IT IS SO ORDERED.

Dated: 01:53 PM September 30 2009

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 08-50421, 08-50657, 08-50722
Royal Manor Management, Inc.,	)	
Dani Family Ltd.,	)	CHAPTER 11
Darlington Nursing & Rehabilitation Center, Ltd.,	)	JUDGE MARILYN SHEA-STONUM
DEBTORS.	)	**MEMORANDUM OPINION RE: OBJECTION TO CLAIM**

This matter is before the Court on the Liquidating Trustee's objection[1] to proof of claim no. 27 (the "Claim") filed by David and Alison Gordon (collectively, the "Claimants" or the

[1]The objection was initially filed by the Official Committee of Unsecured Creditors (the "Committee") in these cases. The Committee was dissolved as of the effective date of the plan of liquidation confirmed in these cases, and the Liquidating Trustee took the Committee's place with respect to the objection to Claim.

"Gordons"). Following a lengthy pre-hearing process,[2] an evidentiary hearing on the Objection to

[2]On June 26, 2008, the Gordons, through their mother, Gertrude Gordon, timely filed the Claim in the amount $2,142,200 against "Darlington Nursing & Rehabilitation" for money loaned. Gertrude Gordon attached a copy of the Agreement (defined herein) to the Claim.

The Committee filed its objection to the allowance of the Gordons' Claim on September 5, 2008 ("Objection"). No timely responses were filed to the Objection and it was granted on October 29, 2008. [Dkt # 253].

On November 10, 2008, the Gordons filed a motion to vacate the order sustaining the Objection. [Dkt # 266]. The Committee filed a response in opposition to the motion to vacate the order sustaining the Objection. [Dkt # 278]. On November 26, 2008, the Court entered an order scheduling an evidentiary hearing on the motion to vacate for January 27, 2009.

On December 5, 2008, this Court entered an Order Confirming Third Amended Plan of Liquidation (the "Plan") proposed by the Committee and Orion Care Services LLC (the "Confirmation Order").

Following a status conference, on December 17, 2008, the Court adjourned the evidentiary hearing until February 24, 2009 and directed that counsel be prepared to deal first with the merits of the Committee's Objection, rather than the motion to vacate. [Dkt # 392].

On January 13, 2009 the Gordons filed their motion to amend their Claim (Dkt # 441), which was opposed by the Committee (Dkt # 446). On February 11, 2009, upon the Gordons' request, and with the consent of the Committee, the Court adjourned the evidentiary hearing on the merits of the Committee's Objection. Following a telephonic status conference on February 12, 2009, the Court entered an order rescheduling the evidentiary hearing on the Gordon's motion to vacate for March 31, 2009. [Dkt # 456].

The Plan became effective on March 2, 2009 ("Effective Date").

On March 6, 2009, the Liquidating Trustee gave notice to all creditors of the entry of the Confirmation Order and of the effectiveness of the Plan. As of the Effective Date of the Plan, the Committee was dissolved, and Liquidating Trustee took its place with respect to the Objection to Claim.

On March 17, 2009 the Gordons filed their motion for leave to file a new claim based on the Dani Family and Darlington operating agreements (Dkt # 474) which apparently bear the forged signatures of Alison Gordon and David Gordon. The Liquidating Trustee opposed the motion for leave file a new claim. [Dkt # 491]. In addition, the Gordons filed a motion to continue the March 31, 2009 evidentiary hearing which motion was denied. [Dkt # 479]. On March 31, 2009, counsel entered into an Agreed Order resolving the motion to vacate pursuant to which the order disallowing the Claim on a default basis was vacated. The Court set a briefing schedule with respect to the Gordons' motion for leave to file a new claim and set a further status conference for May 12, 2009.

At the May 12, 2009, status conference the Court denied the Gordons' motion for leave to file an amended claim and the Gordons' motion for leave to file a new claim and scheduled an evidentiary hearing on the Objection to Claim. [Dkt. 526].

The Gordons, in a manner consistent with their efforts to draw this process out, have taken an appeal from the Court's order denying Gordons' motions for leave and requiring the Gordons' to proceed based on the Claim as filed, but allowing them the leeway to assert, at the evidentiary hearing, various theories in support of their Claim. The appeal is pending on the docket of District Court Judge Gaughan in the Northern District of Ohio, Case No. 09 cv 1506.

the Claim was held on June 30, 2009. Appearing at the hearing were Louise Mazur and Mark Merklin, counsel for the Liquidating Trustee, and Dennis Grossman and David Mucklow, counsel for the Gordons. During the hearing, counsel presented evidence in the form of exhibits and testimony from David Gordon, Alison Gordon, Gertrude Gordon, Robert Hanson, Harry Brown, Mark Schlachet, and Michael Hydell.[3] In addition, prior to the hearing counsel filed a list of facts which they agree are not in dispute (the "Stipulations"). [docket ## 516 and 552]. Prior to the hearing, the Court also directed counsel to file with the Court proposed findings of fact and conclusions of law ("PFF/CL"). Counsel for the Liquidating Trustee and counsel for the Gordons each filed PFF/CL [Dkt. ## 553 and 555, respectively].[4]

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[3]Mr. Grossman sought to introduce the testimony of Rabbi Spero regarding the use of the terms "loan" and "investment" in transactions involving orthodox jews. The testimony and report of Rabbi Spero were being offered for the purpose of assisting the Court in the interpretation of the Agreement. The Liquidating Trustee objected to the admission of Rabbi Spero's testimony because the Agreement is clear and unambiguous on its face, and, therefore, parol evidence is not appropriately considered by the Court. The objection was sustained and Rabbi Spero's testimony was excluded. After the conclusion of the trial, Mr. Grossman filed a motion seeking reconsideration of the Court's ruling with respect to Rabbi Spero's testimony. In part he argued that parol evidence should be allowed to show that a term like "loan" or "investment" has special meaning in this case. However, there was no evidence presented to the Court that the terms "loan" and "investment" had a special meaning to the parties to the Agreement. Furthermore, the testimony of Rabbi Spero is irrelevant with respect to the preliminary question regarding whether the Gordons have a claim against Schwartz or one of the debtor entities. Therefore, the motion to reconsider is denied.

[4]The PFF/CL filed by Mr. Grossman contain no citation to relevant 6th circuit authority. At trial, Mr. Grossman took the position that he did not understand the need to cite to any and all relevant authority in his pre-trial proposed findings of fact and conclusions of law, and therefore, he did not cite any. His position is disingenuous. Mr. Grossman has taken every opportunity available to him (and some that were not) to put lengthy writings in support of his clients' current position before the Court. That he failed to take this opportunity and instead requests permission to file post-trial briefs appears to the Court to be designed to further delay the resolution of this proceeding and to increase the cost of such resolution. At the conclusion of the trial, Mr. Grossman moved the Court orally, and, later, in writing [dkt # 561], for permission to file post-hearing briefs. The Court finds that post-hearing briefs would not be useful to the Court in reaching a decision. The request is denied.

JURISDICTION

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b).

FINDINGS OF FACT

1. On February 12, 2008, Royal Manor Management, Inc. ("Royal Manor") filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and was assigned Case Number 08-50421.

2.On March 4, 2008, Darlington Nursing & Rehabilitation Center, Ltd. ("Darlington"), Willow Park Convalescent Home, Inc., Blossom Nursing & Rehabilitation Center, Inc., and AMDD, Inc. (hereinafter collectively the "Debtor Operating Entities") filed with this Court voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

3.On April 22, 2008, this Court issued an Order of Joint Administration directing that the Chapter 11 cases of Royal Manor and the Debtor Operating Entities be consolidated for administrative purposes only.

4.Subsequently, the related entities of Austinburg Properties, Ltd., Willow Interests, LLC, 138 Mazal Health Care, Ltd., Dani Family, Ltd. ("Dani"), Broadway Care Center of Maple Heights LLC, and Brian Family Ltd. (hereinafter sometimes referred to collectively together with the Debtor Operating Entities as the "Related Entities"), each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

5. Dani and Darlington were interrelated companies. Darlington operated the nursing home which was located on the real property owned by Dani.

6. Sally and Abraham Schwartz (collectively "Schwartz") were the majority owners of Dani, Darlington, Royal Manor and the Related Entities.

7. The Claimants are the niece and nephew of Schwartz. The Claimants' mother is Gertrude Gordon, Sally Schwartz's sister.

8. From May 25, 1994 through October 30, 1996, David, Alison and/or Gertrude Gordon loaned money to Schwartz on five (5) occasions, as follows:

a. Promissory Note for $250,000,00 of Schwartz to David Gordon dated May 25, 1994;

b. Promissory Note for $250,000.00 of Schwartz to David Gordon dated September 9, 1994;

c. Promissory Note for $500,000,00 of Schwartz to David Gordon dated September 9, 1994;

d. Promissory Note for $225,000.00 of Schwartz to Alison Gordon dated October 1, 1995; and

e. Promissory Note for $350,000.00 of Schwartz to Gertrude Gordon dated October 30, 1996.

f. The above Promissory Notes were replaced by a single Promissory Note for $1,550,000.00 of Schwartz to Gertrude Gordon dated January 1, 2000.

9. The Gordons agree that the obligations referenced in the immediately preceding paragraph are the personal obligations of Schwartz.

10. In July, 2000, Gertrude Gordon sent two checks, Check Number 406 and Check Number 407, in blank except for her signature to Schwartz. Both checks were drawn on an account in the names of Alison Gordon and Gertrude Gordon, (hereinafter collectively the "Checks").

11. Janet Grisanti, [an employee of the nursing homes], typed the following information on the Checks pursuant to Sally Schwartz's instructions: "Sally Schwartz" on the payee lines, "for Dani Family" on the memo lines, and the amount of "$500,000" on each check.

12. On July 27, 2000 the Checks were deposited into the "personal business account" Schwartz at Bank One ending in 2936.

13. Sally Schwartz used this "personal business account" to deposit money intended for one or more of her business entities, and from this personal business account she would distribute the money to the various business entities.

14. The designation "for Dani Family" on the memo lines of the Gordons' Checks meant that the $1 million was to be transferred to Dani.

15. The combined $1,000,000.00 transaction was evidenced by an “agreement” dated July 27, 2000 and notarized on August 24, 2000 (the “Agreement”) which was executed by Schwartz personally. *See* Exhibit 5.

16. The first line of the Agreement, the writing upon which Gordons claim Dani / Darlington owes them money, reads, “Sally and Abraham Schwartz to Gertrude, David and Alison Gordon.” There is no mention of Dani or Darlington until paragraph 3(b), after provisions relating to 1) the January 1, 2000 promissory note for $1.5 million that the parties agree is a personal obligation of Schwartz and 2) the “Schwartz Family” agreement to provide nursing home care to Gertrude Gordon and Gerald Lorin (Gordon’s second husband) at no cost. Paragraph 3 provides, in pertinent part,

> David and Alison Gordon issued to the Schwartz’s on 7/25/00 $1,300,00.00 (sic).
>
> a) $300,000.00 is to be returned to Gertrude Gordon on or before August 15, 2000.
>
> b) The $1,000,000.00 is an investment by the Gordon’s in the Darlington Nursing Home. The following are the benefits of this investment:
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> -The principal investment is to be returned to Gordon on or before 7/25/2002. Collateral for this shall be a 50% interest in P.S. Realty....
> - 10% cumulative interest while the $1,000,000.00 is invested payments to be made when the bank says we can take money out.
> 10% equity ownership (5% to Alison and 5% to David).
> 10% Annual profit (guaranteed by the Schwartz’s to be a minimum of

> $50,000.00 annually. Payments to be made when debt service covenant is met and bank allows money to be taken out.

In addition, Schwartz signed the Agreement personally, in the exact same manner as the six promissory notes which the Gordons agree were the personal obligation of Schwartz. There is nothing on the face of the Agreement which reflects that Schwartz executed the Agreement in a representative capacity for Dani, Darlington, Royal Manor or any other Related Entity.

17. Gertrude Gordon negotiated this transaction on behalf of her children Alison Gordon and David Gordon.

18. No promissory note was ever prepared or executed in relation to this $1 million transaction.

19. The Gordons received Schedule K-ls from Dani for the tax years 2000, 2001 and 2002. The Schedule K-1s reflect Dani's treatment of the $1 million as a capital contribution ($500,000 from Alison Gordon and $500,000 from David Gordon). The Gordons never once contacted Schwartz or Dani to dispute the issuance or accuracy of the K-1 Schedules.

20. The Gordons never received any of the payments they claim to be due under the Agreement. The Gordons never filed any litigation concerning the default on the Agreement before filing their original Claim in these proceedings.

21. David Gordon said he understood from conversations with his mother that the transaction reflected by the Agreement was a loan with an "equity kicker" in Dani and Darlington.

22. On or about June 1, 2007, Benesch Friedlander Coplan Aronoff LLP ("Benesch"), then acting as counsel for Royal Manor, Dani, Darlington and the Related Entities, sent to the Gordons a letter requesting the Gordons consent to the proposed sale of Darlington and Dani to Orion Care Services, LLC ("Orion"). In the course of the ensuing negotiations between Benesch and the Gordons over the Orion sale, the Gordons were not represented by counsel. Gertrude

Gordon, a non-attorney who held power of attorney for her children with respect to this transaction, negotiated for the Gordons. Several emails were exchanged between attorneys associated with Benesch and Gertrude Gordon.

23. On June 13, 2007, at the behest of Gertrude Gordon, Schwartz signed a letter on Benesch letterhead which was sent to Gertrude Gordon. The letter details the understanding between Schwartz and Gordon regarding the Agreement and the treatment the Gordons were to receive as a result of the $1 million transaction if the sale of Dani and Darlington to Orion (the "Orion Transaction") was completed. The first numbered paragraph of the letter says that "the initial investment is $1million plus accrued interest and shall be paid when Abraham and Sally Schwartz have the ability to do so." The letter further reflects that proceeds from the Orion Transaction would be used to pay the "mortgagees, secured creditors, trade creditors and related costs" first.

24. After receiving the letter from Schwartz, the Gordons, through Gertrude Gordon as their attorney-in-fact, executed an action by unanimous written consent as members of Darlington and Dani for the purposes of consenting to and permitting Orion and its related entities to purchase Darlington and Dani and other Related Entities.

25. At the time of the hearing in this matter, Alison Gordon was 30 years old. She is a well educated young professional. She is currently a vice president of Nomura Securities, a Japanese bank, at the mortgage backed securities desk. Previously, she worked as an auditor for Deloitte & Touche in its banking group. On June 20, 2008, Alison Gordon executed a durable general power of attorney granting Gertrude Gordon permission to act as her attorney-in-fact as to her business matters.

26. At the time of the hearing in this matter, David Gordon was 34 years old. He is a well educated young professional. He currently works for Auriga, a small hedge fund and bank based in Spain. Previously he worked for Morgan Stanley at its mortgage backed securities desk, MBNA, and Lehman Brothers. On June 20, 2008, David Gordon executed a durable general power of attorney granting Gertrude Gordon permission to act as his attorney-in-fact as to his business matters.

27. Gertrude Gordon, the mother of the Claimants, has a B.S. and a Masters Degree in Early Childhood Education. Her first husband, the father of the Claimants, was a lawyer. Upon his death, Gertrude Gordon became involved in contentious litigation with her dead husband's law partners over his partnership interest. Mr. Grossman represented Gertrude Gordon in that litigation. Gertrude Gordon's second husband, Gerald Lorin, is a retired dentist.

CONCLUSIONS OF LAW

According to 11 U.S.C. § 502(a), "a claim is deemed allowed, unless a party in interest, ... objects." Fed. R. Bankr. P. 3001 provides that a properly filed proof of claim shall constitute prima facie evidence of the validity and amount of the claim. Therefore, a party objecting to a properly filed proof of claim bears the burden of producing sufficient evidence to rebut the claimant's prima facie case. *In re Hollars,* 198 B.R. 270, 271 (Bankr. S.D. Ohio 1996). If the objector succeeds in overcoming the prima facie case, the claimant has the burden of going forward and proving the validity of its claim by a preponderance of the evidence. *Id.* It is not up to the objector to disprove the claim. *Id.*

The Liquidating Trustee, based on the stipulations reached in this case and the documents attached to the proof of claim, submitted sufficient evidence to overcome the Gordons' prima facie case. Therefore, the Gordons bore the burden, at trial, of proving the validity of the Claim by a

preponderance of the evidence. For the reasons set forth more fully below, the Court finds that the Gordons do not have an unsecured claim against Royal Manor or any of the Related Entities. On the face of the Agreement, it appears clear that the obligation held by the Gordons was to be satisfied by Schwartz individually and includes an agreement by Schwartz, the owners of Dani and Darlington, to grant an equity position in "the Darlington Nursing Home" – "5% to Alison and 5% to David." The Gordons argue that, although the document is clear and unambiguous on its face,[5] the Agreement really reflects a loan to Dani/Darlington. The Gordons presented no credible evidence in support of their argument.

Gertrude Gordons' testimony was that she lent the money to her sister for Dani/Darlington, not that she lent Dani/Darlington money. Gertrude Gordon sent the money to her sister in blank, the money was deposited into the Schwartz' personal business account and subsequently transferred to Dani. Further, Gertrude Gordon expected her children to be repaid by Schwartz. The June 13, 2007 letter from Schwartz to Gertrude Gordon, Exhibit 28, clearly sets forth in the first numbered paragraph that "the initial investment is $1million plus accrued interest and shall be paid when Abraham and Sally Schwartz have the ability to do so."

The meaning of the term "investment" as used in the Agreement to describe the transaction is not relevant to the inquiry as to identity of the obligor in the transaction.

An individual who fails to disclose the existence of an agency relationship is personally liable for any agreement that the individual executes with third parties. *Aungst v. Creque* (1905), 72 Ohio St. 551 at 553-554 and *Dunn v. Westlake* (1991), 61 Ohio St. 3d 102, 106. To be binding on

[5]At the evidentiary hearing in this matter, counsel for the Gordons and counsel for the Liquidating Trustee stipulated that the Agreement is clear and unambiguous on its face. Therefore, parol evidence with regard to the meaning of the document is inappropriate under Ohio law.

a corporation, an agreement must be executed in the following manner: "The signature itself represents a clear indication that the signatory is acting as an agent if: (1) the name of the principal is disclosed, (2) the signature is preceded by words of agency such as 'by' or 'per' or 'on behalf of', and (3) the signature is followed by the title which represents the capacity in which the signatory is executing the document, e.g., 'Pres.' or 'V.P.' or 'Agent'." *Hursh Bldrs. Supply Co., Inc. v. Clendenin,* 2002-Ohio-4671 at ¶21, citing *Spicer v. James* (1985), 21 Ohio App.3d 222, 223 and *Collins v. Buckeye State Ins. Co.* (1867), 17 Ohio St. 215. 64. Both Sally and Abraham Schwartz executed the Agreement in their own names, without indicating that they were signing the Agreement as a representative or in a representative capacity for any business entity.

Therefore, regardless of whether the Gordons ultimately had an equity investment in Dani/Darlington, Sally and Abraham Schwartz are the obligors under the Agreement. The Gordons failed to prove that they have an unsecured claim against Dani or Darlington based on the Agreement.

The Gordons also argue that the transaction reflected in the Agreement was meant to be a loan to Dani/Darlington, not an equity investment. Based on the factors adopted by the Sixth Circuit in *Bayer Corp. v. MascoTech, Inc. (In re AutoStyle Plastics, Inc.),* 269 F.3d 726 (6th Cir. 2001), the Court finds the transaction evidenced by the Agreement was at best a capital contribution, not a loan.

Each case is considered based on its own unique circumstances, but eleven factors are relevant in determining whether a transaction is a loan or capital contribution.

> (1) the names given to the instruments, if any, evidencing the indebtedness; (2) the presence or absence of a fixed maturity date and schedule of payments; (3) the presence or absence of a fixed rate of interest and interest payments; (4) the source of repayments; (5) the adequacy or inadequacy of capitalization; (6) the identity of interest between the creditor and the stockholder; (7) the security, if any, for the advances; (8) the corporation's ability to obtain financing from outside lending institutions; (9) the extent to which the advances were subordinated to the claims of outside creditors; (10) the extent to which the advances were used to acquire capital assets; and (11) the presence or absence of a sinking fund to provide repayments.

269 F.3d at 750.

As the claimants, the Gordons bore the burden of proving these factors weigh in favor of characterizing the transaction reflected in the Agreement as a loan to Dani/Darlington. For the reasons set forth below, the Court finds that the Gordons failed to carry their burden.

No evidence was presented to the Court regarding the existence of a sinking fund, the extent to which the advances were used to acquire capital assets, the corporation's ability to obtain financing from outside sources, or the adequacy/inadequacy of the purported limited partnerships'/obligors' capitalization.

Further, based on the evidence that was presented, the Court finds that there is no promissory note reflecting an obligation on the part of Dani or Darlington to the Gordons. The absence of a promissory note "is a strong indication" the advances were a capital contribution and not a loan. *See Id.* In addition, the Gordons and Dani/Darlington acted as if the advances were a capital contribution and not a loan. Schedule K-1s reflecting that the advances were capital contributions were issued for tax years 2000, 2001, and 2002.[6] The Gordons never contacted Dani, Darlington or Schwartz to dispute the treatment of their advances as shown on the Schedule K-1s.

Although the Agreement provides that the advances are to bear 10% cumulative interest and are to be returned by a date certain, payments are to be made only when the bank says money can be taken out, or in other words, based on the success of the business. Factors 2 and 3 lean towards

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[6]The Gordons attempt to argue, through the testimony of their tax expert, Robert Hanson, that the Schedule K-1 as issued is not indicative that the parties were treating the advances as a capital contribution, but rather could be consistent with the treatment of the advances as a loan. Michael Hydell, the Liquidating Trustee's tax expert, testified to the contrary. Based on the inclusion of the amount of the advance on line J(b) of Schedule K-1, Mr. Hydell opined that the parties were treating the advances as a capital contribution. If the advances were loans, according to Mr. Hydell, they should have been listed on line F - other. The Court found Mr. Hydell's testimony persuasive on this issue.

the characteristics of a loan. Factor 4 leans toward the characteristics of a capital contribution. Furthermore, prior to filing the Claim, the Gordons never took any action to recover the payments they say are due to them under the Agreement. Taken together, these factors neutralize each other.

According to the operating agreement, Schwartz holds a combined 80% of the equity in exchange for $0 contribution. The Gordons each hold 5% of the equity for a $500,000 contribution and 1176913 Ontario, Inc. holds 10% for a $1 million contribution. The ratio of contribution to equity percentage is not symmetrical. This factor leans slightly towards the transaction having been a loan.

The collateral for the advance is equity in PS Realty. The ownership of PS Realty was not disclosed to the Court. Dani / Darlington do not have an ownership interest in PS Realty. The grant of collateral often shows a transaction has the characteristics of a loan. In this case, however, the collateral offered did not belong to Dani or Darlington. Therefore, the Court finds that this factor does not weigh in favor of finding the transaction to have been a loan to Dani / Darlington, but rather that it was a transaction (perhaps a loan) with the owner of the collateral (perhaps, Schwartz).

The extent to which advances were subordinated to unsecured creditors. The email exchange culminating in the June 13, 2007 letter reflects an understanding of Schwartz and Gertrude Gordon, that the Gordons' advances would not be repaid until after payments were made to the mortgagees, secured creditors and trade creditors. This is reflective of a capital contribution, not a loan.

No one factor is conclusive. Based on the analysis of the factors in this case, the Court concludes that the transaction bears the characteristics of a capital contribution, more than those of a loan. Therefore, the Court finds that, even if this transaction was one with Dani / Darlington (rather than one with Schwartz where the proceeds of the transaction were intended for Dani / Darlington), it was at best a capital contribution and not a loan.

Finally, the Gordons argued in some of their papers in support of their Motion to Allow a New Claim, that to the extent the Gordons held an equity interest in Dani/Darlington, their equity position was converted over time to unsecured debt by virtue of section 4.7 of the operating agreements which bear the forged signatures of the Gordons. When it suits their purpose, the Gordons embrace the operating agreements as evidence of their equity position converting to debt. When it doesn't, they reject the operating agreements as bearing forged signatures and of no impact in assessing the character of the $1 million transaction. The Gordons bore the burden of proving the existence of an unsecured claim based on section 4.7 of the operating agreements. At the evidentiary hearing, the Gordons presented no evidence or arguments with respect to this theory in support of their Claim. They presented no evidence that Dani or Darlington were accruing these amounts allegedly due in their books, there was no mention of section 4.7 or the existence of any unsecured debt owed by Dani / Darlington to the Gordons in conjunction with the negotiations surrounding the Orion Transaction. Therefore, the Court views the Gordons as having abandoned this argument.

CONCLUSION

For the reasons set forth above, the Court sustains the objection to the claim of David and Alison Gordon. The Claim is disallowed.

The Committee followed by the Liquidating Trustee were forced to expend a great deal of estate resources in prosecuting the Objection to the Claim of David and Alison Gordon, the nephew and niece of the pre-petition owners of Royal Manor and the Related Entities, perhaps as the result of unjustified, unsupported, or vexatious positions taken by Mr. Grossman in support of the Gordons' Claim. Although no request for sanctions pursuant to Fed. R. Bankr. P. 9011 has been made to date, the Liquidating Trustee shall have twenty days from the entry of this memorandum

opinion to file a motion seeking sanctions against Mr. Grossman, and, if appropriate, against Gertrude Gordon and/or the Gordons pursuant to Fed. R. Bankr. P. 9011. If a motion pursuant to Fed. R. Bankr. P 9011 is filed, it will be deemed to be a matter separate from that addressed in this memorandum opinion and, as such, will have ne effect on the finality of the judgment entry that will be entered as a separate pleading.

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cc: Louise Mazur / Mark Merklin

Dennis Grossman / David Mucklow