

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
ROBERT EDWIN JACOBSEN, § Case No. 07-41092
§ (Chapter 7)
Debtor. §

MEMORANDUM OPINION

The matter before this Court is a Motion for Summary Judgment filed by Timothy E. Carlson, CPA, in which Mr. Carlson moves this Court for a summary judgment overruling the objection to his proof of claim filed by the Debtor, Robert Edwin Jacobsen. This matter is a core proceeding in which this Court may enter a final order pursuant to 28 U.S.C. §§ 157(b)(2)(B) and 1334. For reasons set forth more fully in this Memorandum Opinion, the Court hereby grants the Motion for Summary Judgment and overrules the Debtor's objection to Mr. Carlson's claim. This Memorandum Opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014.¹

I.

On December 19, 1994, the Debtor entered into a stipulated judgment with Timothy E. Carlson, CPA, a professional corporation, regarding a suit brought against the Debtor in California for unpaid rent. The total amount of the stipulated judgment was

¹ To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. Likewise, to the extent any conclusion of law is construed to be a finding of fact, it is hereby adopted as such.

\$17,991. On December 23, 1994, an abstract of the stipulated judgment was recorded in the official public records of Contra Costa County, California.

On December 30, 1994, the Debtor offered Mr. Carlson a cashier's check in the amount of \$16,500. Mr. Carlson refused to accept the check. In subsequent correspondence, counsel for Mr. Carlson explained that Mr. Carlson had mistakenly believed that accepting the check would constitute a full and final payment of the stipulated judgment.

The Debtor did not subsequently make or offer any payment to Mr. Carlson with respect to the stipulated judgment. On September 23, 2003, Timothy E. Carlson, CPA, a professional corporation, applied to renew the stipulated judgment. On December 9, 2004, the stipulated judgment was re-recorded in, among other places, the public records of Contra Costa County, California.

On May 25, 2007, the Debtor filed a voluntary petition for bankruptcy relief. In his bankruptcy schedules, the Debtor listed "Timothy E. Carlson, CPA" as a secured creditor. The Debtor described the nature of the claim as a "money judgment" and listed \$47,350 as the amount of the secured claim. The Debtor described the nature of the collateral as a "judgment lien." The Debtor did not indicate in his original bankruptcy schedules that the claim was contingent, unliquidated, or disputed.

Timothy E. Carlson, CPA, a professional corporation, filed a proof of claim in the amount of \$45,808.97 on August 3, 2007, which was assigned claim number eight by the Court. On May 2, 2008, Mr. Carlson filed a notice that Timothy E. Carlson, CPA, a

professional corporation, had transferred its claim to him. *See* FED. R. BANKR. P. 3001(e)(4). The Debtor subsequently objected to claim number eight.

In his objection, the Debtor asserts that, “pursuant to California Commercial Code §3603(b), when Carlson refused to accept the CHECK from JACOBSEN for the monies owed to CARLSON, CARLSON discharged \$16,500 of the Agreement.” Mr. Carlson has opposed the Debtor’s objection. In his Motion for Summary Judgment, Mr. Carlson argues that California Commercial Code §3603 has no application to this case and that, under relevant California law, nothing short of an offer to pay the full amount due is sufficient to discharge the stipulated judgment.

II.

A motion for summary judgment shall be granted if the Court determines that “there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The material facts of this case as set forth above are not in dispute. The Motion for Summary Judgment is, therefore, ripe for the Court’s determination.

III.

As a preliminary matter, Mr. Carlson, as the successor to Timothy E. Carlson, CPA, a professional corporation, filed his claim in compliance with the Federal Rules of Bankruptcy Procedure, including the attachment of a copy of the stipulated judgment upon which his claim is based. His claim is, therefore, *prima facie* valid. *See* 11 U.S.C. §502(a); FED. R. BANKR. P. 3001(f). To rebut that effect, the Debtor alleges that the

Court should extinguish his obligation to pay Mr. Carlson to this extent he previously offered to pay a portion of the stipulated judgment.²

The Debtor's objection relies upon §3603 of the California Commercial Code. As Mr. Carlson points out in his Motion for Summary Judgment, however, §3603 of the California Commercial Code is inapplicable to this case. Section 3603, which is a codification of §3-303 of the Uniform Commercial Code, relates to the "tender of payment to pay an instrument." CAL. COM. CODE §3603. An "instrument" is defined as a "negotiable instrument," CAL. COM. CODE §3104(b), which, in turn, is defined as:

[A]n unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it is all of the following:

- (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder.
- (2) Is payable on demand or at a definite time.
- (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

CAL. COM. CODE §3104(a). The stipulated judgment in this case is not a negotiable instrument. *See generally* 10 Cal. Jur. 3d Bills and Notes § 11 (discussing the types of

² In a footnote to the Motion for Summary Judgment, Mr. Carlson states that he is reserving the right to seek dismissal of the Debtor's objection to his proof of claim for lack of standing. For purposes of this Memorandum Opinion, the Court assumes that the Debtor has standing to object to Mr. Carlson's claim. The Court notes, however, that standing in bankruptcy proceedings is limited to "parties in interest." *See, e.g., Magnolia Venture Capital Corp. v. Prudential Securities, Inc.*, 151 F.3d 439, 445 n. 9 (5th Cir. 1998). A party in interest is often defined as a person "whose pecuniary interests are directly affected by the bankruptcy proceedings." *In re Hutchinson*, 5 F.3d 750, 756 (4th Cir. 1993). Generally, chapter 7 debtors are not considered persons with a pecuniary interest in the estate unless the estate is solvent. *See, e.g., Gregg Grain Co. v. Walker Grain Co.*, 285 F. 156 (5th Cir. 1922) ("The bankrupt, being insolvent, has no interest in manner of distribution of assets of estate among his creditors.").

instruments included within the definition of negotiable instrument).

The California Code of Civil Procedure and the Civil Code of California discuss, and codify, the legal theory of tender in the State of California. In general, full performance of an obligation extinguishes it. *See* CAL. CIV. CODE ANN. §1473. An obligation also may be extinguished by an offer of full performance made with intent to extinguish the obligation. *See* CAL. CIV. CODE. ANN. §1485. Part performance of an obligation, in contrast, extinguishes the obligation only “when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose” CAL. CIV. CODE ANN. §1524. Moreover, a mere “offer of partial performance is of no effect.” CAL. CIV. CODE. ANN. §1486.

The California Civil Code provides that “[a]ll objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, which then could be obviated by him, are waived by the creditor if not then stated.”” CAL. CIV. CODE ANN. §1501. Similarly, the California Code of Civil Procedure provides as follows:

The person to whom a tender is made must, at the time, specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

Cal. Code Civ. Pro. §2076. The purpose of Civil Code §1501 and Code of Civil Procedure §2076 is “to allow a debtor who is willing and able to pay his debt to know what the creditor demands so that the debtor may, if he wishes, make a conforming tender.” *Gaffney v. Downey Savings & Loan Assn.*, 200 Cal.App.3d 1154, 1166 (Cal.

App. 1988). No creditor is obliged to accept payment of less than the entire debt, and these provisions are “unavailable to [a debtor] to excuse the inadequacy of [his] offer of payment.” *Heimstadt v. Tapered Parts*, 318 P.2d 681, 692 (Cal. App. 1957).

Here, as previously discussed, the Debtor’s obligation to Mr. Carlson is in the form of a stipulated judgment. A judgment is an obligation within the meaning of the California doctrine of tender, as it “represents a legal duty to pay a definite sum in satisfaction of an obligation.” *Schwartz v. Cal. Claim Svs., Ltd.*, 125 P.2d 883, 887-888 (Cal. App. 1942). *See also Willys of Marin Co. v. Pierce*, 296 P.2d 25, 27 (Cal. App. 1956) (discussing the difference between a “note” and an “obligation”). The Debtor, however, did not offer to pay the full amount of his obligation under the stipulated judgment when he tendered a cashier’s check to Mr. Carlson. The Debtor did not deposit the funds offered to Timothy E. Carlson, CPA, a professional corporation, into a bank in the name of Timothy E. Carlson, CPA, a professional corporation. *See CAL. CIV. CODE* §1500.³ Indeed, the Debtor to this date has not made any payment on the stipulated judgment. The Court, therefore, concludes that the Debtor’s mere offer of partial payment did not discharge any portion of his obligation to Timothy E. Carlson, CPA, a professional corporation, under the stipulated judgment.

IV.

For the foregoing reasons, the Court concludes that Mr. Carlson is entitled to judgment as a matter of law and that the Motion for Summary Judgment should be

³ California Civil Code §1500 states in its entirety:

An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank or savings and loan association within this state, of good repute, and notice thereof is given to the creditor.

granted. The Court will enter a separate order consistent with this Memorandum Opinion pursuant to Federal Rule of Bankruptcy Procedure 9021.

Signed on 10/7/2008

Brenda T. Rhoades MD
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE