

October 18, 2004

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT

IN RE IN RE KATHRYN GRACE
IRELAND, doing business as Country
Sampler Gifts,

Debtor.

BAP No. WO-04-049

LYLE R. NELSON, Trustee,

Plaintiff – Appellee,

v.

STILLWATER NATIONAL BANK
AND TRUST COMPANY,

Defendant – Appellant.

Bankr. No. 02-22503-BH

Adv. No. 03-1051-BH

Chapter 7

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the Western District of Oklahoma

Before McFEELEY, Chief Judge, BROWN, and THURMAN, Bankruptcy Judges.

THURMAN, Bankruptcy Judge.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

Stillwater National Bank & Trust Company (SNB) appeals a Judgment of the United States Bankruptcy Court for the Western District of Oklahoma

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

avoiding a prepetition transfer pursuant to 11 U.S.C. § 547(b).¹ For the reasons stated, the bankruptcy court's Judgment is AFFIRMED.

I. Procedural Background and Basis for the Factual Background

The debtor filed a Chapter 7 petition on December 13, 2002. The Chapter 7 trustee commenced an adversary proceeding in her case against SNB, seeking to avoid a cash transfer pursuant to § 547(b), and to recover it from SNB pursuant to § 550. After SNB answered the trustee's complaint, the parties filed cross motions for summary judgment.

SNB's summary judgment motion included a statement of undisputed facts supported by an Affidavit made by an SNB Senior Vice President. The trustee objected to SNB's summary judgment motion, in part responding to SNB's statement of undisputed facts and stating additional undisputed facts (Summary Judgment Objection). The trustee's facts reference numerous Exhibits, all of which are attached to his Summary Judgment Objection. Many of these Exhibits are documents that were not introduced by Affidavit or otherwise authenticated. In addition to his Summary Judgment Objection, the trustee filed a separate motion for summary judgment, reiterating the statement of undisputed facts set forth in his Summary Judgment Objection, and cross referencing the Exhibits attached to that Objection.

SNB objected to the trustee's Exhibits (Evidentiary Objection). The bankruptcy court did not rule on SNB's Evidentiary Objection. Instead, at a hearing, it requested that the parties file a statement of stipulated facts. The parties agreed, and they subsequently executed and filed with the bankruptcy court a joint statement of facts, entitled "Parties Stipulated Facts for Summary Judgment" (Stipulated Facts Statement), attached to which are Exhibits A and B,

¹ All future statutory references in the text are to title 11 of the United States Code.

both of which are incorporated by reference. The Stipulated Facts Statement is comprised of several paragraphs of stipulated facts. As discussed in more detail below, however, one crucial paragraph of the Stipulated Facts Statement does not contain stipulated facts, but rather a stipulation as to the dispute between the parties (Stipulated Dispute).

After the Stipulated Facts Statement was filed, SNB filed a Brief acknowledging the Stipulated Facts Statement and the Stipulated Dispute. As to the Stipulated Dispute, SNB stated that its “contentions continue as previously set forth in its Motion for Summary Judgment.”² In a Reply Brief, the trustee set forth facts related to the Stipulated Dispute supported by the Exhibits attached to his Summary Judgment Objection. SNB objected to the trustee’s Reply Brief, claiming that he had improperly relied on evidence outside of the Stipulated Facts Statement (Reply Brief Objection).

At the close of briefing, the bankruptcy court entered its “Memorandum of Decision and Order,” granting the trustee’s motion for summary judgment and denying SNB’s motion for summary judgment. It held that an avoidable transfer was made to SNB under § 547(b) and that the trustee could recover it from SNB for the benefit of the estate pursuant to § 550. A separate Judgment, incorporating the Memorandum of Decision and Order by reference, granted judgment to the trustee. In its Memorandum of Decision and Order, the bankruptcy court expressly stated that its Judgment was based solely on the Stipulated Facts Statement,³ and it denied the Reply Brief Objection as moot.⁴

SNB timely filed a Notice of Appeal from the bankruptcy court’s final

² Brief of Stillwater National Bank and Trust Company at 1, Appellant’s Appendix at 179.

³ Memorandum Decision and Order at 2-3, Appellant’s Appendix at 209-10.

⁴ *Id.* at 2 & 10, Appellant’s Appendix at 209 & 217.

Judgment.⁵ The parties consented to this Court’s jurisdiction because they did not elect to have the appeal heard by the United States District Court for the Western District of Oklahoma.⁶

On appeal, SNB does not argue that summary judgment was inappropriate. Furthermore, despite the Stipulated Dispute, neither party takes issue with the bankruptcy court’s reliance on the Stipulated Facts Statement. Rather, both parties in large part ignore the Stipulated Facts Statement and the Memorandum of Decision and Order, compiling their respective Statements of Fact from their summary judgment papers below. Despite its own dependence on facts outside of the Stipulated Facts Statement, SNB complains that the trustee’s Brief contains facts “outside of the record considered by the bankruptcy court in making its decision, and [the facts stated] were the subject of objections presented by [SNB].”⁷ By so stating, SNB appears to admit that the relevant facts are those in the Stipulated Facts Statement. Notably, it does not argue that the bankruptcy court erred in failing to rule on its Evidentiary Objection or in entering the order denying its Reply Brief Objection, nor has it moved to

⁵ 28 U.S.C. § 158(a)(1); Fed. R. Bankr. P. 8002(a). SNB filed its Notice of Appeal from the Judgment on the same day that it filed a motion requesting that the bankruptcy court reconsider the Judgment. While this motion rendered the Notice of Appeal as to the Judgment “ineffective,” the Notice of Appeal later became effective when the bankruptcy court entered an Order denying the motion. Fed. R. Bankr. P. 8002(b). SNB has not amended its Notice of Appeal to include the Order disposing of its motion for reconsideration as an Order appealed and, therefore, we do not discuss that Order because we lack jurisdiction to review it. *Id.*

⁶ 28 U.S.C. § 158(b)-(c); Fed. R. Bankr. P. 8001(e).

⁷ Appellant’s Reply Brief at 1. Despite its acknowledgment that the bankruptcy court relied only on the Stipulated Facts Statement and its failure to contest such reliance, SNB attempts to justify its Statement of Facts stating that the “bankruptcy court . . . considered only the facts and stipulations *properly* before it” in rendering the Memorandum of Decision and Order and Judgment. *Id.* at 3 (emphasis added). SNB represents that the facts “properly” before the bankruptcy court were the Stipulated Facts Statement and the facts set forth in its motion for summary judgment. *Id.* n.1.

strike the portions of the trustee’s Statement of Facts that it finds offensive. SNB generally states that the trustee “should be required to conform to the proper procedure for presentation of facts and the making of argument in this case now on appeal. To hold otherwise denies Appellant of its constitutional rights and due process of law.”⁸

With this procedural background, our review of the Judgment is based on the facts set forth in the Stipulated Facts Statement because those are the facts that were agreed to by the parties and relied on by the bankruptcy court. Furthermore, SNB admits, and has argued, that they are the applicable facts.⁹ We acknowledge, however, that the Stipulated Facts Statement is not a wholesale stipulation of facts, in that it contains the Stipulated Dispute. Accordingly, we also consider certain limited facts noted below that have been argued or admitted by SNB.

II. Factual Background

SNB made a loan to “Country Sampler Candlerly & Gifts, LLC,” an Oklahoma limited liability company (the “LLC”).¹⁰ On February 8, 2001, the debtor, as the “Member-Manager” of the LLC, executed a Promissory Note in favor of SNB in the principal amount of \$45,000.00 (the “LLC Note”).¹¹ The

⁸ *Id.* at 4.

⁹ *See, e.g., In re Durability, Inc.*, 212 F.3d 551, 555 (10th Cir. 2000) (“Generally, on motions for summary judgment, courts regard stipulations of fact as admissions of the parties that are conclusive without further evidentiary support in the record.”); *Vallejos v. C.E. Glass Co.*, 583 F.2d 507 (10th Cir. 1978) (stipulation is judicial admission binding on parties that should not be set aside at will), *cited in Wheeler v. John Deere Co.*, 935 F.2d 1090, 1097 (10th Cir. 1991); 73 Am. Jur. 2d *Stipulations* § 17 (2003) (stipulations render proof unnecessary and both prevent an independent examination by the court and bind the parties on appeal).

¹⁰ *See* Stipulated Facts Statement & Exhibit A, Appellant’s Appendix at 166 & 168.

¹¹ Stipulated Facts Statement, Exhibit A at 4, Appellant’s Appendix at 171.

LLC is listed as the borrower on the LLC Note at the address: “129 West 7th Avenue[,] Stillwater, Oklahoma 74074.”¹² The LLC Note was designated a “Commercial - Single Advance - Variable Rate” loan, its “LOAN PURPOSE” was “Commercial,” and it was assigned a loan number of 44170 and an account number of 112/5B/kac.¹³ Paragraph 7 of the LLC Note states that “[t]he purpose of this Loan is to consolidate company debt.”¹⁴ Paragraph 8 provides that “[t]his Loan is secured by separate security instruments prepared together with this Note[,]” in particular, a Security Agreement executed by the LLC.¹⁵ The LLC Note was also secured by the debtor’s personal unsecured guaranty in favor of SNB (Unsecured Guaranty).¹⁶

Later, SNB made a loan to the debtor. On November 13, 2002, the debtor personally executed a Promissory Note in favor of SNB in the principal amount of \$42,256.68 (“Debtor Note”).¹⁷ The debtor is listed as the borrower on the Debtor Note at the address: “2211 Timbercrest Drive[,] Stillwater, Oklahoma 74075.”¹⁸ The Debtor Note was designated as a “Consumer Closed End - Variable Rate” loan, its “LOAN PURPOSE” is “Consumer,” and it was assigned a loan number of 4417003 and an account number of 303/1F/rlj.¹⁹ Paragraph 9 of the Debtor Note states that “[t]he purpose of this Loan is pay off Business

¹² *Id.* at 1, Appellant’s Appendix at 168.

¹³ *Id.*

¹⁴ *Id.* at 2, Appellant’s Appendix at 169.

¹⁵ *Id.*

¹⁶ Stipulated Facts Statement ¶ 2, Appellant’s Appendix at 166.

¹⁷ Stipulated Facts Statement, Exhibit B at 1, Appellant’s Appendix at 173.

¹⁸ *Id.*

¹⁹ *Id.*

Loan and new funds for dental work.”²⁰ Paragraph 10, entitled “ADDITIONAL TERMS,” states: “This Promissory Note is a renewal and extension of that certain Promissory Note #44170 [the LLC Note loan number] dated February 8, 2001, in the amount of \$45,000[.]00 and is secured by all collateral documents executed in connection therewith and not subsequently released.”²¹ The next paragraph of the Debtor Note, paragraph 11, entitled “SECURITY,” provides that “[t]his Loan is secured by separate security instruments prepared together with this Note as follows . . . Mortgage - 2211 Timbercrest Drive[.]”²²

Consistent with this paragraph, the debtor executed a mortgage against her home in favor of SNB. SNB recorded the mortgage on November 19, 2002 (Security Transfer).²³

Concurrent with or after the Debtor Note was made, the LLC Note was imprinted with a stamp, stating: “Renewed To November 20 2002 # 44170-03.”²⁴ The number referred to by the stamp is the loan number assigned to the Debtor Note, but the date bears no relationship to the dates in the Debtor Note.

As stated above, the principal amount of the Debtor Note was \$42,256.68. It is undisputed that of this amount, \$33,763.42 was used in some manner in connection with the LLC Note within the ninety days preceding the

²⁰ *Id.* at 2, Appellant’s Appendix at 174.

²¹ *Id.*

²² *Id.*

²³ Stipulated Facts Statement ¶ 4, Appellant’s Appendix at 166. The stipulation states that the mortgage was recorded in 2003; however, this appears to be a typographical error. *See* Mortgage at 1, Appellant’s Appendix at 45 (bearing 2002 file stamp).

²⁴ Stipulated Facts Statement, Exhibit A at 1, 3 & 5, Appellant’s Appendix at 168, 170, 172.

filing of the debtor’s Chapter 7 case.²⁵ But, the use of these funds is the subject of the Stipulated Dispute referred to above. In particular, the parties stated in the Stipulated Facts Statement the following Stipulated Dispute: “\$33,763.42 of the loan proceeds of Ms. Ireland’s note were used to either: (a) renew the LLC note dated February 8, 2001 (according to SNB); or (b) satisfy and pay off the LLC note and unsecured guarantee dated February 8, 2001 (according to the Trustee).”²⁶

In addition to the facts in the Stipulated Facts Statement, the following fact submitted as part of SNB’s summary judgment motion is pertinent. Of the Debtor Note loan proceeds, \$33,763.42 was disbursed directly to SNB.²⁷ This disbursement will be referred to herein as the “Cash Disbursement.” Because there is no evidence of any other indebtedness due SNB from either the LLC or the debtor, the Cash Disbursement necessarily was applied to the LLC Note.

III. Discussion

We review the bankruptcy court’s summary judgment *de novo*.²⁸

Section 547(b) states:

Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;

²⁵ Stipulated Facts Statement ¶¶ 5-6, Appellant’s Appendix at 167.

²⁶ *Id.* ¶ 5.

²⁷ SNB Motion for Summary Judgment and Brief, Exhibit A-6 at 1, Appellant’s Appendix at 44.

²⁸ See, e.g., *Manchester v. First Bank & Trust Co. (In re Moses)*, 256 B.R. 641, 644 (10th Cir. BAP 2000) (citing cases); *Harris v. Beneficial Oklahoma, Inc. (In re Harris)*, 209 B.R. 990, 993 (10th Cir. BAP 1997) (citing cases).

- (4) made–
 - (A) on or within 90 days before the date of the filing of the petition. . . ; and
- (5) that enables such creditor to receive more than such creditor would receive if–
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.²⁹

The bankruptcy court concluded that the only element of § 547(b) that was in issue was whether the Cash Disbursement was a “transfer of an interest of the debtor in property.”³⁰ This conclusion is not challenged by SNB on appeal.³¹ Thus, the following is assumed: (1) SNB was a creditor of the debtor by virtue of the Unsecured Guaranty that the debtor made in conjunction with the LLC Note; (2) the Cash Disbursement was made on account of an antecedent debt owed by the debtor – the Unsecured Guaranty; (3) the Cash Disbursement was made while the debtor was insolvent; (4) it was made within 90 days before the filing of the debtor’s Chapter 7 petition; and (5) the Cash Disbursement enabled SNB to receive more than it would have received if the Cash Disbursement had not been made and the SNB received payment of the Unsecured Guaranty debt to the extent provided by the Bankruptcy Code.

As to the only contested element, whether the Cash Disbursement was a “transfer of an interest of the debtor in property” within the meaning of

²⁹ 11 U.S.C. § 547(b).

³⁰ *Id.*; see Memorandum Decision and Order at 4, Appellant’s Appendix at 211 (“[T]here is no dispute that all these elements [of § 547(b)] are present except the first.”).

³¹ See *In re Texas General Petroleum Corp.*, 52 F.3d 1330, 1337 n.9 (5th Cir. 1995) (agreement as to issues at trial binds parties on appeal).

§ 547(b), we must discuss two concepts. First, “transfer” is broadly defined as “every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property.”³² Second, it is well-established that the phrase “interest of the debtor in property” “is broadly defined, and guidance is to be drawn from the definition of ‘property of the estate’ set forth in § 541(a).”³³ Section 541(a) states that “property of the estate” includes “all legal or equitable interests of the debtor in property as of the commencement of the case.”³⁴ Thus, “‘property of the debtor’ subject to the preferential transfer provision is best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings.”³⁵ We have stated that the “fundamental inquiry under § 547(b) is whether the transfer diminished or depleted the debtor’s estate.”³⁶

A transfer of monies loaned to a debtor has been held to be a “transfer of an interest of the debtor in property” within the meaning of § 547(b) because, upon execution of a promissory note, the debtor has a legal and equitable

³² 11 U.S.C. § 101(54); *see Barnhill v. Johnson*, 503 U.S. 393, 400 (1992) (acknowledging that “§ 101(54) adopts an expansive definition of transfer.”).

³³ *Moses*, 256 B.R. at 645; *accord Begier v. IRS*, 496 U.S. 53, 58-59 (1990); *Bailey v. Big Sky Motors, Ltd. (In re Ogden)*, 314 F.3d 1190, 1197 (10th Cir. 2002); *Payne v. Clarendon Nat’l Ins. Co. (In re Sunset Sales, Inc.)*, 220 B.R. 1005, 1013 (10th Cir. BAP 1998), *summarily aff’d*, 195 F.3d 568 (10th Cir. 1999).

³⁴ 11 U.S.C. § 541(a)(1); *see generally United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05 (1983) (§ 541(a)(1) is very broad in scope).

³⁵ *Begier v. IRS*, 496 U.S. at 58, *quoted in Sunset Sales*, 220 B.R. at 1013; *accord Moses*, 256 B.R. at 645; *see Ogden*, 314 F.3d at 1197 (attributing the same quotation to *Danning v. Bozek (In re Bullion Reserve of N. Am.)*, 836 F.2d 1214, 1217 (9th Cir. 1988)).

³⁶ *Sunset Sales*, 220 B.R. at 1013 (citing *Gill v. Winn (In re Perma Pac. Properties)*, 983 F.2d 964, 968 (10th Cir. 1992)); *accord Moses*, 256 B.R. at 645; *see Ogden*, 314 F.3d at 1197.

interest in the monies.³⁷ It is undisputed that the Cash Disbursement was a transfer of monies loaned to the debtor by SNB and, therefore, the Cash Disbursement was a “transfer of an interest of the debtor in property” under § 547(b). When the debtor executed the Debtor Note, she had a legal and equitable interest in the proceeds of the loan, and such proceeds would have been property of her estate had she not transferred a large portion of them to SNB. The debtor’s estate was diminished by the Cash Disbursement because the loan proceeds were not available to pay unsecured creditors; instead they were used to pay SNB on account of the Unsecured Guaranty. Accordingly, the bankruptcy court did not err in concluding that the Cash Disbursement was a “transfer of an interest of the debtor in property” avoidable under § 547(b).

SNB claims that the bankruptcy court erred in avoiding the Cash Disbursement because a transfer of the debtor’s property did not occur inasmuch as the Debtor Note renewed or extended the LLC Note, merely substituting one obligation for another. In making this argument, SNB relies on cases stating that the renewal of an existing debt does not constitute a “transfer” of property.³⁸ As acknowledged by SNB, however, all of the cases it cites involve the renewal or extension of one debtor’s existing obligation during the preference period.³⁹ This case is distinguishable because here there is no “renewal” or “extension” of a single debtor’s debt. In fact, there is no renewal or extension of a debt at all.

³⁷ See, e.g., *Moses*, 256 B.R. at 645.

³⁸ See Appellant’s Brief at 8 (citing *Central Trust Co. v. Burchett (In re Willson Dairy Co.)*, 30 B.R. 67 (Bankr. S.D. Ohio 1981); *Citizens Fidelity Bank & Trust Co. v. All-Brite Sign Serv. Co. (In re All-Brite Sign Serv. Co.)*, 11 B.R. 409 (Bankr. W.D. Ky. 1981)).

³⁹ *Id.*

To “renew” means to “[t]o bring into being again” or “[t]o start over.”⁴⁰ To “extend” means “[t]o stretch to spread out to full length” or “[t]o prolong the time of repayment of.”⁴¹ Applying these definitions in the context of a debt, an obligation must be brought back into being or an existing obligation’s time for repayment must be prolonged or spread out over a longer period of time.

Here, the original obligation is the LLC Note. SNB claims that it was renewed or extended by the Debtor Note. Although the Debtor Note states that it renews and extends the LLC Note, it does not do so as a matter of law because the LLC is not obligated under the Debtor Note. Specifically, the LLC Note was made by the *LLC* and the Debtor Note was made by the *debtor* individually. Under the Debtor Note, therefore, the debtor became liable for the debt thereunder; the LLC is not legally required to pay the Debtor Note; and after the Cash Disbursement was made, the LLC obligation under the LLC Note was extinguished. Accordingly, the Debtor Note, being made by a wholly new obligor, in no way brought the LLC Note debt back into being or extended the terms of the LLC Note debt.

SNB maintains that although the debtor appears as the borrower on the Debtor Note, the debtor in fact executed that Note as a Member-Manger of the LLC. According to SNB, therefore, the debt resulting from the Debtor Note is really an extension of the LLC’s debt under the LLC Note. While the LLC’s status as the borrower is admittedly not apparent on the face of the Debtor Note, SNB argues that “there is no other reasonable interpretation when

⁴⁰ Webster’s II New Riverside University Dictionary at 995 (1994).

⁴¹ *Id.* at 456.

construing the documents themselves[.]”⁴² We do not agree.

The following facts are all taken from the Stipulated Fact Statement: (1) the debtor, not the debtor as Member-Manger of the LLC, was the obligor under the Debtor Note; (2) the Debtor Note states that the debtor is the borrower; (3) the Debtor Note refers to the debtor at her home address, not her business address; (4) the Debtor Note has a different account number than the LLC Note; (5) the loan purpose for the Debtor Note is “consumer,” not commercial; (6) the amount loaned pursuant to the Debtor Note was in excess of the amount owed by the LLC under the LLC Note, and no one disputes that the excess funds were used by the debtor to pay a dentist; (7) the purpose of the loan was to pay off a business loan and funds for dental work; and (8) the debtor extended SNB a mortgage on her home to secure the Debtor Note. None of these undisputed facts indicate that the debtor was acting on behalf of the LLC when she executed the LLC Note. Although the face of the Debtor Note and the stamp on the LLC Note refer to a “renewal” or “extension” of the LLC’s debt, the legal effect of the Debtor Note was to create a new obligation for the debtor, not to renew or extend the LLC’s debt. After the Debtor Note was made, the LLC no longer had a promissory note obligation to SNB. Its debt to SNB as reflected in the LLC Note was not renewed or extended in any way.

SNB also states that the parties intended the LLC, not the debtor, to be the borrower on the Debtor Note and, therefore, the bankruptcy court erred in refusing to reform the Debtor Note to correct this mutual mistake. It represents that reformation of a contract is appropriate under Oklahoma law to capture the true intent of the parties, and intent should be gleaned from all of the circumstances of the case. Accepting this as an accurate representation of Oklahoma law, we nonetheless conclude that the bankruptcy court did not err in

⁴² Appellant’s Brief at 8.

refusing to reform the Debtor Note to show the LLC as the borrower thereunder.

While intent typically is a factual issue that precludes summary judgment, SNB has based its reformation argument on facts asserted in the Stipulated Facts Statement, contending the parties' intent that the LLC be the borrower on the Debtor Note was evident from the face of the Debtor Note and the LLC Note.⁴³ It states that intent to renew the LLC Note is "apparent from the four corners of the documents themselves."⁴⁴ For reasons already stated, such intent is not evident from the face of the two Notes. And, at this point, SNB has waived any right to assert that intent precludes summary judgment in that it has never argued – either before the bankruptcy court or this Court – that summary judgment was inappropriate or that SNB had provided sufficient evidence of a "genuine issue for trial."⁴⁵

In addition to claiming that the LLC, not the debtor, was the borrower on the Debtor Note, SNB states that the bankruptcy court erred in avoiding the Cash Disbursement because it was not property of the debtor. In making this argument, SNB first claims that the bankruptcy court erred in applying *Manchester v. First Bank & Trust Co. (In re Moses)*⁴⁶ for the rule that money loaned to a debtor is property in which the debtor holds an interest. It claims that *Moses* is distinguishable from this case because the debtor in that case

⁴³ In rejecting SNB's reformation argument, the bankruptcy court stated that SNB "rest[ed] adamantly on the stipulation and its attachments, which are copies of the two loan agreements. It ask[ed] the Court to infer a mistake in the name of the obligor." Memorandum Decision and Order at 9, Appellant's Appendix at 216 (emphasis added). Our review of the record shows this statement to be accurate.

⁴⁴ Appellant's Brief at 13.

⁴⁵ Fed. R. Civ. P. 56(e); *see id.* 56(c); Fed. R. Bankr. P. 7056; *see also Harris*, 209 B.R. at 995 (citing cases).

⁴⁶ 256 B.R. at 641.

transferred the proceeds of a loan made by one lender to pay the outstanding loan balance owed to a third lender. SNB maintains that because it was the lender under the LLC Note and the Debtor Note, the funds to which the debtor became entitled under the Debtor Note and that are the subject of the Cash Disbursement never became property of the debtor – instead, they were immediately applied to the LLC Note owed to SNB. This argument fails because, again, it does not recognize the separate identities of the debtor and the LLC and the separate obligations that were formed. The Debtor Note was made by the debtor and gave her an interest in the monies loaned to her by SNB. The debtor agreed to pay those funds to SNB, and the Cash Disbursement extinguished the LLC’s debt.

That the debtor never had physical control over the funds loaned to her by SNB does not mean, as suggested by SNB, that the Cash Disbursement was not a transfer of property in which she held an interest. As discussed above, a “transfer” may be an indirect disposition of property, and the debtor’s making of the Debtor Note gave her a legal or equitable interest in the funds loaned to her by SNB. The debtor simply agreed to the immediate transfer of those funds to SNB on account of the debts owing under the LLC Note.

SNB also claims that the debtor’s estate was not diminished by the Security Transfer, the mortgage against the debtor’s home, because the home is exempt. This argument is irrelevant in this appeal because the only transfer that the trustee sought to avoid and that was avoided by the bankruptcy court’s Judgment was the Cash Disbursement. Although the bankruptcy court discussed the Security Transfer in its Memorandum of Decision and Order as an alternative to the Cash Disbursement as grounds for avoidance, the Order in the Memorandum of Decision and its Judgment only avoid the Cash Disbursement.

Finally, SNB claims that the bankruptcy court erred in calculating the

amount of the Judgment. Its arguments made in conjunction with this point of error were raised for the first time in a post-Judgment motion for reconsideration, which was denied by the bankruptcy court. Because SNB did not appeal the bankruptcy court's Order denying the reconsideration motion, we lack jurisdiction to consider it in this appeal.⁴⁷ Based on the facts set forth in the Stipulated Facts Statement, the bankruptcy court did not err in calculating the amount of the Judgment as the parties stipulated that the Cash Disbursement was in the amount of \$33,763.42.

IV. Conclusion

The bankruptcy court's Judgment is **AFFIRMED**.

⁴⁷ *See* n.5 *supra*.