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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. SC-16-1066-JuFY
)	
NASHAT NAOOM and MANAL NAOOM)	Bk. No. 15-02484-LT7
)	
Debtors.)	
_____)	
CREDIT ONE CORPORATION,)	
)	
Appellant,)	
v.)	MEMORANDUM*
)	
NASHAT NAOOM; MANAL NAOOM,)	
)	
Appellees.)	
_____)	

Argued and Submitted on January 19, 2017
at San Diego, California

Filed - February 1, 2017

Appeal from the United States Bankruptcy Court
for the Southern District of California

Honorable Laura S. Taylor, Chief Bankruptcy Judge, Presiding

Appearances: Dixon Leon Gardner of Madison Harbor, ALC for
appellant Credit One Corporation; David E.
Britton of Lockhart & Britton for appellees
Nashat and Manal Naoom.

Before: JURY, FARIS, and YUN,** Bankruptcy Judges.

* This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

** Hon. Scott H. Yun, United States Bankruptcy Judge for the
Central District of California, sitting by designation.

1 Credit One Corporation ("Credit One") appeals the decision
2 of the bankruptcy court which (1) after an evidentiary hearing,
3 valued Chapter 7¹ debtors', Manal Naoom and Nashat Naoom
4 ("Debtors"), investment property at \$600,000.00, and
5 (2) partially avoided Credit One's judicial lien pursuant to
6 § 522(f)(1). Credit One argues on appeal that the bankruptcy
7 court failed to consider evidence at trial that would value the
8 property at a higher amount. For the reasons set forth below, we
9 AFFIRM.

10 **I. FACTS**

11 The instant appeal centers around a contested evidentiary
12 dispute on the value of Debtors' investment property located at
13 4189 Rolando Blvd., San Diego, California 92115 (the
14 "Property").

15 On April 17, 2015, Debtors filed a joint chapter 7 petition
16 listing the Property on Schedule A with a value of \$450,000.00.
17 The Property was encumbered by a first deed of trust in favor of
18 Wells Fargo Bank, N.A. ("Wells Fargo") in the amount of
19 \$516,399.67. It was also encumbered by a judicial lien recorded
20 by Credit One in the amount of \$122,747.39, and a \$5,889.62 lien
21 for delinquent property taxes recorded by San Diego County.
22 Debtors claimed the Property as exempt in the amount of
23
24
25

26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure.

1 \$26,765.00 pursuant to California Code of Civil Procedure
2 § 704.730(b) (5).²

3 Debtors primarily leased the Property to auto repair and
4 service tenants. The Property is improved with two separate
5 concrete block buildings. The first building is approximately
6 1,008 square feet and can be leased to one tenant
7 ("Building A"). USA Smog has been a longstanding tenant in
8 Building A. The second building is approximately 2,000 square
9 feet, but is divided into two units. ("Building B"). Cartunist
10 Auto Repair has been a longstanding tenant in one unit in
11 Building B. The second unit in Building B had been vacant for
12 awhile on the petition date, but was leased shortly thereafter
13 to Peter Auto Repair.

14 On July 23, 2015, Debtors filed a motion under § 522(f) (1)
15 to avoid Credit One's judicial lien. Credit One filed an
16 opposition on August 5, 2015, disputing the value of the
17 Property. On August 19, 2015, Debtors filed a reply, attaching
18 an appraisal report prepared by John Agamata ("Agamata"), who
19 valued the Property at \$450,000.00 (the "Agamata Appraisal").
20 Notably, Agamata had appraised the Property at various times
21 prior to the Agamata Appraisal, and two of his earlier
22 appraisals were received into evidence. The first was conducted
23 in 2011 when Agamata valued the Property at \$535,000.00. The

24
25

26 ² On the petition date, Debtors did not claim the Property
27 as exempt. However, after various amendments to Schedule C, the
28 last of which occurred just prior to the evidentiary hearing,
Debtors claimed the Property as exempt in the full amount of
\$26,765.00.

1 second was conducted in 2013 when he valued the Property at
2 \$550,000.00.

3 On August 26, 2015, the bankruptcy court issued a tentative
4 ruling allowing Credit One an opportunity to obtain an
5 appraisal. On that same day, Credit One filed an appraisal
6 report and two supporting declarations from Jeff Greenwald
7 ("Greenwald") and John Morgan ("Morgan"), who opined that the
8 value of the Property was \$600,000.00 on the petition date (the
9 "Morgan Appraisal"). On October 30, 2015, the bankruptcy court
10 set an evidentiary hearing in January 2016 to reconcile the
11 differences between the Agamata Appraisal and the Morgan
12 Appraisal.

13 Prior to the evidentiary hearing, Credit One filed a
14 supplemental brief and declaration of Morgan which asserted that
15 the Property should be valued at \$653,091.20. Credit One argued
16 that the increase in value was due to Debtors providing Morgan
17 incorrect information regarding (1) the longevity of the
18 leasehold interests,³ and (2) the correct rent roll information.⁴
19 Morgan then used the rent roll information from the Agamata
20 Appraisal in his own analysis to arrive at the \$653,091.20
21

22 ³ Morgan asserted that Debtors represented to him that all
23 of the tenants occupying the Property were on a month-to-month
24 tenancy, when in fact, USA Smog and Cartunist Auto Repair had
25 prior long-term tenancies, which only became month-to-month
because of the bankruptcy.

26 ⁴ Morgan asserted that Debtors represented to him that the
27 monthly rental income from all of the tenants was \$4,800 per
28 month (or \$57,600 per year). However, after reviewing the Agamata
Appraisal in August of 2015, Morgan became aware that the actual
rental income was \$6,000 per month (or \$72,000 per year).

1 figure; in the written Morgan Appraisal, Morgan had used the
2 allegedly incorrect figures provided by Debtor.⁵

3 The bankruptcy court held a two-day evidentiary hearing
4 where the court heard extensive testimony from Morgan, Agamata,
5 Debtors, and the owner of Cartunist Auto Repair, Tang In. In its
6 written closing argument, Credit One argued that the Property
7 should be valued at \$680,320.00. It based the \$680,320.00 value
8 on Morgan's testimony at trial when he calculated the figure on
9 the stand by using the correct rent roll information. On
10 February 12, 2016, Debtors filed their reply to Credit One's
11 closing argument, still asserting Agamata's value.

12 On March 9, 2016, the court issued its oral ruling, valuing
13 the Property at \$600,000.00. In doing so, the court made various
14 factual findings, weighed the exhibits and testimony presented
15 at trial, accepted the written Morgan Appraisal as the proper
16 valuation of the Property, and totally rejected the Agamata
17 Appraisal. As a result of this valuation, the court partially
18 avoided Credit One's judicial lien in the amount of \$71,801.68.
19 Credit One filed a timely appeal.

20 **II. JURISDICTION**

21 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
22 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.
23 § 158.

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25
26 ⁵ Although Morgan was provided with incorrect rent roll
27 information, Morgan had based his appraisal on projected market
28 rent. As a result, Morgan projected that market rent would be
\$72,879.00 per year, which is only a \$879.00 difference from the
actual rental income of \$72,000.00.

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2 **III. ISSUE**

3 Whether the bankruptcy court committed clear error in
4 valuing the Property at \$600,000.00 rather than \$680,320.00.

5 **IV. STANDARD OF REVIEW**

6 In reviewing decisions of the bankruptcy court, the Panel
7 reviews legal conclusions de novo, factual findings for clear
8 error, and mixed questions of law and fact de novo. Murray v.
9 Bammer (In re Bammer), 131 F.3d 788, 792 (9th Cir. 1997);
10 Jorgensen v. Fed. Land Bank of Spokane (In re Jorgensen),
11 66 B.R. 104, 109 (9th Cir. BAP 1986).

12 We review a bankruptcy court's findings of fact based on an
13 evidentiary hearing under the clearly erroneous standard. Rand
14 v. Rowland, 154 F.3d 952, 957 n.4 (9th Cir. 1997) (en banc);
15 Diamant v. Bank of Levy (In re Rossi), 86 B.R. 220, 222 (9th
16 Cir. BAP 1987). A finding of fact is clearly erroneous when,
17 after reviewing the evidence, we are left with the definite and
18 firm conviction that a mistake has been committed. Dewhirst v.
19 Citibank (Ariz.) (In re Contractors Equip. Supply Co.), 861 F.2d
20 241, 243 (9th Cir. 1988).

21 Credit One suggests that the standard of review in the
22 present matter varies between de novo, abuse of discretion, and
23 clearly erroneous. This suggestion misses the mark. Credit One's
24 only argument before this Panel is that the bankruptcy court
25 erred in assigning value to the Property, a disputed fact at
26 trial. Although Credit One attempts to create different
27 standards of review by restating the same issue on appeal with
28 varying emphasis, this differentiation fails. Each argument
boils down to the same thing: Credit One disagrees with the

1 court's factual findings of value. Therefore, because Credit One
2 does not challenge whether its judicial lien is avoidable under
3 the requirements of § 522(f)(1) as a matter of law, we can only
4 disturb the bankruptcy court's findings if we determine they
5 were clearly erroneous. See Joseph F. Sanson Inv. Co. v.
6 268 Limited (In re 268 Limited), 789 F.2d 674, 677 (9th Cir.
7 1986); see also Rule 7052(a)(6).

8 **V. DISCUSSION**

9 Section 522(f)(1) permits a debtor to avoid the lien of a
10 judgment creditor on exempt property. It states, in relevant
11 part, that "the debtor may avoid the fixing of a [judicial] lien
12 on an interest of the debtor in property to the extent that such
13 lien impairs an exemption to which the debtor would have been
14 entitled under [§ 522(b)]" In the Ninth Circuit, in
15 order to avoid a judicial lien, a debtor must satisfy three
16 conditions: (1) there was a fixing of a lien on an interest of
17 the debtor in property; (2) the lien impairs an exemption to
18 which the debtor would have been entitled; and (3) the lien is a
19 judicial lien. Culver, LLC v. Chiu (In re Chiu), 304 F.3d 905,
20 908 (9th Cir. 2002).

21 As stated above, Credit One does not challenge whether the
22 bankruptcy court properly determined that each condition was met
23 in order to avoid its judicial lien as a matter of Ninth Circuit
24 law. Rather, Credit One centers its arguments only around
25 whether the bankruptcy court properly valued the Property,
26 asserting that the court erred by not considering all of the
27 evidence at trial.

1 We disagree that there was error. Following the two-day
2 evidentiary hearing, the bankruptcy court made detailed factual
3 findings that the Property should be valued at \$600,000.00. We
4 can only disturb these findings if we are left with a definite
5 and firm conviction that a mistake has been committed.
6 In re Contractors Equip. Supply Co., 861 F.2d at 243. That is an
7 unlikely determination when, as here, the court's ruling
8 addresses each and every factual argument Credit One put
9 forward.

10 In valuing the Property, the bankruptcy court made a
11 lengthy oral ruling that carefully considered the exhibits and
12 testimony presented at trial. Based on all of the evidence, the
13 court found the value to be \$600,000.00. Although Credit One
14 challenges the outcome, the simple fact is that the court
15 actually accepted Credit One's written appraisal which valued
16 the Property at \$600,000.00.

17 To reach this conclusion, the court principally relied on
18 the following five points. First, the court found that Agamata's
19 prior appraisals undercut the current Agamata Appraisal value of
20 \$450,000.00. The court found that this current valuation was not
21 credible based on his valuing the Property at a much higher
22 amount twice before, during the depths of the real estate
23 recession. Second, the court considered each appraisal with
24 respect to Building A, unit one in Building B, and unit two in
25 Building B, and found that the Morgan Appraisal properly
26 determined market rent and, using the market rent, properly
27 evaluated the Property. The court found that market rent is what
28 a potential buyer would assume when purchasing the Property and

1 therefore this valuation methodology was sound. Third, in
2 looking at the comparable rentals submitted by both parties, the
3 court found that the Morgan Appraisal properly adjusted the
4 comparable properties, properly differentiated between
5 Building A and Building B, and considered historical rent and
6 market rent. Fourth, the court found that the Morgan Appraisal
7 was much more accurate than the Agamata Appraisal with respect
8 to comparable sales. Last, the court found that the Morgan
9 Appraisal properly considered the impact of parking on the
10 value, weighing various factors including parking at night in
11 the various units, the informal relationship with Debtors'
12 neighbors, O'Reilly's Auto Parts, the fact that there is no
13 reciprocal easement, and the possibility of being towed if
14 parked illegally overnight. The court's careful consideration of
15 these factors shows there is clear evidence in the record to
16 support its factual findings that the Property should be valued
17 at \$600,000.00. We cannot disturb these findings on appeal.

18 Contrary to Credit One's claims, the bankruptcy court did
19 specifically consider evidence offered through Morgan's
20 testimony which asserted that the Property should be valued at
21 \$680,320.00 when accounting for an increase in rent roll and
22 actual expenses. In addressing the higher rent roll information,
23 the court stated:

24 [Credit One] suggested [this] court, in effect, . . .
25 determine its own number, **assuming greater income from the**
26 **property** . . . and plug in these numbers into the equation
27 utilized by . . . Morgan. The court declines this
28 suggestion. During trial, both parties asked the appraisers
about averaging things, about using real numbers generated
by the property, and both parties miss the mark when they
do this.

1 (Emphasis added). The court explained:

2 appraisal methodology is not a matter of mere math and
3 averages. Instead, the appraiser must gather market data
4 and come to conclusions based on his expertise. The court
5 is not an appraiser, and while simple mathematical errors
6 may be capable of correction and result in a different
7 number, the suggestion by the creditor requires
8 recalculation at a much more sophisticated level . . .
9 Mr. Morgan did some math as suggested by his client . . .
10 but it was not a full reappraisal that really went back,
11 factored those additional numbers in, and resulted in . . .
12 a completely redone appraisal.

13 As made clear by these comments, the bankruptcy court weighed
14 the evidence and determined that it was unwilling to accept a
15 higher appraised value by solely accounting for additional rent
16 and expense figures; instead, it would have only considered a
17 full re-appraisal of the Property taking into account all
18 valuation factors, something Credit One did not provide. Even if
19 this panel was convinced that, had it been sitting as the trier
20 of fact, it would have weighed this evidence differently, we
21 must affirm the bankruptcy court's ruling because the decision
22 here is plausible in light of record viewed in its entirety. See
23 Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985).

24 Therefore, because there is evidence in the record to
25 support the bankruptcy court's factual findings, we conclude
26 that the court's findings were not clearly erroneous.

27 **VI. CONCLUSION**

28 For the reasons stated above, we AFFIRM.