NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-04-1552 PaBK
LITFUNDING CORPORATION, a Nevada corporation; CALIFORNIA LITFUNDING, a Nevada corporation,	Bk. Nos. LA 03-19005-ES LA 04-11622-ES (Substantively consolidated)
Debtors.	
BARBARA ROGERS and LAWRENCE SEIDMAN,	
Appellants,	
v.	**M E M O R A N D U M**[1]
LITFUNDING CORPORATION, a Nevada corporation; CALIFORNIA LITFUNDING, a Nevada corporation,	
Appellees.	

Argued and Submitted on November 17, 2005
at Los Angeles, California

Filed - December 27, 2005

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

Honorable Erithe Smith, Bankruptcy Judge, Presiding.

Before: PAPPAS, BRANDT AND KLEIN, Bankruptcy Judges.

[1] This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case and the rules of res judicata, including claim preclusion and issue preclusion. See 9th Cir. BAP Rule 8013-1.

This is a consolidated appeal of an interlocutory order of the bankruptcy court disallowing certain creditor claims. The Panel granted leave to appeal on July 7, 2005. We AFFIRM.

FACTS

Morton Reed ("Reed") and Lawrence Weisdorn ("Weisdorn") founded Litfunding Corp., a California corporation ("Original Litfunding" or, generally, "Litfunding") on November 17, 2000.[2] Debtor California Litfunding is the successor in interest by merger to Original Litfunding. The other Debtor, Litfunding, a Nevada corporation, is not directly related to Original Litfunding. At all relevant times, Reed was an officer and director of both corporations.

Before its founding, Reed sought funding sources for Original Litfunding. Reed contacted Appellants Barbara Rogers and Lawrence Seidman and asked them to introduce Reed to potential investors or partners.[3] Sometime in early October 2000, Reed and Appellants reached an understanding regarding payment of finder's fees to Appellants. This arrangement was documented in a series of writings and communications sometimes referred to by the parties and herein as the "Reed Contract." Among its provisions, in exchange for introducing Reed to investors, the Reed Contract

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[2] Unless otherwise noted, all section and chapter references are to the Bankruptcy Code, 11 U.S.C. §§101-1330 and all Rule references are to the Federal Rules of Bankruptcy Procedure. The bankruptcy court's Findings of Fact and Conclusions of Law are abbreviated "FOF" or "COL".

[3] The record indicates that Reed first approached Appellant Seidman, and through Seidman, contacted Appellant Rogers.

allegedly provides that Seidman would receive cash compensation in the amount of $300,000, and Rogers would receive cash compensation in an amount equal to five percent of any funds invested.

On or about October 25, 2000, Appellants introduced Reed to Lawrence Weisdorn. Reed and Weisdorn discussed a new business venture and went on to form Original Litfunding in November 2000. Under Appellants' view, once they made this introduction, their contractual performance under the Reed Contract was complete.

Thereafter, on November 27, 2000, Appellants, Reed and Weisdorn met at a café (the "Café Meeting"). The parties agree that the fees to be paid to Appellants were discussed at this meeting. The following day, November 28, 2000, Seidman sent a letter to Rogers outlining his understanding of the terms of the agreement reached by the parties at the Café Meeting concerning Appellants' fees (the "Seidman Letter"). On December 14, 2000, Rogers sent a memo to Weisdorn, Reed and Seidman, acknowledging the terms to which the parties had agreed at the Café Meeting (the "Rogers Letter"). Neither the Seidman Letter nor the Rogers Letter contains any provision indicating that Appellants were to be paid any cash compensation. Instead, both Letters evidence an arrangement whereby Appellants would receive stock in the new corporation for their services.

Sometime in early 2001, Seidman moved to Arizona and provided services to Original Litfunding through his own corporation, Empire Star. The terms of his employment were stated in an Independent Contractor Agreement and Authorization. Seidman signed the Independent Contractor Agreement on or about April 23, 2001, but did not sign the Authorization.

Appellants allege that, commencing in April 2001, Original Litfunding raised $27 million "directly or indirectly" as a result of Weisdorn and his resources. But relations among the parties deteriorated in 2001. Rogers filed suit against Litfunding, Reed and Weisdorn in Los Angeles Superior Court, Case No. BC 257023. Original Litfunding terminated the services of Empire Star and Seidman on October 31, 2001. Seidman then also sued Litfunding, Reed and Weisdorn in Los Angeles, Case No. BC 274200.

The lawsuits were stayed when an involuntary chapter 7 petition was filed against Litfunding on April 2, 2003. The bankruptcy case was converted to a voluntary chapter 11 on November 11, 2003. Seidman filed four proofs of claim in this bankruptcy case. Three of those claims were for shares of stock; one was for cash compensation in the amount of $300,000. Rogers filed two proofs of claim in the bankruptcy case. One claim was for shares of stock, and the other was for cash compensation of $1,350,000 (based upon 5% of the total $27 million raised for Debtors).

The Debtors filed objections to all of the Rogers and Seidman claims on April 22, 2004. The bankruptcy court conducted a consolidated hearing on May 24, 2004 concerning all the Rogers and Seidman claims and the Debtors' objections. Both Appellants and Appellees were represented by their attorneys and had an opportunity to be heard. Most of the attention of the parties and the court during the hearing was directed to the stock claims. However, at the conclusion of the hearing, the bankruptcy court also stated its findings and conclusions on the record regarding the cash claims.

With respect to Seidman's cash claim for $300,000, the bankruptcy court stated:

> [B]ased on the evidence presented I cannot find that the corporation [Litfunding] ratified any of the agreements that would have required payment of cash to Mr. Seidman either in connection with the introduction of Mr. Weisdorn or for any other services. And I say this with, with the caveat that to the extent that Mr. Seidman has any claims against Mr. Reed or Mr. Weisdorn that that –those claims may very well exist, but as far as Litfunding Corporation is concerned, Litfunding's ratification of those agreements, if they did exist, simply hasn't been demonstrated here.

Transcript of hearing, 49-50, lines 18-25, 1-3, May 24, 2004.

With respect to Rogers'cash claim for $1,350,000, the court found:

> Again, with respect to the cash claim [of Rogers] of one million three hundred fifty thousand dollars ($1,350,000), to the extent that there ever was an agreement between Ms. Rogers and Mr. Reed and/or Mr. Weisdorn – but I think this one was probably with Mr. Reed – for a five percent cash fee, there is no evidence that Litfunding either ratified that prior agreement or entered into a similar agreement upon its incorporation.

Transcript of hearing, 58, lines 13-20.

Following the hearing, the bankruptcy court memorialized its decision in written Findings of Fact, which included the following regarding the cash claims:

> 2.7 The Seidman claims are based upon an alleged finders fee agreement that Seidman contends he entered into with Reed in October of 2000. . . . According to Seidman, Reed promised to pay him both stock and cash compensation if he introduced him to Weisdorn, and these two individuals later formed a company.
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> 2.9 The Rogers claims are based upon an alleged finders fee arrangement that Rogers contends she entered into with Reed in October of 2000. . . . According

to Rogers, Reed promised to pay her both stock and cash compensation if she introduced him to Weisdorn, and these two individuals later formed a company.

2.10 Original Litfunding and Debtors were not parties to either the Seidman October Agreement or the Rogers October Agreement.

2.18 There is no credible evidence before the court indicating that Original Litfunding, or either of the Debtors, ever ratified, assumed, or otherwise accepted responsibility for the cash portion of the finders fees alleged by Seidman in his claims.

2.19 [Seidman wrote the Seidman Letter.]

2.20 There is no reference in the Seidman Letter to any right to cash compensation as claimed in the Seidman Claims.

2.22 [Rogers wrote the Rogers Letter].

2.23 Both the Seidman Letter and the Rogers Letter describe the terms of a finders fee agreement for stock ratified by Debtor[s] at a meeting held on November 27, 2000 by and among Seidman, Rogers, Reed and Weisdorn.

2.24 The finders agreement for stock ratified by Debtor[s] and described in the Seidman Letter and the Rogers Letter does not provide for the payment of any monetary compensation. . . . Moreover, the finders agreements described in the Rogers Letter and the Seidman Letter was [sic] entered into after Seidman October Agreement referenced in the Seidman Claims and in Rogers October Agreement referenced in the Rogers Claims.

2.30 The admissible evidence before the Court indicates that Seidman and Rogers[’] claims against the Debtors are limited to claims for shares of common stock.

The bankruptcy court adopted the following Conclusions of Law concerning the cash claims of Rogers and Seidman:

2.1 Seidman failed to establish that Original Litfunding, or either of the Debtors, ratified, assumed, or otherwise incurred liability for any of the cash fees described in the Seidman Claims.

2.2 Rogers failed to establish that Original Litfunding, or either of the Debtors, ratified,

> assumed, or otherwise incurred liability for any of the cash fees described in the Rogers Claims.
>
> 2.3 Other than his claim for common stock fees, Seidman does not have any debt or monetary claims (claims giving rise to a right of payment) against Original Litfunding, or either of the Debtors. Accordingly, the claim . . . (for a $300,000 cash fee) is permanently disallowed.
>
> 2.5 Rogers does not have any debt or monetary claims (claims giving rise to a right of payment) against Original Litfunding, or either of the Debtors. Accordingly, the claim . . . (for a $1,350,000 finders fee) is permanently disallowed.

The Findings of Fact and Conclusions of Law were entered on October 27, 2004; an order disallowing Appellants' cash claims was filed on October 28, 2004. The court deferred a final ruling on the stock claims, thus rendering its ruling interlocutory. With leave of the Panel, this timely appeal followed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under § 158(a)(3) and (b)(1).

STANDARDS OF REVIEW

The Panel reviews the legal conclusions of the bankruptcy court de novo, its factual findings for clear error, and mixed questions of law and fact de novo. Fed. R. Bankr. P. 8013; Murray v. Bammer (In re Bammer), 131 F.3d 788, 791-92 (9th Cir. 1997).

The bankruptcy court's finding that the only contract between the parties ratified by Original Litfunding was the finders fee agreement entered into at the Café Meeting on November 27, 2000, was a determination of fact and is reviewed for clear error. 18

AM.JUR.2D, CONTRACTS, § 125 ("Whether the doing of certain acts by an officer of a corporation after its incorporation was with intent to adopt the promoter's contract is a question of fact for the determination of the jury. [Citations omitted.]" (cited in WITKIN, SUMMARY OF CALIFORNIA LAW (10th ed. 2005), CONTRACTS § 62); 18 AM.JUR.2D, TRIAL, § 776 ("Questions as to whether facts given in evidence amount to a ratification of an act or contract usually are to be determined by the jury as questions of fact, and not by the court as questions of law."). California case law treats the issue of whether a pre-incorporation contract has been ratified by a corporation as a question of fact. See Smith v. Glo-Fire Co., 94 Cal.App.2d 154 (4th App. Dist. 1949)(although evidence was conflicting, there was sufficient evidence in the record for court to find that corporation ratified the pre-incorporation contract); Abbott v. Ltd. Mut. Compensation Ins. Co., 30 Cal.App.2d 157 (1st App. Dist. 1938)(to prove adoption of a pre-incorporation contract, evidence must show an affirmative post-incorporation act by corporation from which it may be inferred); Scadden Flat Gold Mining Co. v. Scadden, 121 Cal. 33 (1898) (facts in record, including testimony of officers and entries in corporate minute book, proved acceptance of pre-incorporation contract).[4]

[4] In the case law, the terms "ratification," "adoption" and "acceptance" are used to describe the act by which a corporation agrees to accept the benefits, and be bound to the obligations, of a pre-incorporation contract. While there may be subtle differences in the precise meanings of these terms, such differences are not meaningful for purposes of this appeal.

ISSUES PRESENTED

1. Was the bankruptcy court's finding that the only contract between the parties ratified by Original Litfunding was the finders fee agreement entered into at the Café Meeting on November 27, 2000, as described in the Seidman Letter and the Rogers Letter, clearly erroneous?
2. Did the bankruptcy court err in concluding that Appellants hold no enforceable monetary claims, except stock claims, against the Debtors?[5]

DISCUSSION

1. The bankruptcy court's finding that the only contract ratified by Original Litfunding or the Debtors was the finders fee agreement entered into by Appellants, Reed and Weinsdorn at the Café Meeting on November 27, 2000 was not clearly erroneous.

Appellants base their cash claims in the bankruptcy case on rights allegedly granted them in a series of written and oral communications among the parties that together formed an enforceable agreement known as the Reed Contract. Appellants argue that Original Litfunding, which was not organized until after the Reed Contract was negotiated, later ratified that contract. According to Appellants, the bankruptcy court found

[5] Appellants proposed five issues on appeal; they have been consolidated and restated here. As discussed below, three of Appellants' proposed issues assume that the Debtors partially ratified the original Reed Contract, a premise at odds with the bankruptcy court's findings, and which the Panel does not accept. Appellants' fifth proposed issue suggests that "Appellants' stock claims should not be subordinate to those of other shareholders" by virtue of § 510(b). The Panel need not consider this issue because the bankruptcy court made no final ruling on Appellants' stock claims and the applicability § 510(b), but instead explicitly reserved such a determination for a future hearing and later determination. COL 2.3 and 2.5.

that Original Litfunding partially ratified the terms of the Reed Contract regarding Appellants' stock claims. But Appellants argue that under California law, ratification of a pre-incorporation contract is an "all or nothing" proposition. Therefore, Appellants contend, the Reed Contract was not subject to modification in this fashion, and all of the original terms of the Reed Contract became enforceable against the corporation. In the alternative, even if a partial ratification is not enough, Appellants argue that the monetary compensation provisions of the Reed contract were ratified by the pre- and post-incorporation acts of Original Litfunding's founders when they knowingly accepted the benefits of the Reed Contract.

Appellees, the Debtor-corporations, counter that there is no evidence to support that Original Litfunding ever ratified the Reed Contract, in whole or in part. Rather, Appellees argue that the only contract enforceable against Debtors is that reached on November 27, 2000 at the Café Meeting and described in the Rogers Letter and the Seidman Letter. That later contract makes no provision for cash compensation to Appellants.

Appellants' first argument is flawed in its assumption that the bankruptcy court decided that the stock provisions of the Reed Contract were ratified by Original Litfunding. This is an incorrect reading of the bankruptcy court's decision, and as a result, the Panel need not entertain Appellants' "all or nothing" ratification arguments.

Appellants define the Reed Contract by reference to the declarations of Barbara Rogers and Lawrence Seidman who discussed three written documents: (i) a written Non-Circumvention Agreement

between Rogers and Reed, dated October 12, 2000, signed by Reed only, and purporting to bind Reed, any organization with which he was associated and any of his assigns, etc.; (ii) the Seidman October Agreement, between Seidman and Reed, dated October 13, 2000, signed by Seidman and Reed; and (iii) the Rogers October Agreement, a memo from Reed to Rogers.

The bankruptcy court demonstrated it was acquainted with the documents allegedly comprising the Reed Contract. The bankruptcy court made specific findings of fact concerning what it called the "Seidman October Agreement" and the "Rogers October Agreement": FOF 2.7 ("the Seidman claims are based on" the Seidman October Agreement); FOF 2.9 ("the Rogers claims are based on" the Rogers October Agreement); FOF 2.17 ("the Seidman October Agreement was entered into, if at all, prior to the formation of Original Litfunding"); FOF 2.24 (the agreement referenced in the Seidman Letter and the Rogers Letter were entered into after the Seidman October Agreement and the Rogers October Agreement).

The bankruptcy court was likewise cognizant of the terms contained in the Seidman Letter and the Rogers Letter circulated among the parties after the November 27 Café Meeting. In its Findings of Fact and Conclusions of Law, the bankruptcy court quoted extensively from both of these documents. In FOF 2.20, the bankruptcy court quoted from several paragraphs in the Seidman Letter, including the opening paragraph:

> This shall serve as confirmation of the agreement made within and between myself, you [Rogers], Lawrence Weisdorn, and Morton Reed regarding the manner of the payment of your fee for arranging introduction of Morton Reed and Lawrence Weisdorn, with the agreement made on November 27, 2000. . . .

In FOF 2.22, the court then quoted extensively from the Rogers Letter, including the following excerpt:

> It was agreed by all parties that as a fee for my participation in the introduction and founding of Litfund [sic], or any company, financial entity or organization participating directly or indirectly in the operating and marketing of funding litergation [sic] of any kind, between Mort Reed or his representative, agent or resources I, Barbara Rogers am to be remunerated by the following two part compensation. . . .[6]

Although it was aware of the Reed Contract, the bankruptcy court did *not* rule that any of its terms had been ratified by Original Litfunding or Appellees. Correctly viewed, the record shows that the bankruptcy court instead ruled that Original Litfunding and Debtors ratified the stock compensation provisions set forth in the Seidman Letter and Rogers Letter. Indeed, when counsel for Appellees submitted proposed findings of fact to the bankruptcy court after the hearing, the bankruptcy judge altered them to provide that the Debtor corporations had ratified the stock provisions of the finders fee agreement as described in the Seidman and Rogers Letter, not the Reed Contract. FOF 2.23, as originally proposed by Appellees, reads as follows:

> 2.23 Both the Seidman Letter and the Rogers Letter describe the terms of a finders fee agreement reached by and among Seidman, Rogers, Reed and Weisdorn at a meeting held on November 27, 2000.

In her own handwriting and initialed in the margins, the bankruptcy judge changed this proposed finding to read:

> 2.23 Both the Seidman Letter and the Rogers Letter describe the terms of a finders fee agreement ~~reached by~~

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[6] The bankruptcy court's FOF 2.22 had several immaterial typographical errors. We have quoted here from the original text of the letter that was excerpted by the court (and which, as noted, also contained several typographical errors).

~~and among Seidman, Rogers, Reed and Weisdorn~~ for stock ratified by Debtor at a meeting held on November 27, 2000 by and among Seidman, Rogers, Reed and Weisdorn.

The bankruptcy court also altered proposed FOF 2.24 by adding the following:

> 2.24 The finders agreement for stock ratified by Debtor and described in the Seidman Letter and in the Rogers Letter does not provide for the payment of any monetary compensation.

A summary of the bankruptcy court's findings regarding the Debtor's ratification of the finders fee agreement is as follows: (i) Original Litfunding and the Debtors were not parties to either the Rogers October Agreement or the Seidman October Agreement (the elements of the Reed Contract) (FOF 2.10); (ii) the Seidman October Agreement was entered into, if at all, prior to the formation of Original Litfunding (FOF 2.17); (iii) although the court made no explicit finding that the Rogers October Agreement was entered into prior to the formation of Original Litfunding, the bankruptcy court was aware that the Rogers October Agreement was signed on October 19, 2000, almost one month before the incorporation of Original Litfunding on November 17, 2000; (iv) the Seidman Letter and the Rogers Letter were entered into after the Seidman October Letter and the Rogers October Letter (FOF 2.24).

As can be seen by its changes to the proposed findings and conclusions, the bankruptcy judge emphasizes the court's determination that Debtors had ratified only the stock provisions of the finders fee agreement as reflected in the Rogers and Seidman Letters, and not any terms of the Reed Contract. Considered in total, the bankruptcy court amply supported its

finding that the Debtors ratified only the agreement reached at the Café Meeting on November 27, 2000, as evidenced by the Rogers and Seidman Letters in the findings of fact and conclusions of law.

Despite the court's clear ruling, Appellants insist that the bankruptcy court decided that the stock components, but not the monetary components, of the *Reed Contract* were ratified. Because this reading of the record is incorrect, the Panel need not address Appellant's arguments that the Reed Contract was not subject to partial novation or modification under California law.

Alternatively, Appellants argue that Original Litfunding ratified the Reed Contract through the pre- and post-incorporation acts of its founders, in this case, Reed and Weisborn, who allegedly knowingly accepted the benefits of the Reed Contract. In the bankruptcy court and here, Appellants rely heavily on Jones v. Allert, 161 Cal. 234, 118 P. 794 (Cal. 1911) for support.

In that case, Annie and B.L. Jones (collectively, "Jones") owned several mining claims which they agreed to sell with associated property rights to Engle. At the time of the sale, the parties understood that Engle would incorporate a mining company to develop and work the claims. The agreement between Jones and Engle provided that cash payments and stock in the mining company be given to Jones in exchange for the properties. Jones executed a deed to the property and put it into escrow with directions that it be delivered to Engle or his assigns when the terms of the agreement were satisfied. Engle, along with his associates, organized and incorporated the Continental Mining Company. Jones then surrendered possession of the property to Engle, his

associates and the Continental Mining Company. Jones received the stock in the mining company and all cash payments except the last one for $4,500. Before the last payment was due, Engle and his associates, acting in their capacities as directors and officers of the mining company, induced Jones to execute another deed directly to the mining company corporation. In return, Engle and his associates gave Jones a promissory note in the name of the corporation for the $4,500 final payment.

When the mining company defaulted on the promissory note, Jones sued the mining company for a money judgment, and asserted a vendor's lien on the property. The trial court granted judgment against the corporation and secured it with the vendor's lien. The California Supreme Court affirmed the judgment but denied the vendor's lien.[7] In rejecting the corporation's argument that it never assumed the obligations of the Jones-Engle contract, the California Supreme Court noted:

> Without elaborating on the facts which justified the court's judgment in this regard, the agreement and course of conduct of the parties gave evidence that Engle was a mere intermediary and that the real party in interest was the corporation, that the officers of this corporation solicited and obtained from [Jones] a deed to the property directly to [the corporation]. . . that they proposed to [Jones] to accept for the last payment the note of the corporation; that they delivered to [Jones] on behalf of the corporation, the security note above discussed. . . . and in many ways, through its officers, made recognition of its personal obligation to make the money payments in accordance with the terms of the Engle contract.

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[7] The issues related to the vendor's lien are not relevant to the instant appeal.

Jones, 161 Cal. at 237.

Jones does not stand for the proposition offered by Appellants that a corporation that merely accepts the benefits of a pre-incorporation contract is thereby deemed to have ratified that contract. Instead, the California Supreme Court in Jones cited multiple affirmative actions taken by the corporation that evidenced the ratification: the corporation took possession of real property and developed it; the corporation induced Jones to revoke the deed to the corporation and the Engle associates and replace it with a deed solely to the corporation; and the corporation executed a promissory note in its own name in fulfillment of the final term of the contract.

The other authority Appellants cite to support their argument that a corporation will be deemed to have ratified the pre-incorporation contract of its promoters if it accepts the benefits of those contracts is Stickel v. Harris, 196 Cal.App.3d 575 (1st App. Dist. 1988). But Stickel does not deal with ratification of a pre-incorporation contract.

In December 1980, Nancy Stickel agreed to loan money to a joint venture to be formed by Robert Buttici, a real estate broker, and his associates, Joseph Atencio and Joseph Harris, to purchase real estate and construct condominiums. Stickel lent Buttici $74,000 for the project. Stickel later advanced an additional $30,000 which was secured by a promissory note executed on April 15, 1981 by Butticci, Atencio and Harris. The joint venture, a limited partnership, was formed thereafter and was comprised of entities controlled by Butticci, Atencio and Harris. Stickel then agreed to extend the term of the loans, first to

November and then to December 1981. In December 1981, Stickel agreed to a further extension of the loan at an increased interest rate. While she received interest payments on the loans from May 1981 through November 1982, during the latter months of 1982, the interest payments to Stickel were drastically reduced. Stickel sued one of the entities serving as a general partner in the limited partnership and Harris for recovery of amounts due on the note. The trial court entered judgment in favor of Stickel. The California Appellate Division affirmed.

On appeal, the defendants argued that Butticci could not have acted for the joint venture when he negotiated the original loans from Stickel because the limited partnership did not yet exist. The appeals court rejected this argument. In discussing applicable law, the court analogized to that involving corporations. Like a corporation adopting a pre-incorporation contract, the court reasoned, a limited partnership that knowingly accepts the benefits of a pre-partnership-formation agreement becomes obligated on that agreement. Stickel, 196 Cal.App.3d at 586.

However, in applying the law to the facts, as was the case in Jones, the Stickel court did not rely upon a mere acceptance of benefits by the limited partnership, but instead cited three different affirmative actions by the joint venture demonstrating its intent to be bound by the loan agreement:

> The issue then becomes whether [the joint venture parties] ratified Buttici's actions. Clearly, ratification did occur. This is evident from (1) the interest payments apparently made by partners Atencio and Butticci on behalf of the joint venture; (2) the imperative need of both the partnership

> and the joint venture to obtain the lots purchased with plaintiff's money and subject to her deed of trust; and (3) the assumption by the joint venture of the ultimate responsibility to discharge all obligations.

Stickel, 196 Cal.App.3d at 587. In other words, while the court indicates that a corporation may be bound to a pre-incorporation contract by merely accepting the benefits of that agreement, the court did not rely upon mere acceptance of alleged benefits by the joint venture as a basis for finding that a ratification had occurred.[8]

Other California cases hold that, as a condition to binding a company to a pre-incorporation contract, the corporation must have performed some affirmative act of ratification. Abbott, 30 Cal App.2d at 163 ("Appellant is not liable to respondent upon such promoters' contract unless it adopted such contract after its incorporation. . . . To prove such adoption, the evidence must show some affirmative act by the corporation from which it may be inferred. . . . Knowledge of a director directly interested in the contract is insufficient to charge the corporation."); Biggart v. Lewis, 183 Cal. 660, 667, 192 P. 437 (Cal. 1920) ("Acts of promoters performed prior to the existence of the corporation are not binding upon the corporation, unless made so by the act under

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[8] Of course, Stickel's value as precedent in deciding whether a corporation has ratified a pre-incorporation contract of a promoter may be questionable. As noted, Stickel involved a joint venture, not a corporation. The appeals court in Stickel "analogized" to a situation involving a corporate ratification. Fairly read, Stickel announced no rule for corporations, and as a result, it is not binding, nor perhaps even informative, here. At best, Stickel holds that an entity's acceptance of the benefits of an agreement negotiated before its formal organization, *when accompanied by affirmative acts of ratification by the managers of that entity*, will serve to bind the new entity.

which the incorporation took place or adopted by the corporation after it comes into existence.") In our opinion, these cases present the most reasoned approach to resolving ratification issues.

In this case, the bankruptcy court did not find that Original Litfunding or the Debtors had performed any affirmative acts showing their intent to ratify the cash compensation provisions of the Reed Contract. To the contrary, the bankruptcy court found that the explicit stock provisions of the November 27 agreement reached at the Café Meeting of the parties had been ratified. There is no basis in this record to find a ratification of the Reed Contract by any "affirmative act."

Appellants also assert that Original Litfunding ratified the Reed Contract by the post-incorporation statements of its officers, directors and sole shareholders, Reed and Weisdorn. In support of its contention that Reed and Weisdorn repeatedly ratified the Reed Contract with post-incorporation statements, Appellant cites to the deposition testimony of Elliott Kalt, as well as the depositions of Reed and Weisdorn.

The bankruptcy court considered whether the deposition testimony of Kalt was hearsay and inadmissible. Ultimately, the court found that a ruling was unnecessary because Kalt's testimony only implicated the liability of Reed and Weisdorn, not Original Litfunding.

As to Reed's deposition testimony, far from showing a ratification of any agreement for cash compensation, Reed instead testified "No. On the contrary I said, 'You'll get your three percent [of the stock] and I'll get you eight for Barbara.'" Reed

Deposition at 556. The eight percent of stock for Barbara [Rogers] Reed refers to in his deposition is a term negotiated at the November 27 Café Meeting, not in the Reed Contract.

The Weisdorn deposition testimony amounts to little more than his admission that Reed had shown him the Rogers October Agreement, one component of the Reed Contract, sometime in mid-2001. There is no indication in this testimony that either Reed or Weisdorn ratified the Reed Contract.[9] In fact, Weisdorn characterized Rogers' claim to five percent of stock and five percent of funds in the Rogers October Agreement as "very excessive, very greedy, and thank God it no longer existed." Weisdorn Deposition at 392.

In summary, the bankruptcy court did not find that the Reed Contract had been partially ratified by Original Litfunding as Appellants urge. As a result, Appellants' arguments that, based upon a partial ratification, all the terms of that contract may be enforced against the corporation lack merit. Instead, the bankruptcy court found that only the stock provisions of the

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[9] By citing to the record of Weisdorn's deposition, Appellants actually weaken their argument that Reed and Weisdorn, as officers and directors of Litfunding, could have ratified the Reed Contract. For a corporation to ratify a pre-incorporation contract, the corporate directors must know all the material facts with respect to the transaction. White v. Kaiser-Frazer Corp., 100 Cal.App.2d 754 (2nd App. Dist. 1950); Frye & Smith Ltd. v. Foote, 113 Cal.App.2d 907 (3rd App. Dist. 1952); Chapman v. Sky L'Onda Mut. Water Co., 69 Cal.App.2d 667 (1st App. Dist. 1945). The existence of a written Rogers October Agreement was unquestionably one of the material facts that Weisdorn, a director and officer of Litfunding, needed to know before he could "ratify" the Reed Contract. Weisdorn's deposition excerpt cited by Appellants suggests that Weisdorn did not know of the existence of a written Rogers October Agreement until June or July 2001, more than half a year after the Café Meeting and at least two months after Weisdorn allegedly began generating benefits for Litfunding.

parties' Café Meeting on November 27, 2000 were ratified, and that those terms are described in the Seidman and Rogers Letters. This was not clear error because there is ample factual support in the record for the bankruptcy court's findings. Finally, there is no support in the record that Original Litfunding or Appellees ratified the Reed Contract by either an affirmative act or the statements or conduct of their officers.

2. The bankruptcy court did not err in concluding that Appellants hold no monetary claims, except stock claims, against the Debtors.

The bankruptcy court found that Seidman's claims, including his $300,000 cash claim, were based on the Seidman October Agreement. FOF 2.7. The court found that Debtors effectively ratified the November 27, 2000 agreement, not the Seidman October Agreement. FOF 2.23, 2.24. The bankruptcy court found that there was no credible evidence indicating that Original Litfunding, or either of the Debtors, ever ratified, assumed or otherwise accepted responsibility for the cash portion of the finders fees sought by Seidman in the claims. FOF 2.18. The finders fee agreements ratified by the Debtors do not provide for the payment of any monetary compensation. FOF 2.24. Based upon these findings, the bankruptcy court did not err in concluding that Seidman failed to establish that Original Litfunding, or either of the Debtors, ratified, assumed, or otherwise incurred liability for any of the cash fees described in the Seidman claims. COL 2.1.

The transcript of the hearing on May 24, 2004, demonstrates that the bankruptcy court spent considerable time examining the

evidence of Appellant Seidman's $300,000 cash compensation claim. Transcript of hearing, pp. 29-34. Unlike the Rogers October Agreement, the Seidman October Agreement does not include any reference to a cash finders fee. Seidman alleges that there was a simultaneous oral agreement to pay him $300,000. As evidence of this oral agreement, Seidman submits an alleged business plan that was exchanged between Weisdorn and Reed in October 2000. According to Appellants, Weisdorn told Seidman that a fee of $300,000 would need to be stretched out in 36 monthly payments. Seidman agreed and confirmed the terms with Reed. Reed and Weisdorn then built these payments into their business plan.

The "business plan" is in the form of a chart. One line of the chart is labeled "Arizona" and lists monthly payments to Arizona of $8,000 for 36 months. It appears from the record that Arizona was a "code name" for Seidman, who had agreed to be the principal sales representative for Litfunding in Arizona.

However, there are numerous problems with reliance upon this business plan as evidence of Reed's or Weisdorn's intent to bind Original Litfunding to a cash payment to Seidman. First, there is no heading, caption or identification on the chart tying it to Litfunding or any of the parties. Second, the business plan contains no signatures or any written proof that Reed or Weisdorn intended that it be a binding document. Third, the $8,000 monthly payment to Arizona is listed in the plan immediately below the same $8,000 fee for 36 months for the president/CEO's salary. Such placement might imply that the figure was a salary rather than a finder's fee. Fourth, 36 payments of $8,000 amounts to $288,000, not $300,000, and Seidman never explains this disparity.

Finally, Appellant's attorney conceded at the hearing that he had no evidence of a post-incorporation acknowledgment by Weisdorn, the chief financial officer, that the monthly payment was ever made to Seidman. Transcript of hearing at 44, lines 13-15.

To engraft a $300,000 oral promise onto the written terms of the Seidman October Agreement runs afoul of California's parol evidence rule. Where a term or agreement is of a kind that "certainly would have been included in the writing" between the parties, a later attempt to import such a term or agreement into the final writing will be barred. Cal. Civ. Code § 1856; Masterson v. Sine, 68 Cal.2d 222, 226 (1968); Software Design & Application, Ltd. v. Price Waterhouse, 49 Cal.App.4th 464 (1st App. Dist. 1996).

The bankruptcy court found that Rogers' claims, including her $1,350,000 cash claim, were based on the Rogers October Agreement. FOF 2.9. The Debtors ratified the November 27, 2000 Café Meeting agreement, not the Rogers October Agreement. The Café Meeting agreement ratified by Debtors does not provide for the payment of any monetary compensation. FOF 2.24. Consequently, the bankruptcy court did not err in concluding that Rogers failed to establish that Original Litfunding, or either of the Debtors, ratified, assumed or otherwise incurred liability for any of the cash fees described in the Rogers claims. COL 2.2.

Unlike the Seidman cash claim for $300,000, the bankruptcy court spent no appreciable time at the hearing discussing the Rogers cash claim for $1,350,000. The court found that there was no evidence that Original Litfunding either ratified the Rogers October Agreement or entered into a similar agreement upon its

incorporation. The court, however, did opine that, to the extent there may have been an agreement for a 5 percent cash fee to Rogers, such an agreement would probably have been with Reed and not Weisdorn or Original Litfunding. Transcript of hearing at 58, lines 13-20.

The comment by the bankruptcy court that there may have been an agreement to pay a cash finders fee between Rogers and Reed is of no moment in this appeal. The question presented here is whether the Debtors ratified, assumed or otherwise incurred some liability to Rogers or Seidman for their cash claims. The bankruptcy court properly determined in COL 2.6 that Rogers failed to establish any debt or monetary claims, with the exception of stock claims, against the Debtors.

CONCLUSION

For the above reasons, the judgment of the bankruptcy court is AFFIRMED.