UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Not For Publication

In re:	:	Chapter 11
ENRON CORP., *et al*.,	:	Case No. 01 B 16034 (AJG)
Reorganized Debtors.	:	(Confirmed)

MEMORANDUM OPINION GRANTING DEBTOR'S OBJECTION TO
PROOF OF CLAIM NO. 25169
FILED BY PACIFIC GAS & ELECTRIC COMPANY

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ARTHUR J. GONZALEZ
United States Bankruptcy Judge

The issue before the Court is whether Enron Corp. (the "Debtor"), as a guarantor, has a payment obligation arising from alleged acts of market manipulation by the Debtor and one of its affiliates, Energy Power Marketing Inc. ("EPMI"), under a bilateral guarantee agreement (the "Agreement") with Pacific Gas and Electric Company ("PG&E"). The Court finds that the Agreement does not require the Debtor to pay any overcharges that may be owed to PG&E as a result of the alleged market manipulation and grants the Debtor's objection to PG&E's guarantee claim.

FACTUAL AND PROCEDURAL HISTORY

The Debtor

Commencing on December 2, 2001, and from time to time continuing thereafter, the Debtor filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On July 15, 2004, the Court entered an Order confirming the Debtor's Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors (the "Plan") in these cases. The Plan became effective on November 17, 2004.

The Claims

PG&E provides natural gas and electric service to customers in Central and Northern California. It filed its own Chapter 11 case pending in the United States Bankruptcy Court for the Northern District of California. On December 22, 2003, PG&E's reorganization plan was confirmed and PG&E emerged from Bankruptcy on April 12, 2004.

The proofs of claim arise out of the Agreement, dated January 28, 1998, entered between PG&E and the Debtor prior to the Debtor filing for bankruptcy protection. Under the Agreement, the Debtor guarantees EPMI's payment and performance obligations, with respect to all agreements between EPMI and PG&E, involving transactions in natural gas, electricity or other energy commodities, to a maximum amount of $10,000,000.

PG&E filed proofs of claim against the Debtors on October 29, 2004, as amended on November 19, 2004 (Claim No. 25169), asserting that the Debtor owes PG&E the sum of $10,000,000 pursuant to the Agreement because EPMI has failed to pay outstanding amounts owed to PG&E, which arose out of EPMI's alleged market manipulation in the Western energy markets resulting in overcharges to PG&E.

On March 7, 2005, the Debtor filed an objection to PG&E's guarantee claim on the ground that the guarantee claim exceeds the scope of the guarantee under the Agreement.

On May 2, 2005, PG&E filed its response to the Debtor's objection, contending that the guarantee claim doesn't exceed the scope of the guarantee under the Agreement. PG&E asserts that the Debtor and EPMI were involved in numerous agreements for the sale, purchase and transmission of power in the California market, and that any resulting determination concluding there was an overcharge actually impacts the payment obligations under the Agreement.

A hearing on this matter was held before the Court on May 18, 2005.

DISCUSSION

The issue before the Court is whether the Agreement imposes a payment obligation upon the Debtor arising from the alleged market manipulation by the Debtor and EPMI. The issue requires the Court to interpret the Agreement pursuant to California Contract Law. Like other contracts, a guarantee contract is subject to rules of interpretation. *Zellerbach Paper Co. v. Virden Packing Co.* 53 P.2d 163, 167 (Cal. Ct. App. 1935). Under California Law, "the fundamental goal of contract interpretation is to give effect to the mutual intent of the parties as it existed at the time of contracting," Cal. Civ. Code §1636 (Deering 2004), and "when a contract is reduced to writing, this intent is to be ascertained from the writing alone." Cal. Civ. Code §1639 (Deering 2004), also *U.S. Cellular Inv. Co. v. GTE Mobilnet, Inc.*, 281 F.3d 929, 935 (9th Cir. 2002).

PG&E argues that the Debtor's obligation under the Agreement extends to cover the liabilities owed to PG&E for the alleged market manipulation by EPMI and the Debtor. Thus, the Court is required to determine what the respective parties intended as their obligations to each other pursuant to California's rule of interpretation. "In construing a contract, the duty of the court is first to attain an understanding of the purpose and object of the writing, and next to give to that purpose and object the fullest effect compatible with the meaning of the language through which that purpose and object find expression. Words, phrases and sentences are to be construed in contemplation of those fundamental purposes and objects." *Bradner v. Vasquez*, 227 P.2d 559, 562 (Cal. App. 1951). Under the Agreement, the Debtor guarantees to pay PG&E for the purpose of inducing PG&E to enter into agreements with EPMI and extending credit to EPMI. Further, the Agreement explicitly states that the Debtor's obligation is limited to EPMI's defaults in the payment or performance. The Agreement provides as follows:

> This is a continuing guarantee of payment and performance and not of collection. If [EPMI] defaults in the payment or performance when due or any part of it for any reason, [the Debtor] will pay all sums due and owing or provide performance directly to PG&E promptly. (Agreement §1).

Under California Law, the words in a contract are to be understood in their ordinary and popular sense. *Gates v. Rowland*, 39 F.3d 1439, 1444 (9th Cir. 1994). Under the plain language of section 1 of the Agreement, the Debtor's obligation occurs only when EPMI defaults. "Default" means "the omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due." BLACK'S LAW DICTIONARY 712 (7th ed. 1999). No record before the Court demonstrates that EPMI has defaulted in payment or performance under any agreement with PG&E. Rather than seeking a default claim, PG&E here is seeking the collection of a refund from the alleged overcharges owed to PG&E as a result of the alleged market manipulation by the Debtor and EMPI during the energy crisis. The Court only needs to determine the objective intent as evidenced by the words of the instrument, not a party's subjective intent. *Badie v. Bank of America*, 79 Cal. Rptr. 2d 273, 288 (Cal. App. 1998). Thus, the Court finds that, at the time of contracting, the Debtor intended to cover only the liabilities involving default in payment or performance under the agreements between PG&E and EPMI.

Moreover, what language means in a contract is a matter of interpretation for the Court. And the Court is not controlled by what either of the parties intended or thought its meaning to be, if it runs contrary to the Court's interpretation. *Achen v. Pepsi-Cola Bottling Co. of La*. 233 P.2d 74, 80 (Cal. App. 1951). Under the Agreement, the Debtor guarantees to PG&E all amounts payable by, and all covenants and obligations of EPMI under the agreements to a maximum amount of ten million dollars. (Agreement §1). The agreements refer to "agreements, amendments and transactions between PG&E and EPMI relating thereto involving

the purchase, sale, transmission, transportation, distribution, lending, parking, storage, or similar transactions with respect to natural gas, electricity, other energy commodities or other energy related services and financial derivatives." (Agreement pmbl.). The language is clear and explicit that the Debtor's obligation is restrictively tied to bilateral contracts between EPMI and PG&E. As long as language is clear and explicit and does not involve an absurdity, the contract language governs the interpretation of a contract. *In re Bartleson*, 253 B.R. 75, 84 (9th. Cir. 2000). Thus, the Court finds that the Agreement is not applicable to transactions concerning market manipulation in the California market, in which EPMI and the Debtor are alleged to have engaged.

The Court's power is limited to enforcing the contract according to its terms, in the absence of ambiguity and uncertainty in the valid contract. *Greenberg v. Continental Cas. Co.*, 24 Cal. App. 2d 506, 514 (Cal. App. 1938). Therefore, the Court finds that pursuant to the Agreement, the Debtor's guarantee obligation does not include any payment obligation arising out of alleged market manipulation by the Debtor and EPMI.

CONCLUSION

For the foregoing reasons, the Court concludes that the Debtors objection to PG&E guarantee claim is granted.

Counsel for the Debtors is directed to settle an order consistent with this Court's Memorandum Opinion.

Dated: New York, New York
July 1, 2005

s/ Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE