

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:
STEVEN R. CALLISON,

Debtor.

Case No. A01-01350-DMD
Chapter 13

**Filed On
7/17/06**

**MEMORANDUM RE DEBTOR'S OBJECTIONS
TO CLAIMS NOS. 14, 15 AND 17**

The debtor filed his chapter 13 petition on December 12, 2001. His third amended chapter 13 plan was confirmed on November 19, 2002. At the time of the confirmation hearing, testimony was also given regarding claims which have been filed in this bankruptcy case by several members of the Basargin family, all of whom are fishermen. Five claims have been filed by the Basargins, seeking compensatory and punitive damages "for fraud and theft from trust account." The claims total more than \$1.2 million. No supporting documentation was provided for any of the claims. Although four of the Basargins had filed suit against the debtor in Kenai Superior Court,¹ the debtor's bankruptcy filing precluded the liquidation of their claims in state court.

After the debtor's third amended chapter 13 plan was confirmed, the trustee objected to the Basargin claims on the grounds that they were filed without any supporting

¹*Artemon Basargin, et al. v. Steven R. Callison, et al.*, Case No. 3KN-00-00790 CI, filed Sept. 26, 2000.

documentation.² A hearing on those objections, scheduled for March 14, 2003, was continued without date. The debtor subsequently objected to the same claims on the grounds that he was not liable to these creditors.³ An evidentiary hearing on the objections to Claims Nos. 14, 15 and 17, filed by Alexey, Fedosia and Artemon Basargin, respectively, was held on June 8, 2006. The hearing on the objections to Claims Nos. 13 and 16, filed by Irina and Evgeny Basargin, was continued to August 22, 2006.

The court has considered the testimony presented at the June 8, 2006, hearing as well as the testimony provided at the confirmation hearing on November 18, 2002. It has also thoroughly reviewed the papers, pleadings and claims which have been filed in this case. Liquidation of these claims is problematic for two reasons. First, the Basargins speak limited English. Although Russian interpreters were provided at each of the two hearings, they were not official interpreters.⁴ Because of this, the testimony given by the Basargins is often contradictory or unclear. Second, the documentary evidence submitted at the two hearings is very sparse and, due to language difficulties and other factors, the parties' testimony failed to satisfactorily explain the significance of these documents. The court has attempted to "connect the dots" in order to determine the substance and amount of the Basargins' claims.

²See Trustee's Objection to Claim Nos. 13, 14, 15, 16 and 17, filed February 12, 2003 [Docket Nos. 72 - 76].

³See Debtor's Notice of Hearing on Objection to Proof of Claim (Basargin Claimants), filed May 16, 2006 [Docket No. 133].

⁴At the November 18, 2002, hearing, another fisherman, Frank Martushev, served as interpreter. At the June 8, 2006, hearing, Fedosia Basargin served as interpreter for her husband, Artemon. A continuing objection to the use of a family member as an interpreter was made by debtor's counsel, and duly noted by the court.

Factual Background

Debtor Steve Callison is currently employed as a mortgage broker. Prior to the time he filed his chapter 13 petition, he was a fishing broker with Alaska Marine Brokers, Inc. (“AMB”), a company he started with his wife in the mid-1990’s. He and his wife were officers and shareholders of AMB. Callison held a 49% interest in the company; his wife held a 51% interest. AMB also had one employee, Paul Link, who worked as a fishing broker.

AMB’s record-keeping was fairly informal. Callison said that 99% of the time there would be no listing agreement, unless a boat was involved in the deal. He said AMB sometimes would keep copies of transfer forms or purchase agreements, and kept account cards showing what came in and went out on a transaction. People often would just call up and say they wanted to sell or buy a permit. Each case was different. Callison said AMB had a long relationship with the Basargins before problems arose.

Callison testified that AMB kept two bank accounts: a business account and a trust account. When fishing permits were sold, the payments received would go into the trust account. Funds would then be transferred over to the other account to pay for business expenses. He conceded that when AMB started to decline, he drew funds which should have gone to clients out of the trust account to pay for business and personal expenses. He testified that he didn’t do this with just the Basargins’ money. He made general draws out of the trust account because he was behind on all of his own business and personal obligations.

AMB ceased business in 2000 or 2001. Callison testified that his business went hand in hand with the fishing business; as the fisheries declined, so did AMB. During the period that AMB was active, however, it brokered several transactions for the Basargins. Some of these transactions were concluded without problems, but others had complications and are the source of the Basargins' claims.

Discussion

Upon objection, the proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." To defeat the claim, the objector must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves."⁵

Callison has introduced accounts receivable ledgers which indicate that the Basargins' claims are inaccurate and inflated. The Basargins have the ultimate burden of persuasion in establishing the validity and amount of their claims.⁶

"The 'basic federal rule' in bankruptcy is that state law governs the substance of claims."⁷ The validity and amount of the Basargin's claims is determined under Alaska substantive law. All of the Basargins' proofs of claim contend Callison committed fraud and

⁵*Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035,1039 (9th Cir. 2000) (citations omitted).

⁶*Id.* ("The ultimate burden of persuasion remains at all times upon the claimant.")

⁷*Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000), *citing Butner v. United States*, 440 U.S. 48, 57 (1979).

theft from a trust account. No additional specifics are provided. Nor does the Basargin's state court complaint provide any details about the debtor's fraud. The complaint alleges that the Basargins entered into various contracts with Callison and his company "to sell certain fishing permits" and that some of these permits were sold without the Basargins' consent or knowledge.⁸

The "circumstances of fraud" must be pled with particularity.⁹ A claim of fraud "must specify the time and place where the fraud occurred" rather than "recite without specificity that fraud existed."¹⁰ The Basargin's claims are insufficient on their face to state valid claims for fraud. However, the debtor has admitted that he improperly used funds from his business trust account to pay for personal expenses. He has also conceded that there were instances where the Basargins didn't receive full payment from sales transactions handled through his company.

The court concludes that the debtor has some liability to the Basargins. The issue here is determining the basis and amount of each of the Basargins' claims. In Alaska, damages based on fraud must be established with reasonable certainty and can't be

⁸See ¶ 4 of Complaint, attached to Basargins' Opp'n to Confirmation of Plan, filed May 9, 2002 [Docket No. 48].

⁹Ak. Civil Rule 9(b).

¹⁰*Williams v. Engen*, 80 P.3d 745, 750 (Alaska 2003).

speculative or contingent.¹¹ With one exception, the Basargins have failed to satisfy this requirement.

Claim No. 14, filed by Alexey Basargin:

Alexey Basargin filed Claim No. 14, a general unsecured claim for \$100,000.00 plus \$150,000.00 in punitive damages. Alexey testified at the confirmation hearing on November 18, 2002.¹² He said that he worked through Callison in 1998 to sell some Halibut IFQs. He initially said this transaction went through without a hitch, but later stated that he only got paid for part of the IFQs and that a lien subsequently was placed on the remaining IFQs by the State of Alaska, so they couldn't be transferred. He said the IFQs had been pledged as collateral to the State. He said he didn't know why this had happened, but blamed Callison for the lien.

The only documentary evidence provided regarding AMB's transactions with Alexey was Callison's Ex. 2, an accounts receivable ledger showing a sale of Halibut IFQs on April 14, 1998. According to the entries on the ledger, the IFQs were sold for \$190,188.00, and the full purchase price was paid to AMB. After payment of AMB's commission, sales tax due the Kenai Peninsula Borough, and other specified costs, Alexey received a check for \$183,641.24.

¹¹*Alaska Ins. Co. v. Movin' On Constr., Inc.*, 718 P.2d 472, 474 (Alaska 1986); *Transamerica Title Insur. Co. v. Ramsey*, 507 P.2d 492, 497 (Alaska 1973).

¹²He wasn't present at the claim objection hearing held on June 8, 2006.

Alexey testified that there was a separate IFQ for 10,700 pounds that he bought from his father. He said he paid his father for these IFQs but their transfer to him couldn't be completed because the State of Alaska had a lien on them. Alexey said he was fishing these IFQs but was afraid he might lose them because of the lien. Alexey also testified that some of his own IFQs had been pledged as collateral to the State. This apparently occurred after the 1998 sale of IFQs. Alexey said it happened sometime in 1999. He said there were some documents regarding the sale and lien which he had a friend review, and that his signature had been forged on these documents. No documents to support this second transaction were introduced at either hearing, however.

I find that Alexey has failed to establish a claim in this case. There is testimony and documentary evidence which shows he was paid in full for a sale of IFQs in 1998. His testimony regarding the second, failed transaction, however, is inconclusive and lacks sufficient detail to establish damages. Claim No. 14 will be disallowed.

Claim No. 15, filed by Fedosia Basargin

Fedosia Basargin filed Claim No. 15, a general unsecured claim for \$50,000.00 plus \$150,000.00 in punitive damages. She served as an interpreter for Artemon Basargin at the June 8, 2006, hearing and also briefly testified on her own behalf, but provided no specifics about the substance of her claim. Artemon, however, testified that a sales transaction with Lionel Hallet involved a Cook Inlet permit belonging to Fedosia.

According to Artemon, Hallett couldn't come up with the entire purchase price for the Cook Inlet permit, so they agreed to payment terms. The agreed price for the permit was \$90,000.00.¹³ In June of 1997 Hallett signed a promissory note for \$60,000.00 of this amount, to be secured by the fishing permit and his home.¹⁴ Hallett was to make annual payments of \$15,000, starting September 15, 1997, until the obligation was paid in full. The note provided for interest of 10% per annum on the debt until it was paid.

Artemon testified that some portion of the \$60,000.00 was never paid to him and Fedosia. He said Hallett did pay something when they signed the deed of trust, and that they did get one or two payments afterwards. Artemon couldn't remember how much was paid exactly, maybe a total of \$40,000. He said the balance was never paid.¹⁵

The accounts receivable ledger provided by Callison lists a \$60,000.00 note for the sale of Fedosia's permit.¹⁶ It also shows that a payment of \$27,827.52 was made when the Hallett note was drafted, and that two additional payments of \$27,772.50 were made afterwards. Per the ledger, the Basargins received a total of \$83,372.50, and were paid in full. Callison also testified that he helped to set up an escrow account for the Hallett obligation. He said he believed it was Southcentral Title. He said he recalled something happening regarding a reconveyance of the Basargins' deed of trust, but nothing specific.

¹³Callison's Ex. 1.

¹⁴Basargin Ex. D.

¹⁵The Basargin's attorney represented that a reconveyance of the Basargin's deed of trust had been recorded.

¹⁶Callison's Ex. 1.

Artemon's vague recollections that he and Fedosia didn't quite receive all of the agreed price for the sale of the Cook Inlet permit contradict the entries reflected on the accounts receivable ledger for this transaction. And the ledger is consistent with Artemon's memory as to the number of payments that were actually received by the Basargins for this sale. I find that the evidence in support of Fedosia's claim No. 15 is insufficient to establish damages. Claim No. 15 will be disallowed.

Claim No. 17, filed by Artemon Basargin

Artemon Basargin filed Claim No. 17, a general unsecured claim for \$123,000.00. No punitive damages are requested on his claim. Artemon's claim is based on two transactions. One is the sale of a Bristol Bay permit. This permit was sold to Darrin Anderson for \$93,000.00.¹⁷ The buyer didn't pay the full purchase price, and Callison conceded Artemon didn't receive \$10,000.00 he was owed on this sale. This portion of Artemon's claim will be allowed.

Artemon also testified that he had tried to sell a Hawaii Longline Permit through AMB. He said he initially listed the permit with Callison, but after his listing with Callison had expired, he worked with Paul Link, AMB's employee, to auction the permit. He said he believed Paul could sell the permit for \$45,000 to \$50,000. Instead, the permit sold

¹⁷Callison's Ex. 7.

for \$25,000.00 and Artemon only received \$21,000.00. Artemon said his signature on the sales agreement for this permit was forged; it wasn't his signature.¹⁸

Callison testified that Paul handled the Hawaii Longline Permit sales at AMB; Paul was in charge of handling transactions involving these permits. Callison said he didn't personally oversee the preparation of the documentation involving Artemon's longline permit. At the confirmation hearing, however, Callison said that he believed Artemon was owed "a bit over \$2,000.00" from this sale.

The portion of Artemon's claim arising from the sale of the Hawaii Longline Permit will be allowed in the sum of \$2,000.00, consistent with Callison's testimony at the confirmation hearing. Based on the record, I feel that no greater amount can be awarded. Artemon testified that he worked with Paul on this sale and believed Paul could auction it for at least \$45,000.00. Perhaps the auction didn't yield such a favorable result. Callison said Paul handled this permit because Paul handled all Hawaii Longline Permits. The accounts receivable ledger, which Callison testified was in Paul's handwriting, reflected a sale price of \$25,000.00 for the permit, and also showed that Artemon received \$21,972.50 from the sale.¹⁹ This amount is consistent with Artemon's recollection of how much he received from the sale. Although the accounts receivable ledger shows that Artemon was paid in full, Callison testified that he was owed about \$2,000.00 on the transaction. That is what the

¹⁸Basargin's Ex. A.

¹⁹Callison Ex. 6.

court will allow for this claim. Artemon's Claim No. 17 will therefore be allowed in the total amount of \$12,000.00.²⁰

Punitive Damages

Alexey and Fedosia Basargins' claims also request punitive damages. Punitive damages can be awarded on breach of contract and fraud claims.²¹ To receive such an award, the Basargins had to establish, by clear and convincing evidence, that Callison's conduct was "outrageous, including acts done with malice or bad motives," or reflected a "reckless indifference to the interest of another person."²² In evaluating the reprehensibility of Callison's conduct for the purpose of awarding punitive damages, the court should consider whether:

the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.²³

No punitive damages will be awarded to the Basargins. Callison's conduct doesn't rise to the "outrageous conduct" standard required for an award of punitive damages

²⁰\$10,000.00 for the Bristol Bay permit, and \$2,000.00 for the Hawaii Longline Permit.

²¹*Casciola v. F.S. Air Service, Inc.*, 120 P.3d 1059 (Alaska 2005).

²²A.S. 09.17.020(b).

²³*Casciola*, 120 P.3d at 1067, citing *State Farm Mut. Auto. Ins. v. Campbell*, 538 U.S. 408, 419 (2003).

in Alaska. The evidence reflects that some of the Basargins' claims are based on circumstances outside of Callison's control, such as the failure of a buyer to pay the full amount promised for a permit. The evidence regarding the forgery of Artemon's signature on a sale contract failed to establish that Callison was personally involved with, or had knowledge of, that transaction.²⁴ The Basargins' claims will be limited solely to the economic damages they have established with regard to specific sales transactions. No punitive damages will be awarded.

Conclusion

For the reasons stated in this memorandum, claims Nos. 14 and 15, filed by Alexey and Fedosia Basargin, respectively, will be disallowed. Claim No. 17, filed by Artemon Basargin, will be allowed in the sum of \$12,000.00. No punitive damages will be awarded.

An order and judgment will be entered consistent with this memorandum.

²⁴AMB's employee, Paul Link, handled transactions involving Hawaii Longline Permits, including the one in which Artemon claims his signature was forged.

DATED: July 17, 2006

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: Frank Cahill, Esq. (for debtor)
Joe Kashi, Esq. (for Basargins)
Larry Compton, Trustee
U. S. Trustee

07/17/06