NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-09-1242-BMoPa
ERIC T.Y. HSU aka Ting Yang Hsu and MAN LING CHENG aka Man Ling Hsu, aka Mang Ling Cheng Hsu,	Bk. No. LA 03-26874-RN
Debtors.	
ERIC T.Y. HSU,	
Appellant,	**M E M O R A N D U M**[1]
v.	
BANK OF TAIWAN,	
Appellee.	

Submitted Without Oral Argument on March 19, 2010

Filed - March 24, 2010

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Richard M. Neiter, Bankruptcy Judge, Presiding

Before: BRANDT[2], MONTALI, and PAPPAS, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] Hon. Philip H. Brandt, U.S. Bankruptcy Judge for the Western District of Washington, sitting by designation.

After an evidentiary hearing the bankruptcy court overruled debtor's objection to the claim of Bank of Taiwan ("Bank"), finding that the evidence did not support his contention that the debt in question had been released in a settlement between debtor's father's company and the Bank.

We AFFIRM.

I. FACTS

In November of 2002, the Bank's Los Angeles branch ("Bank Los Angeles") made two loans to Cal-Rainbow Products, Inc., of Pomona, California, one for $299,499.60 and another for $150,000. Debtor Eric Hsu (aka Ting Yang Hsu) was the president of Cal-Rainbow and personally guaranteed both loans. The loans were also guaranteed by Chin-Mu Metal Manufacturing Co., Ltd., located in Taiwan, whose principal is debtor's father, Chin Mu Hsu. Chin-Mu Metal's guarantee took the form of two checks, one for NT$11,500,000 (equivalent to $299,499.60) and another for NT$5,775,000[3] (equivalent to $150,000).

At the time, Chin-Mu Metal also owed the Bank on loans of approximately NT$45,000,000 from the Bank's Southgate branch, located in Taipei, Taiwan ("Bank Southgate"). Debtor and his father had guaranteed those loans.

Cal-Rainbow subsequently defaulted on its loans and filed a chapter 7 bankruptcy petition in April of 2003. As Cal-Rainbow had no assets, Bank Los Angeles was left to look to the guarantors for satisfaction of the debt. In June of 2003, debtor and his wife filed the

[3] "NT$" is the symbol for Taiwan dollars, the currency of Taiwan.

instant chapter 7 case. Bank Los Angeles filed a general unsecured claim for $443,499.60 on 30 January 2004.

Approximately one month earlier, on 21 December 2003, Chin Mu Metal sought a settlement with Bank Southgate by way of a "Petition," the subject line of which was "Chin Mu Metal Manufacturing Co., Ltd's proposal for the repayment of debts to the Bank of Taiwan Southgate Branch." Exhibit M to Findings of Fact and Conclusions of Law (henceforth "Findings").[4] The petition requested that Chin Mu Metal be allowed to pay less than the full balance owed due to recent financial difficulties, and based on the parties' longstanding relationship. Apparently referring to the checks provided as a guaranty for the Cal-Rainbow loan, Chin Mu Hsu stated in the petition:

> As of the entrustment of foreign branch to claim for compensation of the auxiliary pledge, the said auxiliary pledge should have been returned to me a long time ago. It is an invalidated note. I am not responsible for paying off the note. . . .

Bank Southgate responded with its Internal Memo dated 12 March 2004, which was originally written in Chinese. The Chinese version and two different English translations were offered at the evidentiary hearing (The translations are attached to the court's Findings as Exhibits D and N). The first English translation provides in relevant part:

> 2. Said case will be handled as follows: After Chin Mu Metal Manufacturing Co., Ltd. makes the payment of NT$33,000,000 (which shall be used to pay off the debts owed to Southgate Branch), the Bank will waive this company's other debts at the Bank (including the debt owed to Southgate Branch and the promissory note debts owed to Los Angeles Branch), cancel the liens on the properties listed on Exhibits 1 & 2 and the

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[4] The exhibits to the court's findings and conclusions are designated as they were when they were submitted as exhibits by the Bank. They do not follow an alphabetical sequence. The first exhibit is "M" followed by Exhibit D, Exhibit N, Exhibit 2, and Exhibit O.

> provisional seizure of the properties listed on Exhibit 3 & 4, and also return the two promissory notes payable to the Los Angeles Branch as an auxiliary pledge.
> . . . .
>
> 4. Los Angeles Branch shall continue its efforts to recover its credit's [sic] rights on the loan to the borrower and the guarantor.

Exhibit D to Findings. (emphasis added).

The second translation is essentially identical to the first, except that both instances of "promissory note(s)" in paragraph 2 are translated as "auxiliary pledge(s)." Exhibit N to Findings.

Thereafter, the Bank issued a letter dated 19 March 2004, which became the settlement agreement between the parties ("Settlement Proposal"). Again, two different translations were offered at the evidentiary hearing, one by debtor and the other by the Bank. Both translations incorporated the Internal Memo of 12 March 2004, and differed in translating the Chinese characters which sound like "ben piao" (sometimes written as one word: "benpiao"). The debtor's version renders those characters as "promissory notes," while the Bank's does as "auxiliary pledges."

The translation in Exhibit 2 is:

> 2. We agree to process this request as follows: you make a full payment NT$33,000,000, we will revoke the balance of your debts in our Southgate Branch and the debts of promissory notes in our Los Angeles Branch, and erase the mortgages set on the real properties listed in Attachments 1 and 2, revoke the implementation of provisional seizure of real properties listed in Attachments 3 and 4, and return to you the two promissory notes submitted to our Los Angeles Branch as auxiliary pledges.

Exhibit 2 to Findings. (emphasis added). The translation in Exhibit O is:

> 2. We agree to process this request as follows: you will make a one-time payment of NT$33,000,000, and we will revoke the balance of your debts in our Southgate Branch and the

> auxiliary pledges in our Los Angeles Branch, and erase the mortgages set on the real properties listed in Attachments 1 and 2, revoke the implementation of provisional seizure of real properties listed in Attachments 3 and 4, and return to you the two auxiliary pledges submitted to our Los Angeles Branch as auxiliary pledges.

Exhibit O to Findings. (emphasis added).

It is not clear from the record whether the parties executed any settlement documents. The court's Findings indicate that the parties verbally accepted the Settlement Proposal and performed their obligations under it. The full settlement amount of NT$33,000,000 was paid off in March 2007.

Thereafter the Bank returned Chin Mu Metal's two checks which had been pledged to guarantee Cal-Rainbow's debt. The checks were sent to debtor with a letter from Bank Southgate dated 18 April 2007. Exhibit 11 to debtor's Objection to Claim of Bank of Taiwan. That letter provided, in relevant part:

> 2. With regard to your application to pay off your debts with NT$33,000,000, we got approval from our head office and consented to process it in our letter number Southgate Business Tzu 0930013361 dated March 19, 2004.
> 3. For the above mentions [sic] proceeds, NT$12,000,000 and NT$21,000,000 were remitted to us on July 28, 2005 and March 23, 2007 respectively, in the total amount of NT$33,000,000 to repay the balance you owed to our Southgate Branch and the promissory note debt in our Los Angeles Branch (i.e., Promissory Note No. CA3548886 in the amount of NT$5,775,000 and Promissory Note No. CA354884 in the amount of NT$11,550,000, the total amount of those two promissory notes comes to NT$17,325,000).

Id. The letter referred to in paragraph 2 is the Settlement Proposal. The promissory note numbers referred to in paragraph 3 correspond with the check numbers, not the loan numbers of the loans made by Bank Los Angeles to Cal-Rainbow.

Debtor objected to the Bank's claim on 28 September 2007, arguing that the settlement with Bank Southgate released his liability on his

personal guarantees of the Bank Los Angeles loans to Cal-Rainbow. After a hearing, the bankruptcy court sustained debtor's objection, entering its order on 14 December 2007. The Bank moved for reconsideration, which the bankruptcy court granted, vacating the order and setting the matter for an evidentiary hearing. That hearing took place on 29 and 30 April 2009; the court overrruled the objection and entered its findings and conclusions and the order on appeal.

II. JURISDICTION

The bankruptcy court had jurisdiction via 28 U.S.C. § 1334 and § 157(b)(1) and (b)(2)(B), and we do under 28 U.S.C. § 158.

III. ISSUE

Whether the bankruptcy court clearly erred in finding that the debtor's settlement with Bank Southgate did not release his obligations under the Cal-Rainbow guarantees.

IV. STANDARD OF REVIEW

We review findings of fact for clear error. Rule 8013.[5] A factual finding is clearly erroneous if the appellate court, after reviewing the entire record, has a firm and definite conviction that a mistake has been committed. Anderson v. Bessemer City, 470 U.S. 564, 573 (1985). If two views of the evidence are possible, the trial judge's choice between them cannot be clearly erroneous. Id. at 574. We give findings of fact based

[5] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. "FRE" references are to the Federal Rules of Evidence, Rules 101-1103.

upon credibility particular deference. Id. at 575. See also In re Lehtinen, 332 B.R. 404, 411 (9th Cir. BAP 2005).

V. DISCUSSION

When a claim is objected to, the court is to determine the amount of the claim and allow it, "except to the extent that . . . such claim is unenforceable against the debtor and property of the debtor, under any agreement . . . ." § 502(b). A proof of claim, properly filed, is prima facie evidence of the validity and amount of the claim. Rule 3001(f). An objecting debtor has the burden of bringing forth evidence to rebut the presumption of validity. In re Garvida, 347 B.R. 697, 706-07 (9th Cir. BAP 2006). If the debtor produces evidence sufficient to rebut the presumption, the burden shifts back to the claimant to provide further evidence to support its claim. Id. at 707.

It is appellant's burden to provide an adequate record on appeal; we will not reverse the bankruptcy court's findings of fact without that record. In re Kritt, 190 B.R. 382, 387 (9th Cir. BAP 1995). We may properly affirm for lack of an adequate record alone.

The bankruptcy court found that the Bank did not release Cal-Rainbow from its obligation to pay back the two loans made to it, nor did it release the debtor from his guarantee of those loans, based primarily on the letters and other documents presented at the evidentiary hearing. The court further found that those claims were excluded from the settlement between Bank Southgate and Chin Mu Metal, Chin Mu Hsu, and debtor. Debtor argues that the bankruptcy court clearly erred in this finding. Debtor has provided only 30 pages of trial transcript of at

least 132 pages (132 is the highest page number in the record submitted; appellee's brief says the transcript exceeds 300 pages).

To support his assertion of clear error, debtor points out that Hsu Cheng Tung, debtor's brother, testified that the settlement was intended to include the cancellation of the Cal-Rainbow obligations, and that at the time of the settlement, Chin-Mu Metal's indebtedness to the Bank was only NT$28 million, thus making a settlement of NT$33 million illogical. Debtor does not cite to the record, but the excerpts include some of Cheng Tung's testimony, indicating he was present at a meeting with the bank manager and his uncle, at which it was agreed that the NT$33 million would "resolve all problems." The witness was also apparently shown a document identified as Exhibit 12, which he testified was Bank's agreement to use the NT$33 million to "take care of the debt obligations, including the Los Angeles portion." Transcript, 30 April 2009, page 95. No testimony about the loan balance appears in that excerpt. The Bank has provided an excerpt from the evidentiary hearing in which the bank manager testified that she did not recall such a meeting. Transcript, 29 April 2009, pages 76-77. Even without this latter testimony, the record excerpt provided by debtor is insufficient to show clear error. The bankruptcy court was entitled to weigh both the testimony and the credibility of the witness. See Anderson, 470 U.S. at 573-74.

Debtor also argues that the court should have accorded greater "credibility" to the translation of the 19 March 2004 letter he presented at trial because it was translated by a court-certified translator. That version of the letter translated the Chinese characters "ben piao" as "promissory notes" rather than "auxiliary pledges." Translation of a foreign language is a factual question. United States v. Gonzalez,

319 F.3d 291, 296 (7th Cir. 2003). Again, the bankruptcy court was entitled to weigh the evidence. Debtor does not explain why court certification matters, nor does he argue that the translators were not qualified as expert witnesses as required under FRE 604.

And nothing in debtor's brief or in the record he has provided indicates he ever objected to the qualifications of the Bank's translators or the introduction of its translations. While the Final Joint Pretrial Order, which is in the record, indicates in Part IV that there were evidentiary objections which the court had ruled on in its tentative ruling, debtor has not seen fit to include that ruling in the record. We are entitled to presume that he does not regard it as helpful to his appeal. Gionis v. Wayne (In re Gionis), 170 B.R. 675, 680-81 (9th Cir. BAP 1994), aff'd mem., 92 F.3d 1192 (9th Cir. 1996); In re McCarthy, 230 B.R. 414, 416-417 (9th Cir. BAP 1999).

In any event, it does not appear that the bankruptcy court chose one translation over another or relied on either in finding that, while the documents containing those phrases were "not without ambiguity," they "consistently refrained from stating that the settlement releasing Cal-Rainbow from its loans to [sic] the Los Angeles Branch or the debtor from his guarantee of those loans." Finding 17, at page 13. Debtor has not established clear error in that finding.

VI. CONCLUSION

Debtor-Appellant has not shown that the bankruptcy court clearly erred in finding that the settlement did not release him from his obligations to Bank Los Angeles.

We AFFIRM.