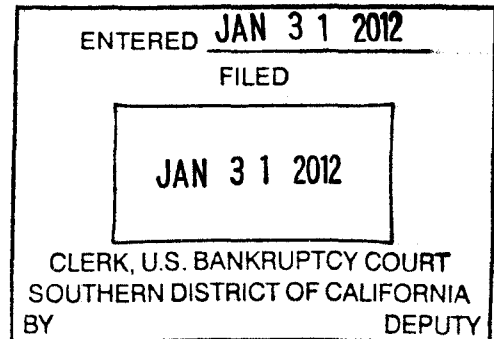


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re ) Case No. 10-07746-PB7  
)  
SHARON BROWN-MORK, ) ORDER ON OBJECTION TO  
) CLAIM NUMBER 7  
Debtor. )  
\_\_\_\_\_ )

After debtor filed her Chapter 7 petition, her brother, Michael, and ex-sister-in-law filed a proof of claim for a debt incurred in April, 1999. The amount they sought was \$37,086.00. Michael attached to the proof of claim form a written "Explanation of claim". He stated:

Due to the time that has passed the cashed bank check from Wells Fargo is unavailable. Below is my statement of facts, and under perjury I swear these are true statements.

Sharon Brown-Mork is my sister. She called me in April 1999 and said that she needed to borrow 23,000.00 for a down payment/refinance of her Loma Verde property. I agreed with the understanding that I would be paid back within 30 days. After one year I received 10,000.00 from Sharon, at this

1 point she stated that I have been paid back.  
2 To me and my ex-wife's dismay Sharon  
3 continued to repeat that she paid us back,  
4 which was not true. I calculated the balance  
of 13,000.00 plus 10% annual interest over 11  
years. The interest compounded is 24,086.00  
with a total amount due of 37,086.00.

5 Also attached is a memo from Michael's ex-wife, Cynthia, who  
6 stated:

7 I, Cynthia Brown was married to Michael  
8 Brown in 1999. We lent Michael Brown's  
9 sister Sharon Mork, \$23,000.00. We had a  
10 verbal agreement with Sharon Mork that she  
11 would repay the money with ten per cent  
12 interest within 30 days. The money we loaned  
13 her was a down payment for her property on  
Loma Verde in Rancho Sante [sic] Fe. She did  
repay us \$10,000 of the money in good faith.  
However we never received the rest. To this  
date the money was never repaid. We have  
tried to collect from her but she refuses to  
co-operate.

14 Debtor objected to the claim filed by Michael and Cynthia.

15 She asserted:

16 Michael Brown is fraudulently claiming  
17 \$37,086.00. It is embarrassing to see my  
18 brother get on the band wagon. I do not  
19 owe him any monies. I do not have a  
20 paper/contract or anything he may have filed  
21 to confirm this. Any money he had given me  
22 I paid back in full cash and furthermore he  
owes me for rent while staying at my house  
with his three children and dog for three  
months . . . . If he provided any written  
form, then it is not valid. Cynthia Brown  
isn't even married to him and she claims I  
do not owe them as well.

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1 Debtor also attached a paragraph which stated:

2           Furthermore, I spoke with Cindy Brown and she  
3           did not write and sign the letter or is it  
4           written under declaration of perjury [sic].  
5           Michael Brown actually owes me and there was  
6           never any discussion of interest or 30 days,  
7           etc.

8           Debtor supplemented her objection to Claim number 7 on or  
9           about September 15, 2011 with what she styled "points and  
10          authorities". In it, she stated, in relevant part:

- 11           1. Amount given to me by Michael Brown was  
12           not \$23,000.00; it was \$20,000.00.
- 13           2. No repayment was discussed, especially  
14           interest.
- 15           3. Was used to pay family law attorney  
16           Steven Striker, not towards my house.
- 17           4. He, Michael Brown was paid over  
18           \$15,000.00 in cash in \$5,000.00 increments  
19           [sic] where I drove to meet him and he drove  
20           his BMW motorcycle to San Clemente off a  
21           freeway stop.
- 22           5. Michael Brown stayed at my house for a  
23           summer promising me to help with utilities  
24           and to pay rent. He was at my house with his  
25           three children and dog. . . .

26           Michael Brown responded to the foregoing with a declaration  
under penalty of perjury of his own. In it, he makes a number of  
statements and arguments. He begins:

- 2           2. It is my sister's position that the  
3           statute of limitations has expired with  
4           respect to my loan of \$23,000 to her. While  
5           I agree that it has been a long time since  
6           the loan was originally made, my sister has  
7           made repeated promises to re-pay the loan  
8           over the past many years. Further, she  
9           continually acknowledged the debt in  
10          conversations, until these recent objections

1 filed with this Court in which she is now  
2 claiming that my loan is unenforceable and  
3 that she has already repaid the debt. I  
4 specifically recall during conversations in  
5 the summer of 2009 (June through August of  
6 2009), when my children and I were living in  
7 her home, she repeatedly acknowledged the  
8 outstanding obligation and stated that while  
9 I was living with her, the rent I would  
10 otherwise pay for occupying a portion of her  
11 home was to be used to reduce the amount owed  
12 on the loan. My sister admits in her  
13 objections filed with this Court that I lived  
14 with her as recently as August of 2009 . . .

15 3. It is well settled law in California that  
16 the statute of limitations on a debt such as  
17 the one owed by my sister to me begins to run  
18 from the date of the last payment made on the  
19 account. My sister clearly acknowledges in  
20 her . . . objections to my claim that she was  
21 not letting me stay in her house "gratis,"  
22 and that she expected to be paid rent for the  
23 time I lived in a part of her home. At the  
24 time, she still owed me the entire balance on  
25 this loan (with the exception of \$3,000  
26 repaid almost immediately after the loan was  
made), so any amounts I may have owed her  
were applied against the unpaid principal of  
the loan which she owed to me, constituting a  
"payment" on the account which extended the  
statute of limitations. As the last date on  
which I occupied a portion of her home was  
less than two years prior to the filing of  
this Bankruptcy case, the statute of  
limitations has not expired, and I am still  
fully entitled to my claim in her bankruptcy,  
as amended herein.

21 Michael then goes through a curious set of calculations,  
22 asserting a value of his 2009 three month occupancy as being  
23 \$1500, then reducing the unpaid principal balance of the loan to  
24 \$18,500, and states:

25 It was mere inadvertent oversight on my part  
26 not to have credited my sister for these  
payments or setoffs, and I ask that the Court

1 through this hearing on my sister's  
2 objection, amend my claim number 7 to reflect  
3 a balance as of the date of filing of the  
4 bankruptcy of \$32,773.86.

5 Debtor's claim objection to Claim number 7 finally came on  
6 for evidentiary hearing. However, debtor contacted the court  
7 staff to advise that she would not attend. Michael did appear,  
8 and was asked if he had anything to add to the papers already  
9 filed. The Court offered to place him under oath for any fact  
10 testimony he wanted to bring out, but he declined, presumably  
11 because he had nothing to add to his last written response.  
12 Thereafter, the matter was taken under submission.

13 Section 502 of Title 11, United States Code, provides in  
14 relevant part:

15 (a) A claim or interest, proof of which is  
16 filed under section 501 of this title, is  
17 deemed allowed, unless a party in interest  
18 . . . objects.

19 (b) [I]f such objection to a claim is made,  
20 the court . . . shall determine the amount of  
21 such claim . . ., except to the extent that

22 (1) such claim is unenforceable against  
23 the debtor and property of the debtor  
24 . . . .

25 Rule 3001(f), Fed. R. Bankr. P. states: "A proof of claim  
26 executed and filed in accordance with these rules shall  
27 constitute prima facie evidence of the validity and amount of  
28 the claim." The Court had indicated at prior hearings on this  
29 matter that an evidentiary hearing was necessary because debtor  
30 had successfully rebutted the prima facie validity of proof of

1 Claim number 7. Indeed, Michael's last written statement  
2 acknowledged errors in both the amount claimed and in asserting  
3 the claim was entitled to priority in payment. Having rebutted  
4 the claim's validity, the claimant has the burden of proof on  
5 both the validity and amount of the claim.

6 A central issue is the statute of limitations. Michael has  
7 asserted that the loan was made in 1999, pursuant to an oral  
8 agreement. The loan was to be repaid within 30 days, but was  
9 not. A sum of \$10,000 was repaid within a year - therefore,  
10 sometime in 2000. At the time of that payment, debtor asserted  
11 the loan had been repaid, and continued to so claim according to  
12 Michael's statement in support of the proof of claim. Under  
13 applicable California law, the statute of limitations for  
14 enforcement of an oral contract is two years. So, by sometime  
15 in 2002, the statute of limitations would have run, and any such  
16 obligation would no longer be enforceable.

17 Michael's argument appears to be twofold: 1) debtor  
18 repeatedly said she still considered the obligation an  
19 outstanding one; and 2) the payments Michael should have made or  
20 credited as rent in 2009 somehow revived the debt that became  
21 unenforceable in 2002. Neither argument is persuasive. First,  
22 the notion of debtor agreeing the obligation remained outstanding  
23 over all those years is directly impeached by Michael's and  
24 Cynthia's written statements attached to the proof of claim where  
25 they declared that debtor consistently said the loan had been  
26 fully repaid. To Michael's argument that debtor listing a debt

1 to him was some sort of admission, it may admit that an  
2 obligation is claimed by a creditor to exist, and should be  
3 scheduled whether agreed to or not.

4 Second, Michael's argument that in 2009 he incurred an  
5 obligation to debtor for rent, etc., which he most recently  
6 unilaterally offset (post-petition) against the alleged debt  
7 does not revive the earlier obligation -- whatever it was. Any  
8 loan debt of debtor owed to Michael had long since become  
9 unenforceable, and there is no evidence of any reaffirmation by  
10 the debtor between 2002 and 2009. Moreover, if one were to  
11 conclude that such a revival had occurred, that could create  
12 new problems for Michael, including a constructively fraudulent  
13 conveyance from debtor to Michael since the debtor got no  
14 consideration for reviving a defunct debt. If it were found  
15 to be a fraudulent conveyance under 11 U.S.C. § 544, Michael  
16 could be obliged to repay the estate the payment he did receive  
17 before he could press his claim against the estate, as provided  
18 in 11 U.S.C. § 502(d). Moreover, the estate would have a direct  
19 claim against him for the value of three months' housing,  
20 utilities, etc.

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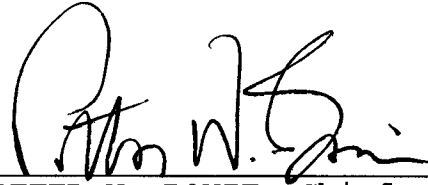
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1 For all the foregoing reasons, debtor's objection to Claim  
2 number 7 is sustained, and the claim is disallowed in its  
3 entirety.

4 IT IS SO ORDERED.

5 DATED: JAN 31 2012

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8 PETER W. BOWIE, Chief Judge  
9 United States Bankruptcy Court  
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