

DOCKET NUMBER: 98-13023

ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Mark Joseph Tapia, AmSouth Bank

CHAPTER: 11

ATTORNEYS: L. C. Williams, E. B. Peebles, III

DATE: 8/17/00

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

IN RE

MARK JOSEPH TAPIA

Case No. 98-13023-MAM-11

Debtor.

**ORDER OVERRULING DEBTOR'S OBJECTIONS  
TO CLAIM NUMBERS 11 AND 12 OF AMSOUTH BANK**

Lionel C. Williams, Mobile, Alabama, Attorney for Debtor  
E. B. Peebles III, Mobile, Alabama, Attorney for AmSouth Bank

This matter is before the Court on Debtor's objection to Claim Numbers 11 and 12 of AmSouth Bank. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the debtor's objections to Claim Numbers 11 and 12 of AmSouth Bank are overruled and the claims are allowed in their entirety.

**FACTS**

AmSouth Bank filed Claim Number 11 in the amount of \$609,420.10 plus, to the extent allowed, interest and post-petition attorneys' fees. This amount includes prepetition interest. This claim represents debtor's alleged personal guarantee of a promissory note in which Seward's Ice Cream Distributors, Inc. was listed as the borrower. A foreclosure of the property mortgaged by the above promissory note occurred on July 27, 1999. The sum of \$54,587.80 was paid for the property covered by the mortgage. Between the date of petition and the date of foreclosure, an additional \$41,843.12 in interest accrued and an additional \$4,314.00 in attorneys' fees and expenses had been incurred. AmSouth Bank filed Claim Number 12 in the amount of \$82,157.52 plus to the extent allowed, interest and post-petition attorneys fees. This

amount includes only prepetition interest. This claim represents debtor's alleged personal guarantee of a promissory note in which Seward's Ice Cream Distributors, Inc. was listed as the borrower. A foreclosure of the property mortgaged by the above promissory note occurred on July 26, 1999. The sum of \$87,147.80 was paid for the property covered by the mortgage. Between the date of petition and the date of foreclosure, an additional \$10,748.65 in interest accrued and an additional \$331.10 in attorneys' fees and expenses had been incurred. AmSouth has agreed to reduce claim numbers 11 and 12 to take into account the proceeds from the sale of the properties less the interest accrued and attorneys' fees and expenses incurred.

#### LAW

Debtor objects to both claims on the grounds that the debtor's signature on the alleged guaranty obligation was procured by misrepresentation. Debtor argues that these debts were in existence before he became part owner of Seward's Ice Cream Distributors, Inc. and that he never intended to guarantee these debts. However, Debtor signed the instrument purporting to guarantee both of these promissory notes in addition to other debts of Seward's Ice Cream Distributors, Inc. The law is clear that "ordinarily when a competent adult, having the ability to read and understand an instrument, signs a contract he will be held to be on notice of all the provisions contained in that contract and will be bound thereby." *Power Equipment Co. v. First Alabama Bank*, 585 So.2d 1291, 1296 (Ala. 1999) (citing *Green Tree Financial corp. of Alabama v. Vintson*, 753 So.2d 497 (Ala. 1999)). Debtor alleges that his signature was procured by misrepresentation. The only testimony he gave regarding that fact is that he signed the document under protest at the airport before departing for a long trip and that he believed he would only be guaranteeing the other debts as a result of a conversation with an AmSouth bank

officer months before he signed the guarantee. However, he was informed that the sale of some of Seward's Ice Cream Distributors, Inc. assets to Barber's Dairy would not proceed unless he signed. The attorney for AmSouth Bank testified that he told Debtor he was guaranteeing all of the debts and Debtor still signed the document. There was no fraud in the inducement or misrepresentation. Debtor testified that he is a college graduate with extensive business experience and that he has guaranteed other notes in the past. Debtor is on notice of all the provisions contained in the contract and is bound by them.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. Debtor's objection to claim number 11 of AmSouth Bank in the amount of \$600,989.42 is OVERRULED;
2. Debtor's objection to claim number 12 of AmSouth Bank in the amount of \$6,089.47 is OVERRULED.

Dated: August 17, 2000

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE