SIGNED.

Dated: December 14, 2012

James M. Marlar, Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re: SANTA FE HOSPITALITY, LLC, Debtor.	Chapter 11 No. 4:10-bk-40621-JMM Adversary No. 4:12-ap-01962-JMM
SANTA FE HOSPITALITY, LLC, an Arizona limited liability company, Plaintiff, v. WELLS FARGO BANK, N.A., as Successor to Deutsche Banc Mortgage Capital, LLC as Trustee for the Registered Holders of Comm 2005-06 Commercial Mortgage Pass-Through Certificates, Defendant.	**MEMORANDUM DECISION**

On December 4, 2012, the parties argued the Debtor/Plaintiff's motion for a preliminary injunction (Adv. ECF No. 1). After having had the matter under advisement, the court now rules.

JURISDICTION

Pursuant to the Debtor's plan of reorganization[1] (Admin. ECF No. 84, at Article 14, pages 12-13) (the "Plan"), this court was permitted to retain jurisdiction as to those matters dealing with enforcement of the Plan's terms. This dispute falls within those specified categories.

The court also determines this dispute to be a core matter. 28 U.S.C. § 157(b)(A), (C), (L), (O). This is not an exclusive list of what is a core proceeding. This matter clearly falls within the Code's "core" orbit.

BACKGROUND

This court confirmed the Debtor's Plan on July 11, 2011 (Admin. ECF No. 135). Part of the confirmation order provided that the Debtor's, and Wells Fargo Bank's (the "Bank") obligations and treatment would track the Stipulation (Admin. ECF No. 133) between the parties, which was incorporated by reference into the confirmation order (Admin. ECF No. 135 at 2, para. 7).

The Stipulation was provided as an attachment to the Debtor's memorandum in support of its prayer for a preliminary injunction (Adv. ECF No. 1).

At issue is the parties' dispute over the interpretation of the following portions of their Stipulation:

Recital No. 10

> 10. Wells Fargo has asserted that it is entitled to its postpetition interest (including default rate interest), late fees, and attorneys' fees and costs pursuant to Bankruptcy Code §506(b) as an oversecured creditor. While the Debtor acknowledges that Wells Fargo is an oversecured creditor, the Debtor disputes

[1] The Plan was confirmed by order entered on July 11, 2011, was not appealed, and is final.

> that Wells Fargo is entitled to interest accrued and accruing at default rate, late fees, the full amount of its attorneys' fees, and Wells Fargo's other out of pocket expenses (the "Disputed Loan Amounts").
>
> Operative Provision No. B(7)
>
> (7) Disputed Loan Amounts/Adversary Proceeding. Wells Fargo's right to collect the Disputed Loan Amounts (including, without limitation, all attorney's fees, costs, late charges, default rate interest, and any other amounts due and owing under the Loan Documents) is expressly reserved against any and all persons and/or entities obligated to pay such amounts. To the extent Wells Fargo seeks to recover such amounts from the Debtor, Wells Fargo shall file an adversary proceeding in this Bankruptcy Court within 90 days from the Effective Date.

At some point, Wells Fargo filed suit, in the Arizona Superior Court (Case No. 20110158), to establish the liability on the Debtor's debt to it by Jasbir Singh Khangura and Sukhbinder Singh Khangura, who had guaranteed that debt (the "Guarantors"). On October 24, 2012, Judge Ted B. Borek, entered a judgment in favor of the Bank, finding that the Guarantors were legally responsible for payment of the Debtor's debt.

No adversary was commenced in the bankruptcy court within the 90 days after the Plan's Effective Date.

This State Court judgment was appropriate under federal bankruptcy law, as 11 U.S.C. § 524(e) will not allow a debtor's discharge to affect the liability of a third party (such as a guarantor) on a debtor's debt. Here, however, there is one slight wrinkle: a corporate debtor cannot receive a "discharge," per se. 11 U.S.C. § 727(a)(1). Nonetheless, the practical equivalent of a discharge can be obtained in a chapter 11 reorganization case, once a plan is confirmed and then ultimately consummated. 11 U.S.C. § 1141 (a confirmed plan binds the debtor and creditors to its terms); Hillis Motors, Inc. v. Hawaii Automobile Dealers' Ass'n, 997 F.2d 581, 588 (9th Cir. 1993) (a confirmed plan creates a new contract between the parties).

The Superior Court, and the Bank, were clearly able to act as they each did. The Bank's contention was that it had declared a default, and that the Guarantors were therefore liable.

Their theory was that the guarantees were absolute and unconditional, and were not guarantees of collection.

Proceeding to judgment on these theories was not a violation of the confirmed Plan's provisions. Indeed, no one has made such a contention.

The rub here has to do with the post-judgment collection activity against the Guarantors, and an argument as to whether that collection is limited to a specific sum, or is without limits or restrictions of any kind.

The Bank has argued that the Debtor has not timely raised these limitation arguments. The flaw in this argument, however, is that the Debtor was not a party to the State Court litigation, and therefore was under no legal obligation to raise anything, much less intervene. In addition, merely establishing a liability by judgment, against the Guarantors, is not what is at issue here. Section 524(e) allows that course of action. Instead, the issue--as between the Debtor and the Bank--is what are the boundaries, if any, to the Bank's actual collection efforts under its judgment against those same third parties, pursuant to its agreement with the Debtor.

WHAT IS THE DEBTOR TRYING TO ACHIEVE?

All the Debtor is attempting to do, by this action, is to enforce the Stipulation (part of the confirmed Plan) that it maintains restricts the extent of the Bank's collection activity against the Guarantors of the Debtor's debt to the Bank, so long as the Debtor remains current under its Plan obligations.

To determine whether the Debtor is correct, it is necessary to review the Stipulation and its pertinent parts. It is clear, from reading the entire Stipulation, that the Debtor and the Bank each gave consideration for the agreement. This Stipulation ended their dispute, and--as the Ninth Circuit has instructed--settlements are to be encouraged, and stipulations are to be enforced. Crown Life Insurance Co. v. Springpark Associates (Matter of Springpark Associates), 623 F.2d 1377 (9th Cir. 1980).

While the parties, in their Stipulation, could not pin down an agreement on the exact dollar amount of what constituted the "Disputed Loan Amounts," and left that determination for another day, they did agree that "Wells Fargo's right to collect the Disputed Loan Amounts" was "expressly reserved against" any party which also was obligated to pay such amounts. As to all other sums due the Bank from third parties, the intent of the agreement was to defer collection.

As for the Guarantors in the State Court action, Judge Borek liquidated those "Disputed Loan Amounts" to the following:

Attorneys' fees	$227,264.00
Costs (included above)	Included above
Late charges	15,499.62
Default rate interest	381,150.59
Other amounts due and owing[2]	None
	$623,914.21

As for the Debtor, no adversary proceeding was brought in the bankruptcy court, within 90 days, to settle such issues, and therefore the Debtor was relieved of its obligation to pay the "Disputed Loan Amounts" under the Plan. (See Stipulation, at 8, para. (II)(B)(7)).

No contention has been made, by the Bank, that the Debtor is in default under its Plan, or that it has breached the Stipulation's payment or other provisions. To the contrary, the parties appear to agree that the Debtor is in full compliance with the Plan's obligations.

The Bank argues that its agreement with the Debtor did not include the Guarantors as signers, and therefore, the Debtor will suffer no damage if the Bank pursues the Guarantors directly.

[2] This court finds that the "Prepayment Premium" was not contemplated by the catch-all phrase of the Stipulation. Therefore, that portion of the judgment is not includable within the "Disputed Loan Amounts."

The Bank, however, misses the point. It is not the Guarantors who have a right to enforce the terms of a confirmed plan. It is the Debtor, which has a right to enforce its agreement with the Bank--an agreement that the Bank made with the Debtor, and which was incorporated into the confirmed Plan.

The Bank, by entering into the Stipulation, agreed to limit its collection rights, against third parties, to only the "Disputed Loan Amounts." This limitation was to last until and unless the Debtor defaulted under its Plan obligations. That latter event had not occurred.

The Bank did not agree not to sue the Guarantors to establish their liability, and it has now done so. But the only logical explanation for the Bank's "express reservation" concerning collection of the Disputed Loan Amounts meant that it did agree that, so long as the Debtor was continuing to make payments to it, and was not otherwise in default under its Plan, the Bank would not enforce its other collection rights against third parties--except for whatever was to be determined to be the "Disputed Loan Amounts."

In so doing, the Bank agreed to change its guarantees from "unconditional" to "collection" guarantees, except for what we now know to be $623,914.21--which it "expressly reserved" the right to continue regardless of the Debtor's compliance with the Plan.

This outcome does not change or alter the Ninth Circuit's cases of American Hardwoods, the BAP's Rohnert Park, Judge Silver's reversal of the Regatta Bay case, or even this court's ultimate holding in Linda Vista Cinemas. This is because, in each of those cases, there was no agreement to alter what would otherwise be unlimited rights against guarantors. Section 524(e) prohibits an involuntary post-confirmation injunction against rights that a creditor may have against third parties. Here, by contrast, the Bank agreed to modify its own rights, and received consideration for so doing. Agreements are upheld by courts. This one will be, as well.

CONCLUSION

The Debtor's motion for preliminary injunction will be granted. As a matter of law, all of the Rule 65 elements are satisfied: (1) the Debtor is likely to succeed on the merits; (2) the

balance of equities tip sharply in the Debtor's favor, due to the parties' own agreement; (3) the Debtor's reorganization prospects are jeopardized if the injunction is not issued, and (4) public policy considerations are not involved in this purely contractual dispute.

However, the Bank may pursue collection remedies against its Guarantors to the extent of $623,914.21.

Plaintiff's counsel shall lodge a form of order consistent with this decision. It will not, however, be a final order, only interlocutory. A preliminary injunction shall be in force, therefore, until further order of the court or until a final judgment on the merits is entered and docketed.

DATED AND SIGNED ABOVE.

To be NOTICED by the BNC ("Bankruptcy Noticing Center") to all parties to this adversary proceeding