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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 13-20096-C-11
) Docket Control No. JLG-4
CALEB D. TECTOR and)
STEPHANIE J. LARSON,)
)
Debtors.)
_____)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION
MOTION TO VALUE SECURED CLAIM OF JPMORGAN CHASE BANK, N.A.

Debtors Caleb Tector and Stephanie Larson are the owners of real property located at 44 Tyrola Lane, Unit 214, Mammoth Lakes, California ("Subject Property") an investment property. They have filed this motion to value the secured claim of JPMorgan Chase Bank, N.A. The claim is secured by the Subject Property, which is not the Debtors' primary residence. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor and Office of the United States Trustee on May 23, 2013. The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed and presented to this court for

1 final determination on the written pleadings filed, each party
2 waiving any right to cross-examine any witnesses or present live
3 testimony to the court. This is a core matter pursuant to 28
4 U.S.C. §§ 1334 and 157(b), for which the bankruptcy judge enters
5 the final order.

6 **DECLARATIONS**

7 The motion is accompanied by the Debtor Caleb Tector's
8 declaration. The Debtors seek to value the Subject Property at a
9 replacement value of \$220,000.00 as of the petition filing date.
10 As the owners, the Debtors' opinion of value is evidence of the
11 asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash.*
12 *Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).
13 The lien on the Subject Property secures a loan with a balance of
14 approximately \$340,930.64. Debtors also offer the Declaration of
15 Matthew Lehman, a licensed real estate appraiser, who opines that
16 the value of the Subject Property is \$220,000.00.

17 **OPPOSITION BY U.S. BANK NATIONAL ASSOCIATION**

18 JPMorgan Chase Bank, N.A. ("Creditor") submitted an opposition
19 to the motion on the basis that the Debtors' Motion to Value
20 proposes to reduce its claim below the fair market value of the
21 Subject Property and requests an opportunity to submit its own
22 appraisal.

23 On June 24, 2013, Creditor filed the Declaration of Otto
24 Krebs, a licensed real estate appraiser with 20 years' experience,
25 who opines that the value of the Subject Property is \$258,000.00.

26 **DISCUSSION**

27 The court considers the opinions, and more importantly the
28 methodology of the parties respective experts in making the

1 necessary finding of fact concerning the value of the Subject
2 Property. Fed. R. Evid. 702, 703 (the expert's testimony "will
3 help the trier of fact to understand the evidence or to determine
4 a fact in issue").

5 Otto Krebs has provided his declaration and appraisal report
6 in Opposition to the Debtors' Motion. Declaration, Dckt. 98;
7 Appraisal Report, Dckt. 99. No objection has been raised and the
8 court accepts Mr. Krebs as an expert concerning the valuation
9 determination which must be made by the court in this Contested
10 Matter.

11 Mr. Krebs testifies that in his opinion the Subject Property
12 has a value of \$258,000.00. He relies upon the "comparable
13 property" approach to valuation for this residential real property.
14 Mr. Krebs has identified four comparable properties which he used
15 in coming to this opinion - three sales from the fourth quarter of
16 2012 and a current listing.

17 In considering the comparables, the court notes that the
18 properties identified as 141 Lake View Blvd, #45, and 865 Majestic
19 Pines Dr., #202, are most similar in age (41 years and 31 years,
20 respectively) to the Subject Property at issue (47 years of age).
21 The 201 Juniper Springs Drive, #331, was constructed 12 years
22 previously. From the photographs provided, #45 and #202 are also
23 of similar "condo design." The Juniper Springs #331 unit appears
24 to be part of a more modern lodge or resort style of structure.
25 The #202 property also is a more modern structure.

26 The fourth comparable, 44 Tryol Lane, #208, is the most
27 similar, being in the same complex and of identical description and
28 size, six address numbers away from the Subject Property (#208).

1 The fourth comparable is not a sale, but a current listing of that
2 property for \$258,000.00.

3 The 141 Lakeview Blvd, #45, property sold in November 2012 for
4 \$229,000.00. This property is slightly smaller, 1,160 square feet
5 (compared to the Subject Property 1,340 square feet). However the
6 #45 property has two full baths (Subject Property has a bath and
7 one-half) and the same number of bedrooms, but one less total
8 rooms. The net adjustments made for this property is to add a net
9 \$5,200.00 to the sales price for there being 180 less square feet
10 and this comparable having two full baths.

11 The 865 Majestic Pines Dr., #202, sold for \$355,000.00 in
12 October 2012. Adjustments in the sale price are a reduction of
13 (\$25,000.00) for the view (the Subject Property having no view),
14 (\$15,000.00) for the good condition (the Subject Property being of
15 average condition), (\$7,500.00) for the property having been built
16 32 years ago (the Subject Property being constructed 47 years ago),
17 (2,000.00) for the #202 property having two full baths, (\$2,500.00)
18 for having a forced air and hearing unit, and (\$16,120.00) for the
19 residence being 1743 square feet (compared to the 1,340 square feet
20 of the Subject Property). For both to these properties, the
21 adjustment for the square footage adjustment was \$40 a square foot.
22 Additionally, both of these comparables have pool/spa common
23 facilities access, which there are not pool/spa facilities for the
24 Subject Property. No monetary adjustment is made for this lack of
25 pool/spa facilities. After the net adjustments, the 414 Lakeview
26 Blvd, #45, has an adjusted comparable value of \$234,200.00 and the
27 865 Majestic Pines Dr., #202, has an adjusted comparable value of
28 \$286,880.00.

1 The 201 Juniper Springs Drive, #331, comparable is only
2 813 square feet, only 12 years old, in superior condition, has a
3 view, is a better design, and has a pool/spa. The #331 property
4 sold for \$355,000.00 in October 2012, and after net adjustments of
5 (\$75,920.00) it yields a comparable value of \$279,080.00.

6 The fourth comparable, 44 Tryol Lane, #208, is an identical
7 residence, which is not a sale but a listing of the property for
8 \$258,000.00. This is exactly the amount to which Mr. Krebs opines
9 for the Subject Property.

10 The prices per square foot, based on the gross sales or
11 listing prices and as adjusted by Mr. Krebs are:

Property	Gross Sales or Listing Price Per Square Foot	Krebs Adjusted Value Price Per Square Foot
141 Lake View Blvd., #45	\$197.41	\$201.90
865 Majestic Pines Dr., #202	\$203.67	\$164.59
201 Juniper Springs Dr., #331	\$436.65	\$343.27
44 Tryol Lane #208 - Listed for Sale	\$192.54	\$192.54

21 The Debtors provide the declaration and appraisal report of
22 Matthew Lehman in support of the Motion. Declaration, Dckt. 37,
23 Appraisal Report, Dckt. 38. He opines that the Subject Property
24 has a value of \$220,000.00. No objection has been made to
25 Mr. Lehman testifying as an expert and the court accepts his
26 testimony as such.

27 Mr. Lehman also uses the comparable property method of
28 valuation, and has provided the court with five comparable

1 properties - three sales and two properties currently listed for
2 sale.

3 The three comparable properties are for sales in July and
4 November 2012. These three properties are summarized, with
5 adjustments as follows:

	50 Hidden Valley Rd., # 18 Mammoth Lakes	141 Lakeview Blvd., # 45 Mammoth Lakes	141 Lakeview Blvd., # 41 Mammoth Lakes
Sales Price	\$220,000	\$229,000	\$232,500
Location Adjustment		(\$25,000)	(\$25,000)
View Adjustment		\$10,000	\$10,000
Condition	\$0	\$0	(\$10,000)
Room Count Adjustment	(\$2,500)	\$0	
Living Area Adjustment	\$3,150	\$9,500	\$9,500
Adjusted Sales Price	\$220,650	\$223,500	\$217,000

18 For these three comparables, the per foot computations of the
19 sales prices are \$171.00/square foot, \$197.00/square foot, and
20 \$200.00/square foot. The adjustments for the amount of square
21 footage used by Mr. Lehman is \$73.00/square foot (#18), and
22 \$50.00/Square foot (#45, #41). The #45 and #41 properties have one
23 less room (5 room, 3 bed, 2 bath) than the Subject Property
24 (6 room, 3 bed, 2 (or 1 ½) bath).

25 The two comparables which are properties listed for sale are
26 286 Old Mammoth Rd., #100, and 2 Arrowhead Drive, #48. The #100
27 property is significantly smaller, only 993 square feet (compared
28 to the 1,350 square feet for the Subject Property), has only two

1 bedrooms and is stated to have four bathrooms. For this square
 2 foot difference, Mr. Lehman reduces the listed value by
 3 (\$17,850.00) (\$50.00/square foot adjustment). The listing price
 4 for this property is \$230,000.00, and Mr. Lehman makes a downward
 5 adjustment of (\$23,000.00) for the property not having yet been
 6 sold. The adjustment value of the #100 property is \$214,850.00.

7 For the #48 property, the listing price is \$250,000.
 8 Mr. Lehman makes a (\$25,000.00) downward adjustment for the
 9 property not yet having been sold. He also reduces the value by
 10 (\$2,500.00) for the room count (apparently because the number of
 11 baths for this comparable is stated to be 2.1), and increases the
 12 value by \$3,150.00 because it is only 1,287 square feet
 13 (\$50.00/square foot adjustment). The adjusted value for #48 is
 14 \$225,650.00.

15 The prices per square foot, based on the gross sales or
 16 listing prices and as adjusted by Mr. Lehman are:

Property	Gross Sales or Listing Price Per Square Foot	Lehman Adjusted Value Price Per Square Foot
50 Hidden Valley Rd., (#18)	\$170.94	\$171.45
141 Lakeview Blvd., (#45)	\$197.41	\$192.67
141 Lakeview Blvd., (#41)	\$200.43	\$187.07
286 Old Mammoth Rd., (#100) - Listed For Sale	\$231.62	\$216.36
2 Arrowhead Dr., (#48) - Listed For Sale	\$194.25	\$175.33

1 After considering the evidence presented, the court determines
2 the value of the Subject Property located at 44 Tyrola Lane,
3 Unit 214, Mammoth Lakes, California, is determined to be
4 \$245,250.00.

5 The first deed of trust secures the claim of JPMorgan Chase
6 Bank, N.A. in the approximate amount of \$340,930.64. The secured
7 claim of JPMorgan Chase Bank, N.A. in this case (for which 44 Tyrol
8 Lane, Unit 214, Mammoth Lakes, California, is the collateral) is
9 determined pursuant to 11 U.S.C. § 506(a) to have a value of
10 \$245,250.00, with the balance to be paid as a general unsecured
11 claim through the bankruptcy plan.

12 Dated: August 15, 2013

13
14 /s/
15 RONALD H. SARGIS, Judge
16 United States Bankruptcy Court
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