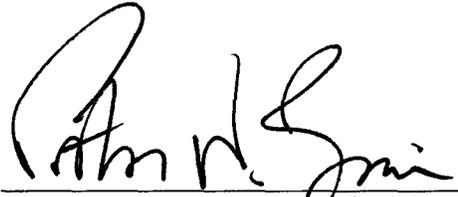
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1 secured by the value of the property after deducting the senior
2 lien, no part of that lien is avoidable. Nobelman v. American
3 Savings Bank, 508 U.S. 324 (1993).

4 IT IS SO ORDERED.

5 DATED: AUG -9 2010

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8 PETER W. BOWIE, Chief Judge
9 United States Bankruptcy Court
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