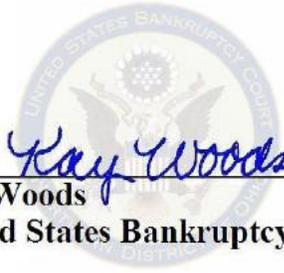


IT IS SO ORDERED.

Dated: June 15, 2012
11:24:55 AM



Kay Woods
 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
	*	CASE NUMBER 10-42899
CARL V. MACE and	*	
CINDY A. MACE,	*	CHAPTER 13
	*	
Debtors.	*	HONORABLE KAY WOODS
	*	

 MEMORANDUM OPINION REGARDING OBJECTION TO CLAIM NO. 13

On October 7, 2010, Timothy S. Kelly and Sharon L. Kelly ("Kellys") timely filed a proof of claim, denominated Claim No. 13, as a general unsecured claim in the amount of \$313,781.36, based on "promise to assume guarantee liability on FNB note." The proof of claim stated, "See pleadings at No. 11998-08, Common Pleas Court, Lawrence County, PA" ("Pennsylvania Court Action"). On May 26, 2011, the Debtors Carl V. Mace and Cindy A. Mace filed Amended Objection to Proof of Claim #13-1 Filed by Timothy S. Kelly and Sharon L. Kelly ("Objection to Claim") (Doc. # 114), in which the Debtors denied any and all liability to the Kellys. After receiving

(i) the Kellys' Response to the Amended Objection (Doc. # 117); (ii) the Debtors' Memorandum in Support of the Objection (Doc. # 126); and (iii) the Kellys' Reply Brief (Doc. # 136), the Court conducted an evidentiary hearing on the Objection to Claim on May 29, 2012 ("Hearing").

At the conclusion of the Hearing, the Court took the matter under advisement. This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052. For the reasons that follow, the Court will overrule the Objection to Claim.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general orders of reference (General Order Nos. 84 and 2012-7) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

I. EVIDENTIARY HEARING

Gary J. Rosati, Esq. appeared at the Hearing on behalf of the Debtors, and P. Raymond Bartholomew, Esq. appeared on behalf of the Kellys. The Court received testimony from Debtor Carl V. Mace, Timothy S. Kelly and Thomas R. Skelton. The Court admitted into evidence the Debtors' Exhibits 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 and the Kellys' Exhibits A, B, C, E, F, H and I¹. The Court sustained

¹ Because Exhibits D and G were duplicates of Exhibits 9 and 8, respectively, which had previously been admitted, the Court declined to admit Exhibits D and G. All references in the record to Exhibit D will be deemed to be references to Exhibit 9 and all references in the record to Exhibit G will be deemed to be references to Exhibit 8.

the objection to admission of Exhibit 4.

II. FACTS

In or about 1995, Mr. Kelly and Mr. Mace formed K&M Feeds, Inc. ("K&M"), with each man receiving 50% of K&M's stock. Mr. Mace was named president and Mr. Kelly was secretary. Mr. Kelly was responsible for the day-to-day operations of K&M and received a salary for his work at K&M. In 1998, K&M entered into a loan agreement ("1998 Loan") with First National Bank ("FNB"). Mr. Mace pledged his home and farm as collateral for the loan and personally guaranteed the 1998 Loan; because Mr. Kelly did not have any real property to pledge, he did not pledge any property to secure the loan, but he personally guaranteed the 1998 Loan; a former K&M employee and unrelated third party also personally guaranteed the 1998 Loan.

Exhibit 1 is a document styled One-Year Agreement, which provides, as follows²:

1. K&M agree [sic] that all stock in K&M Feeds, Inc. should be transferred to Carl V. Mace.
2. K&M agrees to execute a Promissory Judgment Note to Timothy S. Kelly and Sharon L. Kelly, his wife [sic] in the amount of \$40,000.00. In the event of the sale of K&M, Timothy S. Kelly and Sharon L. Kelly, his wife [sic] shall be reimbursed [sic] the sum of \$40,000.00 to carry out the terms of the Promissory Judgment Note.
3. Timothy S. Kelly and Sharon L. Kelly, his wife [sic] shall be authorized to purchase all outstanding shares of K&M for the sum of \$40,000.00. The parties agree that the buy-out shall be re-evaluated and reviewed yearly and

² The Court recites this agreement in full because it is central to the dispute between the Debtors and the Kellys.

a written document acknowledged [sic] by K&M and Mace based on the equity of the business. Real estate owned by Carl V. Mace in Ohio shall be released from the business debt at the time of this transfer.

4. In the event of the death of Carl v. Mace the parties agree that all outstanding shares of K&M shall be transferred to Timothy S. Kelly. It is agreed that the estate of Carl V. Mace shall finance K&M Feeds, Inc., but no transfer of stock shall occur until the outstanding debt owed by Timothy S. Kelly and Sharon L. Kelly is paid in full. Stock shall be transferred only in conjunction with or subsequent to the release of Ohio real estate owned by Carl V. Mace from the business debt and loan.

5. In the event of a buy out offer K&M shall not be sold unless Timothy S. Kelly gives approval of the buy out.

(Ex. 1, at 1-2.) Mr. Mace testified that this agreement came about because he wanted "out" of the K&M business. Neither Mr. Kelly nor Mr. Mace took any action to implement the buy out provisions of the One Year Agreement.

The testimony of Mr. Kelly and Mr. Mace was widely disparate concerning when the One Year Agreement was signed.

Mr. Kelly testified that, although the One Year Agreement is dated January 1, 2002, it was not actually executed until sometime after October 2002. Mr. Kelly stated that he and Mr. Mace agreed to back-date the One Year Agreement for Mr. Mace's benefit in his dealings with Sky Bank. Mr. Kelly further testified that the Promissory Judgment Note was not signed and the transfer of his shares of stock in K&M did not occur until the spring of 2004.

Mr. Mace acknowledged that the One Year Agreement was not signed on January 1, 2002, but he testified that the agreement was signed a few days later. He stated that the One Year Agreement was

back-dated for tax purposes. Mr. Mace further testified that Mr. Kelly transferred his stock to Mr. Mace contemporaneously with signing the One Year Agreement in January 2002.

Mr. Kelly and Thomas Skelton each testified that they reached an agreement among themselves and Mr. Mace in late 2001 or early 2002 that K&M would be restructured with Mr. Mace, Mr. Kelly and Mr. Skelton as owners. As a consequence and in anticipation of that change in ownership, in the spring of 2002, Mr. Kelly and Mr. Skelton refinanced the 1998 Loan ("2002 Loan")³. The 2002 Loan, which was also obtained through FNB, resulted in: (i) the release of Mr. Mace's personal liability, as well as release of his real property as security for the 1998 Loan; (ii) Mr. Skelton putting up his farm to secure the 2002 Loan; (iii) Mr. and Mrs. Kelly, as well as Mr. and Mrs. Skelton, personally guaranteeing the 2002 Loan; and (iv) the proceeds from the 2002 Loan being used to pay off the 1998 Loan. Under the terms of the 2002 Loan, the only parties obligated to FNB were the Kellys and the Skeltons. Despite the 2002 Loan, no change in ownership of K&M occurred.

Mr. Mace denied the existence of an agreement among Mr. Kelly, Mr. Skelton and himself regarding ownership of K&M. Indeed, Mr.

³ Mr. Kelly signed the 2002 Loan as "President" of K&M and Mr. Skelton signed as "Secretary." Both men testified that they did not hold these offices at K&M, but Mr. Kelly averred that Mr. Mace agreed that Mr. Kelly and Mr. Skelton should sign as such officers for purposes of signing the 2002 Loan documents in order that Mr. Mace would not be also obligated by FNB to sign. (Hr'g Tr. at 10:16:10-10:18:42.) Mr. Mace disputes this assertion, but of the three men, Mr. Mace is the only one who benefitted from the 2002 Loan because he obtained release of his personal guarantee and his property as security for the 1998 Loan. At all other times, Mr. Mace conducted himself as President of K&M. Both Mr. and Mrs. Kelly personally guaranteed the 2002 Loan. (See Ex. H.)

Mace testified that he wanted out of the business and "his stipulations were clear." (Hr'g. Tr. at 11:33:37-11:33:41.) In exchange for his half of the K&M stock, Mr. Mace demanded (i) to be released from the 1998 Loan; (ii) to be released from all liability to K&M vendors; and (iii) \$40,000.00 in cash. (*Id.* at 11:33:41-11:33:48.)

Mr. Kelly testified that, contrary to the terms of the One Year Agreement, he did not transfer his K&M stock to Mr. Mace until May 2004. The Promissory Judgment Note referenced in the One Year Agreement also was not executed until May 2004. According to Mr. Kelly, the stock transfer occurred at the office of the K&M attorney, Robert Clark, who had drafted the One Year Agreement and the Promissory Judgment Note. Mr. Kelly testified that, at the May 2004 meeting, he was presented with a new version of the Promissory Judgment Note, which required K&M to make no payments until the maturity date of May 1, 2008. Mr. Kelly stated that the previous versions of the Promissory Judgment Note had provided for installment payments. This May 2004 version of the Promissory Judgment Note⁴ was signed by Mr. Kelly, on behalf of himself, and Mr. Mace, as President of K&M. Mr. Kelly testified that the Promissory Judgment Note was also back-dated to January 1, 2002, even though it was not signed until May 2004. K&M never paid on the note.

Mr. Kelly testified that, at the time the Promissory Judgment

⁴ The Promissory Judgment Note was admitted as Exhibit 3.

Note was signed in May 2004, he also signed the stock certificate. The document transferring Mr. Kelly's stock was also back-dated to January 1, 2002, to be consistent with the other documents. According to Mr. Kelly, the stock certificate was back-dated for Mr. Mace's benefit in his dealings with the bank. Mr. Mace disputes Mr. Kelly's testimony and asserts that the stock certificate was assigned to him in early January 2002.

Mr. Kelly further testified about an unsigned document styled, "Agreement," which appears to have been prepared by Attorney Clark. This agreement, which was admitted as Exhibit C, was not signed, but would have obligated Mr. Mace to obtain the release of the Kellys from the 2002 Loan. Mr. Kelly testified that Mr. Mace refused to sign the agreement because Mr. Mace asserted that he did not need a signed agreement to live up to his obligations to the Kellys. The promise in paragraph 2 of Exhibit C is the oral agreement that the Kellys assert was breached by Mr. Mace and which forms the basis of Claim No. 13.

Mr. Kelly testified that he trusted Mr. Mace to obtain the Kellys' release from the obligations under the 2002 Loan, although he never asked FNB if they had been so released. Mr. Kelly further testified that, although FNB requested information from him, he did not provide the requested information because he did not believe he was still obligated on the 2002 Loan. Mr. Kelly said that he made several requests of Mr. Mace about getting released from the 2002 Loan.

Mr. Mace testified that he asked FNB to release both the Kellys and Mr. Skelton from the 2002 Loan, but such requests were denied⁵. On cross-examination, Mr. Mace was asked whether he promised to obtain the Kellys' release from the 2002 Loan. Mr. Mace asserted that he only promised to "try" to do so. However, Mr. Mace acknowledged his August 2008 deposition testimony taken in conjunction with the Pennsylvania Court Action, as follows:

Q: Does that mean that the guarantors on the original First National loan [2002 Loan] will be released from liability?

A: Absolutely.

Q: Do you know when the release of the guarantors will take place?

A: I have an agreement with FNB to get things done by the 30th of September [2008].

. . .

Q: And in any event, you are definite that the guarantors on the original First National loan will be released by the end of September?

A: Yes.

(Ex. F, at 17-18.)

Mr. Mace tried to equivocate about his deposition testimony, arguing that he had no power to require FNB to release the Kellys from the 2002 Loan obligations and, thus, his only obligation was to "try" to get the Kellys released⁶.

⁵ Mr. Skelton also testified that Mr. Mace promised he was working on getting Mr. Skelton and the Kellys released from the 2002 Loan.

⁶ Although it is true that Mr. Mace could not require FNB to take any particular action, that does not mean that he could not and/or did not make an unequivocal promise to obtain the release.

III. LAW & ANALYSIS

Federal Rule of Bankruptcy Procedure 3001(f) provides, "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." FED R. BANKR. P. 3001(f) (West 2012). Pursuant to 11 U.S.C. § 502, a proof of claim filed is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a) (West 2012). "A valid proof of claim is prima facie evidence of the amount owed." *Oaks v. Bank One Corp.*, 126 Fed. Appx. 689, 692-693 (6th Cir. 2005) (citing *Whitney v. Dresser*, 200 U.S. 532, 534-35 (1906)). The burden of persuasion regarding the validity of proofs of claim shifts throughout the objection to claim process:

The burden of proof for claims brought in the bankruptcy court under 11 U.S.C.A. § 502(a) rests on different parties at different times. Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is "prima facie" valid. *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the prima facie validity of the filed claim. It is often said that the objector must produce evidence equal in force to the prima facie case. *Id.*; see *In re Windsor Communications Group, Inc.*, 45 Bankr. 770, 773 (Bankr. E.D. Pa. 1985). In practice, the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re WHET, Inc.*, 33 Bankr. 424, 437 (Bankr. D. Mass. 1983). The burden of persuasion is always on the claimant. *Holm*, 931 F.2d at

623 (quoting Collier § 502.02, at 502-22); *Windsor Communications*, 45 Bankr. at 773.

In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992) (emphasis added).

Bankruptcy courts may evaluate the credibility of testimony given at evidentiary hearings:

It was not improper for the bankruptcy court to evaluate the credibility of [the debtor's] testimony. Courts have noted that "in practice, the objector must produce evidence which, if believed, would refute at least one of the allegations" that is the basis of the proof of claim. See *In re Consol. Pioneer*, 178 B.R. at 226 (quoting *In re Allegheny*, 954 F.2d at 173-74); *In re Holm*, 931 F.2d at 623. However, such language does not translate into a command that the trial court accept as true all evidence submitted by the objector, especially if presented in an evidentiary hearing in which both parties are provided with ample opportunity to present evidence.

Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell), 223 F.3d 1035, 1040 (9th Cir. 2000).

Here, Claim No. 13 is based on an alleged breach of an oral contract. The Kellys allege that Mr. Mace promised to obtain their release from liability on the 2002 Loan, but that Mr. Mace failed to do so. There is no dispute that the Kellys were never released from the 2002 Loan; as a consequence, if the Kellys establish the existence of the alleged oral agreement, there is no dispute that such agreement was breached. Accordingly, the only issue is whether there is sufficient evidence to support the existence of the alleged oral agreement. Claim No. 13 is considered to be valid as filed unless the Debtors can refute "at least one of the allegations that is essential to the claim's legal sufficiency." *Allegheny*, 954 F.2d

at 174.

The Court finds that the Debtors have not met that burden. First, the Court finds Mr. Kelly's assertion that the One Year Agreement was not signed until October 2002 to be credible based on the letter from Attorney Clark, dated October 23, 2002, which states, "Please find enclosed a new draft of the Agreement and Promissory Judgment Note. Please review these and contact me with any questions or corrections. If they are satisfactory, we need to move forward by making arrangements to have them signed and have the stock transferred to Carl and Cindy." (Ex. A, at 1 (emphasis added).) Contrary to Mr. Mace's assertion that the One Year Agreement and Mr. Kelly's stock transfer both occurred in January 2002, this letter establishes that the stock transfer had not occurred as of October 23, 2002. Exhibit A references an agreement and a promissory judgment note, which Mr. Kelly asserts were, and which appear to be, the One Year Agreement and the Promissory Judgment Note referred to in the One Year Agreement. Thus, Exhibit A establishes that, as of October 23, 2002, Mr. Mace and Mr. Kelly had not yet signed the One Year Agreement and/or the Promissory Judgment Note. Exhibit A supports Mr. Kelly's version of the disputed facts concerning when the One Year Agreement was signed.

Establishing when the One Year Agreement was signed is important because evidence that the agreement was not signed until 2004 supports Claim No. 13. Mr. Mace argues that he already had 100% ownership of all stock of K&M as of January 1, 2002, which was

prior to execution of the 2002 Loan. If the Court were to credit Mr. Mace's version of the facts, there would be support for the argument that any promise by Mr. Mace to obtain release of the Kellys from their obligations under the 2002 Loan would not be supported by consideration. However, to the contrary, credible evidence establishes that Mr. Kelly did not transfer his stock to Mr. Mace until the spring of 2004 and that part of the consideration for such transfer was Mr. Mace's oral promise to obtain the Kellys' release from liability on the 2002 Loan.

The Kellys did not produce a signed agreement containing Mr. Mace's promise to obtain their release from the 2002 Loan obligations; however, there is ample evidence of an oral agreement to that effect. According to Mr. Kelly, in May 2004, he transferred his shares of K&M stock to Mr. Mace, and he and Mr. Mace executed the Promissory Judgment Note. Although these documents are both dated January 1, 2002, as set forth above, Exhibit A demonstrates that neither document was signed until sometime after October 23, 2002. Mr. Mace's contrary testimony that the stock transfer and the Promissory Judgment Note were signed in early January 2002 is not credible. When Mr. Kelly transferred his K&M stock to Mr. Mace, the documentation shows that he received a \$40,000.00 Promissory Judgment Note that required no payments by K&M for four years, when the Note became due in May 2008. Mr. Mace, personally, appears to have given no consideration when he received Mr. Kelly's 50% ownership of K&M since the Promissory Judgment Note only obligated

K&M. As a consequence, this Court credits Mr. Kelly's testimony that part of the consideration for his transfer of his K&M stock to Mr. Mace was Mr. Mace's oral promise to obtain the Kellys' release from the 2002 Loan.

It is beyond belief that Mr. Mace - who insisted that his half of the K&M stock was worth (i) being released from the 1998 Loan (which had already occurred when Mr. Kelly transferred his K&M stock to Mr. Mace in 2004); (ii) being released from all liability to K&M vendors; and (iii) \$40,000.00 in cash - would establish the value of Mr. Kelly's half of the K&M stock as only a promise to pay \$40,000.00 four years in the future. To mirror the value that Mr. Mace put on his own 50% ownership of K&M, Mr. Mace would have included in the value of Mr. Kelly's 50% share of K&M the Kellys' release from liability on the 2002 Loan. Accordingly, this Court finds that the consideration for Mr. Kelly transferring his K&M stock to Mr. Mace also included Mr. Mace's promise to obtain the Kellys' release from the 2002 Loan.

Next, the Pennsylvania four-year statute of limitations for breach of contract claims has no applicability to the facts before this Court and does not bar Claim No. 13. In his closing argument Mr. Rosati argued that, because the transfer of stock occurred in January 2002 (which the Court finds not to be credible), the statute of limitations began to run from that date and, thus, bars Claim No. 13. The Debtors' theory of the statute of limitations would stand contract law on its head. The statute of limitations for breach of

contract runs from the date of the breach, not from when the contract is made. Under Mr. Rosati's theory, there could never be a cause of action for breach of a contract that required no performance for five years because the statute of limitations would run before any performance was required. Moreover, there was no time specified for Mr. Mace to obtain the Kellys' release from the 2002 Loan. Presumably, Mr. Mace could have obtained the Kellys' release any time prior to 2007, when the balloon payment on the 2002 Loan became due. Thus, no breach of the oral contract occurred until Mr. Mace failed to obtain the release.

Even if a time earlier than the maturity date for the 2002 Loan could be inferred (although there was no argument or evidence to that effect), Mr. Mace's repeated assurances that he would obtain the Kellys' release from the 2002 Loan lulled the Kellys into forbearing from filing suit against Mr. Mace. In *Ott v. Midland-Ross Corp.*, the Sixth Circuit Court of Appeals explained:

If the defendant made a misrepresentation of material fact for the purpose of inducing a plaintiff to delay suit or release him from liability, it is estopped to plead the statute of limitations or to interpose the release as a bar to suit, provided the plaintiff has acted in justifiable reliance upon the misrepresentation. It is unnecessary for the misrepresentation to have been made negligently or fraudulently.

600 F.2d 24, 31-32 (6th Cir. 1979) (internal citations omitted). Here, Mr. Mace misrepresented to the Kellys that he would have FNB release them from the 2002 Loan, thereby inducing the Kellys to delay filing suit against him. The Court does not need to find that Mr. Mace's misrepresentations were made either negligently or

fraudulently, but only that the Kellys justifiably relied on Mr. Mace's repeated assurances. The Court finds that the Kellys' reliance on Mr. Mace's promises was reasonable and justified, based on the deposition testimony cited, *supra* at 8. In that deposition, Mr. Mace stated that he "absolutely" would obtain the Kellys' release from the loan.

As a consequence, this Court finds that Mr. Mace made an oral promise to obtain the Kellys' release from their obligations under the 2002 Loan. Mr. Mace breached that agreement. The Kellys have an enforceable claim for the breach of Mr. Mace's oral agreement, which is the basis of Claim No. 13. Thus, the Debtors' position that they have no liability on Claim No. 13 is misplaced and not well taken.

IV. DAMAGES CALCULATION

Because proofs of claim are considered valid as filed and the Debtors here did not adequately demonstrate they were not liable to the Kellys, the Objection to Claim will be overruled. The Court will allow Claim No. 13 in its entirety. In his closing arguments, Mr. Rosati argued that, because the Kellys were obligated on the 1998 Loan and the 2002 Loan merely paid off the 1998 Loan, the Kellys did not suffer any damages. He further argued that, if they suffered any damages, it would be only 1/3 of the value of \$40,000.00, which is the value that the One Year Agreement placed on Mr. Kelly's K&M stock. Mr. Rosati calculated the 1/3 amount by asserting that the Kellys, Mr. Skelton and the Debtors would each

have received 1/3 of the K&M stock. Mr. Rosati, thus concluded that the Kellys' maximum damages would be \$13,333.33. This calculation of damages flies in the face of Mr. Mace's denial of the existence of any agreement by, between and among Mr. Kelly, Mr. Skelton and himself concerning the ownership of K&M.

The Court does not find this argument to be persuasive. The amount of Claim No. 13 is supported by Mr. Mace's own testimony concerning the value he placed on his 50% interest in K&M. Mr. Mace testified that he required the following for his 50% of the K&M stock: (i) release from personal liability and of his real property as security for the 1998 Loan; (ii) release from liability to all vendors of K&M; and (iii) a \$40,000.00 payment. The sum of these items constituted Mr. Mace's valuation of his 50% ownership of K&M. Although the exact sum of these three items is unknown, it is evident to the Court that it is much higher than \$13,333.33. The evidence is undisputed that the 2002 Loan paid off the 1998 Loan. As a consequence, the amount of the 2002 Loan constitutes a portion of the value that Mr. Mace placed on half of the K&M stock. Mr. Kelly transferred his half of the K&M stock to Mr. Mace for the Promissory Judgment Note and the oral promise from Mr. Mace to obtain the Kellys' release from liability on the 2002 Loan. The amount owing on the 2002 Loan constitutes the amount of damages the Kellys sustained as a result of Mr. Mace's breach of the oral agreement to obtain their release from liability on the 2002 Loan. Based on the foregoing, the Court finds that Claim No. 13 is allowed

as filed.

V. CONCLUSION

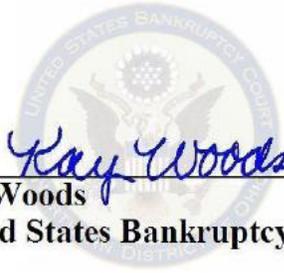
The Federal Rules of Bankruptcy Procedure provide that properly executed and filed proofs of claim constitute prima facie evidence of the validity and amount of the claim. This prima facie evidence can be rebutted if an objector refutes an allegation essential to the claim's legal sufficiency. Here, the Debtors failed to adequately refute the legal sufficiency of Claim No. 13. The Court finds that the Kellys established the existence of an oral agreement, which was breached by Mr. Mace. The four-year statute of limitations for breach of contract does not bar Claim No. 13.

For the foregoing reasons, the Court will overrule the Objection to Claim and allow Claim No. 13, as filed. An appropriate order will follow.

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IT IS SO ORDERED.

Dated: June 15, 2012
11:25:43 AM



Kay Woods

 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
CARL V. MACE and	*	CASE NUMBER 10-42899
CINDY A. MACE,	*	
	*	CHAPTER 13
	*	
Debtors.	*	HONORABLE KAY WOODS
	*	

 ORDER OVERRULING OBJECTION TO CLAIM NO. 13

Timothy S. Kelly and Sharon L. Kelly filed Claim No. 13 on October 7, 2010. On May 26, 2011, the Debtors Carl V. Mace and Cindy A. Mace filed Amended Objection to Proof of Claim #13-1 Filed by Timothy S. Kelly and Sharon L. Kelly ("Objection to Claim") (Doc. # 114), in which the Debtors denied any and all liability to the Kellys. After receiving (i) the Kellys' Response to the Amended Objection (Doc. # 117); (ii) the Debtors' Memorandum in Support of the Objection (Doc. # 126); and (iii) the Kellys' Reply Brief (Doc. # 136), the Court conducted an evidentiary hearing on the Objection to Claim on May 29, 2012 ("Hearing").

At the conclusion of the Hearing, the Court took the matter under advisement. For the reasons set forth in this Court's Memorandum Opinion entered on this date, the Court hereby overrules the Objection to Claim. Claim No. 13 is allowed, as filed.

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