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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re ) Case No. 10-24750-E-13L  
JOANNE ELIZABETH PIERCE, ) Docket Control No. BLG-1  
Debtor. )

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 issues preclusion.

MEMORANDUM OPINION AND DECISION  
Motion to Value Secured Claim of Golden 1 Credit Union

The matter presented to the court is the Motion filed by Joanne E. Pierce, the Chapter 13 debtor (the "Debtor"), to value the secured claim of Golden 1 Credit Union ("Golden 1"). By this Motion, the Debtor seeks to have the court value the claim of Golden 1 secured by real property commonly known as 3124 U Street, Sacramento, California (the "U Street Property"). The Debtor asserts that the value of the U Street Property is \$175,000.00, having provided the testimony of Steven Becker. If the U Street Property has a value of \$175,000.00, and being subject to a senior lien securing an obligation of \$195,091.00, the Golden 1 secured claim would have a value of \$0.00. Golden 1 counters that the U Street Property has a value of \$240,000.00, based on the testimony of Paul J. Lillemo. If the value is as Mr. Lillemo

1 testifies, the full amount of the Golden 1 claim, computed to be  
2 \$44,553.31 as of the commencement of the case, is the secured  
3 claim.

4 Pursuant to 11 U.S.C. §506(a), the court determines the  
5 secured amount of a creditor's claim. A "Secured Claim" is defined  
6 in 11 U.S.C. §506(a) to be "[a]n allowed claim. . . secured by a  
7 lien on property in which the estate has an interest. . . is a  
8 secured claim to the extent of the value of such creditor's  
9 interest in the estate's interest in such property. . . and is an  
10 unsecured claim to the extent that the value of such creditor's  
11 interest. . . is less than the amount of such allowed claim." By  
12 this definition, a creditor's "claim" may generate two sub-claims.

13 The first is a secured claim for that portion which is the  
14 value of the creditor's interest in property in which the debtor  
15 has an interest. Any portion of the claim which exceeds the value  
16 of the creditor's interest in the debtor's interest in the property  
17 is the second unsecured claim. Because the property being valued  
18 is real property (and not personal property subject to §506(a)(2)),  
19 the value "is determined in light of the purpose of the valuation  
20 and of the proposed disposition or use of such property . . ."  
21 11 U.S.C. §506(a)(1). As stated by both appraisers, this is the  
22 fair market value (the price that a willing seller would accept and  
23 a willing buyer would pay, each being fully informed and acting in  
24 their respective interests) for the U Street Property.

#### 25 **Valuation of Secured Claim**

26 The Golden 1 provided the testimony of Paul J Lillemo, a  
27 licensed real estate appraiser. Mr. Lillemo describes the  
28 condition of the U Street Property as follows,

1 The subject improvements are in good condition and no  
2 functional or external obsolescence was noted. The  
3 subject conforms well to the neighborhood and has good  
4 market appeal. No deferred maintenance was noted.  
Currently, there is a wood fence across the driveway,  
prohibiting entry into the garage. However, for a  
nominal amount, the fence can be removed.

5 The property is a single family home built in 1951, consisting  
6 of five rooms (two bedrooms, one bath), with a two-car garage. The  
7 size of the home is 1,346 square feet. Mr. Lillemo testifies that  
8 the U Street Property has a value of \$240,000.00.

9 Mr. Lillemo identifies three comparable sales which he uses in  
10 his appraisal. The first is 1510 29th Street, Sacramento,  
11 California, located .51 miles from the U Street Property. This  
12 home was sold on April 8, 2010, for \$234,000.00. The 29th Street  
13 home has the same number of rooms, but is smaller, being  
14 1,159 square feet in size. For this size difference, Mr. Lillemo  
15 makes a \$7,480.00 upward adjustment in value for the U Street  
16 Property. Mr. Lillemo also made an upward adjustment of \$5,000.00  
17 for the 29th Street property having only a one-car garage and  
18 \$1,500 upward adjustment for not having a fireplace.

19 The second comparable is 3166 O Street, Sacramento,  
20 California, located .49 miles from the U Street Property. This  
21 property sold for \$256,500.00, on March 17, 2010. The O Street  
22 property is slightly larger, 1,362 square feet and has three  
23 bedrooms. For the additional bedroom, Mr. Lillemo adjusts the  
24 price downward \$5,000.00. Because the O Street property does not  
25 have a garage, there is an upward adjustment of \$10,000.00.

26 The third comparable is 1981 36th Street, Sacramento,  
27 California, .34 miles from the U Street Property. This property  
28 sold for \$218,000.00 on November 20, 2009. The O Street property

1 is smaller, 1,095 square feet, but has a total of six rooms (two  
2 bedrooms, one bath). Mr. Lillemo makes an upward adjustment of  
3 \$10,040.00 for the size difference, but does not expressly make an  
4 adjustment for the additional room. He also makes an upward  
5 adjustment for \$5,000.00 due to the O Street property not having  
6 central heating and air, and a \$5,000.00 upward adjustment because  
7 it has only a one-car garage.

8 After adjustments, the three comparable properties are  
9 computed by Mr. Lillemo to have comparable values of \$247,980.00,  
10 \$261,500.00, and \$238,040.00.

11 With respect to the real estate market, Mr. Lillemo testifies  
12 that REO (real estate owned by lenders who have foreclosed on the  
13 property) sales are a sizable percentage of the sales at the lower  
14 end of the market. Due to limited numbers of sales, he testified  
15 that it is becoming more difficult to find an adequate number of  
16 recent sales for an appraisal. Mr. Lillemo stated that there is an  
17 oversupply of homes in the market, which could continue if existing  
18 active property pricing is not adjusted to reflect the market  
19 conditions.

20 The Debtor introduced the testimony and appraisal of Steve  
21 Becker, a licensed real estate broker, mortgage broker, building  
22 contractor, and engineer. He testifies that the U Street Property  
23 has a value of \$165,000.00 to \$175,000.00. Mr. Becker identifies  
24 seven comparable properties, which break down into the following  
25 groups to be compared to the U Street Property:

26 **Description of U Street Property**

27 1,311 square foot home  
28 5 rooms (2 bedrooms, 1 bath)  
Fireplace  
2 car garage

1 1 story  
2 .15 acre lot size  
3 Average Condition, Average Quality

4 **Description of Becker Seven Comparable Properties**

Comparables Under 1,000 Square Feet	Comparables Over 1,000 Square Feet
2220 33rd Street November 30, 2009 \$155,000.00 sales price  828 square foot home 5 rooms (2 bedrooms, 1 bath) No Fireplace 1 car garage 1 story .06 acre lot size Average Condition, Fair Quality	3301 W Street November 24, 2009 \$234,000.00 sales price  1,263 square foot home 5 rooms (2 bedrooms, 2 bath) No fireplace 1 car garage 1 story .09 lot size Average Condition, Fair Quality
2211 33rd Street February 25, 2010 \$71,000.00 sales price  968 square foot home 5 rooms (3 bedrooms, 1 bath) No fireplace 1 car garage 1 story .08 lot size Average Condition, Fair Quality	3172 T Street January 13, 2010 \$253,000.00 sales price  1,689 square foot home 6 rooms (4 bedrooms, 2 bath) Fireplace 1 car garage 1.5 story .13 lot size Average Condition, Average Quality
2426 33rd Street, December 17, 2009 \$95,000.00 sales price  975 square foot home 5 rooms (2 bedrooms, 1 bath) 1 car garage 1 story .09 acre lot size Average Condition, Average Quality	2014 29 <sup>th</sup> Street February 1, 2010 \$234,000.00 sales price  1,416 square foot home 6 rooms (3 bedrooms, 1 bath) No fireplace No garage 2 story .07 lot size Average Condition, Average Quality
	3348 X Street October 26, 2009 \$65,000.00 sales price  1,100 square foot home 6 rooms (3 bedrooms, 1 bath) Fireplace 2 car garage 1 story .14 lot size Average Condition, Average Quality

1 Mr. Becker does not provide a property by property, item by  
2 item adjustment for the differences between the U Street Property  
3 and the comparable properties. Rather, he averages the sales  
4 prices ranging from \$65,000.00 to \$253,000.00, and comes up with an  
5 average square foot price of \$118.00 for the comparable properties.  
6 The actual prices per square foot for each of these seven  
7 comparable properties are: \$59.09, \$72.00, \$97.40, \$139.14,  
8 \$165.25, \$185.27, and \$187.20.

9 In using this average method of valuation, Mr. Becker must  
10 concluded that all of the comparable properties are of similar  
11 condition, quality, desirability, location, appeal, and utility.  
12 Though not making a specific adjustment for the condition,  
13 Mr. Becker further states that the U Street Property backs up to  
14 Highway 99, and is an inferior location due to noise and pollution.  
15 Mr. Baker then makes single adjustments ranging from \$25,000.00 to  
16 \$75,000.00 for each of his seven comparable properties.

17 While Mr. Becker provides an explanation for his average  
18 square foot pricing model, it is not as persuasive as the  
19 traditional valuation analysis that identifies specific item  
20 adjustments to each of the comparable properties. The court is not  
21 convinced that a 1,311 square foot home on U Street is comparable  
22 to an 828 square foot home on 33rd Street (\$187/square foot), which  
23 is comparable to a 1,600 square foot home on T Street (\$149/square  
24 foot), which is comparable with a 1,416 square foot home on  
25 29th Street (\$69/square foot). Clearly there is more to valuation  
26 than creating an average square foot number. It is difficult for  
27 the court to conclude that a property with a \$59.09 square foot  
28 value is comparable to a property with a \$187.20 square foot value,

1 and therefore each property has a value equal to the square footage  
2 times an average square foot price of \$123.15. Such a value is not  
3 an accurate representation of value for any of the properties. The  
4 art of appraising is more fine tuned than averaging sales prices  
5 and square footage from grossly different properties and then  
6 making single block adjustments to achieve consistent normalized  
7 values.

8 Mr. Becker does provide several comparable properties for  
9 which the sales price per square foot is \$185.00 (3301 W Street)  
10 and \$149.00 (3172 T Street). The comparable properties identified  
11 by Mr. Lillemo skew to the higher end of a square foot sales price  
12 ranging between \$188.00 to \$201.00 a square foot.

13 The court ultimately must determine the value of the U Street  
14 Property, and not merely choose one appraisal or the other. As is  
15 often the case, while providing useful information, neither  
16 appraiser completes the picture. However, the testimony of  
17 Mr. Lillemo is more persuasive and has greater probative value on  
18 the question of value. The court determines the value of the  
19 U Street Property to be \$240,000.00.

20 Having determined the value of the U Street Property to be  
21 \$240,000.00, the court computes the interest of Golden 1 in the  
22 interest of the Debtor in the property as follows. The value of  
23 the property is \$240,000.00, subject to the senior lien securing an  
24 obligation in the amount of \$195,091.00. This leaves a value of  
25 \$44,909.00 to secure the Golden 1 claim.

26 The court shall enter an order determining the Golden 1  
27 secured claim of \$44,553.31, computed as of the commencement of  
28 this case, is fully secured.

1 This Memorandum Opinion and Decision constitutes the Findings  
2 of Fact and Conclusions of law in support of the order determining  
3 the value of the Golden 1 secured claim.

4 Dated: September 14, 2010

  
RONALD H. SARGIS, Judge  
United States Bankruptcy Court