WRITTEN DECISION - NOT FOR PUBLICATION

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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re HECTOR M. VILLASENOR, Debtor.	Case No. 13-01272-CL13 ORDER ON MOTION TO VALUE REAL PROPERTY AND TO AVOID JUNIOR LIEN

This matter came on regularly for evidentiary hearing on the debtor's motion to value real property, which is the debtor's residence. Debtor contends the property is worth $263,000, while the junior lien creditor, Noel Vaughan asserts by way of a revised appraisal that the property is worth $305,000 as of February 8, 2013, which is the date of filing of debtor's bankruptcy petition filed under Chapter 13.

The parties stipulated to the credentials of each appraiser, and the admissibility of the respective appraisals. They agreed

that the sole issue is the value of the debtor's residence at 1049 Sage View Street, Chula Vista, CA. Both appraisers faced an initial challenge in that the subject property is relatively unusual in that it is a 3 bedroom, 2 bath, single family home attached on one side to another house. So while it is a single family home, it is not detached and free-standing. For that reason, both worked to come up with properties they were willing to use as comparable sales. None of the comps selected by one appraiser were used by the other. At the same time, all the comps selected by the creditor's appraiser were superior to the subject property, while four of the five comps selected by debtor's appraiser were inferior to, and sold for less than that appraiser set as her value for the subject. During her testimony, debtor's appraiser, Ms. Brown described that it appeared Mr. Ward (creditor's appraiser) made adjustments to his selected comps that resulted in each of them, after his adjustments, having identical value. Ms. Brown described it as "adjusting to a number," and testified that she had never seen that result, even though she conducted appraisal reviews as part of her job.

The Court was curious about those adjustments once the result was brought to its attention. When the creditor filed his opposition to debtor's motion, he filed the first appraisal by Mr. Ward, in which he arrived at an opinion of value of $309,000, without having had the opportunity to assess the interior of the subject property. When the comps he used are reviewed, it shows

that each comp was adjusted in different ways but each arrived at an "Adjusted Sale Price of Comparables" of $309,000, which is puzzling on its face and unexplained by Mr. Ward. Then Mr. Ward had the opportunity to view the inside of the subject, and revised his value opinion down to $305,000. He used the same comps he used in the first appraisal, but now the "Adjusted Sale Price of Comparables" for each comp was $305,000. Like Ms. Brown, the Court has never seen that result, even after twenty-five years on the bench. Generally, an appraiser begins with a sale price, and then compares the subject with the comparable sale and attempts to value the difference between the two from a list of factors or qualities. It is very difficult to imagine how five properties each with a different sale price, with six adjustments on two comps, seven on another, nine on a fourth, and ten on the fifth would all adjust to the identical "Adjusted Sale Price." In the Court's view, Mr. Ward's appraisal is thus largely rendered unreliable. Except for one point of reference. His first comp is for a sale at 1100 Sage View, basically across the street.

The date of sale for 1100 Sage View was November 2012. The comp has 2.5 baths, while the subject has 2. The gross living area of the comp is 188 sq. ft. less than the subject, while its lot size is 173 sq. ft. larger. The year of construction is the same.

After hearing the testimony of both appraisers, the Court is persuaded that 1100 Sage View is the single best comp used by

either appraiser. At the same time, there are some differences that would result in adjustments to its sale price to make it directly comparable to the date of value of the subject property, which is February 8, 2013.

Mr. Ward made a -2000 adjustment to the comp because it had an extra half bath. Ms. Brown used -2500 when she adjusted her other comps for the same item. The Court finds -2500 is a reasonable adjustment. As noted, the comp has a slightly larger site size. Mr. Ward made a -1000 adjustment. The largest site size of any of Ms. Brown's comps was 5000 sq. ft., or almost 2700 sq. ft. less than the subject. She made an adjustment on her comp of +2000. The Court finds little, if any, adjustment is warranted as between the subject and 1100 Sage View.

The subject has a gross living area of 1699 sq. ft., while 1100 Sage View has 1511 sq. ft., 188 sq. ft. less. Mr. Ward gave an upward adjustment of +9000. Ms. Brown's adjustments were +3700 for her comp with 1570 sq. ft. and +6700 for one with 1469 sq. ft. The Court finds that an adjustment of +5000 is appropriate. One of the areas of disagreement between the appraisers was whether there should be an adjustment between the date of sale of the comp and the date of value for the subject. 1100 Sage View was sold November 9, 2012, approximately four months before the date of value. Further, Mr. Ward testified that generally the price was agreed upon roughly 30 days prior to the date of sale. He made a +3000 adjustment because of that. Ms. Brown did not make any date of sale adjustments to any of her

comps, even when the contract date was as early as July 2012. Ms. Brown testified that in her opinion the market was flat over that period of time, so no adjustment was warranted. The Court is persuaded that the market did improve slightly over those months, and finds an adjustment of +2000 appropriate. In part, the Court notes that Ms. Brown's appraisal included an analysis of Market Conditions, which reflected price increases over the preceding year.

With respect to 1100 Sage View, Ms. Brown testified her search for comps failed to identify it. While she acknowledged it was the best of all the comps used by either appraiser, it required adjustments because it was superior to the subject property in three main ways: location, view, and entrance. She testified 1100 Sage View had no homes to its rear or its left, which made it a superior location. It had more useable back yard that the subject, and it had a front entrance on the ground floor in contrast to the subject, which required people to go up steps. She testified she would probably adjust 1100 Sage View by 10000 for its view, another 10000 for location, and 5000 for its entrance. Yet, in reviewing her comps, Ms. Brown made no adjustments to any of her comps of that magnitude, even though her comps were mostly condos with site size less than half that of the subject. She defended her comps on the ground that the slope behind the subject made a portion of its site size not useable for normal back yard activities.

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Mr. Ward testified that 1100 Sage View had a tree line blocking any purported view while forming a sort of border just off the back yard of the property, so the owners could not alter that condition. He also testified that based on photos there was no desirable view from inside the property. The Court finds that some adjustment is warranted. Given the paucity of information about the location, view and entrance of 1100 Sage View, coupled with the absence of adjustment by Ms. Brown of the magnitude she proposed from the witness stand, the Court finds that the combination of location, view and entrance warrants an adjustment of 10,000. The Court notes that the site maps provided by both appraisers show that the back yard of 1100 Sage View is closer to Telegraph Canyon Road than the subject, although no one testified about what, if any, impact that might have on the value of 1100 Sage View's location. No additional adjustment either way is made for that question in the absence of relevant testimony.

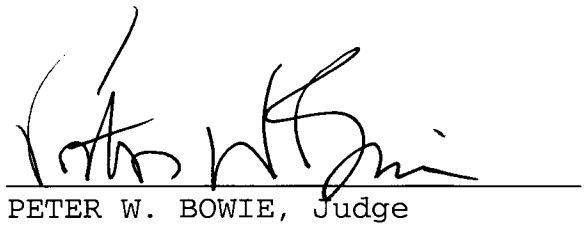
Accordingly, the Court finds and concludes that adjustments should be made recognizing that 1100 Sage View has an additional half bath (-2,500) and superior location, view and entrance (-10,000), while the subject property has superior gross living space (+5,000) and date of sale adjustment (+2,000). Applying those adjustments to the sale of 1100 Sage View, the Court finds and concludes that the value of 1049 Sage View on the date of filing the petition, February 8, 2013 is $299,500.

Both parities have recognized in their pleadings that the senior lien on the property on or about the petition date was

$292,205.09. Because the value of the subject property exceeds the amount of the senior debt, the junior lien is not avoidable, and debtor's motion to avoid the junior lien of Noel Vaughan must therefore be denied.

IT IS SO ORDERED.

DATED: AUG 15 2013



PETER W. BOWIE, Judge
United States Bankruptcy Court