

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:

GOLDEN ISLES PETROLEUM,
INC.,

Debtor

CHRISTOPHER K. FRAME

Movant

v.

PEE DEE FEDERAL SAVINGS
BANK AND HERITAGE FEDERAL
SAVINGS & LOAN ASSOCIATION

Respondent

Chapter 11 Case

Number 91-42239

FILED

at 5 O'clock & 00 min. P M

Date 10-5-95

MARY C. BECTON, CLERK *cl*
United States Bankruptcy Court
Savannah, Georgia

**ORDER ON MOTION FOR INTERPRETATION
OF CONFIRMED PLAN OF REORGANIZATION**

Christopher K. Frame, hereinafter "Guarantor," requests this Court to interpret the confirmed plan of reorganization in the above mentioned matter and declare the claims of creditors, Pee Dee Federal Savings Bank and Heritage Federal Savings and Loan Association, against him to be discharged. Creditors, Pee Dee Federal Savings Bank and Heritage Federal Savings and Loan Association (hereinafter

"PEE DEE"), failed to appear at the hearing on the motion.¹ Based upon Guarantor's motion, the record in the file, and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On June 2, 1986, Golden Isles Petroleum, Inc., executed a Promissory Note in favor of the Service Corporation of South Carolina. Contemporaneous with that agreement, Christopher K. Frame, an officer of Golden Isles Petroleum, Inc., agreed to guarantee the corporation's debt. On April 25, 1989, Golden Isles Petroleum, Inc., assumed the same debt to the Service Corporation of South Carolina. Christopher K. Frame also executed an assumption agreement reaffirming his guaranty of the indebtedness. The right to payment, secured by a parcel of real estate in Richland County South Carolina, was subsequently transferred to creditor, PEE DEE.

On November 1, 1991, Golden Isles Petroleum, Inc. (hereinafter "Debtor") filed for relief under Chapter 11 of the Bankruptcy Code. Creditor, PEE DEE, participated in the initial stages of the reorganization. On April 24, 1992, this Court granted PEE DEE stay relief to foreclose on its real estate collateral.

¹ Pee Dee filed a letter brief approximately ten days after the hearing. In light of its failure to appear at the hearing, for purposes of this motion, this Court will disregard the contents of the letter brief.

On December 22, 1994, this Court confirmed Debtor's plan of reorganization. The confirmed plan of reorganization listed PEE DEE as a class 13 general unsecured creditor, noting that PEE DEE was one of several creditors who had failed to file a deficiency claim before confirmation. PEE DEE also failed to cast a ballot for or against the plan.²

Within the past year, PEE DEE has instituted a lawsuit against Christopher K. Frame in the Court of Common Pleas of Richland County, South Carolina for approximately \$375,000.³ Guarantor now requests this Court to issue a permanent injunction pursuant to 11 U.S.C § 105(a) that binds PEE DEE to the terms of the plan and extinguishes Guarantor's obligation.⁴ In support of his motion, Guarantor cites paragraphs 9.04, 9.08, and 8.01 of the confirmed Plan of Reorganization.

Paragraph 9.04 of the confirmed Plan of Reorganization provides:

² It is still uncertain whether PEE DEE actually has foreclosed on the property, although that issue is irrelevant to the current proceeding.

³ Case No. 94-CP-4063671

⁴ Paragraph 8.04(b) of the confirmed Plan of Reorganization, provides:

Until the entry of a Final Order closing the case as provided for herein, the Court shall retain jurisdiction over the Debtor, the Debtor's property, and all holders of claims or interests provided for in the Plan, but only for the purposes of implementing and consummating the Plan, including but not limited to the following: . . . (b) interpreting the Plan and hearing all disputes arising in connection with implementation of the Plan.

All consideration and payments provided under this Plan shall be in exchange for a complete satisfaction, discharge and release of all Claims of any nature whatsoever against the Debtor, Debtor-in-Possession, and their Officers, Agents, Employees and Attorneys, or any of Debtor's assets or properties; and, except as may be otherwise provided herein, upon the confirmation date, all claims against the Debtor, Debtor-in-Possession, and their Officers, Agents, Employees and Attorneys, shall be satisfied, discharged and released in full; and all holders of claims and creditors, shall be precluded from asserting against the Debtor, Debtor-in-Possession, and their Officers, Agents, Employees and Attorneys, and Debtor's assets or properties, or any interests held by Debtor, any other or further claim based upon anything that occurred prior to the effective date of the Plan.

Paragraph 9.08 of the confirmed Plan of Reorganization provides:

The Order confirming the Plan shall be a judicial determination of the discharge of the liabilities of and claim against the Debtor, Debtor-in-Possession, and their Officers, Agents, Employees and Attorneys, except only as may be otherwise provided for in this Plan.

Paragraph 8.01 of the confirmed Plan of Reorganization provides:

The provisions of the Plan, upon confirmation of the Plan, shall be binding upon the Debtor, upon any entity acquiring property under the Plan, and upon any creditor or claimant, whether or not the claim or interest of such creditor or claimant is impaired under the Plan and whether or not such creditor or claimant has accepted the Plan.

Guarantor contends that as an "officer" of Debtor, paragraphs 9.04 and 9.08 of the

confirmed plan release all claims against him that a creditor may have possessed before confirmation. Further, Guarantor claims that paragraph 8.01 makes a creditor's acceptance of the plan immaterial. Guarantor also notes that PEE DEE failed to object to and appeal the final confirmation order. Therefore, Guarantor requests that this Court determine PEE DEE to be estopped from pursuing related state-law claims barred by the plan of confirmation.

CONCLUSIONS OF LAW

Section 524(e) provides:

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

11 U.S.C. § 524(e). Under this provision, the confirmation of a Chapter 11 plan of reorganization does not discharge the liabilities of a third-party guarantor. *See In re Sure-Snap Corporation*, 983 F.2d 1015, 1018 (1993) ("confirmation of a debtor's Chapter 11 plan does not discharge the obligations of a third-party guarantor"). *See also In re Stoller's Inc.*, 93 B.R. 628 (Bankr.N.D.Ind. 1988) (guarantors liable for post-petition interest and attorney fees as allowed by the terms of guarantee); *In re Scranes, Inc.*, 67 B.R. 985 (Bankr.N.D.Ohio 1986) (liability of a guarantor is not altered by

discharge of the debtor).

Sure-Snap does not necessarily preclude the possibility that in a future case a debtor might propose a plan which expressly, by name, discharges a guarantor because a creditor, perhaps induced by additional consideration, affirmatively votes to accept that plan and is therefore bound to that result.⁵ Arguably, if a plan is clear and a creditor with full knowledge votes to accept, the guarantor's discharge might well be upheld as a matter of contract. Indeed at least one court has held as much. *See Republic Supply*, 815 F.2d 1046 (5th Cir. 1987); *See also In re Davis Broadcasting, Inc.*, 169 B.R. 229 (Bankr.M.D.Ga. 1994), *rev'd*, 176 B.R. 290 (M.D.Ga. 1994).

However, in the present case, PEE DEE failed to participate throughout the confirmation process. As far as this Court can ascertain, once relief of the stay was granted, PEE DEE elected to pursue its rights entirely outside of the bankruptcy forum. PEE DEE never filed a deficiency claim, received a ballot for the final plan, cast a ballot in favor of or in opposition to the plan, objected to the contents of the plan, or appealed the order of confirmation. To hold that a creditor who participates only until stay relief is granted has released its guarantor of all

⁵ I read Sure-Snap as only a recitation that the Code does not, as a matter of law, provide a discharge to a guarantor and not as establishing a bright line rule that no such result can ever occur consensually. Nevertheless, this case presents no facts that would lead me to find a bargained-for discharge of any guarantor in the language of Debtor's plan. Therefore, under either view of Sure-Snap the motion must fail.

liability would be to ignore due process. Moreover, recognizing that creditors are bound by the terms of a confirmed plan, the question here is the scope of that binding effect. 11 U.S.C. Section 1141(d) provides that confirmation "discharges the debtor" and Section 524(e) reinforces that limited reach of the discharge. I find no facts to indicate that PEE DEE by its conduct in this case bound itself more broadly than the Code requires of all creditors.

Additionally, I read the plan less broadly than the Guarantor urges. The language in paragraphs 9.04 and 9.08 never specifically mention the release of "guarantors." Guarantor argues that since the plan refers to "officers" and "employees" and, because Guarantor was an officer at the time of the confirmation, he should be released of all liability. Applying the "plain meaning" rule, however, I hold that the release of officers and employees is limited to liability incurred in their scope of employment. To support Guarantor's interpretation, the plan would have to expressly provide for release of "guarantors," in order to discharge the liability one incurred in his capacity as a guarantor, independent of the employment relationship.

Guarantor relies on In re A.H. Robbins Company, Inc., 880 F.2d 694 (4th Cir. 1989) and Republic Supply Co. v. Shoaf, 815 F.2d 1046 (5th Cir. 1987). The Republic court does uphold the release of a guarantor where the creditor participated throughout the whole confirmation process and the plan contained a specific release

of the guaranty,⁶ and Robbins relied on Republic. However, as previously mentioned, this plan did not contain a specific provision releasing guarantors generally or the guaranty of Christopher K. Frame, creditor PEE DEE did not participate throughout the confirmation process, and the Eleventh Circuit has expressly ruled that guarantors are not released through the confirmation of a plan.

For the above mentioned reasons, it is HELD, ORDERED, and ADJUDGED that Christopher K. Frame's Motion for Release of Liabilities arising out of the Assumption Agreement of April 25, 1989, and the Promissory Note and Guaranty Agreement of June 2, 1986, is DENIED.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 2nd day of October, 1995.

⁶ "It is undisputed, however, that the approved final Plan specifically provided in a separate paragraph for the release of Shoaf's guaranty." Republic Supply Co., at 1049.