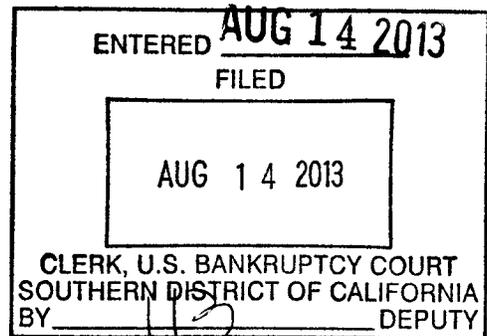


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



8 UNITED STATES BANKRUPTCY COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 12-00026-PB11

12 DAVID M. ANDERSON,)

13 Debtor.) ORDER ON DEBTOR'S MOTION TO

14) APPROVE AMENDED SETTLEMENT

15) WITH SZABO ESTATE

16 Debtor David Anderson and the late George Szabo were the

17 sole members of two limited liability companies, 10B Investment,

18 LLC and Stoneridge Development, LLC. Both entities borrowed

19 money from Mile High Banks which they used to acquire and develop

20 real estate. 10B and Stoneridge gave Mile High notes secured by

21 trust deeds on the properties. Debtor and Mr. Szabo executed

22 personal guaranties of payment of the debt

23 Mile High sued to recover on the notes and the guaranties.

24 Mr. Anderson and Mr. Szabo were named as defendants. While the

25 matter was pending in the Colorado state court, Mr. Anderson

26 filed the instant chapter 11 case, giving rise to the automatic

stay. Mile High's case proceeded to judgment against the non-

1 debtor defendants. On May 25, 2012, a final judgment was entered
2 in the total amount of \$4,720,640.00.

3 Following entry of judgment, Mile High and the Szabo probate
4 estate negotiated a settlement pursuant to which the Szabo estate
5 paid \$2,500,000.00 to Mile High in full satisfaction of the
6 judgment and underlying debt. The parties structured the
7 settlement as an assignment of the debt to the Szabo estate.

8 Previously, the Debtor and Szabo had sought approval of a
9 settlement agreement which provided that the Anderson estate
10 would pay the Szabo estate \$900,000 in cash and provide an
11 allowed general unsecured claim of \$325,000. In addition, mutual
12 releases would be exchanged between the parties. The Court
13 denied the motion, citing concerns about the imbalance in
14 treatment of the Szabo estate's claim and Victoria Place's
15 potential claim for \$12 million.

16 Debtor and the Szabo estate now seek approval of an amended
17 settlement agreement. Under the new deal, the Szabo estate would
18 get an unsecured claim for \$1,250,000.00 (half of the
19 \$2,500,000.00 Szabo spent to resolve the Mile High claims). No
20 payment would currently be made on the claim. However, the
21 settlement agreement also provides that the 10B and Stoneridge
22 properties would be sold, with the net proceeds going to the
23 Szabo estate, up to \$2,500,000.00. The Szabo claim in the
24 bankruptcy estate would be decreased by 50% of those net
25 proceeds.

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1 costs and liens and encumbrances, are to be paid to the Szabo
2 estate up to \$2,500,000.00. Only then, any remaining proceeds
3 are divided equally between Debtor and the Szabo estate. The
4 agreement does provide that the Szabo estate is reduced by 50% of
5 the proceeds received. However, this is not as favorable to the
6 estate as if the proceeds were equally divided. That is, the
7 other unsecured creditors of the bankruptcy estate would be
8 better off if Debtor's share of the proceeds were turned over to
9 the Debtor, and all unsecured creditors, including the Szabo
10 estate, were paid pro rata. Accordingly, under the terms of the
11 amended settlement agreement, the estate is giving up a right to
12 its share of the proceeds, with no comparable corresponding
13 benefit.

14 Movants suggest that the bankruptcy estate benefits under
15 the settlement agreement because the Szabo estate is waiving its
16 right to seek payment of the full amount of Mile High's claim, as
17 an assignee of Mile High. It is true that generally speaking, an
18 assignee of a claim may assert the full amount of the claim even
19 if, as in this case, the claim is acquired at a discount.
20 However, that does not appear to be the case where the assignee
21 is a fiduciary of the debtor, as in the case at hand. In In re
22 Basil Street Partners, LLC, 2012 WL 6101914 (Bankr.M.D.Fla.
23 2012), the court held that where a co-guarantor was assigned the
24 underlying obligation and the guaranties, his recovery against
25 the co-guarantor was limited to their share of the amount
26 actually paid for the claims. *Id.* at 17. The Basil Street case

1 was based upon Florida law. However, Movants have provided no
2 authority which would suggest a different result under California
3 or Colorado law. Thus, Movants have failed to convince the Court
4 that the Szabo estate is entitled to anything more than an
5 unsecured claim for contribution in the amount of \$1,250,000.00.
6 To the extent the amended settlement agreement gives the Szabo
7 estate more, such as first dibs on the net proceeds of the
8 properties, it is not fair and equitable.

9 For those reasons, the Court denies the motion for approval
10 of the amended settlement agreement.

11 IT IS SO ORDERED.

12 DATED: AUG 13 2013

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14 
15 PETER W. BOWIE, Chief Judge
16 United States Bankruptcy Court
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