

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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ENTERED 9/15/2012
FILED

SEP 14 2012

CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 12-00026-PB11
12)
12 DAVID M. ANDERSON,) ORDER ON DEBTOR'S MOTION TO
13) APPROVE SETTLEMENT WITH
13 Debtor.) SZABO ESTATE
14)
14 _____)

15 Debtor David Anderson and the late George Szabo were the
16 sole members of two limited liability companies, 10B Investment,
17 LLC and Stoneridge Development, LLC. Both entities borrowed
18 money from Mile High Banks for real estate development, and both
19 Mr. Anderson and Mr. Szabo executed guaranties of payment of the
20 debt. Both 10B and Stoneridge gave Mile High trust deeds on the
21 properties to secure the indebtedness.

22 Subsequently, Mile High sued to recover on the notes, and
23 on the guaranties. Mr. Anderson and Mr. Szabo were named as
24 defendants. While the matter was pending in the Colorado state
25 court, Mr. Anderson filed the instant Chapter 11 case, giving
26 rise to the automatic stay. Thereafter, Mile High's case

1 proceeded to judgment against the defendants except Mr. Anderson.
2 Final judgment was entered on or about May 25, 2012, in the total
3 amount of \$4,720,640.00.

4 Following entry of judgment Mile High and the Szabo probate
5 estate negotiated a settlement providing for payment by the Szabo
6 estate to Mile High of \$2,500,000 by September 30, 2012. That
7 settlement is not before this Court, although it looks like an
8 excellent resolution for the Szabo estate. What is before this
9 Court is a proposed settlement between the Szabo probate estate
10 and Mr. Anderson.

11 The gist of the proposed settlement between the Szabo estate
12 and the Anderson bankruptcy estate is that the Anderson estate
13 would pay the Szabo estate \$900,000 in cash and provide an
14 allowed general unsecured claim of \$325,000 (some pleadings say
15 \$350,000, but the settlement agreement says \$325,000). The core
16 premise is that Mile High filed a proof of claim in the Anderson
17 case for \$4,505,858.94 based on Mr. Anderson's guaranties. Since
18 that filing, the judgment has determined the full amount due.
19 The parties recognize that there are reciprocal contribution
20 claims between Mr. Anderson and Mr. Szabo. The settlement is
21 beneficial in that it, in effect, reduces the Anderson estate's
22 liability to the Szabo estate on its contribution claim to almost
23 50% of what the Szabo estate would pay to Mile High. In
24 addition, mutual releases would be exchanged between the parties.
25 Moreover, the Szabo settlement with Mile High provides for
26 transfer of the trust deeds on the Colorado properties to the

1 Szabo estate, which may allow for marketing of the real property
2 in non-fire sale circumstances, which may reduce the net
3 liability of both estates.

4 The Court has been told that each settlement was negotiated
5 as a stand-alone resolution. However, during proceedings before
6 the California Probate Court they somehow were linked, and it was
7 represented to the Court that the Probate Court's approval was
8 conditioned on this Court's approval of the settlement between
9 the Szabo and Anderson estates. As already noted the
10 appropriateness of the settlement between Mile High and the Szabo
11 estate is not before this Court, but is before the Probate Court.
12 It would seem that settlement of a \$4.7 million state court
13 judgment (before interest) for \$2.5 million is a good deal,
14 unless there are problems with the judgment. But that is for
15 the Probate Court to decide.

16 In a world where the Anderson estate has sufficient assets
17 to satisfy all claims against it, the settlement between the
18 Szabo estate and the Anderson estate would be approved in a
19 flash. No argument has been made that the Szabo estate would not
20 have an unsecured claim for contribution for any reasonable
21 settlement it makes with Mile High, whether it is 50% of \$2.5
22 million or some greater amount. Settlement of such a claim for
23 \$900,000 and an allowed unsecured claim for \$325,000 (or
24 \$350,000) would appear advantageous where the Anderson estate had
25 sufficient assets to make comparable distributions to all
26 creditors of equal priority.

1 The difficulty in the present situation is that there are
2 five proofs of claim filed with the Anderson estate. The IRS
3 filed one for \$100; Mile High Banks for \$4.5 million; U.S. Bank
4 for \$268,000; Lessley and Victoria Place, \$12 million; and the
5 Szabo estate for contribution, in an amount to be determined.
6 Against those claims, debtor scheduled assets that include the
7 equity in his personal residence minus his homestead exemption,
8 for a value of approximately \$575,000 before costs of sale;
9 a UBS Bond account, valued at approximately \$1.1 million, which
10 is pledged as collateral on a debt of about \$267,000, for a net
11 of about \$833,000; a 2006 Land Rover and a 2006 Lamborghini,
12 valued at \$111,696. Debtor amended Schedule B on or about
13 February 9, 2012 to reflect an increase in the value of the UBS
14 Bond account to \$1,603,329.47. In debtor's original Schedule B,
15 he listed fractional interests in four LLCs and one general
16 partnership, all with unknown values. In his draft Disclosure
17 Statement, debtor listed values for all his non-exempt real and
18 personal property assets at a total "gross estimated" value of
19 \$3,080,647. In the proposed settlement, debtor does not tell us
20 where the \$900,000 in cash would come from, nor does debtor tell
21 us how liquid the remaining assets are.

22 In proposing the settlement, debtor asserts that he has a
23 contingent unsecured liability to the Szabo estate based on his
24 guaranties of the debts owed to Mile High on both the 10B and
25 Stoneridge borrowings. However, debtor does not cite to the
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1 source of that liability for contribution Is there a document,
2 or state statute that gives rise to the liability?

3 In debtor's Motion, at p.2, debtor states, seemingly
4 inconsistently:

5 Any and all claims against Anderson and
6 the Szabo Probate Estate held by MHB [Mile
7 Hile] will be discharged by the payment of
8 \$2,500,000 to MHB upon approval of the State
9 Court in the Szabo Probate case. In the
10 state court settlement between the Szabo
11 Probate Estate and MHB, the Szabo Probate
12 Estate will then be assigned and become the
13 owner of MHB's claim against the Anderson
14 Estate.

15 Which is it, and what does the Szabo Estate hold as claims
16 against Anderson out of the Szabo-MHB settlement? If the Szabo
17 estate steps into MHB's place, and therefore has a claim against
18 Anderson for \$4.7 million (minus any contribution rights), we
19 need to know what Szabo is giving up in the proposed settlement
20 with Anderson. In other words, in order to value the benefit of
21 the proposed settlement, we need explication on the exposure of
22 the estate to Szabo versus the cost of the settlement. If Szabo
23 can only seek from Anderson one half of the \$2.5 million it pays
24 to Mile High, and it receives \$900,000 in cash and a general
25 unsecured claim of \$325,000, those numbers would be assessed one
26 way. If those numbers changed significantly, the analysis might
be different. And the postures asserted appear inconsistent.

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1 Further, the debtor recites that:

2 The Anderson Estate to proceed with the
3 efforts to sell the real property of IOB
4 Investments and Stoneridge Development, the
5 distribution of the proceeds to be provided
6 for in the present voluntary dissolution of
7 IOB Investments and Stoneridge Development.

8 Debtor does not tell us how that happens, nor what it is worth to
9 the Anderson estate. If Szabo acquires the promissory notes from
10 Mile High, how does the Anderson Estate share in the proceeds?
11 Moreover, if the promissory notes are retired by the MHB
12 settlement, are the real properties no longer encumbered by them?
13 If so, what is their value?

14 As expressed by the Court at oral argument, the Court's
15 concern is fair treatment of the contested claim of Lessley and
16 Victoria Place. If roughly one-third of the estate's assets are
17 paid to Szabo in settlement of a claim the size of one-tenth in
18 amount of Lessley and Victoria Place, then if the latter prevail
19 on their claim as sought, there is no way the estate could pay
20 them anything close to the ratio Szabo would receive under the
21 settlement.

22 The debtor and the Szabo Estate have argued that the
23 Court has authority to approve a settlement outside a plan of
24 reorganization even when the result may be a disproportionate
25 distribution. They cite to In re Intercontinental Energy Corp.,
26 764 F.2d 1296 (9th Cir. 1985), which does support the concept
embodied in their argument. In this proceeding, as debtor
recognizes, the court is guided by In re A&C Properties,

1 784 F.2d 1377 (9th Cir. 1986). As noted at the hearing, and
2 reiterated herein, the court is concerned about the imbalance
3 in treatment of what would be the Szabo Estate's unsecured claim
4 for contribution for \$1.25 million, on which Anderson would pay
5 \$900,000 cash, now, plus a claim for \$325,000, versus Lessley
6 and Victoria Place's claim for \$12 million, which if allowed
7 would yield them a much smaller fraction of the estate's assets.
8 Effectively, if they prevail, it would leave them the bulk of
9 a diminished pot, yielding significantly less. Debtor has not
10 proposed to use any of his exempted assets in payment of the
11 Szabo settlement, which are funds not available to Lessley and
12 Victoria Place. Whether such a proposal would alter the analysis
13 sufficiently is not ripe for consideration.

14 So, as already noted, settlement between Mile High and the
15 Szabo Estate is a matter for the California Probate Court. This
16 Court is not clear on how that proposal wound up tied to the
17 proposal between the Szabo Estate and Anderson's bankruptcy
18 estate, but regardless, for the reasons stated on the record in
19 open court and set out herein, the Court is unable to approve the
20 settlement between the Szabo Estate and Anderson on the present
21 record, with so many unanswered questions.

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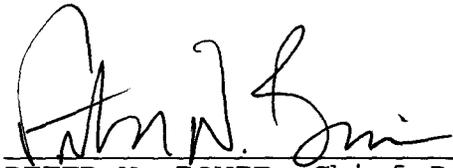
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1 The Court recognizes the time sensitivity to approval of the
2 Mile High and Szabo Estate settlement before the Superior Court.
3 Despite a complicated and crowded schedule this Court will
4 endeavor to make itself available on short notice if there is
5 something more it can do to aid in the resolution process.

6 IT IS SO ORDERED.

7 DATED: SEP 14 2012

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10 PETER W. BOWIE, Chief Judge
11 United States Bankruptcy Court

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