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CREDIT UNION OF SOUTHERN CALIFORNIA

FILED & ENTERED

MAR 19 2013

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY toliver DEPUTY CLERK

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

JONATHAN K. ROMUZGA and
ELIZABETH E. ROMUZGA,

Debtors.

JONATHAN K. ROMUZGA, an Individual,
and ELIZABETH E. ROMUZGA, an
Individual,

Plaintiffs,

v.

CREDIT UNION OF SOUTHERN
CALIFORNIA, a California corporation,

Defendant.

Case No. 2:12-bk-48786-TD

Chapter 7

Adv. No. 2:13-ap-01037-TD

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS UNDER FRCP
12(b)(6)**

Hearing Date & Time:

Date: March 7, 2013
Time: 11:00 a.m.
Place: Courtroom 1345
255 East Temple Street
Los Angeles, CA 90012

1 At the date, time and place set forth above, the Court held a hearing on Credit Union of
2 Southern California's Motion to Dismiss Under FRCP 12(b)(6) (the "Motion"), filed in the
3 above-captioned adversary proceeding (the "Adversary Proceeding") on February 14, 2013 as
4 adversary docket entry no. 4. Appearances were as noted on the record.

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6 The Court having considered the Motion, all papers filed in support thereof and in
7 opposition thereto and the argument of the parties at the hearing, and for the additional reasons
8 discussed at the hearing, as follows: The chapter 7 Debtors, Jonathan and Elizabeth Romuzga,
9 sought to strip-off a junior lien on their residential property under 11 U.S.C. § 506(d). The junior
10 lienholder, Credit Union of Southern California, moved, pursuant Federal Rule of Civil Procedure
11 12(b)(6), to dismiss this motion for failure to state a claim for which relief can be granted.

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13 Section 506(d) allows for a debtor to strip-off a lien that is not an allowed secured claim.
14 However, the Ninth Circuit Bankruptcy Appellate Panel has held that § 506(d) cannot be used to
15 strip-off wholly unsecured junior liens in a chapter 7 bankruptcy. In re Concannon, 338 B.R.
16 90,97 (9th Cir. BAP 2006) (basing this decision on the Supreme Court's rationale in Dewsnup v.
17 Timm, 502 U.S. 410, 417 (1992)).

18 The Debtors have alleged that the value of their property is less than the secured amount
19 of the senior secured lien on the property, leaving the junior lien wholly unsecured. The
20 defendant has contested the Debtors' valuation of the property, but the court must take the facts in
21 a light most favorable to the non-moving party when considering a motion to dismiss.

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23 Viewing these facts in a light most favorable to the non-moving party, the junior lien
24 would be considered a wholly unsecured lien. As stated in In re Concannon, an unsecured lien is
25 not voidable under § 506(d) in chapter 7. Id. Because of this, the Debtors have failed to state a
26 claim upon which relief can be granted, and the case is dismissed pursuant to Federal Rule of
27 Civil Procedure 12(b)(6). Moreover, there are no additional facts that the chapter 7 Debtors could
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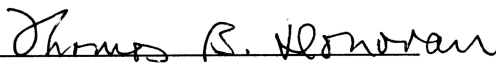
1 allege that would allow for a successful claim to avoid the lien under § 506(d); therefore, the
2 claim is dismissed with prejudice and good cause appearing therefor, it is hereby

3 ORDERED, that the Motion is granted, and it is further

4 ORDERED, that the Adversary Proceeding is dismissed, with prejudice.
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24 Date: March 19, 2013


Thomas B. Donovan
United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS UNDER FRCP 12(b)(6)** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) – Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) March 8, 2013, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

UNITED STATES TRUSTEE: United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
COUNSEL FOR CREDIT UNION OF SOCAL: Angella D Yates ayates@buchalter.com, smartin@buchalter.com
CHAPTER 7 TRUSTEE: Timothy Yoo (TR) tjytrustee@lnbrb.com, tyoo@ecf.epiqsystems.com

☐ Service information continued on attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Debtors:
Jonathan K and Elizabeth E Romuzga
1115 N Alameda Ave
Azusa, CA 91702

☐ Service information continued on attached page

3. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

☐ Service information continued on attached page