



**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:  
  
Margie Leigh Bell,  
  
  
  
  
  
  
  
  
  
Debtor(s).

Case No.: 2:13-bk-18853-NB

CHAPTER 13

**MEMORANDUM DECISION DENYING  
MOTION TO AVOID JUNIOR LIEN HELD BY  
TRABUCO INVESTMENTS, INC.**

Date: November 27, 2013  
Time: 2:00 PM  
Courtroom: 1545

A hearing was held on October 17, 2013 on the debtor's motion (dkt. 33) to avoid the junior lien held by Trabuco Investments, Inc. ("Trabuco") on the property that the debtor identifies as her principal residence. Appearances were as noted in the record.

The parties requested that this court make a binding ruling as to valuation based on their competing written appraisals and other documents (dkt. 36, 44 & 50), without oral testimony. In the interest of cost savings for the parties and all other parties in interest in this case, this court agreed and took the matter under submission and now makes the following findings of fact and conclusions of law.

(1) Applicable law. A claim secured by a junior lien that is entirely "under water" may be characterized as an unsecured claim for purposes of its treatment under a chapter 13 plan. *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002); *In re Lam*, 211 B.R. 36

1 (9th Cir. BAP 1997), *appeal dismissed*, 192 F.3d 1309, 1311 (9th Cir. 1999).

2 Accordingly, the key issue is whether or not the value of the debtor's principal residence  
3 exceeds the dollar amount of senior lien.

4 (2) Senior lien. The Motion lists the dollar amount of a senior lien as  
5 **\$282,974.10** (dkt. 33 para. 3.a.(1)). That dollar amount is supported by a copy of the  
6 proof of claim filed by the senior lienholder listing that dollar amount as owing as of the  
7 petition date, which is April 4, 2013 (dkt. 33, Ex. A) and Trabuco has not contested that  
8 amount.

9 (3) Competing appraisals. The debtor asserts a value of \$250,000.00 in the  
10 motion, based on the debtor's declaration and her stated familiarity with local property  
11 sales, later revised down to **\$220,000 as of September 4, 2013** based on an appraisal  
12 by Mr. Paul Csengeri, identified as a certified appraiser. *See Csengeri Decl.* (dkt. 44).  
13 Although the debtor may have considerable familiarity with local sales, her declaration  
14 provides no details regarding other properties and to what extent they are or are not  
15 similar to her own, so her declaration carries little weight and the principal focus of this  
16 discussion will be on Mr. Csengeri's appraisal and Trabuco's competing appraisal.  
17 Trabuco asserts a value of **\$335,000 as of June 6, 2013** based on the appraisal of Mr.  
18 Maxim Perkler, who declares that he is a licensed real estate appraiser. *See Trabuco*  
19 *Opp.* (dkt. 36 at p. 5 & Ex. 1). Trabuco's Supplemental Opposition (dkt. 50) critiques the  
20 appraisal of Mr. Csengeri.

21 (4) Proximity of Comparables. Of the properties used by the appraisers for  
22 comparison with the subject property (the "Comps"), the debtor's appraiser used five  
23 Comps all of which are between approximately  $\frac{3}{4}$  of a mile and 1.5 miles away from the  
24 subject property, and Trabuco's appraiser used three Comps at 0.27, 0.34 and 0.43  
25 miles away. This difference weighs in favor of Trabuco.

26 (5) Number of Comparables. As just noted, the debtor used five Comps while  
27 Trabuco used three. This consideration weighs in favor of the debtor.

28 (6) Sale Date of Comparables. This court takes judicial notice that property

1 values have risen by a fairly substantial percentage over the last year or so. Two of the  
2 debtor's Comps are somewhat old in comparison to the valuation date (Comps 3 and 4,  
3 dkt. 44 at PDF pp. 6 & 8), but the debtor's appraisal does not make any adjustment on  
4 this basis and does not offer any explanation why not. On the other hand, those sale  
5 dates are closer to the petition date, so if that is the relevant date for valuation (an issue  
6 that this court need not decide as noted below) then the use of these Comps is helpful.  
7 On balance this consideration is neutral.

8 (7) Sale Type of Comparables. The debtor's Comps are all short sales.  
9 Trabuco's supplemental opposition asserts that in a short sale transaction "the seller  
10 has no incentive to maximize the sale price, and typically sells the property for a below  
11 market value that is merely sufficient to satisfy the first trust deed holder and prevent a  
12 foreclosure." *Perkler Decl.* (dkt. 50) at 7:5-7. Although this court is not persuaded that  
13 there is "no" incentive to maximize the sale price – the debtor has an incentive to  
14 persuade the senior lienholder, at least, that it will receive a greater return through a  
15 short sale than it would through other alternatives – nevertheless it is true that short  
16 sales can reduce the incentive to maximize the sale price. This consideration weighs in  
17 favor of Trabuco.

18 (8) Appraiser's Credibility and Experience. Neither appraiser's declaration  
19 reviewed their relevant experience. Neither appraiser testified. In these circumstances,  
20 this court is not prepared to make any adjustments for any differences in experience or  
21 credibility. This consideration is neutral.

22 (9) Adjustments for lot size. Both appraisers acknowledged that the subject's  
23 lot size (13,425 square feet) is significantly larger than usual in the local area. The  
24 debtor's appraisal makes adjustments of between \$11,667 (for Comp 4 with a lot size of  
25 9536 square feet) to \$25,965 (for Comp 3 with a lot size of 4770 square feet), and the  
26 other Comps are adjusted by \$25,710 (Comp 2), \$21,427 (Comp 5), and \$17,184  
27 (Comp 1). Trabuco's appraisal makes adjustments of between negative \$5,000  
28 (Comp 3, for a larger lot size of 16,114 square feet) to \$16,000 (Comps 1 and 2, for lot

1 sizes of 5190 and 5400). First, while large adjustments certainly may be appropriate to  
2 account for large differences, they also tend to reflect that the Comps are not truly  
3 comparable, and large adjustments can magnify any inaccuracies in weighing the  
4 importance of a given characteristic of a Comp. Second, the debtor's adjustments  
5 appear to be excessive, even for the large differences in square footage between the  
6 subject and the Comps, at least without an explanation (e.g., that the lot is ideal for  
7 building a much larger residence, division into two lots, or development as a commercial  
8 site, and that such things are legally feasible and economically advantageous). For all  
9 of these reasons this consideration weighs somewhat in favor of Trabuco.

10 (10) Adjustments for Bed and Bath Counts and Square Footage. The debtor's  
11 appraiser lists the subject property with three bedrooms and two bathrooms, whereas  
12 Trabuco's appraiser lists it with four bedrooms and two bathrooms. The appraisers  
13 agree, however, that the subject has 1,618 square feet of gross living area. Both  
14 appraisers made adjustments for Comps with larger or smaller living areas, and based  
15 on this court's experience the adjustments are within an acceptable range, although the  
16 size differences for debtor's Comp 1 and Trabuco's Comp 2 are large and, as noted  
17 above, that suggests that these Comps are not truly comparable and it magnifies any  
18 inaccuracies. Overall, this consideration is neutral.

19 (11) Consideration of Any Other, Unique Features. Although there are  
20 adjustments for other aspects, such as garages, in comparing the two appraisals these  
21 considerations have an aggregate effect that is neutral.

22 (12) Condition of Subject and Comps. The debtor's appraisal describes the  
23 subject property as having a "poor" overall condition with "considerable deferred  
24 maintenance," including walls and floors that are soiled, damaged, and missing in one  
25 location, "no major upgrades," "limited landscaping" and one bathroom that is "not  
26 working." *Csengeri Decl.* (dkt. 44) at 5 (bottom of page). In comparison, all of the  
27 debtor's Comps are listing as having a "superior" condition. *Id.* at 5 & 7. Trabuco's  
28 appraisal states that the subject property "appears to be in 'Average/Poor' exterior

1 condition” and that the “interior condition is assumed to reflect the exterior” but “[n]o  
2 interior inspection was performed” and “per client’s request a Drive By only appraisal  
3 was performed.” Tracuco Opp. (dkt. 36) Ex. 1 at p. 4. Trabuco’s appraisal lists the  
4 Comps as “Average,” “Avg/Maintained” and “Good” with adjustments of negative  
5 \$10,000 (Comp 3), negative \$25,000 (Comp 1), and negative \$50,000 (Comp 2). The  
6 photographs attached to the appraisals are not very enlightening, although they  
7 generally support the debtor’s assertions about the condition of the subject property.  
8 This consideration weighs in favor of the debtor. Trabuco’s Supplemental Opposition  
9 (dkt. 50) and the supporting declaration state that the debtor’s Comp 2 suffered  
10 “significant fire damage in recent years” and is considered to be a “tear down” but, it  
11 points out, the debtor’s appraiser listed this Comp 2 as being in “superior” condition.  
12 Trabuco makes a similar observation about Comp 4, stating that “while the MLS for this  
13 property stated that the house needs considerable work, Mr. Csengeri considered this  
14 property to be in superior condition to [the subject property] and as such, adjusts the  
15 value of [the subject] down.” *Trabuco’s Supplemental Opposition* (dkt. 50) at 8:9-11.  
16 The absence of an interior inspection by Trabuco’s appraiser weighs considerably in the  
17 debtor’s favor, although that is somewhat counterbalanced by the apparent willingness  
18 of the debtor’s appraiser to discount or overlook defects in the Comps. Overall this  
19 consideration weighs in the debtor’s favor.

20 Conclusion. Based on this court’s analysis of the documents and records,  
21 including the foregoing considerations, this court finds that although Trabuco’s appraisal  
22 does not adequately account for the interior condition of the subject property, the  
23 debtor’s appraisal has some substantial weaknesses and the value of the property as of  
24 the hearing on October 17, 2013 is approximately **\$295,000**.


25 The undersigned Bankruptcy Judge has been using the hearing date for  
26 valuations, and in another case the parties have been disputing what is the appropriate  
27 valuation date including whether the petition date should be used instead. In this case  
28 the petition date is April 4, 2013, which is not very far from the date of Trabuco’s

1 appraisal, and although the valuation might be slightly less if it were as of the petition  
2 date, this court is not persuaded that the ultimate result would be any different.

3 For the foregoing reasons the junior lien held by Trabuco is partially secured and  
4 cannot be avoided. Accordingly, the Motion will be denied by separate order. Trabuco  
5 is directed to serve and lodge within fourteen days of the issuance of this memorandum  
6 decision a proposed order denying the Motion for the reasons stated in this  
7 Memorandum Decision.

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24 Date: November 27, 2013

  
Neil W. Bason  
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 DENYING MOTION TO AVOID JUNIOR LIEN HELD BY THE BANK OF NEW YORK MELLON** 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*) **2/15/13**, 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.

- Kathy A Dockery (TR) efileing@CH13LA.com
- Laleh Ensafi lensafi@yahoo.com, Cmartin@pralc.com
- Joseph Garibyan cmartin@pralc.com
- Philip J Giles efcacb@piteduncan.com
- Nina Z Javan njavan@pralc.com, cmartin@pralc.com
- Matthew D Resnik matt@resniklaw.com
- Cassandra J Richey cmartin@pprlaw.net
- Daniel I Singer bankruptcy@zievelaw.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Kristin S Webb bknotice@rcolegal.com
- Robert P Zahradka efcacb@piteduncan.com

page  Service information continued on attached

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:

**Debtor:**

Margie Leigh Bell  
13805 Kenmore Ave  
Baldwin Park, CA  
91706

page  Service information continued on attached

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:

page  Service information continued on attached

