UNPUBLISHED OPINION

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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IN RE:)

) BANKRUPTCY NO. 86A-00633

THE WEBER CLINIC,

DEBTOR.)

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MEMORANDUM OPINION

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This matter is before the Court on the Trustee's Objection to the Claim of DLB Trust and the Debtor's Objection to Claim. A hearing was held on these objections on February 19, 1987, and the matter was taken under advisement. After a careful review of the evidence relating to these motions, the Court now makes the following determination.

BACKGROUND

Darwin M. Larsen ("Larsen"), Wesley G. Harline ("Harline"), Max D. Lamph ("Lamph"), and Gary S. Harris ("Harris") were officers and directors of Citizens State Bank ("Citizens").

In the fall of 1984, the Federal Deposit Insurance Corporation ("FDIC") conducted an audit of Citizens records which revealed a certain deficit. In an effort to remedy the situation, Larsen arranged a loan, through the Bellfonte Company ("Bellfonte"), Minneapolis, Minnesota.

Larsen and his wife, Karen L. Larsen (collectively the "Larsens"), executed a $1,200,000 Promissory Note in favor of Bellfonte. The proceeds from the note were paid by Larsens to Citizens to satisfy the deficit.

Thereafter, Harline, Harris and his wife, Geneil L. Harris (the "Harrises"), and Lamph and his wife, Edna B. Lamph (the "Lamphs"), executed a note for $900,000 in favor of the Larsens.

As a result of these transactions, Bellfonte was the holder of the $1,200,000 note for which the Larsens were liable for the full amount; and the Larsens were the holders of the $900,000 note for which Harline, the Harrises, and the Lamphs were each jointly and severally liable for the full amount.

As security for the $1,200,000 note, the Larsens assigned the $900,000 Note to Bellfonte.

As security for the $900,000 note, Harline, as president of Weber Clinic, executed a trust deed, thereby pledging an asset of Weber Clinic, and pledged stock in Citizens in favor of the Larsens, the Lamphs executed a trust deed on their condominium and pledged stock in Citizens in favor of the Larsens, and the Harrises pledged stock in a family corporation and stock in Citizens in favor of the Larsens.

All the documents evidencing these transactions were signed on February 5, 1985. Under the terms of both notes, all sums were due and owing on August 5, 1985.

In October, 1985, the FDIC closed Citizens and took control of all the assets.

Early in 1986, Bellfonte provided notice of default to the Larsens and began to gather in the collateral pledged as security on the $1,200,000 note. Reacting to the pressure from Bellfonte, the Larsens took steps to collect on the $900,000 note from the joint obligors. Consequently, on January 29, 1986, Larsens entered into a settlement agreement with the Lamphs. Under the terms of that settlement agreement, the Lamphs were released from all debts, obligations, costs and charges due and owing to the Larsens in connection with the note. As consideration for this release and accord and satisfaction the Lamphs quit-claimed all their interest in their condominium to the Larsens as well as any interest they might have in the common shares of Citizens. The settlement agreement did not reserve any right against the joint obligors.

On February 14, 1986, the debtor filed a petition in bankruptcy. On May 5, 1986, Bellfonte created the DLB Collection

Trust (DLB). The purpose of the trust was to collect all money due and owing on the $1,200,000 note and under all other documents of indebtedness under which the Larsens were the promisee and which had been assigned to Bellfonte.

DISCUSSION

The specific issues contained in the objection filed by the trustee and the debtor are:

a. Any indebtedness claimed against the debtor has been released by reason of the Lamph Settlement Agreement.

b. The Weber Clinic Security Guaranty is unenforceable for lack of consideration.

c. The Weber Clinic Security Guaranty and Trust Deed were signed by Harline in his individual capacity and did not bind the debtor.

The Court determines it is not necessary to discuss in detail all the issues listed above. Instead, it limits its discussion to the issue of whether or not the release by the Larsens of their claim against the Lamphs, without a reservation of right to proceed against joint obligors, constitutes a release of the debtor.

The Utah Code contains a provision governing releases. Utah has adopted the Uniform Joint Obligation Act, Utah Code Ann., Sections 15-4-1 to 15-4-7 (1953). The applicable section relevant to the matter before us is Section 15-4-4 which governs the release of joint obligors.

> 15-4-4. Release of co-obligor - Reservation of rights.
>
> Subject to the provisions of Section 15-4-3, the obligees release or discharge of one or more of several obligors, or if one or more of joint or of joint and several obligors, shall not discharge co-obligors against whom the obligee in writing and as part of the same transaction as the release or the discharge expressly reserves his rights; and in the absence of such a reservation of rights shall discharge co-obligors only to the extent provided in Section 15-4-5.

Accordingly, it is the law that a release of one joint obligor releases all other obligors unless the obligee expressly reserves in writing its rights against the other obligors. Sims v. Western Steel Co., 551 F.2d 811, 818 (10th Cir. 1977).

Even though the Larsens assigned all of their right, title, and interest in the $900,000 note to Bellfonte on February 5, 1985, the Court is convinced that the Larsens were in a position to release the Lamphs from their obligation and, therefore, bind Bellfonte to the terms of such release. Prior to the

establishment of DLB on May 5, 1986, Larsens, not Bellfonte, initiated all actions to collect on the $900,000 note. They filed a lawsuit against the Harrises and entered into the agreement with the Lamphs. Larsens retained the title to the real property covered by the Lamph Trust Deed, paying a $23,000 obligation of the Lamphs to FDIC to clear a lien on the property. There is no evidence that Bellfonte made any attempt, prior to May 5, 1986, to begin collection on the $900,000 note, or to interfere in anyway with the collection efforts of the Larsens. It seems clear to the Court that the Larsens were operating under authority from Bellfonte.

CONCLUSION

This Court determines that the settlement agreement entered into January 19, 1986, between the Larsens and the Lamphs releases all joint obligors under the $900,000 note. In particular, the failure of the Larsens to specifically reserve in writing their rights against the remaining obligors as required by Utah Code Ann., Section 15-4-4, mandates this result.

Accordingly, the objections to the claim of DLB are hereby granted.

IT IS SO ORDERED.

DATED this 12 day of May, 1988.

JOHN H. ALLEN
UNITED STATES BANKRUPTCY JUDGE