

SIGNED.



Dated: September 20, 2010

*James M. Marlara*  
JAMES M. MARLAR  
Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

10	In re:	)	Chapter 13
11	LARRY GENE PORTER and DEBORA	)	No. 4:10-bk-12565-JMM
12	DENISE PORTER,	)	<b>MEMORANDUM OPINION</b>
13	_____ Debtors.	)	

14 Before the court is an issue regarding the valuation of a residential property located  
15 at 1945 North Camino Real, Casa Grande, Arizona 85122 (ECF No. 16). The court heard from two  
16 witnesses, both appraisers. The opinions varied widely. Mr. May valued the residence at \$112,000.  
17 Ms. Schneider valued the same property at \$170,000.

18 The first position lien is in favor of Fidelity National Bank in the amount of  
19 \$115,190.32 (*see* Proof of Claim No. 1). The junior lien is in favor of Pinal County Federal Credit  
20 Union ("PCFCU") for \$99,268.

21 The Debtors seek to "strip off" the PCFCU junior lien, contending that it is wholly  
22 unsecured. Whether they can do so is entirely dependent upon their proving that the property is  
23 worth less than the first lien. *See* 11 U.S.C. § 506. If the value of the property exceeds the amount  
24 of the first lien, even if only slightly, the PCFCU second lien may not be stripped, and remains on  
25 the property up to its full value. 11 U.S.C. § 1322(b)(2); *Nobleman v. Am. Sav. Bank*, 113 S.Ct.  
26 2106 (1993).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1           It is unusual that competent appraisers are this far apart on a property this mundane.  
2   Considering all of the evidence, the court notes that although it may not "pick a number" between  
3   the range testified to, it is not convinced that the property's value falls below the amount of the first  
4   lien. After all, Mr. May's appraisal is only \$3,000 below the first lien balance. At the same time,  
5   while the court may have fair concern that the value is as high as \$170,000, it must first find that  
6   the evidence, based on comparables, places the value closer to the \$170,000 figure than the  
7   \$112,000 figure. Thus, for purposes of this decision, that means that the court must accept the  
8   \$170,000 value. The court was unpersuaded that the value was as low as \$112,000.

9           To accept the \$112,000 value, which is so close to the \$115,190 first lien, is simply  
10   too close to accurately measure. Opinions of value are, after all, simply that--opinions. To deprive  
11   a secured creditor of its bargained-for lien on a margin this small requires that a debtor carry its  
12   burden of proof. The court feels that the margin for error for this type of an opinion, of only about  
13   2.5%, is too close to call with any measure of accuracy to do justice. The court must therefore take  
14   the conservative approach.

15           Thus, failing in their burden of proof, the court finds on the evidence that the  
16   property's value is \$170,000, and therefore, the PCFCU lien may not be stripped.

17  
18           DATED AND SIGNED ABOVE.

19  
20   COPIES to be sent by the Bankruptcy Notification  
21   Center ("BNC") to the following:

22   Ross K. Meiners, Attorney for Debtors

23   Howard Chorost, Attorney for Pinal County Federal Credit Union

24   Dianne C. Kerns, Trustee

25   Office of the U.S. Trustee  
26  
27  
28