

FILED

SEP 13 2007

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 11
)
) Case No. 2-06-03855-EWH
)
 DAVID E. DEEDS,)
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)
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 Debtor.)
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)

MEMORANDUM DECISION

I. INTRODUCTION

The Debtor has objected to two proofs of claim, asserting that the claims are not against him personally. Because the underlying agreements were not between the creditors and the Debtor, the Debtor's objections to the creditors' claims are sustained. The reasons for this ruling are explained below.

II. FACTUAL AND PROCEDURAL HISTORY

In 2003, David E. Deeds ("Deeds") formed a limited liability company, Deeds Capital, LLC ("Deeds Capital") to provide credit to high-credit risk individuals. Later in 2003, Deeds approached Dr. Stacey Olson ("Olson") and Dr. Randall Widmaier ("Widmaier") (collectively, "Claimants") to invest in Deeds Capital. Both Claimants, who considered Deeds a personal friend, testified that Deeds told them that he would guarantee whatever investment they made in Deeds Capital.

1 In mid-October 2003, Dr. Olson wrote a check to Deeds Capital for \$100,000. At
2 about the same time, Dr. Widmaier wrote a check to Deeds Capital for \$50,000. Both
3 Claimants received a packet of documents from Deeds Capital, but they did not read
4 the documents before signing them or see if a personal guarantee from Deeds was
5 included in the packet. Under the terms of the subscription agreement they executed
6 with Deeds Capital, the Claimants could opt either to immediately receive a 1% equity
7 interest in Deeds Capital or, at the end of 12 months, be repaid their investment in full
8 plus 10% interest. Both Claimants received K-1s from Deeds Capital after 2003. Both
9 Claimants testified, based on their conversations with Deeds, that they believed they
10 would get a 1% interest in Deeds Capital and be repaid their investment, although there
11 is nothing in the documents they executed which provided for them to receive both an
12 equity interest in Deeds Capital and repayment in full of their investment.
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15 Deeds testified that he did not recall the details of his conversations with Olson
16 and Widmaier regarding their potential investment in Deeds Capital. Deeds
17 acknowledged that he had personally guaranteed some investments in Deeds Capital,
18 but testified that in those cases he executed written guarantees and that the agreement
19 between those investors and Deeds Capital was different than the one offered to the
20 Claimants. Only the Claimants were allowed the option of either taking an equity
21 position or being repaid in full after 12 months.
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23 Ultimately, Deeds Capital was not a success. Deeds filed an individual
24 Chapter 11 on November 16, 2006. As a result of the sale of his home, there are funds
25 available to distribute to creditors holding allowed claims.
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1 Widmaier filed a proof of claim on December 8, 2006 for \$50,000. Olson filed a
2 proof of claim on December 12, 2006 for \$100,000. Deeds has objected to both claims
3 on the grounds that the Claimants only hold claims against Deeds Capital and not
4 against him personally.
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6 An evidentiary hearing on Deeds' objection to Claimants' proofs of claim was
7 held on July 25, 2007. Closing arguments were submitted by the filing of simultaneous
8 briefs on August 15, 2007. The court requested that the parties' closing briefs address
9 under what circumstances principles of estoppel can bar enforcement of the Statute of
10 Frauds and/or the parole evidence rule. The matter is now ready for a decision.
11

12 13 **III. ISSUES**

14 Is Deeds liable for the obligations of Deeds Capital to the Claimants?
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16 **IV. STATEMENT OF JURISDICTION**

17 Jurisdiction is proper under 28 U.S.C. §§ 1334(a) and 157(b)(2)(B).
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20 **V. DISCUSSION**

21 Because Deeds Capital is apparently unable to pay its debts, Claimants seek to
22 recover their investments from Deeds' individual Chapter 11 estate. The Claimants
23 argue: (1) that Deeds gave an oral guarantee of Deeds Capital's obligations and
24 (2) that the oral guarantee should be enforced. Deeds, citing Taylor v. State Farm
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1 Mutual, 175 Ariz. 148, 854 P.2d 134 (Ariz. 1993), argues that the parole evidence rule
2 bars consideration of Deeds' alleged oral guarantees.

3 Under the parole evidence rule, where an agreement is reduced to writing,
4 evidence of a contemporaneous oral agreement relating to the same subject matter
5 varying, contradicting or enlarging the written agreement, is inadmissible in the absence
6 of an allegation of fraud or mistake. U.S. Fidelity & Guaranty Co. v. Old Bros. Lumber
7 Co., 102 Ariz. 366, 368, 430 P.2d 128, 130 (Ariz. 1967). Similarly, the Statute of
8 Frauds (A.R.S. § 44-101(2)) bars actions to enforce an oral guarantee, but it will not bar
9 relief if fraud has been committed. Trollope v. Koerner, 106 Ariz. 10, 14, 470 P.2d 91
10 998 (Ariz. 1970) ("[T]he Statute of Frauds is intended to be a shield and not a sword,
11 and that it should not become an instrument by which fraud is perpetrated.") Id. at 16,
12 420 P.2d at 97.
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14

15 Equitable estoppel applies when: (1) one induces another to believe certain
16 material facts; (2) the induction results in justifiable reliance, which (3) results in injury.
17 Carlson v. Arizona Department of Economic Security, 184 Ariz. 4, 5, 906 P.2d 61, 62
18 (Ariz. 1995). Equitable estoppel is "a rule of justice which, when all its elements are
19 met, prevails over all other rules." Id.
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21 The Claimants bear the burden of proof of demonstrating the existence of fraud.
22 In order to demonstrate that Deeds committed fraud, the Claimants must be able to
23 show the existence of: (1) a representation; (2) its falsity; (3) its materiality; (4) Deeds'
24 knowledge of its falsity; (5) his intent that it should be acted upon by the Claimants;
25 (6) the Claimants' ignorance of its falsity; (7) the Claimants' reliance on its truth; (8) the
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1 Claimants' right to rely thereon; and (9) the Claimants' consequent and proximate
2 injury. Apolito v. Johnson, 3 Ariz. App. 232, 236, 413 P.2d 291, 295 (Ariz. App. 1966).

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4 Claimants have not sustained their burden of proof because even if Deeds made
5 an oral promise to guarantee their investments in Deeds Capital, they had no right to
6 rely on such an oral promise. Both Claimants executed and initialed, in multiple places,
7 "accredited" investor questionnaires, but did not bother to read what they were signing
8 or to check the documents to see if a personal guarantee from Deeds was included.

9 The general rule under Arizona law is that parties have a duty to read the agreements
10 they sign and, if they do not do so, they will not be permitted to avoid a contract
11 because they supposed its terms were different than what they really were. See Mutual

12 Benefit Health and Accident Association v. Farrell, 42 Ariz. 477, 487, 27 P.2d 519, 523
13 (Ariz. 1933) (overruled on other grounds). There are exceptions to the rule when "there
14 are special and peculiar circumstances justifying the signer in relying upon the
15 representations, such as the existence of a fiduciary relation between the parties, that
16 the signer was . . . unable to understand the nature of the agreement and the like."

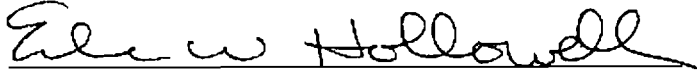
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18 Darner Motor Sales, Inc. v. Universal Underwriters Insurance Company, 140 Ariz. 383,
19 399, 682 P.2d 388, 404 (Ariz. 1984) (citing Farrell, 42 Ariz. at 487-88, 27 P.2d at 523).

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21 No such special circumstances exist in this case. The mere fact that the Claimants
22 considered Deeds to be a personal friend is not sufficient to create a fiduciary
23 relationship between Deeds and the Claimants. Accordingly, the parole evidence rule
24 and the Statute of Frauds apply to the parties' transactions and bar consideration or
25 enforcement of any oral guarantees made by Deeds.
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1 **VI. CONCLUSION**

2 The foregoing constitutes the court's findings of fact and conclusions of law
3 required by Rule 7052. Separate orders will be entered this date sustaining the
4 Debtor's objection to the claims of Dr. Olson and Dr. Widmaier.
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6 DATED: September 13, 2007

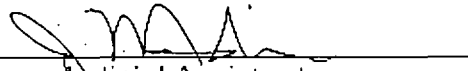
7 
8 Eileen W. Hollowell
9 U.S. Bankruptcy Judge

10 Copy of the foregoing mailed this
11 13th day of September, 2007, to:

12 David Allegrucci, Esq.
13 Allegrucci Law Office, PLLC
14 307 North Miller Road
15 Buckeye, AZ 85326

16 Stanford E. Lerch, Esq.
17 4000 North Scottsdale Road, Suite 107
18 Scottsdale, AZ 85251-00001

19 Christopher J Pattock, Esq.
20 Office of the U.S. Trustee
21 230 N. First Ave. #204
22 Phoenix, AZ 85003-1706

23
24
25
26
27
28 By 
Judicial Assistant