UNPUBLISHED OPINION

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:	:	
GROUP COMMUNICATIONS, INC.,	:	Bankruptcy Number 88B-03045
	:	[Chapter 11]
Debtor.	:	

MEMORANDUM DECISION AND ORDER

David T. Berry, Esq. of Potter & Berry, Salt Lake City, Utah appeared representing Group Communications, Inc., Debtor.

George W. Pratt, Esq. of Jones, Waldo, Holbrook & McDonough, Salt Lake City, Utah appeared representing First Interstate Bank of Utah, N.A., Creditor.

This contested matter came before the court upon the debtor Group Communication, Inc.'s (Group) objection to two proofs of claim filed by First Interstate Bank of Utah, N.A. (First Interstate). Group sought denial of the claims to the extent that the combined claims exceeded $400,000.00 as a secured claim and $42,901.79 as an

unsecured claim. A hearing on Group's objection was held on April 9, 1990, after which the contested matter was taken under advisement.[1] Having fully reviewed the matter and having made an independent review of applicable case law, the court enters the following ruling.

FACTS

Albert Eugene Guthrie[2] and Glenda C. Guthrie are joint owners of eight acres of real property together with all buildings and appurtenances thereon (subject property) located at 5065 West 2100 South, West Valley City, Utah. The radio broadcasting station operated by Group is situated within the buildings on the real property. Group has no ownership interest in the subject property.

Group executed a trust deed note and a promissory note in favor of First Interstate secured by valid first and second deeds of trust, respectively, against the subject property owned by the Guthries. The trust deed note in the amount of $375,000 was executed on April 5, 1984, by Group through its president Sherwin Brotman as joint and several co-obligor with individuals Albert Guthrie, Glenda Guthrie, and Sherwin Brotman. The promissory note in the amount of $37,500 was executed on July 2, 1985, by Group through its vice-president Gene Guthrie as joint and several co-obligor with individuals Albert Guthrie and Glenda Guthrie.

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1 Other issues raised by Group's claims objection have since been resolved by the parties.

2 Albert Guthrie is a director, vice-president, and general manager of Group.

On January 12, 1988, Albert and Glenda Guthrie filed a chapter 11 petition in the Bankruptcy Court for the District of Utah, Bankruptcy Case No. 88C-00162 (*Guthrie* case). The balance of the trust deed note on that date was $413,216.82. The balance of the promissory note on that date was $29,684.97.

On May 25, 1988, Group filed a chapter 11 petition in this court, Bankruptcy Case No. 88B-03045 (*Group* case). The balance of the trust deed note on that date was $435,285. The balance of the promissory note on that date was $32,203.75.

On November 29, 1989, First Interstate stipulated with Albert and Glenda Guthrie in the *Guthrie* bankruptcy case, that the fair market value of the entire eight acre parcel of the subject property was $400,000. An order entered on February 11, 1990, in the *Guthrie* case incorporated the terms of the stipulation of the parties. The order allowed First Interstate's claim with modification:

c.	Claim #22 of First Interstate Bank is allowed but modified as follows:		
	i.	A secured claim pursuant to the stipulated fair-market value of the real property is allowed of:	$400,000.00
	ii.	An unsecured claim is allowed of:	13,216.82
d.	Claim #23 of First Interstate Bank is allowed as an unsecured claim of:		$29,684.97

On November 30, 1989, First Interstate filed secured proofs of claim in this case in the amounts of $435,285.00 and $32,203.75, respectively. On March 5, 1990, Group objected to the proofs of claim. On March 2 and 27, 1990, First Interstate filed

amended proofs of claim to indicate that the obligations owed by Group were unsecured and not secured.

ISSUES PRESENTED

Group asserts that interest does not continue to accrue on the undersecured notes in Group's chapter 11 case from the date the bankruptcy petition was filed in the *Guthrie* case until the date the bankruptcy petition was filed in the *Group* case. Group argues that the deficiency established in the *Guthrie* case is binding on First Interstate.

LEGAL ANALYSIS

The court has jurisdiction over this case by virtue of 28 U.S.C. §§ 157 and 1334. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue is proper in the Central Division of the District of Utah.

A. ACCRUAL OF INTEREST

Group argues that interest and other charges on its unsecured debt owed to First Interstate ceased to accrue from the date of the filing of the petition in the *Guthrie* bankruptcy case. The accrual of interest on a debt is ordinarily set forth as a contractual

term between the parties.[3] Interest on a borrower's debt continues to accrue pursuant to the contractual interest rate unless the borrower files bankruptcy. Upon the filing of the petition in bankruptcy, the accumulation of interest on an unsecured claim against the bankruptcy estate ceases.

Section 502(b)(2)[4] acknowledges the general rule that "accrual of interest on a debt is suspended upon the filing of a petition in bankruptcy." *In re Beverly Hills Bancorp*, 752 F.2d 1334, 1339 (9th Cir. 1984). *See also United States Dept. of Interior v. Elliott*, 761 F.2d 168, 170 (4th Cir. 1985). The Tenth Circuit Court of Appeals applied this general rule[5] in the case of *C & C Co. v. Seattle First Nat'l Bank, (In re Coal-X Ltd., 76)*, 881 F.2d 865, 865 (10th Cir. 1989) (a landlord was entitled to interest on the full minimum annual rent "from the date it was due to the date the bankruptcy petition

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[3] The contract term that discusses the interest rate and the length of time that interest is to accrue is the controlling term in the note. The clause in the Amendment of Note and Security Instrument, dated December 31, 1984, relating to the amount and length of payment of interest states that "[i]nterest shall be charged at the rate of fourteen per cent (14.00%) per annum from October 1, 1984 until paid."

[4] That interest is to accrue only until the date of the petition filing is evident in § 502(b)(2)'s disallowance of unmatured interest. That section provides that the court shall allow a claim except to the extent that the "claim is for unmatured interest." 11 U.S.C. § 502(b)(2).

[5] The rationale for this rule has been set forth by commentators:

> [T]he principle that interest stops running from the date of the filing of the petition must be understood as a bankruptcy rule of liquidation rather than as a rule of substantive law. . . . The bankruptcy law selects as the decisive date the date of the filing of the petition and disregards, for purposes of the liquidation of the debtor's assets, interest accruing beyond that date. This is primarily a technical policy device to cope in the most convenient, equitable, and economical way with the debtor's insolvency.

3 *Collier on Bankruptcy* ¶ 502.02, at 502-33-4 (15th ed. 1989).

was filed") and in the case of *Allen v. Romero (In re Romero)*, 535 F.2d 618, 623 (10th Cir. 1976) ("The general rule in bankruptcy is that interest on the debt stops, for the purposes of liquidating a bankruptcy's estate, at the filing of the petition in bankruptcy."). Therefore, barring any res judicata effect from the *Guthrie* stipulation and order, interest on Group's unsecured debt owed to First Interstate continued to accrue until May 25, 1988, the date of the filing of the *Group* petition.

B. RES JUDICATA

Group asserts that the stipulation in the *Guthrie* bankruptcy case is binding on First Interstate in the *Group* bankruptcy case because the order incorporating the terms of the stipulation has a res judicata effect on First Interstate's claim in the *Group* bankruptcy case. First Interstate acknowledges that the parties settled the amount of First Interstate's allowed secured claim in the *Guthrie* bankruptcy case by entering into the stipulation, but asserts that the stipulation in that case is not relevant in this case for any purpose.[6]

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[6] First Interstate argues that the parties' settlement of the fair market value of the subject property in the *Guthrie* case is inadmissible to demonstrate the value of that collateral in this case. First Interstate cites Rule 408 of the Federal Rules of Evidence which provides in pertinent part:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

The court rules that the stipulation is not the type of evidence that Rule 408 is attempting to exclude.

Group correctly assumes that a judgment entered upon a settlement or compromise or upon an agreed statement of facts is a final determination and res judicata of the merits. *See Brooks v. Barbour Energy Corp.*, 804 F.2d 1144 (10th Cir. 1986) (a dismissal with prejudice pursuant to a settlement agreement approved by the court is a judgment that has res judicata effect). Moreover, the court is cognizant that orders allowing or disallowing claims in bankruptcy proceedings may have far-reaching res judicata effect. However, a valuation of a claim stipulated to by the parties in a separate bankruptcy case has limited effect on the determination of a similar claim in another bankruptcy case.

Under the doctrine of res judicata, "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *May v. Parker-Abbott Transfer & Storage*, 899 F.2d 1007, 1010 (10th Cir. 1990). Group argues that the order entered on the stipulation in the *Guthrie* case is in the nature of a final judgment because such order established the interests of First Interstate and the value of the collateral underlying the First Interstate claims. In addition, Group argues that the order established what would become an unsecured claim upon confirmation of the *Guthrie* chapter 11 plan and upon reconveyance of the security to First Interstate. Although the claims of First Interstate in *Group* and *Guthrie* relate to the same notes and real estate, the parties to the stipulation and order are not the same, and the cause of action differs. There is no mention in the brief order of the rights of First Interstate

against co-obligors, nor is there any evidence either the court or First Interstate considered the issue.

Section 506(a) provides substantive guidance in determining if the *Guthrie* order has any effect on the determination of the claims in the *Group* case. Valuation of the estate's interest in collateral must 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." The narrow scope of such valuation is affirmed by the case law. "It is clear from a reading of section 506 of the Bankruptcy Code and its accompanying legislative history that estimates of value made during bankruptcy proceedings are 'binding only for the purposes of the specific hearing and . . . [do] not have a *res judicata* effect' in subsequent hearings." *In re Snowshoe Co.*, 789 F.2d 1085, 1088-89 (4th Cir. 1986) (quoting S. Rep. No. 989, 95th Cong., 2d Sess. 54, *reprinted in* 1978 U.S.Code Cong. & Admin. News 5787, 5840.) Other bankruptcy courts have similarly held that a prior valuation of collateral has no precedential value. *In re Realty Investments, Ltd. V*, 72 B.R. 143, 146 (Bankr. C.D. Cal. 1987); *In re Smithfield Estates, Inc.*, 52 B.R. 220, 224 (Bankr. D.R.I. 1985) ("valuation for one purpose . . . is not res judicata as to valuation for a different purpose"). If a section 506(a) valuation in the *Guthrie* case of the subject property does not have a res judicata effect in a subsequent hearing in *Guthrie*, then it follows that it would not have a res judicata effect on a subsequent hearing in the *Group* case. Consequently, this court is not

restricted by the court order relating to the valuation made in *Guthrie* in determining if the accrual of interest ceases on Group's debt upon the filing of the petition in *Guthrie*.

CONCLUSION

The *Guthrie* and *Group* bankruptcy cases are two separate cases, involving different debtors. The proofs of claim that First Interstate filed in the respective cases involved distinct parties and distinct rights. Therefore, the accrual of interest on the debt in the *Group* case continued until the filing of its petition. The intervening filing of the petition in the *Guthrie* case did not suspend the accrual of interest on Group's debt to First Interstate. Furthermore, the order incorporating the terms of the stipulation in the *Guthrie* case has no res judicata effect on the accrual of interest on Group's debt to First Interstate in this bankruptcy case.

Therefore, it is hereby

ORDERED, that Group's objection as modified to the unsecured claims of First Interstate is denied.

DATED this 2nd of October, 1990.

JUDITH A. BOULDEN
United States Bankruptcy Judge