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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re

**TIMOTHY NEAL HAGADONE  
and LERIESA MARIE  
HAGADONE,**

Debtors.

Case No. **19-60551-BPH**

**ORDER**

At Butte in said District this 24<sup>th</sup> day of March, 2020.

In this Chapter 12<sup>1</sup> bankruptcy, a hearing was held March 6, 2020, on: (1) Debtors' Motion for Valuation of Security ("Motion"), filed December 31, 2019 at ECF No. 183; and, (2) Debtors' Objection to American State Bank and Trust Company's (the "Bank") Proof of Claim No. 11 ("Objection") filed at ECF No. 184.<sup>2</sup> Appearances were noted on the record. Jeffrey Leuthold, Aaron Granley, Bethany Toews, Robert Toavs, J.T. Korkow and Debtors Timothy and Leriesa Hagadone testified. The Record of Exhibits found at ECF No. 230 reflects the exhibits that were admitted into evidence.

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<sup>1</sup> Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure. All references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

<sup>2</sup> The Objection filed pursuant to Rule 3007, refers to and incorporates the Motion, filed pursuant to Rule 3012 and § 506(a). In essence, Debtors' Motion and Objection assert the value of the collateral securing Proof of Claim No. 11 is less than the amount of the claim and the secured portion of the Bank's claim should be limited to the value of its collateral and the remainder of the claim treated as unsecured pursuant to § 506(a). The Court's decision on the Motion will resolve the Objection. For a discussion of the claims allowance process and the claims bifurcation process, see *In re Bassett*, 2019 WL 993302, at \*4-\*5 (Bankr. E.D. Cal. Feb. 26, 2019).

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Rule 3012 sets forth the procedure for valuing collateral under § 506(a). It provides:

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of secured claim and any other entity as the court may direct.

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *In re Chagolla*, judicial valuation of collateral under § 506(a) divides allowed claims into secured claims and unsecured claims, “which in turn affects how the bankruptcy code treats them.” *Chagolla v. JP Morgan Chase Bank, N.A.* (In re Chagolla), 544 B.R. 676, 680 (9th Cir. BAP 2016).

Debtors commenced this case on May 31, 2019. The Bank filed its amended Proof of Claim No. 11 (“Claim”) on October 29, 2019, asserting that its claim in the amount of \$3,440,312.94 is secured by Debtors’ real property and specific personal property. The property securing the Claim has an aggregate value of \$3,469,791.95, according to the Bank. Debtors assert the value of the property securing the Claim is \$3,130,181.85. The difference between the Bank and Debtors’ valuations of the property is \$339,610.10.<sup>3</sup> The disputes over valuation involve Debtors’ real and personal property.

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<sup>3</sup> During the hearing, there was a colloquy with counsel where it was suggested that valuation is determined as of Debtors’ petition date. Here, valuation is necessary for confirmation and § 1225(a)(5)(B)(ii). In the case of *In re Cool*, 81 B.R. 614 (Bankr. D. Mont. 1987), Judge John L. Peterson explained that “valuation for the purposes of 1225(a)(5)(B)(ii) is to be fixed ‘as of or close to the effective date of the Plan.’” *Cool*, 81 B.R. at 616, quoting *In re Cook*, 38 B.R. 870 (Bankr. Utah 1984). As explained another way by a leading treatise:

Indeed, in the chapter 11, 12 or 13 context, the amount of a single item of property may be valued in different ways depending on the context of the valuation. At the outset of a case, the secured claim might be fixed at one amount in connection with a request for adequate protection or relief from stay. Later on, it might be fixed at another amount in connection with a determination of whether the creditor is adequately protected if a senior or equal lien is granted to a postpetition lender pursuant to section 364(d). Later still, the claim might be fixed at yet another amount in connection with a proposed disposition of the collateral,

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**I. Real Property.**

The Bank maintains that Debtors' real property has a value of \$2,250,000. Debtors counter that the real property has a value of \$2,051,765. The difference is \$198,235. The Bank relies on a real estate appraisal prepared by Bethany Toews ("Toews") dated June 17, 2019 ("Appraisal"). Toews valued Debtors' real property at \$2,250,000. Exhibit X. The Appraisal's valuation has 2 components: Land, \$1,659,717; and Structural Improvements, \$590,283. Debtors' only dispute the latter component, the value assigned to Structural Improvements.

To arrive at her valuation of the Structural Improvements, Toews considered the cost approach, sales comparison approach and income approach. Relying most heavily on the cost approach, Toews concluded that the improvements on Debtors' real property had a value of \$590,283. Toews testified that there are significant improvements on Debtors' property, including a main dwelling with a newer addition, a large shop, a second dwelling and numerous hopper bins and grain storage bins. Toews testified that the improvements are important to Debtors' dry land farming operation. Debtors noted in their testimony that the addition to the home was incomplete.

J.T. Korkow ("Korkow") of Powder River Ag Consulting, LLC, who was employed by Debtors as a consultant to assist in this case, testified that he believed Toews "backed into" her value for the improvements on Debtors' property. Korkow opined that comparable sales are

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and at still another amount for purposes of a plan. Thus, the amount of any claim secured by collateral may be regarded as something of a "moving target."

4 COLLIER ON BANKRUPTCY ¶ 506.03[7][f] at 506-84 (16th ed. 2019). While a fluctuation in value does not appear to be an issue in this case, valuation for purposes of confirmation and § 1225(a)(5)(B)(ii) is determined at or near the effective date of the plan, not at the time the case is commenced.

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most indicative of value. In the current market buyers are acquiring farms to expand existing operations. In most cases, the buyers already have a suitable home, and tend to discount the value ascribed to a home. In Korkow's opinion, the improvements on Debtors' property are only worth approximately \$300,000. Korkow acknowledged that he is not a certified land appraiser and he did not complete an appraisal of Debtors' property.

Both Toews and Korkow were credible. However, Toews' Appraisal at Exhibit X, together with the more recent comparable sales at Exhibit VV, support Korkow's opinion that current buyers are buying bare land, not improved land. Such conclusion is found in Toews' Appraisal wherein she states: "Typical buyers in the area are local owner/operators who are looking to add on to their existing operations, while typical sellers are estates or operators scaling down." Exhibit X, p.9 of 102. Further, a review of Exhibit VV, shows that of the 9 additional recent sales, only 2 (1 & 5) included improvements, and those improvements were grain bins, and quonsets.<sup>4</sup> Based upon the foregoing, the Court concludes that the value of Debtors' real property is \$1,959,717 (Land \$1,659,717 and Structural Improvements \$300,000).<sup>5</sup>

### **II. Personal Property.**

The disputes between the Bank and Debtors related to the valuation of personal property securing the Bank's loan fall into 3 broad categories: vehicles and equipment; Clark Farm property; and crop proceeds and government payments. To support its valuations of vehicles, equipment and the Clark Farm property, the Bank relied on the opinion of Robert Toavs

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<sup>4</sup> The Appraisal was well prepared and Toews testified competently, but the underlying data suggest to the Court the buyers are farmers in the area looking to expand existing holdings, and whether a property has a suitable home is a secondary concern, if a concern at all.

<sup>5</sup> This conclusion differs from Debtors' calculation of value, but it accurately reflects the land value calculated by Toews and Korkow's Structural Improvements value opinion.

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(“Toavs”). Toavs, is a farmer and rancher who has owned and operated Toavs Premier Auction for 10 years. Debtors relied on Korkow’s valuation of the vehicles and equipment. The competing valuations are reflected in Exhibit 1 and Exhibit Y. Generally, both Toavs and Korkow employed the same methodology. This methodology included reliance on an internet service provider that compiles equipment sales information, along with their experience and knowledge of the existing market for used farm equipment and vehicles.

#### **A. Vehicles and Equipment.**

The Bank originally argued that the value of the vehicles and equipment that served as its security had a value of \$1,002,850. However, prior to the hearing, the Bank filed demonstrative Exhibit UU.<sup>6</sup> Exhibit UU deducts the value of 7 specific items of collateral because the Bank conceded it does not have a lien on those items. Along with deducting items, Exhibit UU adds additional items, described as the “Clark Farm property.” As a result of the deductions and additions, the Bank asserts the value of the machinery and equipment, excluding the Clark Farm Property is \$885,250. The Debtors’ initial valuation by Korkow was \$793,000, but it included the 2012 JD 8235R, which was sold. After deducting the value of the 2012 JD 8235R from Korkow’s valuation, the total value of the equipment is \$688,000. Without consideration of the Clark Farm Property, the difference between the Bank’s valuation of equipment and Debtors’ valuation is \$197,200.

#### **1. 2012 Neville Trailer.**

Debtors’ dispute whether the Bank’s inclusion of a 2012 Neville Trailer (“Trailer”) in its valuation, and as its collateral more generally, is proper. Toavs valuation includes the Trailer

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<sup>6</sup> The Bank’s use of demonstrative exhibits assisted the Court by isolating the specific valuation disputes.

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and values it at \$35,000. Korkow did not include the Trailer in his valuation because Debtors challenge whether the Bank has a valid lien on it. Both the Bank and Debtors produced copies of a title for the Trailer. Exhibits U and 4. Debtors' title at Exhibit 4 was issued on March 1, 2016. Debtors' Exhibit 4 does not show the Bank as a lienholder. The Bank's Exhibit U shows an issue date of March 19, 2019, and identifies the Bank as lienholder.

Aaron Granley ("Granley") testified that in February of 2019, Timothy Hagadone, brought his original title for the 2012 Neville trailer into the Bank and willingly signed the original title in connection with a transaction with the Bank, resulting in the Bank's lien as evidenced by the title, Exhibit U. The Bank sent the title into Montana's motor vehicle division and Exhibit U was issued in return.<sup>7</sup> Granley's testimony was credible. The Court concludes that the Bank has a lien on the Trailer, and the value of the Trailer is \$35,000.

**2. Discrete Items of Equipment.**

Korkow and Toavs valuations of equipment were generally consistent with the following exceptions:

<u>Equipment</u>	<u>Toavs</u>	<u>Korkow</u>	<u>Difference</u>
7720 John Deere Tractor	\$60,000	\$45,000	\$15,000
9630 John Deere Tractor	\$125,000	\$85,000	\$40,000
4430 Self Propelled Sprayer	\$150,000	\$112,500	\$38,500

Having considered the testimony of both Korkow and Toavs credible, and reliable, and the methodology employed by both virtually the same, the Court has elected to resolve the issue by adopting in part and rejecting in part, each of the valuations and splitting the difference between

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<sup>7</sup> Upon receipt of a written acknowledgment of a voluntary security interest or lien by the owner of a trailer on a form prescribed by the department and payment of the filing fee, the department shall enter a voluntary security interest or lien against the electronic record of title for a trailer. See Mont. Code Ann. § 61-3-103(1)(a).

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each valuation.<sup>8</sup> As a result, the Court finds the values of these items are as follows: 7720 John Deere Tractor, \$52,500; 9630 John Deere Tractor, \$105,000; 4430 Self Propelled Sprayer, \$131,750. The result of this finding is a reduction in Toavs' overall equipment valuation of \$885,250 by \$46,750.

**B. Clark Farm Property.**

The Bank next asserts that \$145,300 of its claim is secured by personal property referred to as the "Clark Farm" property. The Clark Farm property refers to certain property that is the subject of a pre-petition Asset Purchase Agreement, as amended ("Agreement") between Debtors and Barbara Clark, Kay Parratt, and Fred Clark Farms, LLC (collectively "Clark"). *See* Claim 14-1. According to the proof of claim (filed by the Debtors on behalf of Clarks), Debtors owe Clark \$195,000, and the collateral securing the debt is worth \$227,800. *Id.*

The Trustee objected to Claim 14-1 arguing that although Clark had properly perfected its interests in some property, it had not perfected its interest in other property. ECF No. 134. The property that Clark did perfect its interest in had a value of \$174,300, according to the Trustee's objection. *Id.* The Trustee's objection was served electronically on Bank's counsel. After receiving no response, the Court sustained the Trustee's objection to Claim 14-1, allowing the claim as a secured claim in the amount of \$174,300 and an unsecured claim in the amount of \$20,700. ECF No. 147. The Court's order at ECF No. 147 did not explicitly value the Clark Farm property.

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<sup>8</sup> "It is a fundamental principle that a fact finder is 'not compelled wholly to accept or wholly to reject' the testimony of an expert witness, and is 'entitled to credit part of [the witness's] testimony and discredit the balance[.]'" *Alberts v. HCA, Inc.*, 496 B.R. 1, 18 (D.D.C.2013) citing *Moore v. Chesapeake & O. Ry. Co.*, 340 U.S. 573, 579, 71 S.Ct. 428, 95 L.Ed. 547 (1951).

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According to Debtors' Third Amended Plan, Debtors will assume the executory contract between Clark and Debtors, and the arrearages will be paid pursuant to a stipulation. ECF No. 214. The stipulation requires payment of \$100 prior to December 31, 2019. *Id.* Next, Clarks agreed to release their lien upon finalization of Debtors' Chapter 12 Plan. *Id.*<sup>9</sup> The stipulation provides that Clark shall have an unsecured claim in the amount of \$195,000. *Id.*<sup>10</sup> Finally, the parties agreed the stipulation would be effective upon its approval. *Id.* The stipulation was approved at ECF No. 215.

As a result of the various security instruments executed by the Debtors, the Bank has a "blanket lien" that encumbers Debtors' machinery and equipment, and may extend to after-acquired property. To the extent Debtors acquired the Clark Farm property, subject to a security interest perfected by the Clarks that necessitates a lien release at some future point, the Bank has a lien on the Clark Farm property to the extent there exists value beyond the secured claim of Clarks. Debtors do not dispute that the Bank's various security instruments would extend to the Clark Farm property. Instead, Debtors argued at the hearing that the Court's Order sustaining the Trustee's objection to the Clark claim precludes the Bank from asserting the Clark Farm property has a value that exceeds Clark's secured claim in the amount of \$174,300.<sup>11</sup>

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<sup>9</sup> Under the original Agreement between Debtors and Clark, title to the equipment will transfer to Debtors upon completion of payments. However, the Trustee's objection to Claim 14-1, and the stipulation between Debtors and Clark contemplate the filing of UCC financing statements and lien releases. With the record before it, this Court cannot reconcile the terms of the underlying Agreement with the Trustee's objection, and the stipulation. The stipulation's explicit recognition that lien releases will be necessary at the conclusion of the Plan implicitly suggests that title has been transferred to Debtors, but it is at best, unclear.

<sup>10</sup> If Clark agrees that the \$195,000 claim is unsecured, there is no lien release to provide at the completion of the Plan.

<sup>11</sup> Debtors' argument was less clear at the hearing, but the Court considers this an accurate characterization of the position asserted.



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First, Debtor's argument misconstrues the Trustee's objection and the Court's order sustaining it. The Trustee objected, arguing that the Clarks had failed to perfect their security interest in certain property that was the subject of the sale. Based on that objection and the failure of Clarks or anyone to respond, the Court granted the relief requested by the Trustee. Clark's claim was allowed as a secured claim in the amount of \$174,300 and an unsecured claim in the amount of \$20,700. The order did not value the entirety of the Clark Farm property. Instead, it adopted the Trustee's alleged valuation for the property Clarks had a perfected security interest in at the time of the objection.

More importantly, since the Order sustaining the Trustee's objection, Clarks have stipulated to plan treatment that allows them an unsecured claim in the amount of \$195,000. This agreement was effective on February 5, 2020, when it was approved. The logical conclusion to draw from the stipulation is that the entirety of the Clark Farm property may be subject to the Bank's lien. Debtors did not introduce any evidence of the value of the Clark Farm property at the hearing and relied on their legal argument and the Court's prior order sustaining the Trustee's objection. According to Debtor's schedules the Clark Farm property has a value of \$227,800. Toavs valued the Clark Farm property at \$145,300. Exhibit Z. Based on Clarks' stipulation that their claim is unsecured, and Toavs' valuation of the Clark Farm property at \$145,300, the Bank's claim is secured by Clark Farm property.<sup>12</sup> The Clark Farm property has a value of \$145,300.

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<sup>12</sup> The stipulation between Clarks and Debtors is a real enigma, but given Clark's agreement that their claim is unsecured, the Court cannot discern a basis in the record for Clarks to withhold their lien release until plan completion. Having agreed that their claim is unsecured, Clarks will not be permitted to withhold a lien release, particularly when another creditor asserts an interest in the same property.

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**C. Cash Collateral/2019 Crop Proceeds.**

Debtors argue that the cash collateral component of the Bank's claim should be valued at \$165,658.85. The Bank calculates the value of its replacement liens, resulting from Debtors use of the Bank's cash collateral to be \$326,036.94. The difference is \$160,378.09. At various times in this case, Debtors sought an order from this Court authorizing Debtors to use the Bank's cash collateral. In exchange for use of the Bank's cash collateral, Debtors granted the Bank replacement liens in "all of Debtor's 2019 crop and proceeds, federal crop insurance, government payments, and hail loss insurance payments[.]" See ECF Nos. 54, 94, and 111.

Debtors present calculation of the cash collateral component of the Bank's claim and replacement liens associated with it is irreconcilable with the prior position taken by Debtors.

Debtors stipulated and agreed:

The parties stipulate and agree that American State Bank has a security interest in the 2018 crop, proceeds and government payments. Throughout the course of this bankruptcy, the Debtor has used cash collateral from the 2018 crop and other American State Bank collateral. As a result, the Court has granted an automatically perfected first priority post-petition replacement lien on and security interest in all of Debtors' 2019 crops and proceeds, federal crop insurance, government payments and hail loss insurance payments in the amount of cash collateral used by Debtor. Debtor has used at least the following separate amounts of cash collateral: \$159,894.52, \$9,859.42, \$130,000, \$26,283.00, or a total of \$326,036.94. (Dkt. 54; 94; 111).

ECF No. 169, ¶2. This stipulation was dated December 4, 2019. Debtors also acknowledged in that same Stipulation the Bank's automatically perfected first priority post-petition replacement lien on and security interest in all of Debtors' 2019 crops and proceeds, federal crop insurance, government payments and hail loss insurance payments. Nothing in the record explains the Debtor's present position valuing the Bank's cash collateral component of its claim at \$165,658.85. Having previously agreed that they had used \$326,036.94 in cash collateral post-

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petition, the record in this case does not support unilaterally reducing the value of the replacement liens by \$160,000.

The Bank’s cash collateral calculation does not include the value of approximately 7,000 bushels of wheat seed the Bank permitted Debtors to plant. In exchange for use of the seed, the Bank was granted a “an automatically perfected first priority post-petition replacement lien and security interest in all of Debtors’ 2019 crop and proceeds, federal crop insurance, government payments and hail loss insurance payments in the amount of the value of the seed used by Debtors.” Debtors value that seed at \$34,500.

Based upon the foregoing, the Court finds that the Bank’s claim is secured as follows:

Real Property	\$1,959,717
Machinery and Equipment	\$838,500
Clark Farm property	\$143,500.00
Cash Collateral	\$326,036.94
Wheat Seed	\$34,500.00
<b>TOTAL</b>	<b><u>\$3,302,253.94</u></b>

In accordance with the foregoing,

**IT IS ORDERED** Debtors’ Motion filed December 31, 2019, at ECF No. 183 is granted in part and denied in part; Debtors’ Objection to Proof of Claim No. 11 filed at ECF No. 184 is sustained in part and overruled in part; and American State Bank and Trust Company’s claim is allowed as a secured claim in the amount of \$3,302,253.94. The remainder of their claim, \$138,059, is allowed as an unsecured claim.

BY THE COURT:



Hon. Benjamin P. Hursh  
United States Bankruptcy Court  
District of Montana