IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE MAIN, INC., Debtor	:	CIVIL ACTION
IN RE ERIC J. BLATSTEIN, Debtor	:	
	:	
718 ARCH STREET ASSOCIATES, LTD., et al.	:	
v.	:	
	:	
ERIC BLATSTEIN, et al.	:	NO. 98-6460

MEMORANDUM AND ORDER

YOHN, J. September , 1999

The debtors in these two related chapter 7 bankruptcy cases are Eric J. Blatstein ("Blatstein"), and Main, Inc. ("Main"), a corporation that Blatstein formerly controlled. These bankruptcy cases arose from the attempt of one of Blatstein's creditors, 718 Arch Street Associates, Ltd. ("Arch"), to execute on a state court judgment against Blatstein by garnishing the assets of Main, which consisted primarily of the Philly Rock Bar & Grill ("Philly Rock"). After a series of machinations by Blatstein and his insiders, Columbusco, Inc. ("Columbusco"), another corporation controlled by Blatstein, obtained the assets of Main and Main was left with no assets. The details of the transactions culminating in Columbusco's acquisition of Philly Rock are explained and analyzed in detail in prior opinions by both the bankruptcy court and the district court and will be discussed here only as needed to resolve the issues before me. See 718 Arch St. Assoc. v. Blatstein (In re Blatstein), 226 B.R. 140, 144-47 (E.D. Pa. 1998) ("Blatstein II"); 718 Arch St. Assoc. v. Blatstein (In re Main, Inc.), 213 B.R. 67, 72-77 (Bankr. E.D. Pa. 1997) ("Main II").

Before the court are cross-appeals from an order of the bankruptcy court filed on

November 4, 1998, which resolved issues remanded to the bankruptcy court by Blatstein II, decided before this matter was reassigned to me. See 718 Arch St. Assoc. v. Blatstein (In re Main, Inc.), No. 96-19098, 1998 WL 778017 (Bankr. E.D. Pa. Nov. 4, 1998) ("Main V"). Appeals were filed by: (1) Morris Lift ("Lift"), the former accountant for Blatstein and his corporations;[1] (2) a group of corporations originally owned and controlled by Blatstein, which will be referred to as the Non-Debtor Corporate Defendants;[2] (3) Blatstein and his wife, Lori Blatstein;[3] and (4) the Trustees of the Blatstein and Main bankruptcy estates and Arch.[4] These four appeals were consolidated, on May 18, 1999, under Civil Action No. 98-6460, as the issues

[1] Under penalty of having his appeal dismissed, I ordered Lift to comply with the bankruptcy rules requiring an appellant to provide a statement of issues appealed and a designation of items to be included in the record on appeal, by February 1, 1999. Though Lift complied with the court's order, and his appeal was thus not dismissed, Lift has not filed a brief in his appeal, and has not joined in a brief filed by another party in the consolidated appeals. Moreover, his counsel has withdrawn from representing Lift in this case and no other attorney has appeared on Lift's behalf. The court can only conclude, therefore, that Lift has abandoned his appeal. Lift's failure to participate in this appeal, however, does not prohibit the court from resolving the issues presented to the court.

[2] The Non-Debtor Corporate Defendants are Columbusco, Inc., Reedco, Inc., Airbev, Inc., Delawareco, Inc., Engine 46 Steak House, Inc., Pier 53 North, Inc., Waterfront Management Corporation, Cobalt, Inc., and Waterfront Valet, Inc. With the exception of Cobalt, Inc., and Waterfront Valet, Inc., all of these corporations filed an appeal that was assigned Civil Action No. 98-6461. Cobalt and Waterfront Valet joined the other corporations and Blatstein in an appeal that was assigned Civil Action No. 98-6463.

[3] Lori Blatstein was never listed an as appellant in Civil Action No. 98-6463. Her attorney, Kevin Carey, Esq., has nonetheless participated in these consolidated appeals and has signed the appellants' brief on her behalf.

[4] Though the Trustees filed an appeal, which was assigned Civil Action No. 98-6464, they did not urge reversal of any aspect of the bankruptcy court's November 4, 1998, order, and sought only to preserve their challenges to the adverse aspects of Blatstein II that are currently before the United States Court of Appeals for the Third Circuit. The Trustees thus acted as appellees in this matter.

raised in each appeal challenged the same order of the bankruptcy court and demanded the resolution of interrelated questions.

In Main V, the bankruptcy court reaffirmed its previous conclusion that the transfer of Main's assets to Columbusco by way of Lift's July 25, 1996, foreclosure sale was a fraudulent conveyance that should be reversed. See Main V, 1998 WL 778017, at *5, 16. The bankruptcy court also reaffirmed its prior conclusion that Blatstein should be denied a discharge under 11 U.S.C. § 727 (a)(2)(A), (a)(7). See id. at *16. On appeal, the appellants, a consortium of the Non-Debtor Corporate Defendants and the Blatsteins, raise numerous arguments why these holdings should be reversed. The Trustees and Arch, acting as appellees here, defend the bankruptcy court's decision.[5] After considering the parties' submissions, completed on August 2, 1999, I conclude that the bankruptcy court's order setting aside the transfer of Philly Rock to Columbusco as a fraudulent conveyance, ordering the return of Philly Rock to the Trustee of Main's estate, and denying a discharge to Blatstein will be affirmed.

STANDARD OF REVIEW

The district court, sitting as an appellate tribunal, applies a clearly erroneous standard to review the bankruptcy court's factual findings and a de novo standard to review its conclusions of law. See In re Siciliano, 13 F.3d 748, 750 (3d Cir. 1994). Mixed questions of fact and law require a mixed standard of review, under which the court reviews findings of historical or narrative fact for clear error but exercises plenary review over the bankruptcy court's "choice and interpretation of legal precepts and its application of those precepts to the historical facts."

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[5] Though Arch, as well as the Trustees, is an appellee here, I will refer to the appellees as "the Trustees" to avoid confusion.

Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991), cert. denied, 503 U.S. 937 (1992); see also Chemetron Corp. v. Jones, 72 F.3d 341, 345 (3d Cir. 1995), cert. denied, 517 U.S. 1137 (1996).

DISCUSSION

I. The Bankruptcy Court Properly Concluded that Arch's Judgment Against Main Is Final and Cannot be Disturbed

Arch obtained a judgment in garnishment in the amount of $2,774,803.09 against Main on November 12, 1992. See 718 Arch St. Assoc., Ltd. v. Blatstein, 698 A.2d 117, slip. op. at 4 (Pa. Super. Ct. Jan. 14, 1997). Arch's judgment was affirmed by the Pennsylvania Superior Court on January 14, 1997, and was not appealed to the Pennsylvania Supreme Court. See id. That state court judgment was thus final. Arch's judgment against Main was reduced to $582,443.65 by § 502 (b)(6) of the Bankruptcy Code, which caps the claims of a debtor's landlord for future rent. See Blatstein II, 226 B.R. at 160-61 (approving bankruptcy court's selection of a surrender date for application of the § 502 (b)(6) cap); 718 Arch St. Assoc. v. Blatstein (In re Main, Inc.), No. 96-19098, 1997 WL 626544, at *10-11 (Bankr. E.D. Pa. Oct. 7, 1997) ("Main III") (calculating Arch's claim with new surrender date).

The district court, writing in Blatstein II, affirmed the portion of the bankruptcy court's decision that fixed the amount of Arch's claim against Main. See Blatstein II, 226 B.R. at 161. Elsewhere in its opinion, however, the district court commented that the bankruptcy court should consider, on remand, whether one sentence in the Pennsylvania Superior Court opinion affirming Arch's garnishment judgment against Main might have an "impact on the extent of Arch's claim against Main."[6] Id. at 158. On remand, the bankruptcy court did consider the effect of the state court's comment on the present controversy, and found the effect to be "nil at this point." Main V, 1998 WL 778017, at *6.

Appellants protest that the bankruptcy court's conclusion was clear error because the language of the state court's opinion clearly limits Arch's ability to recover from Main if Main does not owe a debt to Blatstein. See Appellants' Brief at 16-17. Because Main has never owed Blatstein money, appellants thus contend, Arch has no authority to collect from Main, and therefore has no standing to question the transfer of Main's assets to the Philly Rock through Lift's foreclosure sale. See id. at 17. As a result, they conclude, the court must dismiss the entire appeal. See id. The Trustees argue that the state court decision, which rendered Arch's garnishment judgment against Main final, is res judicata as to the challenge that appellants now seek to bring to the amount of Arch's judgment against Main. See Trustees' Brief at 59-62. Moreover, the Trustees argue that because the district court has twice affirmed the validity of Arch's state court judgment against Main, appellants may not now question that judgment. See id. at 62.

Reviewing the bankruptcy court's holding under the plenary standard applied to such conclusions of law, the court finds that the bankruptcy court properly concluded that the Pennsylvania Superior Court's decision does not affect the amount or validity of Arch's judgment against Main. Because Main could have litigated the amount of Arch's judgment

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[6] The Superior Court, in the course of affirming Arch's garnishment judgment against Main, noted that Arch's right "to execute against assets in the hands of Main, Inc. is limited to those assets owed to, owned, or controlled by Eric J. Blatstein." 718 Arch St., slip op. at 5-6 (Pa. Super. Ct. Jan. 14, 1997). The court then affirmed the trial court's denial of Blatstein's petition to open the garnishment judgment entered against Main. See id. at 6.

against it when it filed a petition to open Arch's judgment, but chose not to do so, Main may not now raise that issue in an attempted collateral attack on Arch's judgment. See Hopewell Estates, Inc. v. Kent, 646 A.2d 1192, 1195 (Pa. Super. Ct. 1994) (holding that issues relating to amount of confessed judgment should have been litigated in petition to open judgment and that later litigation of those issues was barred by res judicata); Romah v. Romah, 600 A.2d 978, 981-82 (Pa. Super. Ct. 1991) (finding that res judicata prevents challenge to interest and attorney's fees component of confessed judgment when those issues were not litigated in a petition to open the confessed judgment). The state court's decision resolved all issues concerning the propriety of Arch's judgment that were, or could have been, raised in the petition to open the judgment, and the doctrine of res judicata bars any further litigation concerning the amount of that judgment at this late date. See Duquesne Light Co. v. Pittsburgh Ry. Co., 194 A.2d 319, 321 (Pa. 1963) (explaining that res judicata bars litigation of both defenses that were actually raised and those that could have been raised in the first petition to open a confessed judgment), cert. denied, 377 U.S. 924 (1964); Nevling v. Commercial Credit Co., 39 A.2d 266, 267 (Pa. Super. Ct. 1944) (same).

In addition, the language of the Superior Court's opinion would not limit Arch's ability to execute against Main. There is no doubt that Main's assets were "controlled by" its president, Blatstein, and there is no evidence in the record to suggest that anyone other than Blatstein controlled Main's operations. 718 Arch St., slip op. at 3, 6 (Pa. Super. Ct. Jan. 14, 1997) (referring to "Main, Inc., a corporation controlled by Eric J. Blatstein"); see also Blatstein II, 226 B.R. at 144 (referring to Main as "a corporation controlled by Blatstein"); Blatstein I, 1997 WL 560119, at * 16 ("As a corporation Blatstein controlled, Main constitutes a 'quasi' alter ego.").

Also, given the Superior Court's decision to affirm the full amount of the garnishment judgment against Main, the sentence at issue here was clearly dictum. Finally, to the extent that Pa. R. Civ. P. 3146 (a), describing the judgment that shall be entered against a garnishee who fails to appear at a hearing to assess the amount of a garnishment, or refuses to answer interrogatories in garnishment, may be in tension with the language used in the Superior Court's opinion, the language of the Rule shall control. The bankruptcy court's decision that the Pennsylvania Superior Court judgment does not impact the amount of Arch's claim against Main is thus affirmed.

II. The Bankruptcy Court Did Not Err by Analyzing the Content of the Security Agreements Signed by Blatstein and Lift

Underlying several of appellants' allegations of error on appeal are their arguments that the financing statements, or UCC-1's, filed by Lift against Main's assets constituted valid security agreements, and that the bankruptcy court erred when it examined the contents of the security agreements actually signed by Lift and Blatstein. See Appellants' Brief at 18-19; Appellants' Reply Brief at 3. Because the financing statements comply with all of the requirements for security agreements under Pennsylvania's version of the Uniform Commercial Code ("UCC"), appellants contend, the court need examine only the language of the financing statements to determine the scope and validity of Lift's liens on Main's assets. See Appellants' Brief at 18 (citing 13 Pa. Cons. Stat. Ann. § 9203 (a) (1984 & Supp. 1999)). In support of their position, appellants cite several cases that establish that a financing statement, in conjunction with supporting transactional documents, may function as a security agreement when the parties neglect to sign a formal security agreement. See id. (citing In re Bollinger Corp., 614 F.2d 924, 927 (3d Cir. 1980); In re O'Hara Brothers, Inc., 151 B.R. 702, 706 (Bankr. E.D. Pa. 1993)).

As the Trustees point out, these cases do not support the proposition that appellants urge on this court. See Trustees' Brief at 17. In Bollinger, the court found that though neither a promissory note nor a financing statement alone would establish a valid security interest when the parties had not signed a security agreement, there was sufficient evidence from the existence of a promissory note, a financing statement, and documents showing a course of dealing between the parties, that the court would find a valid security interest in the property listed on the detailed financing statement. See Bollinger, 614 F.2d at 927-29. A financing statement standing alone, however, does not establish a security interest but "provides only an inferential basis for concluding that the parties intended a security agreement." Id. at 928. Where, as here, the parties have signed a security agreement that complies with the provisions of the UCC, and also filed a financing statement to perfect the security interest established by that security agreement, the security agreement itself, and not the financing statement, controls the scope of the bargain between the parties. See In re Soden-Mardane Excavating, Inc., 178 B.R. 631, 633-34 (Bankr. M.D. Pa. 1994) (distinguishing Bollinger when parties had signed a financing statement and a security agreement with inconsistent terms and finding that language in security agreement controlled); Jackson v. Miller (In re Jackson), 93 B.R. 421, 424 (Bankr. W.D. Pa. 1988) (holding that description of collateral in security agreement, not more expansive description in financing statement, controlled scope of the creditor's security interest); In re Dargis, 44 B.R. 985, 986-87 (Bankr. E.D. Pa. 1984) (noting that even if Bollinger applied when the parties had signed a security agreement inconsistent with the financing statement, the terms of the security agreement control). Any language in O'Hara to the contrary, on which appellants base their argument, is not an accurate statement of the law of Pennsylvania and this circuit. See O'Hara, 151 B.R. at 706 (explaining that a financing statement "can operate as a security agreement as long as it is appropriately executed by both parties"). Appellants' contention that Lift's financing statements, standing alone, created valid security interests in Main's assets is thus rejected. To determine the scope and validity of Lift's security interests in Main's assets, the court must therefore, as the bankruptcy court did, examine the language of the security agreements signed by Lift and Blatstein, which were later perfected by the filing of financing statements.

III. The Bankruptcy Court Properly Concluded that Lift had Two Valid Security Interests in Main's Assets

On remand, the bankruptcy court was instructed to consider whether Lift had a valid security interest in Main's assets when he foreclosed on those assets on July 25, 1996.[7] See Blatstein II, 226 B.R. at 154. Because Arch executed against Main on its state court judgments on February 16, 1996, and April 16, 1996, by attaching its bank accounts and levying on its assets, Arch became a judicial lien creditor of Main on those dates. See id. at 151 (finding that Arch "apparently did not become a lien creditor of Main until its garnishment action in February,

[7] The district court concluded that the bankruptcy court could not analyze the transfer of Main's assets under Pennsylvania's Uniform Fraudulent Transfer Act "to the extent" that those assets are "encumbered by a valid lien." Pa. Cons. Stat. Ann. § 5101 (b) (West 1999); see also Blatstein II, 226 B.R. at 150, 154. Thus, if Lift had a valid prior lien on Main's assets, the difference between the value of Main's assets and the value of Lift's liens would be property of the debtor subject to avoidance under the Uniform Fraudulent Transfer Act. The parties have hotly contested the value of Main's asset in July, 1996, with estimates ranging from approximately $30,000 by Lift, to approximately $3.252 million by George Miller, appellants' accounting expert. See Trustees' Brief at 32-34 (arguing that Philly Rock was worth approximately $3 million at the time of the foreclosure sale); Appellants' Reply at 6 (arguing that the value of Main's assets was their foreclosure sale price, or at most, approximately $30,000). Though the Trustees have presented convincing arguments that Main's assets were worth far more than Lift's security interests in July, 1996, the bankruptcy court has never resolved the factual issues affecting the value of Main's assets, and I will not do so on appeal.

1996"). Thus, to have a valid prior lien on Main's assets, Lift must have been either a judicial lien creditor of Main, or the holder of a perfected security interest in Main's assets, at that time.[8] See id. at 150-51.

When faced with this issue on remand, the bankruptcy court found that the October 15, 1991, and February 15, 1992, security agreements signed by Lift and Blatstein granted Lift a valid security interest in Main's assets. The bankruptcy court also found that the January 31, 1989, security agreement signed by Lift and Blatstein was void, and was also superseded, so that it did not grant Lift a valid security interest in Main's assets. See Main V, 1998 WL 778017, at *6-7. In addition, the bankruptcy court found that, by the terms of the security agreements, Lift's security interest in Main's assets was only intended to secure the obligations created by judgment notes dated October 15, 1991, and February 15, 1992, and that Lift's other loans to Main or the other Blatstein corporations were not secured. See id. at *7. Finally, the bankruptcy court

[8] There appears to be no dispute that, in order for Lift to have an interest in Main's assets superior to Arch's interests, Lift's interest must result from properly attached and perfected security interests and not from his confessed judgments, obtained on May 28, 1992, and November 12, 1992. See Record on Appeal in 98-6463, No. 6, at AA 238-49 (May 28, 1992, confessed judgment for $43,229.50 entered on basis of October 15, 1991, judgment note); AA 250-63 (May 28, 1992, confessed judgment for $174,443.30 entered on basis of February 15, 1992, judgment note); AA 224-37 (November 12, 1992, confessed judgment for $481,411.30 entered on basis of January 31, 1989, judgment note) (References to the Record will be to the "AA" page numbers in the lower right hand corner of each page.). As the district court recognized in Blatstein II, a judicial "lien arises only after the judgment is enforced through the judicial process--by writ of execution, attachment, levies or the like" as to personal property which is at stake here. Blatstein II, 226 B.R. at 150 (quotations omitted). Thus, because there is no evidence in the record that Lift levied, or executed, on his confessed judgments prior to February 16, 1996, or April 16, 1996, the dates on which Arch executed on its state court judgments, Lift cannot hold an interest superior to Arch's as to personalty solely by virtue of his confessed judgments. See Trustee's Brief at 13-15. Although appellants contend that the Trustee cannot now attack the validity of Lift's confessed judgments, they do not argue that Lift is entitled to priority over Arch's judicial lien by virtue of his own judgment by confession. See Appellants' Brief at 23.

concluded that Lift's security interest in Main's assets, as created by the 1991 and 1992 Agreements, had expired when the underlying judgment notes were repaid, and thus, Lift had no valid security interests in Main's assets when he foreclosed on them on July 25, 1996. See id. at *10-11.

Appellants attack each of these conclusions, which I will address below.

A. The 1989 Agreement Did Not Create a Security Interest Enforceable on April 26, 1996

Lift and Blatstein, as president of Main, signed a security agreement ("the 1989 Agreement") and accompanying judgment note[9] ("the 1989 Note"), both dated January 31, 1989. See AA 390-404; 459-463. The 1989 Agreement purported to give Lift a security interest in "all the assets of the Debtor, trade fixtures, fixtures, equipment, furniture, inventory now or hereafter acquired, accounts receivable and in the cash and non-cash proceeds of all said assets and liquor license TR-11163" to secure the $500,000 debt created by the 1989 Note. AA 390, 391. There is no dispute that Main was not incorporated until September, 1989. See Main V, 1998 WL 778017, at *6. On the date the 1989 Agreement and Note were signed, therefore, Main was not in existence.[10]

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[9] A judgment note is a note containing a provision that authorizes the creditor to obtain a confessed judgment against the debtor by filing a copy of the note with the prothonotary. See Pa. R. Civ. P. 2951, 2955. A confessed judgment is the judgment obtained when the note is filed with the prothonotary. The confessed judgment acts as a lien against realty, but is not a lien against personal property until the judgment holder executes upon the judgment. See 42 Pa. Cons. Stat. Ann. § 4303 (a) (West 1981 & Supp. 1999); Clairton Corp. v. Chicago Title Ins. Co., 652 A.2d 916, 920 (Pa. Super. Ct.), appeal denied, 665 A.2d 466 (Pa. 1995) (noting that judicial lien did not attach to personal property) .

[10] Appellants assert that the Trustees proved that the 1989 Agreement and Note were executed at some point in 1990 or 1991. See Appellants' Brief at 36. They have, however, cited no evidence to support this assertion and the bankruptcy court rejected such an argument. See

The bankruptcy court first concluded that the 1989 Agreement is "wholly fictitious" because "[a] corporation which is not yet in existence lacks the capacity to contract." Id. at *6-7. In response, appellants argue that Blatstein, as Main's incorporator, had the legal authority to encumber Main's assets when he borrowed $500,000 from Lift, as evidenced by the 1989 Note, to provide start-up money for Main. See Appellants' Brief at 36. Though neither the bankruptcy court nor the appellants have provided a complete description of Pennsylvania law with respect to the ability of a promoter to obligate a non-existent corporation under a contract signed by the promoter, the bankruptcy court reached the correct legal conclusion. The bankruptcy court was correct in holding that Blatstein, as Main's promoter, could not bind Main to a contract when Main was not yet in existence. See In re Rothman, 204 B.R. 143, 150, 151 (Bankr. E.D. Pa. 1996) (explaining that a non-existent corporation "lack[s] the capacity to enter into a contract" and "a contract which is executed by a corporation's promoter is not binding upon the corporation, even if the contract was entered into for and in the name of the proposed corporation, unless the corporation subsequently adopts the contract"); RKO-Stanley Warner Theatres, Inc. v. Graziano, 355 A.2d 830, 833 (Pa. 1976) (discussing promoter's personal liability for contract and noting that promoter "cannot, of course, bind [a proposed corporation] by anything he does, at the time") (quoting O'Rorke v. Geary, 56 A. 541, 542 (Pa. 1903)). After its incorporation, Main could demonstrate by some affirmative act that it chose to be bound by the terms of the 1989 Agreement and the 1989 Note, but the parties have presented no evidence that it did. See Rothman, 204 B.R. at 151; RKO, 355 A.2d at 834, n.5, n.6 (finding that to

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Main V, 1998 WL 778017, at *7 (referring to Appellants' contention as "imaginative"). The parties have presented no evidence suggesting that the bankruptcy court's factual finding that the 1989 Agreement was signed in 1989 is clearly erroneous.

release promoter from personal liability under the contract, there should be "some affirmative action by the projected corporation"). Thus, the bankruptcy court correctly concluded that the 1989 Agreement and Note did not give Lift a valid security interest in Main's assets.

The bankruptcy court also held, in the alternative, that if the 1989 Agreement had given Lift a valid security interest in Main's assets, that security interest was extinguished on February 19, 1990, when Lift and Blatstein signed a judgment note superseding the 1989 Note, which was the sole obligation secured by the 1989 Agreement.[11] See Main V, 1998 WL 778017, at *6-7. On February 19, 1990, Lift and Blatstein signed a $520,000 Judgment Note, stating that "[t]his Note is intended to supersede and replace any other Judgment Notes made payable to Morris Lift by Eric Blatstein, or his agents, or any corporation of which Eric Blatstein has been a principal." AA 727-28. The bankruptcy court concluded that this language "clearly terminates any remaining validity which the 1989 Security Agreement could have." Main V, 1998 WL 778017, at *7.

Appellants contend that the bankruptcy court's finding was in error because testimony at various bankruptcy court hearings established that the February 19, 1990, note was not intended

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[11] The 1989 Agreement provides that the security interest it established "relates to the deferred payment in the sum of $500,000.00 plus interest at nine percent (9 %) per annum" which is "evidenced by a Judgment Note executed by Debtor simultaneously with the execution of this Agreement," and that it is granted "for the value and consideration represented by the undertakings of the Secured Party pursuant to the Judgment Note." AA 390, 391. Contrary to appellants' arguments, there is no language in the 1989 Agreement granting Lift a security interest in Main's assets to secure future advances he might make to Main or to any of Blatstein's other corporations, past or present. See Appellants' Brief at 36-38. In the absence of such language, the court will not rewrite the 1989 Agreement to grant Lift more rights than he contracted to receive. Had Lift actually intended to obtain a security interest in Main's assets for all future advances he made to any of Blatstein's corporations, he could have included such language in the 1989 Agreement.

to supersede the 1989 Note from Main, but was only intended to provide a consolidated payment schedule for Lift's loans to Blatstein's defunct corporations. See Appellants' Brief at 35-38. Appellants apparently overlook the plain language of the February 19, 1990, Note and ask this court to do the same. As the bankruptcy court correctly concluded, that note unambiguously terminated the debt established by the 1989 Note, and thus, also terminated the security interest established by the 1989 Agreement, because Main is undisputedly a corporation of which Blatstein is a principal. See Main V, 1998 WL 778017, at *7. Though appellants would obviously like the court to relieve them of their drafting mistakes, or revise the documents to their benefit with the advantage of hindsight, the court will not do so. Where the terms of a contract are clear and unambiguous, as the terms of the February 19, 1990, note are, the court will not permit extrinsic evidence to change the contract's terms. See Hutchinson v. Sunbeam Coal Corp., 519 A.2d 385, 390 (Pa. 1986) (holding that court must determine whether a contract is ambiguous); Amerikohl Mining, Inc. v. Mount Pleasant Township, 727 A.2d 1179, 1182 (Pa. Commw. Ct. 1999) (finding it "firmly settled" that extrinsic evidence will not be received to alter the terms of an unambiguous contract). Moreover, the bankruptcy court concluded that Lift's and Blatstein's testimony concerning the parties' intentions with respect to the scope of the security agreements they executed was not worthy of credence, and I will not disturb that credibility finding. See Main V, 1998 WL 778017, at *8. Because Lift's foreclosure sale was based on his November 12, 1992, confession of judgment, which was in turn based on the 1989 Note, Lift's foreclosure sale was invalid as a matter of law because it was conducted to secure payment of an unenforceable obligation. See id. at *9; see also *supra* fn. 8. The bankruptcy court's conclusion that the 1989 Agreement and Judgment Note did not provide Lift with a valid security interest in Main's assets, on which he could foreclose on July 25, 1996, is thus affirmed. Though the court's inquiry could end here, for completeness' sake, I will address appellants' contention that other security agreements, on which Lift did not purport to foreclose, gave Lift a valid security interest in Main's assets on July 25, 1996, thereby validating his foreclosure sale.

B. The Bankruptcy Court Properly Held that the 1991 and 1992 Agreements Did Not Secure Lift's Loans to Corporations Other Than Main, But Its Holding that the Reedco Loan Was Not Secured Cannot Be Affirmed

The bankruptcy court held that Lift had valid security interests in Main's assets by virtue of security agreements he and Blatstein, as Main's president, signed on October 15, 1991, and February 15, 1992. See Main V, 1998 WL 778017, at *7. On October 15, 1991, Main and Lift signed a security agreement ("the 1991 Agreement"), which gave Lift a security interest in Main's assets to secure the $50,000 debt created by the judgment note ("the 1991 Note") signed on October 15, 1991. See AA 405-20. Also, on February 15, 1992, Main and Lift signed a security agreement ("the 1992 Agreement"), which gave Lift a security interest in Main's assets to secure the $140,000 debt created by the judgment note ("the 1992 Note") signed on February 15, 1992. See AA 421-36. Both the 1991 Agreement and the 1992 Agreement grant Lift a security interest to protect his future advances "to the debtors" as well as to secure the 1991 and 1992 Notes. See AA 411-12 (future advance provision of 1991 Agreement); AA 427-28 (future advance provision of 1992 Agreement). The bankruptcy court concluded, however, that the only obligations of Main that were secured by the 1991 and 1992 Agreements were the 1991 and 1992 Notes, because the Agreements cover only future advances to Main and there were no future advances to Main that were "related" to the obligations secured in the 1991 and 1992 Agreements. See Main V, 1998 WL 778017, at *7. Additionally, because Lift does not claim that Main owes him money under either the 1991 or 1992 Notes, the bankruptcy court concluded that the 1991 and 1992 Agreements are extinguished because the debts they secure have been fully repaid. See id. at *10-11.

Appellants dispute the bankruptcy court's findings concerning the extent of the obligations secured by the 1991 and 1992 Agreements. Appellants first argue that the Agreements must be construed as granting a security interest to Lift to secure all the loans he made to Main and to Blatstein's other corporations after the Agreements were signed. See Appellants' Brief at 24-27. Appellants next assert that, at the least, Lift's $100,000 loan to Reedco, made on April 30, 1996, was secured by the Agreements because it was an advance made on behalf of Main. See id. at 28-30. Finally, appellants contend that the bankruptcy court erred when it concluded that Main's debts to Lift had been fully repaid. See id. at 40. The Trustees support the bankruptcy court's findings, and argue that because Lift's security interests in Main's assets were extinguished by April 16, 1996, when Arch became a lien creditor of Main, that Arch's liens were senior to Lift's and that Lift had no security interest on which to foreclose on July 25, 1996. See Trustees' Brief at 23-26.

1. The 1991 and 1992 Agreements Do Not Secure Lift's Loans to Blatstein's Other Corporations

Appellants argue that the bankruptcy court neglected to follow the district court's mandate when it held that the 1991 and 1992 Agreements did not grant Lift a security interest in Main's assets to secure his past or subsequent loans to Blatstein's other corporations. See Appellants' Brief at 24-28. Appellants contend that the district court specifically found that Main could give Lift a security interest in its assets to secure loans he made to Blatstein's other corporations. See id. at 24-25 (citing Blatstein II, 226 B.R. at 152-54). According to appellants, the bankruptcy court refused to follow the district court's holding when it concluded "that Lift did not have a valid security interest in Main's assets based on Lift's loans to Main's corporate affiliates" and when it distinguished Adelvision, L.P. v. Groff, 859 F. Supp. 797, 804-05 (E.D. Pa. 1994), on which the district court relied. See id. at 27.

Contrary to appellants' assertion, the district court in Blatstein II did not find that Lift had a valid security interest in Main's assets as a result of loans he had made to Blatstein's other corporations. Instead, the district court held only that if Lift loaned money to corporations other than Main, those loans could constitute the "value" that Lift is required to give in order for his security interest in Main's assets to attach under 13 Pa. Cons. Stat. Ann. § 9203 (a)(2) (West 1984 & Supp. 1999). See Blatstein II, 226 B.R. at 154 (holding that "a corporate lender in Lift's position could obtain a valid security interest in Main's assets securing loans made for the benefit of Blatstein's old corporations and Main's corporate affiliates"). The district court specifically reserved for remand the question of whether Lift actually had a valid security interest in Main's assets as a result of his loans to Blatstein's other corporations. See id. ("The Court does not now hold that Lift's security interests in and judicial liens on Main's assets are valid, which is an issue that must be left for the Bankruptcy Court to decide on remand.").

On remand, the bankruptcy court followed the district court's instructions to consider whether the security agreements signed by Lift and Blatstein gave Lift a security interest in Main's assets to secure his loans to all of Blatstein's corporations and thus, did not disregard the district court's mandate. See Main V, 1998 WL 778017, at *6-8. The bankruptcy court's conclusion that Lift's security interest in Main's assets did not secure his loans to Blatstein's other corporations was based specifically on its construction of the language of the 1991 and 1992 Agreements. See id. at 7. The bankruptcy court found that the Agreements only secured the obligations under the 1991 and 1992 Notes and any future advances made to Main, and did not secure past loans or future advances to other corporations.[12] See id. The bankruptcy court's reasoning focused on those sections of the 1991 and 1992 Agreements which provided that only the obligations memorialized in the 1991 and 1992 Notes, and only future advances to, or on behalf of the "debtors" or "Debtors" were secured thereby. See id. Because the Agreements defined the term "Debtor" as "Main," and did not define the terms "debtors" or "Debtors," and because future advance clauses are disfavored under Pennsylvania law, the bankruptcy court found nothing in the Agreements that would support the appellants' assertion that "debtors" means "any of Blatstein's other corporations." See id. (citing Potomac Coal Co. v. $81,961.13 in Hands of an Escrow Agent, 679 A.2d 800, 804 (Pa. Super. Ct. 1996), appeal denied, 690 A.2d 1163 (Pa. 1997)). Though appellants argue that the bankruptcy court must have known that "debtors" means all of Blatstein's corporations, there is nothing in the language of the Agreements that compels that conclusion. See Appellants' Brief at 29. Particularly given Pennsylvania's "relatedness rule" for interpreting future advance clauses, under which only advances made to the same party will be covered by a future advance clause, it appears that the bankruptcy court properly construed the terms of the Agreements to secure only the 1991 and

[12] The bankruptcy court erred by finding that the 1991 Agreement did not contain a provision granting Lift a security interest in future advances. See Main V, 1998 WL 778017, at *7; see also AA 411-12 (future advance provision of 1991 Agreement). This error, however, does not affect the substantive conclusions of the bankruptcy court because the language of the future advance provisions in the 1991 and 1992 Agreements is substantially similar, and the bankruptcy court did analyze the future advance provision in the 1992 Agreement. See id.

1992 Notes and any future advances made to Main. See Potomac Coal, 679 A.2d at 804 (finding that loans are considered related if they "provide working capital for the same business venture"). Moreover, the bankruptcy court found incredible Lift's and Blatstein's testimony that they intended to grant Lift a security interest in Main's assets to secure all of his loans to all of Blatstein's other corporations. See Main V, 1998 WL 778017, at *8. Because there is no basis for disturbing the bankruptcy court's credibility findings, this ground alone is sufficient to uphold the bankruptcy court's finding that future advances to Blatstein's other corporations are not covered by the future advance clauses of the 1991 and 1992 Agreements. See Blatstein II, 226 B.R. at 154 (noting that parties' intent is relevant in determining whether particular loan is covered by a future advance clause). Thus, the bankruptcy court's conclusion that the 1991 and 1992 Agreements do not secure Lift's loans to Blatstein's other corporations will be affirmed.

With respect to appellants' arguments that the bankruptcy court "sidestepped the District Court's decision by distinguishing the facts of Adelvision," and "ignored the District Court's directives and mandates as mere 'argument,'" appellants are simply mistaken. After concluding that the language of the 1991 and 1992 Agreements did not secure Lift's loans to corporations other than Main, the bankruptcy court found that the district court's opinion, and the cases cited therein, did not compel a contrary conclusion. See Main V, 1998 WL 778017, at *14 (finding thatAdelvision does not support "the argument that Lift has a valid security interest against the assets on account of loans to other entities" because "no further advances subject to the 1992 Security Agreement . . . were identified"). As discussed above, the bankruptcy court followed the district court's interpretation of Adelvision by noting that, although value given by Lift on behalf of Main's corporate affiliates could support a security interest securing those loans, the language of the security agreements at issue here does not create such a security interest. See Main V, 1998 WL 778017, at *7-8, 14. This finding by the bankruptcy court was not inconsistent with the mandate of the district court and thus, was not precluded by the doctrine of law of the case. See Casey v. Planned Parenthood of Southeastern Pa., 14 F.3d 848, 856-57 (3d Cir. 1994) (finding that lower court must honor appellate court's findings and mandate on remand).

2. Lift's $100,000 Loan to Reedco on April 30, 1996 May Be Secured Under Either the 1991 or 1992 Agreements

Appellants next contend that Lift's $100,000 loan to Reedco on April 30, 1996, ("the Reedco loan"), was a future advance secured by either the 1991 or 1992 Agreements because the funds were lent to Reedco for the benefit of Main and thus, were related to the debts secured by the 1991 and 1992 Agreements. See Appellants' Brief at 28-30. The Trustees counter that the 1991 and 1992 Agreements terminated before April 30, 1996, the date of the Reedco loan, because the 1991 and 1992 Notes had been repaid by that date. See Trustees' Brief at 30. The Trustees also argue that the Reedco loan is not related to the 1991 or 1992 Notes because the loan was made to a different entity, and though Main eventually used the loan funds, Lift had not intended for Main to use the funds when he advanced them to Reedco. See id. at 30-31.

The bankruptcy court concluded that the Reedco loan, along with all other loans to corporations other than Main, was not a future advance secured under either the 1991 or 1992 Agreements because it was not "sufficiently related to the 1992 transaction as to be considered in the same 'class' as the 1992 Security Agreement transaction." Main V, 1998 WL 778017, at *7. The bankruptcy court also found, when discussing the amount of Lift's claim against Main, that "[t]he fact that the loan made [to] Reedco . . . was made on behalf of the Debtor does not render that obligation a valid claim against the Debtor." Id. at *11 (citing In re Valley Forge Plaza Assoc., No. 89-1136S, 1992 WL 96336, at *1-2 (Bankr. E.D. Pa. Apr. 28, 1992)).

The future advance clauses in the 1991 and 1992 Agreements provide that Lift is secured if he "should advance further funds to the debtors or if . . . [he], for the purpose of protecting [his] collateral, shall make any payments or advances for and on behalf of the Debtors." AA 411, 427. The bankruptcy court previously found, in a holding that was not disturbed on appeal, that Lift's loan to Reedco "was actually money lent for the benefit of Main, particularly since, at the time that this loan was made, Reedco was not yet operating." Main III, 213 B.R. at 97. It thus appears that the Reedco loan falls within the scope of future advances secured by both the 1991 and 1992 Agreements as an "advance for and on behalf of the Debtors." The bankruptcy court's conclusion that the Reedco loan was not related to the debts secured by the 1991 and 1992 Agreements ignores its previous finding that the Reedco loan, like the loans made pursuant to the 1991 and 1992 Notes, provided operating capital for the same business, Main. Under Potomac Coal and other cases discussing the relatedness rule for determining when future advances are secured, this fact alone compels the conclusion that the Reedco loan was related to the debts secured by the 1991 and 1992 Agreements. See Potomac Coal, 697 A.2d at 804-05 (finding loans to same business were related); cf. Kitmitto v. First Pennsylvania Bank, N.A., 518 F. Supp. 297, 302 (E.D. Pa. 1981) (finding factual issue of whether future advances for consolidation, home improvements and an automobile were related to real estate loan prevented summary judgment). The bankruptcy court's conclusion, based on Valley Forge Plaza, that the Reedco loan may not be claimed as Main's debt ignores the fact that Lift's loan was covered by the future advance clauses of the 1991 and 1992 Agreements. Unlike the debt in Valley Forge Plaza, the loan here was covered by a valid future advance clause and Lift is not simply attempting to recover a debt from an incidental third-party beneficiary of his loan. Cf. Valley Forge Plaza, 1992 WL 96336, at *1-2 (rejecting bank's attempt to collect unpaid loan made to corporation's principals, as individuals, from the corporation under unjust enrichment and implied contract theories). Additionally, though the Trustees assert that Lift never intended the Reedco loan to be used by Main, the citations that the Trustees supply to support this assertion actually support the opposite conclusion. See Trustees' Brief at 31 (citing transcripts of bankruptcy court hearings conducted on May 12, 1997, and June 11, 1997). In the passages cited by the Trustees, Lift indicates that he wrote the $100,000 check to Reedco so that Main could pay its taxes and that he did not question why the check was being written to Reedco rather than to Main. See Tr. May 12, 1997, at 75-76; Tr. June 11, 1997, at 22.

The Trustees also contend that the Reedco loan could not have been secured by the 1991 or 1992 Agreements because the Agreements had terminated before Lift made the Reedco loan. See Trustees' Brief at 23-32. In support of their argument, the Trustees assert that: (1) Main had fully repaid the 1991 and 1992 Notes before April 30, 1996; and (2) because the 1991 and 1992 Agreements terminated when the debts they secured were repaid, there was no operative future advance clause that would grant Lift a security interest in Main's assets to secure the Reedco loan.

The bankruptcy court made a factual finding that the 1991 and 1992 Notes had been repaid before July 25, 1996. See Main V, 1998 WL 778017, at *10-11. It reasoned that because Lift's itemized proof of claim against Main, which listed five unpaid obligations totaling approximately $476,000, did not list amounts owing on either the 1991 or 1992 Notes, these Notes must have been repaid. See id. The bankruptcy court also concluded that the 1991 and 1992 Notes were repaid before July 25, 1996, when Lift foreclosed, because Lift received no payments from Main between June 23, 1996, and September 20, 1996, when Main filed for bankruptcy. See id. at *11. Though appellants vociferously dispute the bankruptcy court's conclusion that all of Main's debts to Lift were repaid before Main filed for bankruptcy, they do not specifically dispute the bankruptcy court's conclusion that the 1991 and 1992 Notes were repaid, nor can the court discern any ground for doing so. See Appellants' Brief at 40. In the absence of evidence suggesting that the 1991 and 1992 Notes remained unpaid on July 25, 1996, I cannot conclude that the bankruptcy court's factual finding was clearly erroneous.

Such a finding does not, however, completely resolve the issue presented by the Trustees, because it does not foreclose the (admittedly very unlikely) possibility that the 1991 and 1992 Notes were repaid between April 30, 1996, the date of the Reedco loan, and June 23, 1996. If, as the Trustees argue, the Notes were repaid before Lift made the Reedco loan on April 30, 1996, that loan would be unsecured because the 1991 and 1992 Agreements would have terminated. See McCarthy v. Bank, 423 A.2d 1280, 1283 (Pa. Super. Ct. 1980) (finding that ordinarily, when a secured debtor completes payment of the secured obligation, the "security interest is extinguished"); 33 Pennsylvania Law Encyclopedia, Secured Transactions § 92 (1960 & Supp. 1998) ("A security interest created in property in order to secure a debt is extinguished when the debt is satisfied, and the property subject to such interest must be returned."). Given the murky state of the factual record in this appeal, a conclusive answer to the question of whether the 1991 and 1992 Notes were repaid between April 30, 1996, and June 23, 1996, would require further factual findings by the bankruptcy court on remand. See Nantucket Investors II v. California Fed. Bank (In re Indian Palms Assoc., Ltd.), 61 F.3d 197, 210 n.19 (3d Cir. 1995) (prohibiting district court from engaging in independent factual findings when deciding a bankruptcy appeal). In light of the extended litigation over the issue of Lift's security interests in Main's assets that has already occurred, and the conclusions described in other sections of this memorandum, which provide alternative grounds for affirming the bankruptcy court's order, I will not remand this issue to the bankruptcy court for further factual finding. If the other grounds for affirming the bankruptcy court's holding in Main V are later disturbed, it may become necessary for the bankruptcy court to reexamine this factual issue in the future. Until such a time, however, the issue of whether Lift had a security interest in Main's assets to secure the Reedco's loan under the future advance clauses of either the 1991 or 1992 Agreements will be held in abeyance.

IV. The Bankruptcy Court Did Not Err by Concluding that the Transfer of Philly Rock from Main to Columbusco Could Be Avoided, Regardless of the Validity of Lift's Security Interests, Because Blatstein and Lift Had an Actual Intent to Hinder, Delay or Defraud Arch

In Blatstein II, the district court reversed the bankruptcy court's previous conclusion that, irrespective of Lift's security interests in Main's assets, the transfer of Philly Rock from Main to Columbusco could be avoided because it was a fraudulent transfer. See Blatstein II, 226 B.R. at 154-56. The district court reasoned that, in light of the Supreme Court's decision in BFP v. Resolution Trust Corp., 511 U.S. 531 (1994), it is "unlikely" that a foreclosure sale could be collusive "in the absence of some form of bid rigging or auction fraud." Blatstein II, 226 B.R. at 155. Additionally, the district court concluded that the price Lift received at his foreclosure sale would be considered reasonable under BFP because there is nothing in the record to indicate that his sale did not comply with Pennsylvania's foreclosure laws. See id. Finally, the district court characterized the evidence cited by the bankruptcy court in support of its conclusion that the foreclosure sale was collusive as "circumstantial," and found that the bankruptcy court's conclusion that the sale was collusive was unwarranted, particularly because its logic "carrie[d] the implication of fraud and perjury" by Lift. Id. at 156.

On remand, the bankruptcy court reaffirmed its prior holding that Lift's foreclosure sale was collusive, and was but one small part in Blatstein's scheme to remove Main's assets from the reach of Arch. See Main V, 1998 WL 778017, at *3-5. The bankruptcy court found, as a factual matter, that Lift's testimony that his foreclosure sale was not "part and parcel of Blatstein's fraudulent conveyance scheme" was utterly unworthy of belief and, in fact, constituted perjury. Id. at *5. The bankruptcy court also found that Blatstein admitted that, when he deposited Main's funds into other corporations' bank accounts, he intended "to hinder, delay and/or defraud Arch from executing on its judgment against the Debtor." Id. at *4. These findings are not clearly erroneous. The bankruptcy court thus concluded that direct, as well as circumstantial, evidence supported its conclusion that the sale was collusive and that BFP did not insulate Lift's sale from attack. See id. at *5, 13-14. As a result, the bankruptcy court held that the transfer of Main to Columbusco, accomplished with the assistance of Lift's foreclosure sale, was a fraudulent conveyance that could be avoided. See id. at *5.

Appellants first attack the bankruptcy court's holding on the ground that it disregards the law of the case established by the district court. See Appellants' Brief at 30-33. They contend that the bankruptcy court was not permitted to disregard the district court's comment that the determination of whether a sale was collusive should focus "on the sale itself as opposed to events leading up to the commencement of the foreclosure." See id. at 30 (citing Blatstein II, 226 B.R. at 155). Appellants also contend that the bankruptcy court erred when it found Lift's sale collusive without citing evidence that the sale failed to comply with Pennsylvania's foreclosure requirements. See id. at 30-31. Next, appellants assert that the Trustees never proved that Lift engaged in a conspiracy with Blatstein to defraud Arch because Lift was justified in attempting to protect his valid security interests and justification is a legitimate defense to charges of conspiracy. See id. at 32-33.

Addressing the last of appellants' contentions first, it is clear that the bankruptcy court never concluded that Blatstein and Lift engaged in a civil conspiracy, and therefore, appellants' complaint that the Trustees never proved the existence of a civil conspiracy is irrelevant. Unlike the case on which appellants rely, the Trustees never brought, and the court never ruled on, claims that Lift and Blatstein were engaged in a civil conspiracy to defraud Arch. Cf. Constitution Bank v. DiMarco, 836 F. Supp. 304, 308-09 (E.D. Pa. 1993), aff'd, 27 F.3d 556 (3d Cir. 1994). Moreover, as discussed above, the security interest upon which Lift foreclosed, the 1989 Agreement and Note, was invalid at the time of his attempted foreclosure, so his actions were not justified as those of a creditor seeking to protect a valid security interest. See id. at 308.

Appellants' principle contention is that the bankruptcy court interpreted BFP in a manner inconsistent with the district court's interpretation, by which, appellants contend, the bankruptcy court was bound. See Appellants' Brief at 30-31. In BFP, the Supreme Court was faced with the issue of "whether the consideration received from a noncollusive, real estate mortgage foreclosure sale, conducted in conformance with applicable state law conclusively satisfies the Bankruptcy Code's requirement that transfers of property by insolvent debtors within one year prior to the filing of a bankruptcy petition be in exchange for 'a reasonably equivalent value'" under 11 U.S.C. § 548 (a)(2). BFP, 511 U.S. at 533. The Court concluded that, in such a situation, a trustee could not avoid a noncollusive foreclosure sale under the constructive fraud provision of 11 U.S.C. § 548 (a)(2), when the property's sale price was lower than either its "fair market value" or its "fair foreclosure price." Id. at 545. Rather, the Court held, "the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself." Id. at 549. Evidence of the property's actual value at the time of sale would be considered however, if "[a]ny irregularity in the conduct of the sale would permit judicial invalidation of the sale under applicable state law." Id. at 545. The Court explicitly recognized that § 548 (a)(1) remained a viable method of challenging collusive and fraudulent foreclosure sales, and did not discuss the criteria used to evaluate when a particular sale is collusive or fraudulent. See id. at 545.

In reversing the bankruptcy court's conclusion that the transfer of Philly Rock from Main to Columbusco via Lift's foreclosure sale was fraudulent regardless of the validity of Lift's security interests, the district court apparently believed that the bankruptcy court was basing its decision on 11 U.S.C. § 548 (a)(2), when it focused on whether Lift's foreclosure sale complied with the requirements of Pennsylvania law.[13] See Blatstein II, 226 B.R. at 154 (noting that the

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[13] Section 548 (a) of the Bankruptcy Code allows the Trustee to

> avoid any transfer of an interest of the debtor in property, . . . that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily - (1) made such transfer . . . with the actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation incurred, indebted; or (2)(A) received less than a reasonably equivalent value in exchange for such transfer . . . .

11 U.S.C. § 548 (a). A foreclosure sale of the debtor's property is a transfer within the meaning

bankruptcy court's reasoning is "not entirely clear" but probably turned on § 548). Because BFP explicitly limited its holding to mortgage foreclosure sales of real estate challenged solely because of the property's sale price under § 548 (a)(2), the district court must have concluded that the bankruptcy court's conclusion was focused on a finding that Lift did not give reasonably equivalent value for Philly Rock. See BFP, 511 U.S. at 537 n.3 (limiting holding to "mortgage foreclosures of real estate" and explaining that "considerations bearing upon other foreclosures and forced sales . . . may be different"); Blatstein II, 226 B.R. at 155 (citing cases describing challenges to the adequacy of foreclosure sale prices under § 548 (a)(2), such as In re Theoclis, 213 B.R. 880, 882 (Bankr. D. Mass. 1997); Miner v. Bay Bank & Trust Co., 185 B.R. 362, 367 (N.D. Fla. 1995); In re Bennett, 154 B.R. 140, 147 (Bankr. N.D.N.Y. 1992)). Though, under BFP, it is unlikely that a low sale price could be attacked under § 548 (a)(2) unless there were discrepancies between the sale procedure and state law foreclosure requirements, as the district court commented, BFP does not address the circumstances under which a sale may be avoided by applying the actual fraud provision of § 548 (a)(1).[14] See BFP, 511 U.S. at 545; Blatstein II, 226 B.R. at 155.

On remand, the bankruptcy court clarified its holding that the transfer of Philly Rock

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of § 548. See 11 U.S.C. § 101 (54); BFP, 511 U.S. at 535.

[14] Though the parties spend a portion of their briefs discussing whether Lift's foreclosure sale complied with the requirements of Pennsylvania law, the court need not decide that issue in light of the fact that the bankruptcy court found actual fraud under § 548 (a)(1). See Appellants' Brief at 30-31; Trustees' Brief at 41-47; Appellants' Reply Brief at 7-9. The bankruptcy court did not focus its finding of actual fraud on Lift's violations of Pennsylvania foreclosure laws, and under BFP, demonstrating noncompliance with state foreclosure laws is significant when challenging the price received at a foreclosure sale under § 548 (a)(2). See BFP, 511 U.S. at 545-46.

could be avoided under § 548 (a)(1) because Lift and Blatstein acted with the intent to hinder, delay and defraud Arch. See Main V, 1998 WL 778017, at *5. In addition to the factual findings contained in its previous opinion, the bankruptcy court also found, as a factual matter, that Lift's testimony concerning his foreclosure sale constituted perjury. See id. (explaining that "[i]f we failed to use the terms 'fraud' and 'perjury' in assessing Lift's credibility . . . it was from delicacy and a desire to refrain from bandying about strong terms when we believed our meaning was clear without them"). Contrary to appellants' arguments, the bankruptcy court's additional clarifications are not inconsistent with the district court's order remanding the case to the bankruptcy court "for further proceedings consistent with the Court's opinion" or with the district court's interpretation of BFP and the fraudulent conveyance provision of § 548 (a)(2). Blatstein II, 226 B.R. at 161. The bankruptcy court only further explained that its previous conclusion had been reached under § 548 (a)(1), a code provision different from that analyzed in BFP, and that the Third Circuit's holding in Voest-Alpine Trading USA Corp. v. Vantage Steel Corp., 919 F.2d 206, 215 (3d Cir. 1990), permitted the court to avoid a fraudulent transfer scheme accomplished with the use of "a friendly and collusive lienor" such as Lift.[15] Main V, 1998 WL 778017, at *5.

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[15] Appellants argue that Voest-Alpine was overruled by BFP. See Appellants' Reply Brief at 7. Contrary to appellants' claims, BFP and Voest-Alpine addressed completely different approaches to attacking foreclosure sales. BFP was decided under § 548 (a)(2) of the Bankruptcy Code and does not affect the validity of the holding in Voest-Alpine, which was decided under Pennsylvania fraudulent conveyance law. See Voest-Alpine, 919 F.2d at 214-15. Unlike BFP, where the holding was limited to attacks on real estate mortgage foreclosure sales premised solely on the inadequacy of the sale price, Voest-Alpine addressed a situation more closely resembling that presented here, where the debtor's fraudulent and collusive conduct removed assets from the reach of one of its creditors. See Voest-Alpine, 919 F.2d at 208-10 (describing series of transactions that resulted in the transfer of the Paige Group's assets to a new corporation named Vantage); In re Sherman, 223 B.R. 555, 556 (10th Cir. B.A.P. 1998) (limiting BFP's application to real estate foreclosure sales); In re Wentworth, 221 B.R. 316, 317 (Bankr. D. Conn. 1998) (same); In re D'Alfonso, 211 B.R. 508, 517 (Bankr. E.D. Pa. 1997) (same).

In Voest-Alpine, VATCO sold steel to the Paige Group, a group of steel fabrication companies, whose sole shareholders were Marvin and Holley Sue Stabler. See Voest-Alpine, 919 F.2d at 208. When the Paige Group failed to pay for the steel, VATCO sued to collect the debt and obtained a judgment against the Paige Group for approximately $450,000. See id. at 209. In an effort to prevent VATCO from collecting on its judgment, the Stablers, with the assistance of their secured lender, orchestrated a series of transactions that transferred the assets of the Paige Group to a new corporation, Vantage, which the Stablers formed. Thus, this transfer prevented the Paige Group's creditors from collecting on their debts. See id. at 209-10. The transfer of assets was accomplished by the lender's foreclosure on its security interest in all of the Paige Group's assets and the lender's sale of those assets to Vantage. See id. at 209. The court found that the factual record developed in the district court supported the court's finding that the "Stablers had intentionally defrauded their creditors through their conveyance of Paige's assets" to Vantage. Id. at 214.

Like the evidence cited by the district court in Voest-Alpine, the evidence cited in the bankruptcy court's opinion on remand is sufficient to support its finding that Lift and Blatstein orchestrated the conveyance of Philly Rock from Main to Columbusco in an effort to prevent Arch from collecting on its judgments. See Main V, 1998 WL 778017, at *4-5. As discussed above, the security interest on which Lift said he was foreclosing, the 1989 Note and Agreement, was invalid on the date of the foreclosure sale and did not, therefore, justify his actions. See *supra*, pt. III.A. Moreover, the bankruptcy court found that Lift's foreclosure sale on July 25, 1996, was only one small step in a larger scheme to secret Main's assets from Arch, particularly when Blatstein allowed Columbusco to operate Philly Rock for almost a month before Lift's foreclosure sale, and Blatstein began to deposit Main's accounts receivable into the bank accounts of other corporations. See Main V, 1998 WL 778017, at *5 (noting that "insofar as Lift's involvement is concerned, it was only one of numerous actions which were part of a plan to actually fraudulently convey Philly Rock"). Even if Lift had remaining security interests in Main's assets by virtue of either the 1991 or 1992 Agreements at the time of his foreclosure, his foreclosure on those security interests is not severable from Blatstein's larger scheme to prevent Arch from collecting on its judgment. Just as the Voest-Alpine court refused to consider the lender's foreclosure separate from the transfer of assets from the Stablers' old corporation to their new corporation because it found that the foreclosure would not have occurred absent the Stablers' request, the bankruptcy court here found that Lift's foreclosure would not have occurred absent Blatstein's involvement. See Voest-Alpine, 919 F.2d at 212-13; Main V, 1998 WL 778017, at *4-5. Additionally, the bankruptcy court concluded that Lift's "denials that his foreclosure sale was part and parcel of Blatstein's fraudulent conveyance scheme" constituted perjury. Id. at *5. These facts, in combination with the admissions of Blatstein and Shoop that Main's receivables were deposited into other companies' bank accounts to protect those funds from Arch, demonstrate that the transfer of Philly Rock from Main to Columbusco was a fraudulent conveyance under Voest-Alpine. See Voest-Alpine, 919 F.2d at 214-15 (finding that the existence of actual fraudulent intent "is a question of fact") (citing United States v. Tabor Court Realty Corp., 803 F.2d 1288, 1304 (3d Cir. 1986)). As appellants have not demonstrated that the bankruptcy court's factual finding that Lift and Blatstein had an actual fraudulent intent to hinder Arch's collection efforts was clearly erroneous, the court will not disturb that finding. Though the district court had previously dismissed the bankruptcy court's finding of actual fraud as clearly erroneous, the district court did not have before it the benefit of the bankruptcy court's clarification of its findings on remand, and was unaware that the bankruptcy court attached no credibility to the testimony of Lift and Blatstein. See Blatstein II, 226 B.R. at 156. In light of the additional findings supplied by the bankruptcy court on remand, and the deference that should be given to the bankruptcy court's determinations of credibility, the bankruptcy court's holding that the transfer of Philly Rock from Main to Columbusco can be avoided under § 548 (a)(1), regardless of whether Lift had some remaining valid security interests at the time of his foreclosure, is affirmed.

V. The Bankruptcy Court Properly Denied Blatstein's Discharge

In Blatstein II, the district court instructed the bankruptcy court to reconsider its decision that Blatstein was not entitled to a bankruptcy discharge by virtue of 11 U.S.C. § 727 (a)(2)(A), (a)(7).[16] See Blatstein II, 226 B.R. at 158. The bankruptcy court had previously denied Blatstein's discharge on grounds that he "orchestrat[ed] [] the actual fraudulent transfer of debtor Main's assets within one year of the bankruptcy filings by both him and Main." Main II, 213 B.R. at 85. The bankruptcy court concluded that its finding that "the 1996 Main asset transfers

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[16] Section 727 (a) of the Bankruptcy Code provides that

> The court shall grant the debtor a discharge, unless - . . .
> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate, charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed - (A) property of the debtor, within one year before the date of the filing of the petition; . . .
> (7) the debtor has committed any act specified in paragraph (2) . . . of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title, . . . concerning an insider.

11 U.S.C. § 727 (a).

were perpetuated with actual fraud mandates the conclusion that Blatstein" should be denied a discharge. Id. at 84. The district court's instruction to reconsider this finding was based on its holding that the validity of Lift's security interests must be determined before the bankruptcy court could conclude that the transfer of Philly Rock from Main to Columbusco was actually fraudulent. See Blatstein II, 226 B.R. at 158. On remand, the bankruptcy court reexamined its decision to deny Blatstein a discharge, and reinstated its conclusion that Blatstein's discharge should be denied under 11 U.S.C. § 727 (a)(2)(A), (a)(7), because Blatstein had engineered the fraudulent transfer of Philly Rock from Main to Columbusco to prevent Arch from collecting on its judgments within one year of Main's bankruptcy filing. See Main V, 1998 WL 778017, at *16. Though the provisions of § 727 (a) must be "construed liberally in favor of the debtor," the creditor objecting to the debtor's discharge need only prove the elements of § 727 (a) by a preponderance of the evidence. Rozen v. Bezner, 996 F.2d 1527, 1531 (3d Cir. 1993) (emphasizing the importance of discharge as the "heart of the fresh start provisions of the bankruptcy law"); see also Grogan v. Garner, 498 U.S. 279, 291 (1991) (holding that preponderance, rather than clear and convincing, is the appropriate standard to evaluate claims under the related § 523 (a), governing exceptions to discharge). The bankruptcy court's factual finding that Blatstein acted with the fraudulent intent to hinder, delay or defraud Arch may only be reversed if it is clearly erroneous. See Equitable Bank v. Miller (In re Miller), 39 F.3d 301, 307 (11th Cir. 1994)

Appellants' argument that the bankruptcy court erred by denying Blatstein's discharge is premised on their assertions, dismissed above, that the transfer of Main's assets to Columbusco was not actually fraudulent and that Lift had valid security interests in Main's assets on which he foreclosed.[17] See Appellants' Brief at 42-50. Because I have discussed these arguments above, and found them unpersuasive, I need not discuss them again. In addition to these arguments, appellants also contend that Blatstein's decision to deposit Main's accounts receivable in other corporations' bank accounts would not justify a denial of his discharge because he was not attempting to defraud Main's creditors, but was, in fact, attempting "to preserve the operations of Philly Rock, for the benefit of all its creditors." Appellants' Brief at 44. Moreover, they argue, Blatstein did not decrease the assets available to Main's creditors by directing funds away from Main's bank accounts because the funds deposited into other corporations' bank accounts were paid to Main's creditors and thus, there is no showing that the value of assets available to creditors has been reduced. See id. at 46 (relying on Applebaum v. Henderson (In re Henderson), 134 B.R. 147, 157 (Bankr. E.D. Pa. 1991)).

Even if the funds belonging to Main but deposited into other corporations' bank accounts were, as appellants contend, paid out to Main's creditors other than Arch, the conclusion is inescapable that Arch's efforts to garnish those funds were hindered and delayed by Blatstein's decision to deposit them into other bank accounts. See Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1343 (9th Cir. 1986) (noting that the "inquiry under § 727 (a)(2)(A) is whether [the debtor] intended to hinder or delay a creditor" and that the debtor need not "intend to hinder all of his creditors"). Though Blatstein may have preferred to pay Main's creditors other than Arch, Arch had levied on Main's funds and thus Blatstein was not free to make that choice. Though appellants' expert witness may have testified that in his opinion Blatstein was not

[17] Appellants do not contest the bankruptcy court's finding that Blatstein was an "insider" of Main, as required by § 727 (a)(7). See Main II, 213 B.R. at 85; Appellants' Brief at 43.

committing fraud when he removed funds from Main's accounts in order to defeat Arch's garnishment, the bankruptcy court was not obligated to, and did not, credit this testimony on the ultimate issue to be decided by that court. See Main II, 213 B.R. at 82 (discrediting expert's testimony because his "experiences with debtors of questionable moral and legal standards, [] may have jaded his perceptions" and because the fact that other debtors have "'gotten away' with conduct which is illegal" does not insulate Blatstein from liability for the same illegal conduct). Indeed, the court considers the contention of the "expert" to be ludicrous and is deeply disturbed by what it says about the business practices of some.

The cases cited by appellants do not support their contention that the bankruptcy court erred when it concluded that Blatstein's decision to direct Main's funds to other corporations' bank accounts was actually intended to hinder Arch's collection efforts. In Henderson, which appellants cite for the proposition that the bankruptcy court was required to determine that the value of assets available to creditors was reduced by the debtor's transfers, the court determined that none of the debtor's property was transferred and there was no evidence that the debtor intended to hinder or delay the plaintiff's collection efforts. See Henderson, 147 B.R. at 158-59. Here, unlike the situation in Henderson, cash belonging to Main was transferred to other corporations and, as a result, Arch was unable to collect those funds through its garnishment. Thus, assets of value were clearly made unavailable to Arch. Similarly, the decisions in Equitable Bank v. Miller (In re Miller), 39 F.3d 301 (11th Cir. 1994), and Commerce Bank & Trust Co. v. Burgess (In re Burgess), 955 F.2d 134 (1st Cir. 1992), abrogated on other grounds, Field v. Mans, 516 U.S. 59, 73-75 (1995), do not support appellants' argument that Blatstein's professed intention to preserve Main's assets for the benefit of his other creditors required the bankruptcy court to grant his discharge. The debtors in those cases, as the bankruptcy court recognized, transferred only portions of their assets to legitimate creditors in order to meet payroll obligations and in exchange for cancellation of secured debts. See Miller, 39 F.3d at 307 (characterizing transfer of property to debtor's largest creditor as a preferential transfer); Burgess, 955 F.2d at 138 (explaining that company's accounts receivable were transferred to the debtor so that he could pay the company's employees). In neither of these cases, unlike the present case, did the factfinder conclude that the debtors had been motivated by an actual fraudulent intent to prevent a creditor from collecting a judgment against them because the transfers were not designed to impede the ongoing collection efforts of particular creditors. In Burgess particularly, the plaintiff's sole basis for arguing that the debtor intended to defraud it was an assertion that the debtor's testimony should not be believed. See Burgess, 955 F.2d at 138. In Miller, the appellate court affirmed the bankruptcy court's factual finding that the debtor had no fraudulent intent when he transferred some of his property to his largest creditor because the transfer price was reasonable under the circumstances and the only evidence of fraudulent intent offered by the objecting creditor was the alleged inadequacy of the transfer price. See Miller, 39 F.3d at 307.

As the Trustees argued, Blatstein's behavior is more like that of the debtors in Matter of Krehl, 86 F.3d 737 (7th Cir. 1996), and Consumers United Capital Corp. v. Greene (In re Greene), 202 B.R. 68 (Bankr. D. Md. 1996), whose discharges were denied under § 727 (a)(2)(A). See Trustee's Brief at 52-55. In Greene, the debtor admitted that he transferred assets, including accounts receivable, from his bankrupt corporation to his new business venture to prevent a judgment creditor from executing on them, and "to preserve those funds and use them to pay other creditors." Greene, 202 B.R. at 72. Similarly, Blatstein admitted that he transferred

Main's accounts receivable into other corporations' bank accounts to avoid Arch's garnishment. Tr. May 9, 1997, at 136. Like the court in Greene, the bankruptcy court appropriately concluded that Blatstein's admissions that he intended to hinder Arch's effort to collect on its garnishment sufficed as evidence of an actual intent to hinder, delay or defraud a creditor under § 727 (a)(2)(A), as incorporated by § 727 (a)(7). See Main II, 213 B.R. at 82, 84-85. Similarly, in Krehl, the individual debtor transferred accounts receivable, among other assets, from his bankrupt corporation to a new corporation he directed. See Krehl, 86 F.3d at 740. The court affirmed the lower court's finding that Krehl's actions evidenced an actual intent to defraud his creditors and concluded that because the lower court's determination of intent depended upon its assessment of Krehl's lack of credibility, "deference to the court's finding [was] particularly appropriate." Id. at 743-44. Thus, because the bankruptcy court's conclusion here that Blatstein acted with an actual intent to defraud Arch was partially based on its determination that his testimony was not credible, particular deference should be given to the bankruptcy court's finding.

Therefore, even if the court had not affirmed the bankruptcy court's conclusion that Blatstein's orchestration of the fraudulent conveyance of Philly Rock justified a denial of his discharge, the bankruptcy court did not err in concluding that Blatstein's discharge could be denied on grounds that he transferred Main's accounts receivable to other corporations with the actual intent to hinder, delay or defraud Arch under § 727 (a)(2)(A), and (a)(7). The bankruptcy court's denial of Blatstein's discharge is thus affirmed.

VI. Remand to Determine the Balances of the Loans Between Lift, the Beratans, Main, and Blatstein's Other Corporations is Unnecessary

In the course of determining, in Blatstein II, whether Lift had an attached and perfected security interest in Main's assets that took priority over Arch's lien, the district court suggested that a table showing the outstanding balances of any loans between Lift and Blatstein's corporations "would be helpful" to resolving this issue. See Blatstein II, 226 B.R. at 151 n.13. On remand, the bankruptcy court determined that compiling such a table would be impossible given the inaccuracies in the parties' accounting records and the parties' disputes over the current status of various loans. See Main V, 1998 WL 778017, at *12-13. The bankruptcy court explained that the parties offer widely divergent views of the status of loans between Lift and the various Blatstein-controlled corporations, views largely unsupported by citations to the record, and in some cases, unsupported by documents in the record. See id. at 13 (noting that appellants' expert's opinion is "based in part on additional documents which are not in the record").

Although such a chart may indeed be helpful to understanding the financial dealings between all of the corporations and individuals involved, such a table is not necessary to resolve the issues raised by this appeal. Contrary to appellants' suggestion that the bankruptcy court's refusal to compile the information requested by the district court ignored the law of the case and "allows the [bankruptcy] court to ignore the principles of law enunciated by the District Court's opinion,"Blatstein II did not order the bankruptcy court to produce a chart showing loan balances, but merely indicated that it might be "helpful" to resolving issues concerning the validity of Lift's security interests. Appellants' Brief at 26, 33-34. The court is also not persuaded by appellants' assertion that all the bankruptcy court had to do was adopt the chart prepared by their expert. See Appellants' Brief at 34. As appellants stubbornly refuse to accept, the bankruptcy court found that Miller's calculations were not entirely reliable. See Main V, 1998 WL 778017, at *13 (finding that its conclusions in Main IV are “not consistent with Miller’s analysis”).

Because the bankruptcy court was able to determine that Lift’s security interests in Main’s assets were invalid, and thus did not have priority over Arch’s lien on the date of his foreclosure sale, without drafting the chart suggested by the district court in Blatstein II, and the bankruptcy court’s conclusions have been affirmed above, see *supra*, pt. III.A., it is unnecessary to remand this case to the bankruptcy court for further clarification of the factual record.

CONCLUSION

The bankruptcy court’s order dated November 4, 1998, will be affirmed. Because the bankruptcy court’s order setting aside the transfer of Philly Rock from Main to Columbusco, and ordering Philly Rock returned to the Trustee of Main’s estate, is affirmed, the bankruptcy court shall conduct further proceedings to facilitate that return.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE MAIN, INC., Debtor	:	CIVIL ACTION
IN RE ERIC J. BLATSTEIN, Debtor	:	
	:	
718 ARCH STREET ASSOCIATES, LTD., et al.	:	
v.	:	
	:	
ERIC BLATSTEIN, et al.	:	NO. 98-6460

ORDER

AND NOW, this _____ day of September, 1999, after consideration of the Appellants' Brief, the Trustee's opposition, and the Appellants' reply thereto, IT IS ORDERED that the bankruptcy court's Order dated November 4, 1998, is AFFIRMED.

____

William H. Yohn, Jr., J.