

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

---

**In Re:**

**Pierri's Motel Associates,**

**Debtor.**

---

**BK. NO. 94-21347**

**DECISION & ORDER**

**BACKGROUND**

On June 22, 1994, the debtor, Pierri's Motel Associates, ("PMA") filed a petition initiating a Chapter 11 case. The petition was executed by Francis A. Pierri ("Francis Pierri") as a general partner of PMA.

On November 8, 1994, the Court entered an Order approving a Stipulation (the "Stipulation"), which was executed on behalf of Francis A. Pierri and his spouse, Joan M. Pierri ("Joan Pierri"), by their attorney. Included in the Stipulation were the following provisions: (1) "Pierri [Francis] hereby waives any and all economic claims he may have against PMA's estate"; and (2) "[t]he Pierris agree that any interest the Pierris may have in the property defined in the deed executed by them and delivered to PMA in 1988, is held in constructive trust for the benefit of PMA and that the deeds should be recorded, unless there is some other, equivalent method of placing the property in the hands of PMA".

On December 6, 1994, Joan Pierri filed a secured proof of claim, dated November 23, 1994, in the amount of \$160,000 plus interest from January, 1989 (the "Joan Pierri Claim").

On May 15, 1995, PMA filed an objection to the Joan Pierri Claim alleging that: (1) it was unaware of any legitimate basis for the asserted secured claim; (2) no contract existed between Joan Pierri and PMA granting any mortgage, lien or security interest in any of the property in which PMA had an interest; and (3) no documents evidencing any security interest had been attached to the Joan Pierri Claim.

At the hearing on the PMA claim objection conducted on June 1, 1995, Joan Pierri testified

and the following exhibits were admitted into evidence: (1) an April 1, 1988 Contract for Sale of Real Estate (the "Sale Contract") entered into between Francis and Joan Pierri, as sellers, and John R. Bloise, Robert Vollmer and Francis Pierri, as buyers, which covered certain property located in the City of Corning, New York, known as Pierri's Restaurant (the "Restaurant Property") and described in a Deed to Francis and Joan Pierri dated February 5, 1980, and which provided for a purchase price of \$500,000; (2) a February 8, 1989 Deed (the "Restaurant Deed") between Francis and Joan Pierri, as grantors, and PMA, as grantee, covering the Restaurant Property as well as an additional parcel of property located in Corning and owned by Francis Pierri individually; and (3) a February 9, 1989 PMA Report of Income and Disbursements (the "PMA Disbursement Statement"), prepared on the letterhead of John R. Bloise, Esq., which showed a disbursement to Francis Pierri of \$340,290.59 as "partial payment on Restaurant".

At the hearing conducted on June 1, 1995, Joan Pierri testified that: (1) she and Francis Pierri had purchased the Restaurant Property in 1980 from Sagittarius Realty, at which time a \$5,000 downpayment was made, one-half of which was contributed by Joan Pierri, who always worked and had her own funds, and the other one-half was contributed by Francis Pierri<sup>1</sup>; (2) the Restaurant Property was deeded by Sagittarius Realty to Francis and Joan Pierri jointly; (3) the Restaurant Property was leased to Pierri's Enterprises, Inc., which operated a restaurant, and any rent paid was used to pay the existing mortgages on the Property; (4) in 1988 she agreed to a sale of the Restaurant Property and executed the Sale Contract, which she believed was later assigned to PMA, as buyer; (5) she believed that there was a closing for the sale of the Restaurant Property to PMA, at which time the existing mortgages were paid and the balance of the purchase price was to be paid one-half

---

<sup>1</sup> On June 8, 1995, the attorney for Joan Pierri filed with the Court a Statement of Sale documenting the February 5, 1980 purchase of the Restaurant Property by Francis and Joan Pierri from Sagittarius Realty with a downpayment of \$5,000.

to Francis Pierri and one-half to her; (6) she was aware that the existing mortgages on the Restaurant Property were paid, as set forth in the PMA Disbursement Statement, but she never received any other funds in payment of her interest in the Property; and (7) Francis Pierri had continually advised her that she would be paid any amounts due her when PMA received additional financing.

At the hearing Joan Pierri further testified that: (1) she did not know how the \$500,000 purchase price had been determined; and (2) her interest, as a joint owner, in any alleged unpaid purchase price, in view of Francis Pierri's waiver of any claim against the estate in the Stipulation, would at best be approximately \$80,000 rather \$160,000.

The hearing was adjourned to June 21, 1995 at which time the parties requested additional time to make further written submissions and also requested that the Court make its determination as to the validity of the Joan Pierri Claim without any further hearings.

PMA submitted a July 7, 1995 letter from its attorney, which included a copy of a November 30, 1990 letter executed by John R. Bloise and Francis Pierri (the "Payment Confirmation")<sup>2</sup>. The Payment Confirmation stated that: (1) "Francis Pierri has already received the major portion, if not all, of his sale price for the Restaurant building by way of Mortgage pay-off and direct payments to him"; (2) "Pierri's [sic] requested a Mortgage on their Restaurant only to document and establish the basis for the money which had already been paid"; and (3) "[i]t was only to establish the basis for the payments which had already benefited the Pierri's [sic], all of which had previously been fully disclosed to everyone".

---

<sup>2</sup> The letter advised that the attorneys for the respective parties had agreed that the Payment Confirmation could be admitted into evidence.

The Payment Confirmation was addressed to the attorney for an individual who at the time was a limited partner in and a lender to PMA. That individual later became the sole general partner of PMA in the Chapter 11 case, and was a general partner when PMA proposed its plan, which was confirmed by the Court, and when it objected to the Joan Pierri Claim.

## DISCUSSION

Prior to the filing of the PMA Chapter 11 case and a related case for B & F Realities ("B & F"): (1) there were multiple state court mortgage foreclosure proceedings pending in connection with the Corning Day's Inn which PMA operated; (2) several critical issues involved in those mortgage foreclosure proceedings were scheduled for trial; (3) the limited partners of PMA had a pending action against the former general partners of B & F and PMA; and (4) there were ongoing investigations by the New York State Attorney General's Office and other law enforcement authorities. This complex and extended litigation was impacting directly and indirectly on what otherwise appeared to be a viable business entity and threatened the loss of the entity as a going concern to the creditors, investors, employees and the public. In Chapter 11 the parties and their professionals, after protracted negotiations and extraordinary efforts, were able to enter into the necessary settlement agreements so that a plan of reorganization could be and was confirmed. At the same time, however, several indictments were entered against a number of individuals associated with B & F and PMA.

Based upon all of the facts and circumstances presented in this proceeding, the Court finds that Joan Pierri has not met her burden to prove that she has a valid claim against PMA.<sup>3</sup>

That there is no valid claim against PMA in connection with the transfer of the Restaurant Property is consistent with the following: (1) neither the terms and provisions of the Sale Contract

---

<sup>3</sup> The ultimate burden of proof always rests with the claimant. Under Federal Rules of Bankruptcy Procedure 3001(f) a properly filed proof of claim constitutes *prima facie* evidence of a claim's validity and amount. An objecting party carries the initial burden of producing evidence to rebut the claim; however, once such evidence is produced, the burden shifts back to the claimant to prove the validity and amount of the claim by a preponderance of the evidence. *See In re Frederes*, 98 B.R. 165, 166 (Bankr. W.D.N.Y. 1989); *Matter of Fidelity Holding Co., Ltd.* 837 F.2d 696, 698 (5th Cir. 1988) (outlining shifting burdens of proof for claims under the Bankruptcy Code).

and the Restaurant Deed or the testimony of Joan Pierri indicated that she took any steps to: (a) require that any consideration due in connection with the transfer of the Restaurant Property be paid directly to her; or (b) negate any actual and apparent authority Francis Pierri had to receive any and all consideration for the transfer; (2) at all times in connection with the transfer of the Restaurant Property, as to any and all third parties, Francis Pierri acted with authority to receive any consideration which might be due to the Pierris in connection with the transfer, whether it be by direct payment or by credit or offset to his accounts; (3) between February 1, 1988 and November 30, 1990, Francis Pierri, John R. Bloise and Robert Vollmer were in control of the funds of PMA; (4) the Payment Confirmation, when read in its entirety, indicated that any consideration due in connection with the transfer of the Restaurant Property was paid, directly or indirectly, to the Pierris or was paid to Francis Pierri on behalf of himself and as the agent for Joan Pierri; (5) the Stipulation is consistent with a finding that any and all consideration due in connection with the transfer of the Restaurant Property had been paid, directly or indirectly, to Francis Pierri who was acting for himself and as the agent for Joan Pierri in connection with the transaction; and (6) a prospectus issued by PMA before the date of the Restaurant Deed indicated that both parcels described in the Restaurant Deed were to be conveyed to PMA for a total consideration of \$500,000.

The documentary evidence presented by Joan Pierri and her testimony do not overcome the foregoing. Therefore, she has not met her burden to prove by a preponderance of the evidence that the Joan Pierri Claim is a valid claim against PMA either in whole or in part.

### **CONCLUSION**

The PMA Claim Objection is in all respects sustained and the Joan Pierri Proof of Claim is disallowed in its entirety.

**IT IS SO ORDERED.**

**/s/**  
\_\_\_\_\_  
**HON. JOHN C. NINFO, II**  
**U.S. BANKRUPTCY JUDGE**

**Dated: August 28, 1995**