

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

ALICIA MERCADO,

Case No. 6:09-bk-17124-ABB

Chapter 11

Debtor.

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**ORDER**

This matter came before the Court on the Motions to Value Collateral (Doc. Nos. 64, 77, 78, 79) filed by the *pro se* Debtor Alicia Mercado seeking to value the claims of various lienholders and the lienholders' responses thereto (Doc. Nos. 85, 91).<sup>1</sup> Also before the Court is the Debtor's Application to Employ Jon Timothy Burns as her appraiser (Doc. No. 55).

An evidentiary hearing was held on August 5, 2010 at which the Debtor, counsel for the Office of the United States Trustee, counsel for BAC Home Loans Servicing, L.P., and counsel for Aurora Loan Services appeared. The Court makes the following findings and conclusions after reviewing the pleadings and exhibits, hearing live testimony and argument, and being otherwise fully advised in the premises.

***Debtor's Real Property***

The Debtor filed this case on November 9, 2009. She owns five parcels of residential property which are encumbered by various mortgages. She seeks to cram down the mortgages encumbering four of the properties. The valuation of a secured claim is governed by 11 U.S.C. Section 506(a) which provides:

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<sup>1</sup> Doc. No. 64 is a composite filing consisting of the Debtor's four Motions to Value Collateral. Three of the motions were extracted out to create separate docket entries: Doc. Nos. 77, 78, 79.

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a). "Section 506(a) defines the secured and unsecured components of debts according to the value of the underlying collateral." Tanner v. FirstPlus Fin., Inc. (In re Tanner), 217 F.3d 1357, 1358 (11th Cir. 2000).

**Glyn Street:** Aurora Loan Services ("Aurora") holds a first-priority mortgage of \$208,241.95 (Claim No. 25-1) on the Debtor's investment property located at 2922 Glyn Street, Orlando, Florida. The Debtor and Aurora presented an Agreed Order post-hearing setting forth they agree the property has a value of no more than \$125,000.00. The Agreed Order granting the Debtor's motion to value this parcel of property at \$125,000.00 was entered on August 16, 2010 (Doc. No. 100).

**Mailer Boulevard:** The Debtor owns a residential property located at 14043 Mailer Boulevard, Orlando, Florida 32828 with a legal description of: Lot 9, Block B, of AVALON PARK SOUTH PHASE 1, according to the plat thereof as recorded in Plat Book 52, Page 113-124, of the Public Records of Orange County, Florida.

The property is encumbered by a first-priority mortgage held by JPMorgan Chase Bank, N.A. ("JPMorgan") in the amount of \$398,494.46, as set forth in Claim No. 24-1. The Debtor values the property at \$175,000.00 and seeks to cramdown JPMorgan's secured claim pursuant to her Motion to Value Collateral (Doc. No. 78). The Debtor concedes this property is her homestead.

The Debtor is prohibited from modifying JPMorgan's secured claim pursuant to 11 U.S.C. Section 1123(b)(5) and her Motion to Value this claim is due to be denied. JPMorgan's Claim No. 24-1 constitutes an allowed secured claim which must be paid in full pursuant to the plan confirmation requirements of Chapter 11.

**McLeod's Way:** The Debtor owns a residential property located at 112 McLeod's Way, Winter Springs, Florida 32708 with a legal description of: Lot 150, of JESUP'S RESERVE TOWNHOMES REPLAT, according to the Plat hereof recorded in Plat Book 71, Pages 86 through 93 inclusive, of the Public Records of Seminole County, Florida.

The property is encumbered by a first-priority mortgage held by American Home Mortgage Servicing, Inc. ("AHMS") in the amount of \$326,912.38, as set forth in Claim No. 26-1. The Debtor seeks to cramdown AHMS' secured claim pursuant to her Motion to Value Collateral (Doc. No. 64).

The Debtor's appraiser Jon Timothy Burns ("Burns") testified the property has a fair market value of \$150,000.00. AHMS did not file a response to the Debtor's Motion to Value and presented no valuation evidence. The property's fair market value is \$150,000.00. AHMS' claim is subject to cramdown pursuant to 11 U.S.C. Section 506(a).

**Tanja King Boulevard:** The Debtor owns a residential property located at 12601 Tanja King Boulevard, Orlando, Florida 32828 (a/k/a 12601 Tanya King Boulevard, Orlando, Florida 32828) with a legal description of: Lot 335 of AVALON PARK NORTHWEST VILLAGE PHASES 2, 3 AND 4, according to the Plat thereof as recorded in Plat Book 63, Page(s) 94 through 103, of the Public Records of Orange County, Florida.

The property is encumbered by a first-priority mortgage held by BAC Home Loans Servicing, L.P. (“BAC”) in the amount of \$245,258.97 as set forth in Claim No. 27-1. The Debtor seeks to cramdown BAC’s secured claim pursuant to her Motion to Value Collateral (Doc. No. 77). BAC filed a Response to the Debtor’s Motion to Value objecting to the Debtor’s valuation (Doc. No. 91). BAC appeared at the evidentiary hearing and stated it believes the property has a value of \$155,000.00, but did not present any supporting evidence. BAC was granted fourteen days to submit valuation evidence, but submitted no evidence.

Burns testified the property has a fair market value of \$130,000.00. His testimony is un rebutted. The property’s fair market value is \$130,000.00. BAC’s claim is subject to cramdown pursuant to 11 U.S.C. Section 506(a).<sup>2</sup>

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Debtor’s Application to Employ Jon Timothy Burns is hereby **APPROVED** (Doc. No. 55); and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor is prohibited from modifying the mortgage held by JPMorgan encumbering her property located 14043 Mailer Boulevard, Orlando, Florida 32828 pursuant to 11 U.S.C. Section 1123(b)(5) and her Motion to Value JPMorgan’s Claim No. 24-1 (Doc. No. 78) is hereby **DENIED**; and it is further

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<sup>2</sup> The Debtor states in her Motion to Value Collateral (Doc. No. 77) that BAC (also referred to as Bank of America) holds a second-priority mortgage on the Tanja King Boulevard property in the amount of \$55,575.00. BAC filed one proof of claim, Claim No. 27-1, relating to the Note and Mortgage executed by the Debtor on March 27, 2007. No proof of claim relating to a subordinate mortgage has been filed. If the property is encumbered by a subordinate mortgage, such mortgage is wholly unsecured and is subject to strip-off pursuant to 11 U.S.C. Section 506(d). In re Tanner, 217 F.3d at 1360.

**ORDERED, ADJUDGED and DECREED** that JPMorgan's Claim No. 24-1 is an allowed secured claim in the amount of \$398,494.46; and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor's Motion to Value Collateral (Doc. No. 64) is hereby **GRANTED** and: (i) her real property located at 112 McLeod's Way, Winter Springs, Florida 32708 has a present market value of \$150,000.00; (ii) American Home Mortgage Servicing, Inc. has an allowed secured claim in the amount of \$150,000.00; (iii) and the balance of Claim No. 26-1 is unsecured; and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor's Motion to Value Collateral (Doc. No. 77) is hereby **GRANTED** and: (i) her real property located at 12601 Tanja King Boulevard, Orlando, Florida 32828 has a present market value of \$130,000.00; (ii) BAC Home Loans Servicing, L.P. has an allowed secured claim in the amount of \$130,000.00; and (iii) the balance of Claim No. 27-1 is unsecured; and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor is hereby directed to file and serve an Amended Disclosure Statement and Amended Plan within fourteen (14) days of the entry of this Order. Should the Debtor fail to timely file and serve an Amended Disclosure Statement and Amended Plan, this case shall be dismissed without further hearing.

Dated this 25th day of August, 2010.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge