



Dated: December 29, 2010

UNITED STATES BANKRUPTC

  
JOHN L. PETERSON  
U.S. Bankruptcy Judge

FOR THE DISTRICT OF ARIZONA

In re

LESLIE STACKPOLE and DARREN  
LEEK, wife and husband,

Debtors.

In Chapter 11 proceedings

Case No. 2:10-bk-17151-CGC

**FINDINGS OF FACT AND  
CONCLUSION OF LAW  
REGARDING JPMORGAN CHASE  
BANK'S OBJECTION TO PLAN  
CONFIRMATION**

This matter comes before the Court on the *Chapter 11 Plan of Reorganization* (the "Plan") and the *Omnibus Motion To Determine Amount Of Claims Secured By Rental Properties Pursuant To 11 U.S.C. §506* (the "Valuation Motion") filed Debtors and debtors-in-possession Leslie Stackpole and Darren Leek (collectively, "Debtors"), and the objection to confirmation of the Plan filed by secured creditor JPMorgan Chase Bank ("Chase").

Chase objected to the Plan on the grounds that the Plan was not feasible and that the Plan and Valuation Motion incorrectly state the value of its interest in the real property located at 1329 W. Woodland Avenue, Phoenix, Arizona (the "Subject Property"), upon which Chase holds a first-position deed of trust. The objections to confirmation of the Plan filed by IBM Lender Business Process Services, Inc. ("IBM"), and Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-2 ("Deutsche Bank") have been resolved by stipulation between Debtors and said creditors.

On December 7, 2010, the Court held an evidentiary hearing on Chase's objection to confirmation of the Plan and the valuation of its interest in the Subject Property. This Order sets forth the Court's findings of fact and conclusions of law on these issues.

1 **I. FINDINGS OF FACT**

2 **A. Events Leading To Filing Of Bankruptcy Petition.**

3 1. Debtors are wife and husband.

4 2. Aside from their primary residence, Debtors own 8 residential properties  
5 (collectively, the “Rental Properties”) that they purchased to hold as investments.

6 3. The Rental Properties are located primarily in the downtown Phoenix area, although  
7 Debtors also own one property located in Pinetop, Arizona that they have typically leased to  
8 vacationers through short-term leases.

9 4. As set forth in Schedule D of the Debtors’ bankruptcy schedules, each of the Rental  
10 Properties is subject to a Deed of Trust in favor of the lender that provided financing for the  
11 purchase or refinance of the respective Rental Property.

12 5. Debtors purchased the Subject Property in January 2006 for \$145,000.

13 6. On or about February 16, 2007, Debtors executed an *Adjustable Rate Note* (the “1329  
14 W. Woodland Note”) in the original principal amount of \$180,000 in favor of Washington Mutual  
15 Bank.

16 7. The 1329 W. Woodland Note is secured by a first-position Deed of Trust on the  
17 Subject Property in favor of Washington Mutual Bank, which was recorded in the Office of the  
18 Maricopa County Recorder on February 28, 2007 at Instrument No. 2007-0243542.

19 8. Chase is the successor-in-interest to Washington Mutual Bank.

20 9. Chase filed a timely proof of claim (Claim No. 10 in the Court’s official claim  
21 register), stating a claim secured by the Subject Property in the amount of \$184,493.25.

22 10. The Debtors’ bankruptcy petition was precipitated by the national economic recession  
23 coupled with the substantial decline in the value of real property in the Phoenix metropolitan area.  
24 Debtors experienced a decrease in occupancy rates and a steady drop in the market rate of rent,  
25 which led to substantially lower rental revenues. The rental revenue thus became insufficient to  
26 service the indebtedness secured by the Rental Properties.

11. Prior to filing the bankruptcy petition, Debtors worked diligently to obtain voluntary loan modifications with their lenders. Their efforts were for the most part unavailing, as the lenders were unwilling or unable to offer a permanent modification of the secured indebtedness on terms that the Debtors could reasonably afford.

12. On June 1, 2010 (the “Filing Date”), Debtors filed the instant petition for relief under Chapter 11 of the United States Bankruptcy Code.

### B. The Plan and Valuation Motion.

13. Debtors have continued to operate and maintain the Rental Properties throughout the pendency of this bankruptcy case.

14. Debtors have complied with all of their obligations under the Bankruptcy Code, including their obligation to timely file monthly operating reports and to pay the fees owed to the Office of the United States Trustee.

15. Debtors filed the Plan on July 8, 2010. (Dkt. 54).

16. Debtors filed their *Disclosure Statement* in support of the Plan on July 8, 2010. (Dkt. 58). Exhibit 2 to the Disclosure Statement is Debtors' 5-year projected cash flow analysis, which Leslie Stackpole testified she prepared based upon historical income and expense data relating to her employment income, the rents generated by the Rental Properties, expenses relating to the Rental Properties, and Debtors' reasonable living expenses. The cash flow analysis demonstrates Debtors' ability to fund the payments required under the Plan and is reasonably supported.

17. Exhibit 3 to the Disclosure Statement is the Debtors' liquidation analysis, which Leslie Stackpole testified she prepared based upon her estimation of the liquidation value of the Debtors' non-exempt property. The liquidation analysis demonstrates that the projected distribution to unsecured creditors in a hypothetical Chapter 7 liquidation would be approximately \$10,874.00. In comparison, the projected distribution to unsecured creditors under the Plan is \$40,855.00. Debtors' liquidation analysis is reasonably supported.

18. Chase's secured claim on account of the 1329 W. Woodland Note is classified under Class 6 of the Plan. Section 4.6 of the Plan specifies that "The amount of the Allowed Secured Claim in Class 6 shall be determined by the Court pursuant to the Valuation Motion, or upon the agreement of the Debtors and the holder of the Class 5 [sic] Claim set forth in the Confirmation Order."

19. The Plan provides that Debtors shall pay the Class 6 Allowed Secured Claim in full, with interest to accrue at the rate of 5.0% per annum. Debtors shall pay the Class 6 Allowed Secured Claim in equal monthly installments of principal and interest based upon a 20-year amortization. Chase shall retain its lien on 1329 W. Woodland to the extent of its Allowed Secured Claim. The difference between the amount of the Allowed Claim relating to the 1329 W. Woodland Note and the amount of the Class 6 Allowed Secured Claim shall be deemed a General Unsecured Claim and treated accordingly.

### C. The Valuation Motion.

20. On July 12, 2010, Debtors filed the Valuation Motion (Dkt. 61), which seeks an order pursuant to 11 U.S.C. §506(a) determining the amount of the allowed secured claim held by each creditor with an interest in the Rental Property. With respect to the Subject Unit, the Valuation Motion seeks an order determining that the amount of Chase's secured claim relating to the 1329 W. Woodland Note is \$72,000. The Valuation Motion is supported by the appraisal of Jay Josephs.

21. In its Objection to confirmation of the Plan, Chase objected to the valuation of the Subject Unit proposed in the Valuation Motion, contending that the fair market value of the Subject Unit is greater than \$72,000.

#### D. The Valuation Testimony.

22. Mr. Josephs testified in support of his opinion that the value of the Subject Property is \$72,000 at the hearing held on December 7, 2010.

23. Mr. Josephs is certified by the State of Arizona as a residential real estate appraiser. He is also an associate member of the Appraisal Institute. He has 19 years of experience in the

1 appraisal of residential properties and the review of appraisals of such properties prepared by other  
2 professionals. Mr. Josephs has also taught a number of valuation courses. He is well-qualified to  
3 provide an opinion on the value of the Subject Property.

4         24.     The Subject Property is located in the Woodland Historic District of downtown  
5 Phoenix, which Mr. Josephs characterized as one of the least desirable historic districts in the  
6 downtown area. Average home prices in the Woodland Historic District and surrounding areas  
7 south of Van Buren Avenue are over \$100,000 lower than the average home prices in the more  
8 desirable historic districts of downtown Phoenix located north of Roosevelt Avenue.

9         25.     The Subject Property consists of a two-bedroom, two-bathroom “main” home built  
10 in 1916 and a separate one-bedroom, one-bathroom structure of approximately 400 square feet to  
11 the rear of the main home. The structures are separately metered for utilities. Mr. Josephs testified  
12 that it is a standard practice in the residential appraisal industry that when a parcel of property  
13 consists of living units that are separately metered, the property should be considered a multiple  
14 family residence and compared only to other multiple family residences.

15         26.     Leslie Stackpole testified that for the majority of the time the Debtors have owned  
16 the Subject Property, the “main” home and the one-bedroom unit have in fact been leased to  
17 separate, unrelated families.

18         27.     The Subject Property is located near a park that has been closed due to excessive  
19 loitering, which detracts from its value.

20         28.     In forming his valuation opinion, Mr. Josephs utilized both the sales comparison  
21 approach and the income approach. He testified that the cost approach to valuation is not  
22 appropriate for a property of the age of the Subject Property, and that there was insufficient sales  
23 data to determine the value of the land.

24         29.     In utilizing the sales comparison approach, Mr. Josephs compared the Subject  
25 Property against the sale prices for comparable multi-unit homes located near the Subject Property,  
26 in neighborhoods similar to the Woodland Historic District, with adjustments made for features that  
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1 made the comparable properties more or less desirable than the Subject Property. The comparable  
2 sales selected by Mr. Josephs and the adjustments made by Mr. Josephs were appropriate.

3 30. In utilizing the income approach, Mr. Josephs estimated, based on rental data for  
4 comparable properties, that the market rate of interest for the Subject Property was \$1,200.00, which  
5 he multiplied by a “gross rent multiplier” of 55 to arrive at a valuation of \$66,000.00 for the Subject  
6 Property.

7 31. Reconciling the sales comparison approach to valuation and the income approach,  
8 Mr. Josephs opined that the value of the Subject Property was \$72,000.

9 32. Mr. Josephs also testified, consistent with the Addendum in his written appraisal for  
10 the Subject Property, that home values in the Phoenix real estate market experienced appreciation  
11 above historic levels in 2004 and 2005, with a decline beginning in 2006. The addendum to his  
12 appraisal states that “2007 and 2008 nationally was two of the worst years within the housing and  
13 lending industry ... Arizona, and more specifically, Maricopa and Pinal Counties in general were  
14 not immune to these adverse factors ... While Phoenix experienced some of the most significant  
15 property value increases over past five years, this sector is now labeled one of the most significantly  
16 impacted areas.” Mr. Josephs testified that it was not unusual for a home purchased in early 2006  
17 to have declined in value by 50% as of December 2010; however, it would be very unusual for a  
18 home purchased in early 2006 to be worth more in December 2010 than at the time of purchase.

19 33. Mr. Josephs also testified that he had reviewed the appraisal prepared by Ricilee  
20 Talbot, which Chase relied upon to support its contention that the Subject Property is worth  
21 \$190,000. Mr. Josephs stated that Ms. Talbot’s appraisal was materially flawed in two major  
22 respects: (1) Ms. Talbot incorrectly treated the Subject Property as a single family residence; and  
23 (2) all of the “comparable properties” selected by Ms. Talbot were located north of Roosevelt, in  
24 neighborhoods considered significantly more desirable and with average home prices substantially  
25 greater than homes in the Woodland Historic District.

26 34. Mr. Josephs also testified that Ms. Talbot’s appraisal included a number of factual  
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1 misstatements and material omissions, such as incorrectly stating that the Subject Property had a two  
2 car garage when it fact it had no garage, incorrectly stating that the neighborhood was only 25-75%  
3 “built up,” and omitting any detail concerning the park that was closed due to loitering. Mr. Josephs  
4 also testified that the adjustments made by Ms. Talbot to the comparable property sales were  
5 inappropriate (such as making a \$15,000 adjustment for comparable sales that were in either  
6 “updated” or “fix-up” condition and adjusting the “guest house” at \$50 per square foot while  
7 adjusting the “main house” at only \$30 per square foot).

8 35. Ms. Talbot testified in support of her appraisal, which concluded that the Subject  
9 Property should be valued at \$190,000.

10 36. On cross-examination, Ms. Talbot acknowledged that she did not make any attempt  
11 to determine whether the “main” home and the one-bedroom unit were separately metered because  
12 it was not within the scope of her assignment to do so.

13 Ms. Talbot testified that she did not know her appraisal would be used for litigation  
14 purposes and she would not have accepted the assignment had she known that she would need to  
15 testify in support of her appraisal.

16 37. Ms. Talbot further testified that she had reviewed recent listings and closed sales of  
17 properties located much closer to the Subject Property than the comparables she relied upon in her  
18 appraisal, including one property located at 1321 W. Woodland Avenue (on the same block as the  
19 Subject Property). However, Ms. Talbot did not use any of these listings or sales in her appraisal  
20 report. The sale prices for these properties were considerably lower than the comparable properties  
21 that Ms. Talbot actually used in her appraisal (\$90,000, \$57,000 and \$45,000, respectively).

22 38. Ms. Talbot’s appraisal states that property values are “declining.” However, she  
23 acknowledged that according to her appraisal, the Subject Property would actually have appreciated  
24 in value by \$45,000 between the date the Subject Property was purchased in January 2006 and the  
25 effective date of her appraisal.

39. The Court finds Mr. Josephs' testimony concerning the value of the Subject Property to be more credible and reliable than that of Ms. Talbot. Accordingly, the Court finds, consistent with Mr. Josephs' testimony, that the fair market value of the Subject Property is **\$72,000**.

## II. CONCLUSIONS OF LAW

40. All of the foregoing Findings of Fact are incorporated herein. To the extent the Findings of Fact may constitute legal conclusions, they shall be deemed to constitute this Court's Conclusions of Law. To the extent any of the following Conclusions of Law may be factual in nature, they shall be deemed to constitute the Court's Findings of Fact.

41. The Plan complies with the applicable provisions of Title 11 of the United States Code.

42. Debtors have complied with all applicable provisions of Title 11 of the United States Code.

43. The Plan has been proposed in good faith and not by any means forbidden by law.

44. All payments made or to be made by the Debtors under the Plan for services or costs incurred in connection with the instant bankruptcy case or in connection with the Plan and incident to the bankruptcy case have been approved by, or are subject to approval by the Court.

45. The provisions of 11 U.S.C. §1129(a)(5) and (a)(6) are inapplicable to the Debtors, as the Debtors are individuals.

46. With respect to each impaired class of claims, each holder of a claim of such class has accepted or will receive or retain on account of such claim property of a value, as of the effective date of the Plan, that is not less than the amount such holder would receive if the Debtors were liquidated under Chapter 7.

47. The following classes of claims are impaired under the Plan: Classes 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. The holder of the Class 12 claim has accepted the Plan pursuant to its stipulation with the Debtors filed on October 7, 2010 (Dkt. 104) and approved by this Court's Order



1 entered on November 24, 2010. (Dkt. 131). The holder of the Class 7 claim has accepted the Plan  
2 pursuant to its stipulation with the Debtors filed on November 17, 2010 (Dkt. 127), and as to which  
3 stipulation no timely objections have been filed. The holder of the Class 8 claim has accepted the  
4 Plan pursuant to its stipulation with the Debtors filed on December 6, 2010 (Dkt. 137). Debtors  
5 have entered into a stipulation (Dkt. 135) (the “IBM Stipulation”) with IBM Lender Business  
6 Process Services, Inc. (“IBM”), pursuant to which IBM has agreed to accept the treatment of its  
7 Class 5, 9, 10 and 11 claims pursuant to a modified payment schedule and agreed upon valuation  
8 of the allowed secured claims in those classes. The stipulation has been served via negative notice  
9 and approval of the stipulation remains pending.

10 48. The Plan provides for the payment of all administrative claims on the later of the  
11 effective date of the Plan or the date such claim becomes an allowed administrative claim, unless  
12 otherwise agreed by the Debtors and the holder of such claim.

13 49. The Plan provides the treatment required under 11 U.S.C. §1129(a)(9) for all claims  
14 of a kind specified in 11 U.S.C. §507(a)(8), or which would otherwise meet the description of  
15 §507(a)(8) but for the secured status of such claim.

16 50. The Plan has been accepted by at least one class of claims that is impaired under the  
17 Plan, determined without including any acceptance of the Plan by an insider.

18 51. Confirmation of the Plan is not likely to be followed by the liquidation of the Debtors  
19 or the need for further financial reorganization of the Debtors.

20 52. All fees payable under 28 U.S.C. §1930 have been paid or the Plan provides for the  
21 payment of all such fees on the effective date of the Plan.

22 53. The provisions of 11 U.S.C. §1129(a)(13) and (a)(14) do not apply to the Debtors,  
23 as they do not owe any retiree benefits or domestic support obligations.

24 54. The Plan provides for the distribution of all of the Debtors’ projected disposable  
25 income for a period of 5 years from the effective date of the Plan to the holders of unsecured claims.

26 55. The Plan does not discriminate unfairly and is fair and equitable with respect to each  
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1 secured and unsecured class of claims that is impaired under, and has not accepted the Plan.

2 56. Confirmation of the Plan is in the best interest of the bankruptcy estate and of the  
3 Debtors.

4 **III. ORDERS**

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

6 1. Chase's objection to confirmation of the Plan is overruled.

7 2. The value of Chase's interest in the estate's interest in the Subject Property is determined  
8 to be equal to \$72,000.00. Pursuant to 11 U.S.C. §506(a), Chase shall have an allowed secured  
9 claim on account of the 1329 W. Woodland Note in the amount of \$72,000 (the "1329 W. Woodland  
10 Secured Claim"). Chase shall have an allowed unsecured claim equal to the difference between the  
11 allowed amount of Chase's claim on account of the 1329 W. Woodland Note and the amount of the  
12 1329 W. Woodland Secured Claim.

13 3. Upon the expiration of the negative notice period for the IBM Stipulation, or upon the  
14 resolution of any objections thereto, Debtors may lodge an order confirming the Plan.

15  
16 **DATED AND SIGNED ABOVE.**

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Hon. John L. Peterson  
United States Bankruptcy Judge