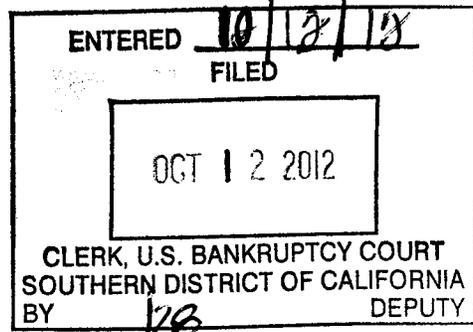


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**WRITTEN DECISION - NOT FOR PUBLICATION**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: ) BK. No. 12-04261-LT13  
Ralph Jesus Jimenez and Rosalind Dion )  
Jimenez, ) MEMORANDUM DECISION<sup>1</sup>  
Debtors. )

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On October 1, 2012, the Court conducted an evidentiary hearing regarding Debtor's Motion to Value Real Property, Treat Claim as Unsecured and Avoid Junior Lien of North Island Federal Credit Union (the "Lien Strip Motion"). Appearances were made as set forth on the record.

The Court carefully considered the declaratory and oral testimony of the appraisers, the testimony of debtor Ralph Jimenez, and the written appraisal reports. The Court also considered the arguments made by counsel at the hearing. After considering this evidence and argument, the Court concludes that the Debtors' appraiser more accurately appraised the Debtors' real property (the "Residence") and that, in any event, adjustments to this appraisal,

<sup>1</sup> This opinion is intended only to resolve the dispute between these parties and is not intended for publication.

1 even if made by the Court, would not be sufficient to establish a value for the Residence in  
2 excess of the amount owed to the senior lienholder. The Court's reasoning is as follows:

3 **1. Location of Comparables.**

4 a. The Debtors' appraiser, Brenner C. Ault, utilized three comparable properties  
5 ("Debtors' Comparables") in his appraisal report. Mr. Ault's properties were more  
6 comparable to the Residence in terms of location. Indeed, one comparable was located  
7 immediately adjacent to the Residence and, in fact, shares a fence with the Residence. The  
8 other two properties were located within a block and a half block of the Residence,  
9 respectively.

10 b. The North Island Federal Credit Union ("Lender") appraiser, David S.  
11 Cuchiara, utilized five comparables ("Lender's Comparables") located between .42 and .93  
12 of a mile from the Residence. These comparables, while not geographically remote, were  
13 less geographically similar.

14 **2. Other Issues As To Comparables.**

15 a. Mr. Cuchiari testified that while his comparables were more remote, they were  
16 otherwise more similar. Mr. Ault disputed this assertion. The Court found Mr. Ault more  
17 credible on this point.

18 i. Mr. Cuchiari never established with precision what factors, other than  
19 swimming pools, made the Debtors' Comparables significantly dissimilar. He discredits the  
20 Ault appraisal because it does not comply in minor respects with general lending and Fannie  
21 Mae guidelines, but these guidelines are not applicable here. The house next door  
22 (Mr. Cuchiara mistakenly places it across the street) is 453 sq. feet larger, but Mr. Cuchiara  
23 never adequately explains why the square footage adjustment is not an appropriate way to  
24 determine relative value. Mr. Ault's other comparables had square footage closer to that of  
25 the Residence.

26 ii. More importantly, however, Mr. Cuchiara never adequately established  
27 why his comparables were more comparable. He flatly states that one of Debtors'  
28 Comparables was not comparable because of a recent remodel. This is curious as

1 Mr. Cuchiara also utilized substantially remodeled properties as comparables. Mr. Cuchiara  
2 also stated in his rebuttal declaration that one comparable was on a dissimilar busy street,  
3 but Mr. Ault effectively refuted this point.

4 b. Mr. Cuchiara makes the point that the Ault appraisal did not provide an  
5 upward adjustment for the existence of a fence. If the Court allows a \$5,000 upward  
6 adjustment to each of the Debtors' Comparables, however, this does not result in a value in  
7 excess of the amount owed to the senior lender.<sup>2</sup>

8 c. In the case of Debtors' comparable two, Mr. Cuchiara testified that the pool  
9 adjustment is excessive as the pool contained "green water" and was not "functional." He  
10 testified that he might add a slight value, but that it would be minimal, and certainly not the  
11 full adjustment for the pool utilized by Mr. Ault. Mr. Ault utilized a \$15,000 downward  
12 adjustment in connection with a "superior" patio and a pool. But an adjustment in the full  
13 amount of \$15,000, even on top of a fence adjustment, would not yield a value in excess of  
14 the amount owed to the senior lender.

15 d. Mr. Cuchiara also testified that the condition adjustment in connection with  
16 Debtors' comparable three is excessive. But once again even a reduction for the fence and a  
17 \$10,000 reduction in the condition adjustment, one that appears to be similar to condition  
18 adjustments made by Mr. Cuchiara, does not yield a value in excess of the amount owed to  
19 the senior lender.

20 e. The Court notes that the size adjustments Mr. Ault used were not criticized by  
21 Mr. Cuchiara and, indeed, appear to be consistent across the board with upward and lower  
22 adjustments made at approximately the same rate.

23 f. Thus, even if adjustments are made to Debtors' Comparables in areas  
24 criticized by Mr. Cuchiara, the adjustments do not result in a value for the Residence in  
25 excess of the amount owed to the senior lender.

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28 <sup>2</sup> The parties stipulated that this amount was \$238,323.46. Dkt. # 39 ¶1.

1 **C. Lender's Comparables Follow Recent Prior Sales At Substantially Lower**  
2 **Amounts And, Thus, Evidence Substantial Remodeling.**

3 A review of Mr. Cuchiara's appraisal also raises questions. First, the comparable  
4 properties are slightly farther away. The Court does not find this fact either dispositive or  
5 especially probative, given his evidence that these properties are otherwise "competitive"  
6 and "similar."

7 But most of these properties also evidence recent remodels. Lender's Comparables  
8 two, three, and four all sold for an amount substantially less than the Debtors' proposed  
9 value for the Residence earlier this year.<sup>3</sup> Each resold thereafter for significantly more.  
10 Mr. Cuchiara indicated that each property involved some remodeling.

11 In contrast, there is no evidence of any recent remodeling of the Residence.  
12 Mr. Jimenez's testimony makes clear that the Residence has not received any recent  
13 remodeling and that much of the Residence remains in its condition as of Debtors' purchase.

14 The Debtors argue that the correct adjustment should reflect the entirety of the  
15 difference between the previous sale and the resale. This requires, however, that the Court  
16 assume that the condition of the Lender's Comparables prior to any renovations was exactly  
17 the same as the Residence. There is no evidence in this regard, and the Court cannot make  
18 this assumption. But given the testimony by both appraisers that the market is stable, one  
19 must assume that any increase in value over the short time period between sales is the result  
20 of physical improvement to the property (and not to a significant upward adjustment in  
21 market prices). This makes highly questionable, for example, the properties where  
22 Mr. Cuchiara makes absolutely no condition adjustment. It also raises exactly the  
23 dissimilarity problem that Mr. Cuchiara attempted to use to discredit Mr. Ault's appraisal.  
24 Indeed, it appears to the Court, that these properties, given the recent improvements, are less  
25 similar to the Residence than the Debtors' Comparables.

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28 <sup>3</sup> Comparable 5 was in escrow at the time of the appraisal, but sold for \$205,000 earlier this year.

1 As a result of all the above, the Court, once again, finds the Ault appraisal to be more  
2 accurate.

3 **D. Even After Appropriate Adjustments, The Ault Appraisal Indicates A Value**  
4 **For The Residence That Is Less Than \$238,323.46.**

5 The Court made an appropriate adjustment in its analysis to increase the Ault  
6 calculations to account for the fence and to otherwise increase a comparable value to  
7 eliminate a downward adjustment on account of a nonfunctional pool. The Court also made  
8 other possibly appropriate adjustments to examine the possibility that such adjustments  
9 would make a meaningful difference. After all such adjustments, however, the value of the  
10 Residence continued to be less than the amount owed to the senior secured lender. The  
11 Court, thus, concludes that the value of the Residence is less than that owed to the senior  
12 secured lender and that, as a result, a lien strip is appropriate.

13 The Court does not think it necessary to put a precise value on the Residence  
14 different from that of the Ault appraisal and is hesitant to do so as the Court is not, itself, an  
15 appraisal professional. However, if a modified value must be used, the value is \$227,500.  
16 This represents a \$5,000 increase for each of the comparables based on the fence, a \$12,000  
17 increase as to Debtors' Comparable 2 based on the fact that the pool is nonfunctional, and a  
18 \$10,000 increase for Debtors' Comparable 3 where there was a \$40,000 downward  
19 adjustment for condition (this brings this factor more into line with Mr. Cuchiara's value  
20 adjustments.) Having made these adjustments, the Court, as noted above, concludes that  
21 under no scenario is the value of the Residence over and above that owed to the senior  
22 lender. Thus, Lender is completely unsecured and a lien strip is appropriate.

23 The Debtors, as the prevailing parties, should submit an appropriate order within  
24 14 days.

25 DATED: October 11, 2012

26   
27 LAURA S. TAYLOR, JUDGE  
28 United States Bankruptcy Court