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

11 In re:

12 Tracey P. Nubia,

16 Debtor(s).

Case No.: 2:19-bk-24337-NB

CHAPTER 13

13 **MEMORANDUM DECISION DENYING**
14 **MOTION TO AVOID JUNIOR LIEN**

15 Date: May 28, 2020

Time: 8:30 a.m.

16 Courtroom: 1545

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18 At the above-captioned time and place, a hearing was held on Debtor's motion to
19 avoid a junior lien (the "Motion", dkt. 33) held by The Bank of New York Mellon fka The
20 Bank of New York, as successor to JPMorgan Chase Bank, N.A., as Trustee for the
21 Certificateholders of CWHEQ Revolving Home Equity Loan Trust, Series 2005-F,
22 represented by its agent, Real Time Resolutions, Inc. (the "Junior Lienholder") that is
23 secured by Debtor's principal residence located at 3758 West 118th Street, Los
24 Angeles, CA 90250 (the "Property"). By agreement of the parties, the matter was taken
25 under submission for a final ruling based on the written record (dkt. 33, 35-36, 43)
26 without oral testimony.

27 (1) Background. A chapter 13 plan can "modify the rights of holders of
28 secured claims, *other than* a claim secured only by a security interest in real property

1 that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2) (emphasis added). A
2 claim is not a "secured claim" for bankruptcy purposes, however, if the subject lien is
3 entirely underwater. *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002); *In re Lam*, 211 B.R.
4 36 (9th Cir. BAP 1997). Therefore the key issue is whether or not (a) the aggregate
5 dollar amount owed on senior liens exceeds (b) the value of the Property as of the
6 relevant date. The parties have not briefed what date is relevant. This Memorandum
7 Decision will use the date on which the bankruptcy petition was filed (the "Petition
8 Date"), which in this case was **December 7, 2020**, based on the reasoning set forth in a
9 tentative decision in another case. *In re Gutierrez* (Case No. 2:12-bk-49133-NB, dkt.
10 37).

11 (2) Senior Liens. The parties agree that the dollar amount owed on the senior
12 lien against the Property was **\$400,670.56**, based on its proof of claim. See dkt. 33,
13 Ex. A, and dkt. 35, p. 2:10.

14 (3) Competing Appraisals. Debtor's appraisal values the Property at
15 **\$390,000** as of approximately three months after the petition date, on March 3, 2020.
16 Dkt. 33, Ex. C. The Junior Lienholder's appraisal values the Property at **\$455,000** as of
17 the Petition Date. Dkt. 35, Ex. A and dkt. 36, Ex. A. Both appraisals rely on sales or
18 listings of properties that they assert are comparable ("Comps"), and adjust the prices of
19 those Comps to arrive at a value for the Property; but the largest difference between the
20 appraisals is in their estimate for necessary repairs at the Property.

21 (4) Repair costs. The condition of the Property and all Comps can be difficult
22 to determine without a physical inspection, and more generally the condition of any
23 property is somewhat subjective and difficult to quantify. Debtor's appraisal describes
24 the Property as "almost uninhabitable" and estimates "deferred maintenance in excess
25 of \$110,000 repairs" (dkt. 33, Ex. C, at PDF p. 8) based on an estimate from an
26 unnamed contractor for \$111,150.00. Dkt. 33, Ex. C, at PDF p. 11. In her reply papers
27 Debtor increases her repair estimate to \$131,925.00, including mold remediation, based
28 on the declaration of Daniel Messina of South Coast Developers, Inc., a licensed

1 contractor and certified mold remediation contractor. Dkt. 42, p. 4:16-28, *and* dkt. 43.
2 Mr. Messina's estimate does not include any breakdown of his total dollar estimate, but
3 does include an extensive list of proposed work including not only roof repair and
4 drywall replacement but also what appears to be complete replacement of two
5 bathrooms including bathtubs and other fixtures, vanities, lighting, and plumbing.

6 Turning to Junior Lienholder's appraisal, it states that it is an "exterior only
7 inspection" and that "an interior inspection of the [Property] could have an impact upon
8 the opinion of value in this appraisal report." Dkt. 35 at PDF p. 4. But that appears to
9 be language retained from an earlier draft, based on the following.

10 The appraisal notes "[s]ignificant items of deferred maintenance observed from
11 water damage identified in the bathroom area upstairs" with "leaking observed" from the
12 roof into the bathroom on the day of inspection, and it includes photographs of the
13 interior. Dkt. 35 at PDF p. 8. The appraiser "estimates costs associated with
14 remediation of the water damage, including ceiling/roof repair, bathroom repair for
15 functional use, cleanup, etc. at \$20,000, based on discussions with local contractors
16 and handymen surveyed of potential costs of materials, labor, and overhead." *Id.* The
17 appraiser adds, however, that a "smell from water damage could indicate a detection of
18 mold present" (*id.*); the \$20,000 adjustment does not include remediation of mold (*id.*);
19 the appraisal is expressly subject to "an inspection from a mold expert"; and the
20 valuation is based "on the extraordinary assumption that the observed deficiency in the
21 bathroom area (water damage) does not require additional remediation for mold
22 damage." *Id.* at PDF p. 6.

23 Based on the foregoing, and review of the photographs, this Court finds a
24 substantial likelihood of not only visible but hidden water damage, including some mold
25 damage. But this Court is not persuaded that the damage is anywhere near as
26 extensive or expensive to repair as Debtor asserts. On balance, this consideration
27 weighs somewhat in favor of the Junior Lienholder's appraisal.

28 (5) Sale Date of Comps. Sale dates close to the valuation date generally are

1 preferable, at least in a market that may be rising or falling, and this Court takes judicial
2 notice that the real estate market in the greater Los Angeles area has been rising for the
3 past several years and that both the Petition Date and all the sale dates for Comps are
4 before any reported negative effects from the COVID-19 pandemic. Therefore, older
5 Comps warrant an upward adjustment, and both appraisers appear to have made
6 appropriate adjustments. See Dkt. 33, Ex. C, at PDF p. 9; dkt. 36, p. 5. This
7 consideration is neutral: it does not weigh in favor of either appraisal.

8 (6) Sale Type of Comps. Actual sales are superior to listings, and arms-
9 length non-distressed sales are preferable to the alternatives, such as “short” sales.
10 Neither appraisal relies on sales that would appear to warrant an adjustment, and
11 neither makes any adjustment. Again, this consideration is neutral.

12 (7) Proximity and Precise Location of Comps. Usually the Comps that are
13 closest to the Property are the best indicators of value; and it is also important to
14 consider the characteristics of the precise location, such as whether the Property is
15 adjacent to undesirable properties or features, or within a particular school district. Both
16 appraisals appear to make appropriate adjustments, primarily for the fact that the
17 subject Property backs on a freeway. Again, this consideration is neutral.

18 (8) Appraiser’s Experience/ Credibility. Both appraisers appear to be well
19 qualified and experienced, and there are none of the “red flags” that might normally lead
20 this Court to question an appraiser’s credibility (such as assertions that appear doubtful
21 on their face and that lack support, or statements that are contrary to matters of which
22 this Court can take judicial notice – and although the Junior Lienholder’s appraisal is
23 somewhat inconsistent about whether there was or was not an interior inspection, that
24 appears to be a minor oversight). This consideration weighs very slightly against the
25 Junior Lienholder’s appraisal.

26 (9) Adjustments for Bed and Bath Counts and Interior Square Footage.
27 Appraisals traditionally adjust Comps for bed and bath counts, or square footage, or
28 some combination of those things, and any one of those methods is acceptable.

1 a. Gross Living Area and Configuration of Subject Property. Both
2 appraisers appear to make appropriate adjustments for these matters.
3 Again, this consideration is neutral.

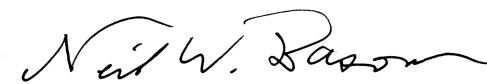
4 b. Magnitude of Adjustments. Debtor's appraisal makes two very large
5 adjustments: \$138,000 for Comp #2 and \$165,500 for Comp #3. The
6 Junior Lienholder's appraisal makes one very large adjustment:
7 \$88,000 for Comp #1. On the one hand, if the subject Property really
8 is all but uninhabitable as Debtor asserts, it may be difficult to find
9 comparable sales and therefore large adjustments may be necessary.
10 On the other hand, large adjustments make appraisals more subjective
11 and can magnify any inaccuracies in weighing a given Comp. On
12 balance, this consideration weighs somewhat in favor of the Junior
13 Lienholder's appraisal.

14 (10) Valuation Decision. Taking into consideration all of the record presented,
15 and in particular the matters noted above, this Court finds that as of the relevant date
16 the Property had a value of **\$430,000.**

17 (11) Conclusion. Based on the foregoing findings of fact and conclusions of
18 law, the Motion must be DENIED. Pursuant to LBR 9021-1(b)(1)(B), the prevailing party
19 is directed within 7 days to serve and lodge via LOU a proposed order adopting that
20 ruling "for the reasons stated" in this memorandum decision.

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24 Date: July 23, 2020



Neil W. Bason
United States Bankruptcy Judge