

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
JON & NANCY MALONEY,)	CASE NO. BK96-81298
)	
DEBTOR)	CH. 13

MEMORANDUM

Hearing was held on April 11, 1997, on the Objection to Claim of Doris Baker. Appearances: Albert Burnes for the debtors, Howard Duncan for Doris Baker and Patrick Campagna for Jon Maloney/Partnership capacity. 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)(B).

Order

Jon Maloney, one of the debtors herein, was involved in a partnership known as J & B Tree Removal with Robert Baker. On December 9, 1994, Washington County Bank loaned the partnership \$33,466.71. Jon Maloney, his wife Nancy Maloney, the other debtor herein, Robert Baker, and his then wife Doris Baker (the parties are now divorced), all signed the note in their personal capacities. As security for the loan, Doris Baker pledged a certificate of deposit.

The partnership was subsequently dissolved, but none of the partnership assets, which are estimated to be worth approximately \$10,000 to \$15,000, have been liquidated. Those assets, which consist of a truck, a chain saw, and other equipment, are currently being held by the debtors.

On or about August 28, 1996, Washington County Bank foreclosed on the certificate of deposit because the partnership was 100 days past due on its loan payment. The loan balance at that time was \$28,783.94, and the certificate of deposit was enough to satisfy the loan balance in full.

Robert Baker has, since the loan was made and the partnership dissolved, received a discharge in Chapter 7, and the discharge apparently extends to the debt to Washington County Bank.

The debtors, Jon and Nancy Maloney filed a petition for relief under Chapter 13 on June 18, 1996. Doris Baker filed a proof of claim in the debtors' case on October 18, 1996 for the entire amount of the loan balance to Washington County Bank. She claims that she is entitled to contribution from the debtors for the debt. On January 24, 1997, the Chapter 13 Trustee moved to allow the claim of Doris Baker, to which the debtors have objected. Doris Baker has filed a resistance to the debtors' objection.

A hearing on the debtors' objection and Doris Baker's resistance was held on April 11, 1997. At the hearing, this court announced that any order on the matter would solely concern the proportionate share of the debt which the debtors are required to contribute, not the amount of such contribution, because there remained partnership assets of an undetermined value to be liquidated and applied to the partnership debts.

The issue thus presented is what is the proportionate share that the debtors must contribute to Doris Baker for their joint debt. In Exchange Elevator Co. v. Marshall, 147 Neb. 48, 22 N.W.2d 403 (1946), the Nebraska Supreme Court stated that "[e]very joint debtor who has been compelled to pay more than his share of the common debt has the right of contribution from each of his codebtors." Id. at 60, 22 N.W.2d at 410. The amount of contribution is an amount that "will put him on an equality of loss with others in view of his share of the obligation undertaken." Id. at 60, 22 N.W.2d at 411. Thus, as there were four signatories to the note, and thus four co-debtors, it would seem that each debtor would be responsible for 25% of the debt, and would be required to contribute 25% toward its satisfaction.

However, the Nebraska Supreme Court did state that "[i]f one of more of the co-[debtors] are insolvent, the plaintiff can in equity obtain a proportionate increase of contribution from the others who are solvent." Id. at 60, 22 N.W.2d 410. This is indeed a proper rule, as it would be inequitable to require one of the co-debtors to bear the burden of another co-debtor's insolvency, while other co-debtors are unaffected.

In this case, Robert Baker received a discharge of the obligation to Washington County Bank, and Doris Baker would be in violation of 11 U.S.C. § 524(a)(2) if she sought

contribution from him for the debt. Accordingly, each of the co-debtors remaining, Jon Maloney, Nancy Maloney, and Doris Baker, are responsible for 1/3 of the obligation to Washington County Bank.

Therefore, following the liquidation of the partnership assets and the application of the proceeds to the partnership debt, i.e. the reimbursement of Doris Baker, each of the debtors shall be deemed responsible for 1/3 of the remainder, that is the loan obligation amount paid for by Doris Baker less the proceeds of the partnership assets applied to that amount.

DATED: May 8, 1997

BY THE COURT:

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

Copies faxed by the Court to:

DUNCAN, HOWARD T.	342-8134
CAMPAGNA, PATRICK	346-8566

Copies mailed by the Court to:

Albert Burnes, Attorney
Kathleen Laughlin, Trustee
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.

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JON & NANCY MALONEY,)	CASE NO. BK96-81298
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<u>DEBTOR(S)</u>)	
)	CH. 13
)	Filing No. 43, 46
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	
)	DATE: May 8, 1997
<u>Defendant(s)</u>)	HEARING DATE: April 11,
		1997

Before a United States Bankruptcy Judge for the District of Nebraska regarding Objection to Claim of Doris Baker by debtors; Resistance by Claimant.

APPEARANCES

Albert Burnes, Attorney for debtors
Howard Duncan, Attorney for Doris Bake
Patrick Campagna, Attorney for Jon Maloney/Partnership Capacity

IT IS ORDERED:

Following the liquidation of the partnership assets and the application of the proceeds to the partnership debt, i.e. the reimbursement of Doris Baker, each of the debtors shall be deemed responsible for 1/3 of the remainder, that is the loan obligation amount paid for by Doris Baker less the proceeds of the partnership assets applied to that amount. See memorandum entered that date.

BY THE COURT:

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

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