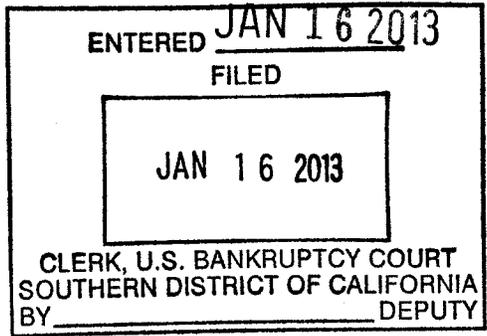


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



WRITTEN DECISION - NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re) **Case No. 12-09569-A13**
TAFFY E. EVERHART,)
) **MEMORANDUM DECISION**
Debtor.)

On November 13, 2012, at 2:00 p.m. in Department Two before the Honorable Louise De Carl Adler, Bankruptcy Judge, an evidentiary hearing was held on the Objection filed by Sapient Providence LLC/Financial Freedom Loan, Inc. ("Sapient/Financial"), to Confirmation of the Chapter 13 plan ("Plan") filed by Taffy E. Everhart ("Debtor"). Diane C. MacDowell appeared on behalf of the Debtor; Russel T. Little appeared on behalf of Sapient/Financial.

Although the initial objection was broader in scope, at the evidentiary hearing, Mr. Little clarified that there remained only two objections to confirmation of the Plan: (1) that Debtor had undervalued her mobile home which is security for the Sapient/Financial debt; and (2) that the Plan is not feasible. For the reasons more fully set forth below, the Court overrules the objections and directs the Debtor to file an amended plan in accordance with this Memorandum Decision.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.
THE VALUE OF DEBTOR'S
MOBILE HOME IS \$16,500

At issue is the value of the Debtor's 1985 Golden West Home double-wide manufactured home located at 12690 Jackson Hill Dr., Space #20, El Cajon, California. The Debtor initially valued her mobile home at \$11,000, but she has increased her valuation to \$16,500 based upon the value set by her appraiser. In contrast, Sapien/Financial contends that her mobile home should be valued at \$40,000.

At the evidentiary hearing, the Court considered the competing appraisal reports and the testimony of: (1) Reuven Silberman ("Mr. Silberman"), a certified residential appraiser with approximately six years experience, who testified on behalf of Sapien/Financial; and (2) Thomas J. Bonnell ("Mr. Bonnell"), a certified appraiser with approximately 27 years experience in residential and commercial appraisal, who testified on behalf of the Debtor. The appraisal reports are unusual in that rarely has the Court encountered such widely divergent opinions of value regarding a residential property. Both appraisers testified they personally inspected the home; both appraisers used the comparable sale method to determine fair market value; and both appraisers found examples of manufactured home sales in the vicinity which they believe represents the market for such homes. Notwithstanding, Debtor's appraiser, Mr. Bonnell, valued the home at \$16,500; whereas Mr. Silberman valued it at \$40,000.

The Court has studied the appraisals, as well as considered their testimony on both direct and cross-examination. It appears that the essential differences between the two appraisals are as follows:

A. Debtor's Appraiser -- Mr. Bonnell defines the condition of the home as "poor." It is his opinion that the value of the home is so low that it is, in essence, a "scrapper"--a home which would be purchased at a low price and then removed

1 from the space to be relocated elsewhere where its condition would not adversely
2 affect the neighboring coaches. He bases his opinion on numerous problems he
3 found during his inspection:

4 • Roof leaks: His appraisal contains photos of two obvious roof leaks as
5 well as circumstantial evidence that other leaks are occurring in the living room
6 where the ceiling tiles are warped and bowing downward. He testified he saw
7 numerous instances of water stains throughout the home.

8 • Inadequate heating and air-conditioning: Mr. Bonnell interviewed the
9 Debtor who stated that the home has no heat; the furnace does not function; and
10 she has been warned against attempting to start it. The only air-conditioning is
11 supplied by four window units, one of which is operated by connection from the
12 bedroom to the kitchen via a heavy duty extension cord because it causes a power
13 outage if plugged into the bedroom it services.

14 • Inadequate flooring: His appraisal has numerous photos of missing
15 floor tiles.

16 • Termite damage which would need to be repaired.

17 • Damaged skirting (the trim panels around the base of the home) which
18 he believes would have to be completely replaced.

19 • Water leakage from the window air-conditioning units has created a
20 dangerous condition on the covered porch by saturating its plywood construction,
21 rendering it unsafe, in his opinion.

22 • Unsafe electrical wiring: His appraisal contained a photo of a
23 chandelier hanging with exposed electrical wires.

24 • Peeling wallpaper in the living room.

25 In selecting comparable sales, Mr. Bonnell focused on sales of similarly
26 sized homes within mobile home parks which are considered family community
27 parks (as contrasted with, for example, senior-only parks or parks where the land
28 is owned by the homeowner rather than rented). To each of his comparable sales,

1 he applied a \$25,000 discount to the subject because of its poor condition. He
2 substantiated the discount by including copies of repair estimates obtained by the
3 Debtor to correct certain of the defects cited above, including: \$9,000 to replace
4 the existing heater with a heat pump for both heat and air-conditioning; \$3,700 to
5 re-roof the home; \$1,300 to repair termite damage; and \$5,500 to repair the porch
6 and damaged skirting and siding.

7 **B. Sapient/Financial's Appraiser** – In contrast, Mr. Silberman's appraisal
8 finds the condition of the home as "average" (two levels higher than "poor").
9 Mr. Silberman initially prepared his appraisal without performing an interior
10 inspection because he had been informed by Sapient/Financial that the Debtor was
11 uncooperative. However, he was provided access to the interior and performed an
12 inspection but stated that it did not materially change his initial valuation of
13 \$40,000.

14 Mr. Silberman found the same evidence of roof leaks, missing floor tiles,
15 peeling wallpaper and damage to the skirting. However, he apparently did not
16 inquire of the Debtor whether her heater was in good working order as he made no
17 allowance for replacement of an inoperable heater. Further, he could not have
18 inspected the entire exterior of the home because he failed to detect evidence of
19 termite damage. Inexplicably, he also failed to notice an extension cord running
20 from the bedroom, to the kitchen, to provide power for the window
21 air-conditioning unit.

22 In selecting comparable sales, it appears Mr. Silberman primarily relied only
23 on similarity in size, age and vicinity. He did not testify that he further refined his
24 choice of comparables by selecting comparables based on similarity in park type
25 (e.g., family community parks). His comparable sales were more recent than
26 Mr. Bonnell's, but there is no evidence that the market for manufactured homes in
27 this area of San Diego county has changed much in the past one and one-half
28 years. Although Mr. Silberman testified that, in his opinion, it would cost between

1 \$5,000 to \$8,000 to put the home in saleable condition, he stated he did not adjust
2 the price of the subject home accordingly. While he claims that the downward
3 adjustments made to the subject, vis-a-vis the comparable sales, allowed for these
4 expenses, the Court cannot find evidence in his appraisal for any adjustments
5 between the subject and the comparables other than for age of the other
6 manufactured homes (all were newer than the subject), or for size. Further,
7 Mr. Silberman's estimate of the cost to put the home in saleable condition has to
8 be questioned because he testified that he had "no idea" what it would cost to
9 replace the home's skirting, and he never discovered the faulty heater nor the
10 termite damage.

11 Based on the above, the Court finds the valuation of Mr. Bonnell more
12 persuasive than that of Mr. Silberman and, in reliance on the Bonnell appraisal,
13 finds the value of the Debtor's manufactured home to be \$16,500.

14 II.

15 THE PLAN IS FEASIBLE

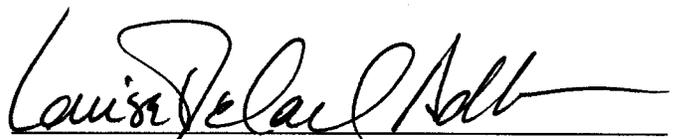
16 The remaining issue is the feasibility of the Plan. The Debtor's Plan
17 proposes a monthly payment of \$541 to the Chapter 13 Trustee for payment of her
18 allowed Class 3 administrative claims; \$241.72 monthly to Class 5 for the \$11,000
19 secured claim of Sapien/Financial; \$66.96 monthly to Class 6 for the \$3,047
20 secured claim of A-L Financial Corp.; \$170.02 monthly to Class 9 to cure the
21 estimated arrears owed to the County of San Diego and/or Sapien/Financial; and a
22 0% dividend to general unsecured creditors in Class 13. [ECF No. 8] However,
23 Debtor acknowledges, and the Court agrees, that Sapien/Financial's Class 5
24 secured claim must be increased to \$16,500 so she must increase her monthly Plan
25 payment to pay this increased claim. Although the Debtor has not yet filed an
26 amended Plan, the Court concludes it has sufficient evidence to conclude the
27 amended Plan will be feasible.

28

1 The Debtor is a preschool teacher with limited income and a financially
2 strained monthly budget. However, at the evidentiary hearing the Court learned
3 that the Debtor's son, daughter-in-law and granddaughter reside with her and they
4 contribute to paying the monthly expenses. At the Court's direction, the Debtor
5 filed a supplemental declaration re: family contributions to show she can feasibly
6 afford to pay an increased Plan payment. [ECF No. 40] The Court has reviewed
7 this supplemental declaration and finds it credible. Specifically, the Debtor
8 explains that her family is paying all of the utilities for the mobile home, and they
9 are willing to help pay the monthly space rent so that they can continue to reside in
10 the mobile home. Debtor's statement is credible because the Debtor's Schedule J
11 did not list an expense for utilities (thus confirming that this expense is paid by
12 family). The Debtor concludes that, based upon her budget and with the increased
13 assistance of her family, she can feasibly increase her plan payment to \$700.00 per
14 month if she could make two payments of \$350.00 each. Thus, it appears the
15 amended Plan will be feasible.

16 Based on the foregoing, Sapient/Financial's objection to confirmation is
17 OVERRULED. Counsel for the Debtor is directed to file an amended Plan
18 consistent with this Memorandum Decision forthwith, and in the absence of any
19 further unresolved objections, to submit an order for confirmation of the amended
20 Plan.

21
22
23 Dated: 16 Jan 2013



24 LOUISE DE CARL ADLER, Judge
25
26
27
28

1 CAD 168
[Revised July 1985]

2
3
4 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

5 Case No. 12-09569-A13

6 Case Name: In Re: TAFFY E. EVERHART
7

8
9 CERTIFICATE OF MAILING

10 The undersigned, a regularly appointed and qualified clerk in the Office of
11 the United States Bankruptcy Court for the Southern District of California, at San
Diego, hereby certifies that a true copy of the attached document, to-wit:

12
13 MEMORANDUM DECISION

14 was enclosed in a stamped and sealed envelope and mailed to the following parties
15 at their respective addresses listed below:

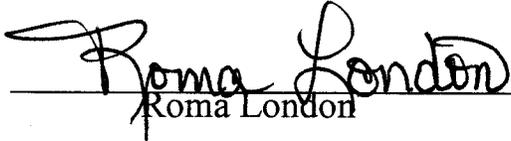
16 Diane C. McDowell, Esq.
17 GOLDEN STATE LAW GROUP
591 Camino de la Reina, Ste. 100
18 San Diego CA 92101

Office of the United States Trustee
402 West Broadway, Suite 600
San Diego, CA 92101

19 Russel T. Little, Esq.
185 West F Street, Ste 100
20 San Diego CA 92101

21 The envelope(s) containing the above document was deposited in a regular
22 United States mail box in the City of San Diego in said district on January 16,
2012.

23
24
25
26 CAD 168

 , Deputy Clerk
Roma London