



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

In re:

ANGEL RODRIGUEZ LARA and
ANGELICA SOTO CALVA,

Debtor(s).

Case No.: 2: 19-bk-14078-NB

CHAPTER 11

**MEMORANDUM DECISION ON VALUATION
MOTION, PROPOSED PLAN, AND CASE
STATUS**

Prior Hearing:

Date: August 4, 2020
Time: 1:00 PM
Place: [Telephonic]

Next Status Conference:

Date: October 27, 2020
Time: 1:00 PM
Place: [Telephonic]

Debtors filed their bankruptcy petition on April 10, 2019 (the "Petition Date"). At the above-captioned time and place, a hearing was held on the debtor's motion (the "Motion", dkt. 172) to value collateral securing the claim held by Mission Hen, LLC (the "Junior Lienholder") for purposes of confirming any proposed chapter 11 plan. Debtors' current Plan (dkt. 154, and exhibits A & E thereto, at dkt. 153, PDF pp. 7-8 & 35-36) (collectively, the "Plan") does not include any alleged secured claim of the Junior Lienholder. Debtors were relying on a prior order of this Court (dkt. 108) granting an

1 earlier valuation motion (dkt. 95) and valuing the subject property at \$425,000.00
2 (dkt. 108), which would have left the Junior Lienholder's claim entirely underwater; but
3 at the above-captioned Prior Hearing this Court ruled that such valuation was not
4 binding on the Junior Lienholder due to lack of proper notice.

5 The collateral consists of the rental property located at 1934-1935 Locust
6 Avenue, Long Beach, California 90806 (the "Property"). By agreement of the parties,
7 the matter was taken under submission for a final ruling based on the written record
8 (dkt. 172, 187, 189, 194) without oral testimony.

9 (1) Background. In general, claims must be determined "as of the date of the
10 filing of the petition." 11 U.S.C. § 502(b) (emphasis added). In analogous contexts, this
11 Bankruptcy Court has held that the Petition Date is the relevant date for valuation. *In re*
12 *Gutierrez* (Case No. 2:12-bk-49133-NB, dkt. 37). True, holders of secured claims are
13 entitled to "adequate protection" against a decline in the value of their collateral (11
14 U.S.C. §§ 361, 362(d)(1), 363(e)), but any appreciation in value of the collateral
15 generally belongs to the bankruptcy estate, subject to certain rights of the holders of
16 secured claims to participate in that appreciation in certain circumstances. *See, e.g.*, 11
17 U.S.C. § 1111(b). It is also true that any proposed chapter 11 plan that pays secured
18 claims over time must provide the present value of whatever interest the holder retains
19 in the collateral (up to the dollar amount of such claim) (11 U.S.C. § 1129(b)(2)(A)(i)(II)),
20 but that simply assures that the stream of future payments is not worth less than the
21 (bifurcated) secured claim – it does not increase the secured claim (or decrease it) to
22 whatever value the collateral might have as of the effective date of the plan. In addition,
23 the parties have not contested that the proper date for valuation is the Petition Date, so
24 any contrary arguments are waived and forfeited. For all of the foregoing reasons, this
25 Bankruptcy Court will find the value of the Property as of the Petition Date, and that will
26 determine the dollar amount of the Junior Lienholder's bifurcated secured claim (11
27 U.S.C. § 506(b)) as of the Petition Date.

28 (2) Senior Liens. The Motion asserts that the dollar amount owed on the

1 senior lien against the Property was **\$508,569.28** as of the Petition Date, based on the
2 senior lienholder's proof of claim. Motion (dkt. 172), Ex. B. The Junior Lienholder has
3 not contested this dollar amount.

4 (3) Competing Appraisals. Debtors' appraisal values the Property at
5 **\$425,000.00** as of September 20, 2019. Motion (dkt. 172), Ex. A. See *a/so* Decl.
6 (dkt. 189), The Junior Lienholder's appraisal values the Property at **\$555,000.00** as of
7 April 19, 2019 (dkt. 187). See also Decl. (dkt. 194). Both appraisals rely on
8 comparisons with properties that they assert are comparable ("Comps"), and adjust the
9 prices of those Comps to arrive at a value for the Property, and both appraisals rely
10 most strongly on the sales approach, supported by the income approach and (to a
11 lesser extent) the cost approach.

12 (4) Condition of the Comps relative to the Property. The parties sharply
13 disagree regarding adjustments based on the alleged condition of the Property.
14 Debtors' appraisal makes an adjustment of \$87,500.00 based on one-half of a
15 \$175,500.00 (rounded) "repair estimate" from a licensed contractor – Debtor's appraiser
16 opines that the full dollar amount would bring the Property to "good" condition, and one-
17 half would bring it to "average" condition. See Debtor Appraisal (dkt.172) Ex. A at PDF
18 pp. 4 and 6-8 The Junior Lienholder's appraiser makes no adjustment for any repairs,
19 opines that such adjustments are inappropriate ("more of a wish list" than a reflection of
20 needed repairs), and states, based on a physical inspection on July 2, 2020, "The
21 subject is considered to be in average condition overall," "no major repairs were noted,"
22 and upgrades "include tile, laminate, and carpeted floors." Dkt. 187 at PDF pp. 6 & 12;
23 dkt. 194, p. 2:6. This Court notes that, although Debtor's appraisal lists the Property as
24 less than "average" condition ("fair-average," emphasis added), nevertheless it states
25 that there are no "physical deficiencies or adverse conditions that affect the liveability,
26 soundness, or structural integrity of the property," and neither any written descriptions
27 nor the photographs attached to the appraisals appear to reflect any specific below-
28 average conditions. See Debtor Appraisal (dkt. 172), Ex. A at PDF p. 5, pp. 9-11, *and*

1 *passim*. In addition, this Court's review of the contractor's bid attached to Debtors'
2 Appraisal (dkt. 172, Ex. A, pp. 18-23 (PDF pp. 22-26)) appears to reflect a complete
3 remodel of all elements of the property, regardless without being tied to any alleged
4 deficiencies in any particular element of the property or improvements. Based on all of
5 the foregoing, this Court is not persuaded to accept Debtors' evidence that **any**
6 adjustment for repairs is appropriate. Adjusting for this consideration alone, Debtor's
7 appraisal would yield a value of **\$512,500.00** (*i.e.*, \$425,000.00 + \$87,500.00 =
8 \$512,500.00).

9 (5) Proximity and Precise Location of Comps. Usually the Comps that are
10 closest to the Property are the best indicators of value; and it is also important to
11 consider the characteristics of the precise location, such as whether the Property is
12 adjacent to undesirable properties or features, or within a particular school district.
13 Debtors' Appraisal (dkt. 172, at PDF pp. 6 & 8) lists 3 Comps over 1 mile from the
14 Property and one 4.57 miles, whereas the Junior Lienholder's appraisal lists all but one
15 Comp within a mile. This consideration weighs in favor of the Junior Lienholder's
16 appraisal.

17 (6) Sale Date of Comps. Sale dates close to the valuation date generally are
18 preferable (in a market that may be rising or falling). Debtors' appraisal uses dates
19 within three to five months of the Petition Date, whereas the Junior Lienholder's
20 appraisal uses dates from within one month to over a year before the Petition Date.
21 The parties have not provided evidence of whatever changes may have occurred in the
22 market during that time period, in the geographic area of the Property. Although this
23 Court takes judicial notice that prices in the greater Los Angeles area generally have
24 been stable or rising, and therefore conceivably an upward adjustment to the Junior
25 Lienholder's appraisal might be warranted based on old sales, nevertheless any such
26 issues should have been analyzed in the first instance by the appraisers, and in the
27 absence of such analysis this Court weighs the Junior Lienholder's sale Comps ## 3
28 and 4 slightly less heavily due to their age. Those sales are not outliers, however, so

1 this adjustment makes little difference. On balance, this consideration weighs very
2 slightly in favor of Debtors' appraisal.

3 (7) Sale Type of Comps. Actual sales are superior to listings, and arms-
4 length non-distressed sales are preferable to the alternatives, such as "short" sales.
5 Debtors' sale Comp #5 is only a listing, so this Court discounts it somewhat. Debtors'
6 other Comps have larger percentage adjustments (see below), so discounting Comp #5
7 makes a difference, although not a huge one. This consideration weighs slightly in
8 favor of the Junior Lienholder's appraisal.

9 (8) Appraiser's Experience/ Credibility. There was no live testimony from
10 which to judge credibility and, although each appraiser critiques the other's appraisal,
11 the record before this Court does not contain sufficient evidence to make adjustments
12 on this basis. Accordingly, this consideration is neutral.

13 (9) Adjustments for Bed and Bath Counts, Interior Square Footage, etc.
14 Appraisals traditionally adjust Comps for bed and bath counts, other characteristics of
15 each property, square footage, or some combination of those things, and various
16 methods of adjustment are acceptable. Based on this Court's review of both the nature
17 and the size of adjustments made by the appraisers, this consideration does not warrant
18 any adjustment.

19 (10) Income and replacement cost approaches. This Court is somewhat
20 persuaded by the Junior Lienholder's critiques (dkt. 194, pp. 2:22-3:9) of the income
21 approach used by Debtors' appraiser. Like both appraisers, this Court does not weigh
22 the income approach as heavily as the sales comparison approach, and this Court gives
23 little weight to the replacement cost approach. On balance, this consideration weighs in
24 favor of the Junior Lienholder's appraisal.

25 (11) Valuation Decision. Taking into consideration all of the record presented,
26 and in particular the matters noted above, I find that as of the relevant date the Property
27 had a value of **\$545,000.00.**

28 (12) Conclusion. Based on the foregoing findings of fact and conclusions of

1 law, the Junior Lienholder had a **secured claim of \$36,430.72** as of the Petition Date
2 (*i.e.*, Property value of \$545,000.00 – senior lien balance of \$508,569.28 = \$36,430.72)
3 and any proposed chapter 11 plan must pay the present value of that claim (subject to
4 any reduction or increase in that claim during the course of this bankruptcy case due to,
5 *e.g.*, any adequate protection payments in excess of interest charges). The remainder
6 of the Junior Lienholder’s claim can be treated as a general unsecured claim.
7 Accordingly, the Motion is granted in part and denied in part as forth forth above.
8 Pursuant to LBR 9021-1(b)(1)(B), the Junior Lienholder is directed within 7 days to
9 serve and lodge via LOU a proposed order adopting the foregoing ruling “for the
10 reasons stated” in this Memorandum Decision.

11 (13) Further proceedings. This Court will hold a status conference at date of
12 the Next Status Conference set forth above in the caption. Meanwhile, with respect to
13 the matters on this Court’s calendar for September 29, 2020 – the Motion, a hearing on
14 the Plan and associated Disclosure Statement, and a Status Conference – the tentative
15 ruling is that the first two matters are mooted by this Memorandum Decision and that
16 the Status Conference should be continued as set forth in the caption, with all parties
17 excused from making any appearances on September 29, 2020, and with a deadline of
18 October 13, 2020 for Debtors to file (but NOT serve, except on the United States
19 Trustee and any party requesting special notice) an amended proposed Plan and
20 amended proposed Disclosure Statement or, alternatively, a Status Report explaining
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1 why they cannot file such documents. If any party seeks to contest this tentative
2 ruling (e.g., if any party wishes to alter the above-referenced deadline) they are
3 directed to follow the posted "Procedures of Judge Bason" (available at
4 www.cacb.uscourts.gov).

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24 Date: September 28, 2020



Neil W. Bason
United States Bankruptcy Judge