

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
CHARLES & PHYLLIS HARTLEY,) CASE NO. BK94-80858
)
DEBTOR) CH. 12

MEMORANDUM

Hearing was held on May 9, 1995, on Motion for Order Approving and Enforcing Settlement Agreement and for Sanctions filed by Security State Bank. Appearing on behalf of debtors was Bruce Teichman of Denver, Colorado. Appearing on behalf of Security State Bank was T. Randall Wright of Dixon & Dixon, P.C., Omaha, Nebraska. Appearing on behalf of Coash, Inc., was Rick Lange of Rembolt, Loudtke, Parker & Berger, Lincoln, Nebraska. Appearing on behalf of the Chapter 12 Trustee was Patricia Napier of Omaha, Nebraska. Appearing on behalf of Domina & Copple, P.C., was Steven Stumpff, of Stumpff & Pollard, P.C., Broken Bow, Nebraska. Appearing on behalf of FCB was Terry Michael of Baird, Holm, McEachen, Pedersen, Hamann & Strasheim, Omaha, Nebraska. Appearing on behalf of the debtors was Charles Hartley, pro se. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A) and (B).

Background

A trial on the confirmation of an amended Chapter 12 plan was scheduled for March 30 and 31, 1995. Trial began on March 30 and evidence was presented. On the morning of March 31, 1995, the parties informed the Court that they had reached a settlement and desired to make a record.

On the record, counsel for the debtors stated the settlement arrangements with creditor Security State Bank and creditor Domina & Copple, P.C. Counsel for Bank and counsel for Domina & Copple, P.C., agreed that the statements made by counsel for the debtors did include all of the terms of the settlement agreement. The debtors were present during the submission of evidence on the 30th day of March, 1995, and were present in the courtroom at counsel table during the discussion of the settlement agreement.

The parties agreed that the settlement agreement would be incorporated into an amended plan which would be filed and served upon all parties within twenty-one days and that the debtors, as part of the settlement, would be required to sign a promissory note to the Bank and both the debtors and Bank would execute mutual releases.

A few days after March 31, 1995, the Court received from Mr. Hartley a copy of a letter sent to his attorney which indicated displeasure with the speed at which the agreement paperwork was moving. Then, on April 27, 1995, at Filing No. 127, Bank filed a motion for an order approving and enforcing the settlement agreement. The motion by the bank was supported on May 8, 1995, at Filing No. 133, by a motion filed by Domina & Copple, P.C., which identified that portion of the agreement that affected Domina & Copple, P.C., and requested the Court to enforce the agreement.

A hearing was held on the motion filed by Bank on May 9, 1995. That hearing was by telephone and a record was made. Mr. Hartley was given the opportunity to inform the Court and all counsel present any and all reasons why he had decided not to execute the settlement documents or follow through on the settlement agreement that was read into the record on March 31, 1995. In addition to his oral presentation, he submitted an affidavit signed on the 8th day of May, 1995. That affidavit had not been received by all of the parties at the time of the hearing and, therefore, the parties were given until May 15, 1995, to receive the document and file any objections they had to its admission. No objections to its admission were received by May 15, 1995, and the Court did receive a letter from counsel for Bank stating that Bank had no objection to the admission of the document. Therefore, the affidavit of Charlie Hartley dated May 8, 1995, has been marked as Exhibit 3 for purposes of the hearing and is admitted.

To summarize Mr. Hartley's concerns, it appears to the Court that Mr. Hartley does not trust the bank to release any and all Uniform Commercial Code financing statements that have been filed in various county offices in the State of Oklahoma and the State of Nebraska. Counsel for the bank, however, has assured this Court that the bank acknowledges its obligation to release such financing statements and has attempted to do so. Counsel further assured the Court that, as part of the settlement agreement, the bank acknowledged its obligation to release any and all financing statements and that it would do so.

Mr. Hartley also informed the Court that he felt that the settlement agreement read into the record on March 31, 1995,

required confirmation as of that day or as of the first day of April, 1995. He also said he believed that he would be receiving various releases from the bank and certain funds from one of the Nebraska courts which had been held as a result of a state court lawsuit brought by Mr. Huston, one of the creditors in the case. Because he did not receive the appropriate releases as of April 1, 1995, and because he did not receive the money from Mr. Huston, he has apparently missed out on an opportunity to buy cattle. Those cattle purchases were necessary at that time to enable him to feed such cattle and have them available for sale in time to make the payments required in 1996 under the settlement agreement. He now feels he still has valid claims against all of the parties to the settlement and he desires to pursue those claims.

Facts

This Court finds as a fact that the parties did actually agree on the terms of a settlement in court, on the record, March 31, 1995. The terms of the agreement are as follows:

1. Debtors--Security State Bank

A. Bank will withdraw its objection to the Chapter 12 plan proposed by the Hartleys.

B. The debtors agree to pay Bank \$100,000.00, with no interest accruing. The \$100,000.00 principal payment shall be paid in installments of \$25,000.00 per year beginning on April 1, 1996.

C. The parties will execute mutual releases regarding all claims.

D. Mr. Hartley agrees not to interfere in any sales of collateral or any other activities that Bank will undertake to exercise on its collateral or security interest.

E. The Bank shall close various accounts held by the Hartleys and deliver the balance from those accounts to the Hartleys.

F. The Hartleys agree not to object to confirmation of any sale of collateral of Bank.

G. Implied in the agreement and expressly stated on the record at the hearing on May 9, 1995, is the obligation of the Bank to release all financing statements currently filed, whether

expired or not, in any filing location in the State of Oklahoma or the State of Nebraska.

2. Debtors--Domina & Copple, P.C.

A. Domina & Copple, P.C., agrees to withdraw the objection to the plan.

B. The debtors agree to pay Domina & Copple, P.C., \$28,000.00, with no interest. Such principal shall be paid in four installments beginning one year after confirmation or April 1, 1996.

C. Hartleys and Domina & Copple, P.C., shall dismiss with prejudice any claims they have against each other.

D. Domina & Copple, P.C., retains its lien on 4,100 shares of stock of Rocky H. Ranch, Inc., currently being held under attachment order by the District Court of Loup County, Nebraska. Those share certificates shall be transferred from the Clerk of such court to Richard Lydick, Chapter 12 Trustee, and held by the trustee until final payment of the amount due to Domina & Copple, P.C. Domina & Copple, P.C., retain a first lien against the 4,100 shares of stock until the amount due pursuant to this agreement is paid in full.

E. The Hartleys waive any claims against Domina & Copple, P.C., and Domina & Copple, P.C., waive any claims against the Hartleys, except for the \$28,000.00 contained in the agreement.

Court Approval

This judge, after hearing the terms of the settlement and inquiring further of the parties, impliedly approved of the settlement terms by the fact that the trial was terminated and the parties were encouraged to move quickly to file a plan incorporating the settlement terms.

Discussion and Legal Conclusions

Settlement agreements are governed by basic principles of contract law. Devils Lake Sioux Tribe v. North Dakota, 917 F.2d 1049, 1055 (8th Cir. 1990); Sheng v. Starkey Lab., Inc., 1995 WL 232611, at *5, ___ F.3d ___ (8th Cir. April 21, 1995). In general, settlement agreements read into the record are valid and binding, and the court has the power to enforce them, even if one party has a change of heart. Holder v. Gerant Indus., Inc. (In re Omni Video, Inc.), 165 B.R. 22 (Bankr. N.D. Tex. 1994); In re Paolino, 78 B.R. 85 (Bankr. E.D. Pa. 1987); In re Masters, Inc.,

141 B.R. 13 (Bankr. E.D.N.Y. 1992). To determine whether a particular settlement agreement is binding on the parties, a federal court must turn to state law. In re Masters, Inc., 141 B.R. at 15; Royal Bank & Trust Co. v. Pereir (In re Lady Madonna Indus., Inc.), 76 B.R. 281 (Bankr. S.D.N.Y. 1987). Applicable state law in this case is that of Nebraska. The Nebraska Supreme Court in In re Estate of Mithofer, 243 Neb. 722, 728, 502 N.W.2d 454 (Neb. 1993), has found that a settlement agreement made in open court on the record agreed to by all of the parties to the litigation and approved by the court is enforceable.

This Court has found as a fact that the debtors did enter into a settlement agreement and that it was read into the record, approved by the judge, and based upon that, the trial was terminated. The debtors have now told the Court that they do not intend to go forward with the agreement. The reasons that the debtors give for refusing to go forward with the agreement do not include any dispute about the existence or the terms of the settlement agreement. Instead, the debtors suggest that there were some unstated terms or understandings by the debtors with regard to the potential receipt of funds immediately after the court hearing. Such understandings of the debtors were not read into the record, and the Court gave the debtors and all other parties in interest the opportunity to make whatever record was necessary concerning the terms of the agreement. The parties, through counsel, stated on the record that all documentation would be completed within twenty-one days. That deadline was apparently met by counsel for the debtors submitting a proposed amended plan to counsel for the bank within a few days after March 31, 1995. Counsel for the bank made certain amendments and sent copies of the proposed amendments to the debtors at their Nebraska address. In the meantime, the debtors were apparently in Oklahoma and did not receive the documents in Oklahoma. When they returned to Nebraska and reviewed the documents, they construed the documents as not being in conformance with the terms of the agreement and, therefore, they now want to walk away. They shall not be permitted to do so.

The agreement outlined above as between the debtors and the Bank and as between the debtors and Domina & Copple, P.C., is the contractual arrangement between the parties agreed to by the parties, all of whom were represented by counsel. The agreement was read into the record in the presence of the judge, and all parties had the opportunity to make whatever corrections they believed necessary at the time. No corrections were made.

Conclusion

The agreement is binding on all parties to the agreement and shall survive confirmation of an amended Chapter 12 plan, or dismissal of this Chapter 12 case. The obligations under this agreement are enforceable in either this court, during the pendency of the Chapter 12 case, or in the appropriate state forum.

Separate journal entry to be entered.

DATED: May 17, 1995

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

WRIGHT, T. RANDALL	345-0965
LANGE, RICK D.	8-402-475-5087
STUMPPFF, STEVEN	8-308-872-6834
MICHAEL, TERRENCE	344-0588

Copies mailed by the Court to:

Bruce Teichman, 3300 East First Ave., Suite 550, Denver, CO
80206-5807
Charles & Phyllis Hartley, H.C. 75 Box 150, Rose, NE 68772
Richard Lydick, Trustee
Theodore Huston, P.O. Box 704, Broken Bow, NE 68822
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
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CHARLES & PHYLLIS HARTLEY,)	CASE NO. BK94-80858
)	A
<u>DEBTOR(S)</u>)	
)	CH. 12
)	Filing No. 127, 133
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	DATE: May 17, 1995
<u>Defendant(s)</u>)	HEARING DATE: May 9,
)	1995

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Order Approving and Enforcing Settlement Agreement and for Sanctions filed by Security State Bank and Motion by Domina & Copple, P.C.

APPEARANCES

T. Randall Wright, Attorney for Bank
Rick Lange, Attorney for Coash, Inc.
Patricia Napier, Attorney for Trustee
Steven Stumpff, Attorney for Domina & Copple, P.C.
Bruce Teichman, Attorney for debtors
Terry Michael, Attorney for FCB, Wichita
Charles Hartley, debtor (pro se)

IT IS ORDERED:

The following agreement read into the record in open court on March 31, 1995, is binding upon the parties:

1. Debtors--Security State Bank

A. Bank will withdraw its objection to the Chapter 12 plan proposed by the Hartleys.

B. The debtors agree to pay Bank \$100,000.00, with no interest accruing. The \$100,000.00 principal payment shall be paid in installments of \$25,000.00 per year beginning on April 1, 1996.

C. The parties will execute mutual releases on all litigation.

D. Mr. Hartley agrees not to interfere in any sales of collateral or any other activities that Bank will undertake to exercise on its collateral or security interest.

E. The Bank shall close various accounts held by the Hartleys and deliver the balance from those accounts to the Hartleys.

F. The Hartleys agree not to object to confirmation of any sale of collateral of the bank.

G. Implied in the agreement and expressly stated on the record at the hearing on May 9, 1995, is the obligation of the bank to release all financing statements currently filed, whether expired or not, in any filing location in the State of Oklahoma or the State of Nebraska.

2. Debtors--Domina & Copple, P.C.

A. Domina & Copple, P.C., agrees to withdraw the objection to the plan.

B. The debtors agree to pay Domina & Copple, P.C., \$28,000.00, with no interest. Such principal shall be paid in four installments beginning one year after confirmation or April 1, 1996.

C. Hartleys and Domina & Copple, P.C., shall dismiss with prejudice any claims they have against each other.

D. Domina & Copple, P.C., retains its lien on 4,100 shares of stock of Rocky H. Ranch, Inc., currently being held under attachment order by the District Court of Loup County, Nebraska. Those share certificates shall be transferred from the Clerk of such court to Richard Lydick, Chapter 12 Trustee, and held by the trustee until final payment of the amount due to Domina & Copple, P.C. Domina & Copple, P.C., retain a first lien against the 4,100 shares of stock until the amount due pursuant to this agreement is paid in full.

E. The Hartleys waive any claims against Domina & Copple, P.C. Domina & Copple, P.C., waive any claims against the Hartleys, except for the \$28,000.00 contained in the agreement.

Judgment

This settlement agreement is binding upon the parties and shall survive either the confirmation of a Chapter 12 plan or dismissal of this case and be enforceable in this bankruptcy

court during the pendency of the bankruptcy case and/or in the appropriate state forum.

See memorandum entered this date.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.