

Arbitration
Summary Judgment

In re Zorn, Inc. 696-66369-fra12
In re Glenn Thomas Owen 696-66368-fra13

3/18/98 FRA Unpublished

Zorn Farms, Inc. (ZFI), a creditor of the two related debtors, filed a claim in the two bankruptcies for a debt for which the debtors are jointly and severably liable. The debt relates to a judgment entered in Marion County Circuit Court based on an arbitrator's award made after the parties agreed to submit their disputes to binding arbitration. The debtors objected to the claims on a number of grounds, the most significant being that they are entitled to a number of offsets the debtors feel they are owed for property held by ZFI but which the debtors allege belongs to them. ZFI filed a motion for summary judgment.

ZFI argued that the terms of the arbitration agreement preclude litigation of the offsets in this forum because the agreement states that the arbitration is intended to resolve all claims that have accrued as of June 1, 1996. Since the property existed on that date, failure to resolve the claims as part of the arbitration extinguished the claims. The debtors countered that at the time of the arbitration, they did not know that ownership of the property was disputed and therefore could not have brought the claims at that time. Further, they allege that it was not their intent at the time that any disputes concerning ownership of property be resolved in the arbitration.

Because there is a material disputed fact, namely whether the arbitration agreement was meant to dispose of the claims at issue, the court denied summary judgment.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

IN RE)	
)	
ZORN, INC.,)	Case No. 696-66369-fra12
)	
Debtor.)	
IN RE)	
)	
GLENN THOMAS OWEN,)	Case No. 696-66368-fra13
)	
Debtor.)	MEMORANDUM OPINION

Zorn Farms, Inc., a creditor of the two related debtors above, filed a motion for summary judgment with respect to the Debtors' objection to the movant's claim. For the reasons that follow, Zorn Farms' motion will be denied.

BACKGROUND

Mr. Glenn Thomas Owen (hereafter Thomas Owen) is an owner and President of Zorn, Inc., a corporation which is in the farming business. Over the years, Zorn, Inc. has been involved in litigation concerning a number of issues with Zorn Farms, Inc. (ZFI), a corporation which owns the land on which Zorn, Inc. operates and whose president is a Mr. Gerald Owen, the brother of

1 Thomas Owen. In 1996, the parties agreed to submit their dispute
2 to arbitration and an arbitration agreement was entered into in
3 June of that year. On August 26, 1996 the arbitrator issued an
4 award in ZFI's favor. A judgment based on the arbitrator's award
5 was entered in the Circuit Court for Marion County on September
6 27, 1996 in the amount of \$15,000 against Zorn, Inc. solely and
7 \$210,000 against Zorn, Inc. and Thomas Owen jointly and
8 severally. A supplemental judgment was subsequently entered in
9 that court in the amount of \$16,652 against Thomas Owen and
10 Catherine Zorn, another party to the arbitration, for attorney
11 fees, costs, and disbursements. After crediting the Debtors with
12 all recoveries made and making allowance for credit bids made for
13 certain equipment, ZFI contends that its claim has been reduced
14 to \$38,832.32 plus interest at 9%. When its proof of claim was
15 filed in the Debtors' bankruptcies, however, it was filed in the
16 amount of \$93,235.65.

17 The Debtors filed an objection to ZFI's claim on a number of
18 grounds, including:

19 1. The claim understates the amount of payments received and
20 does not reflect a credit bid made.

21 2. Claim overstates the amount of interest accrual.

22 3. The Debtors are entitled to offsets for assets of the
23 Debtors held by ZFI, specifically irrigation pipe, a diesel
24 tractor, unpaid rent, and a blade.

25 4. An offset should be made for interest accrual on Tom
26 Owen's ZFI stock and for funds seized from Catherine Owen.

1 ZFI responds that after reduction for credit bids the claim
2 is in fact reduced to \$38,832. It disputes the allegation that
3 interest accrual on its judgment is too high, that interest is
4 due on Thomas Owen's ZFI stock, or that any offset is owed for
5 funds seized from Catherine Owen which were subsequently
6 returned. As to the offsets which the Debtors contend are due
7 for certain assets held by ZFI, ZFI argues that the Debtors'
8 failure to resolve those issues as part of the arbitration
9 agreement precludes their litigation in this forum due to the res
10 judicata effect of the arbitration agreement and the judgment
11 entered based on the arbitrator's award.

12 SUMMARY JUDGMENT

13 Summary judgment is appropriate when the pleadings,
14 depositions, answers to interrogatories, admissions, and
15 affidavits, if any, show that there is no genuine issue of
16 material fact and the moving party is entitled to judgment as a
17 matter of law. Fed. R. Civ. P. 56, made applicable by Fed. R.
18 Bankr. P. 7056. The movant has the burden of establishing that
19 there is no genuine issue of material fact. Celotex Corp. v.
20 Catrett, 477 U.S. 317, 323 (1986). The primary inquiry is
21 whether the evidence presents a sufficient disagreement to
22 require a trial, or whether it is so one-sided that one party
23 must prevail as a matter of law. Anderson v. Liberty Lobby,
24 Inc., 477 U.S. 242, 247 (1986).

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1 DISCUSSION

2 The arbitration agreement entered into by the parties
3 stipulates that the "arbitration is intended to resolve all
4 claims between the parties that have accrued as of June 1, 1996."
5 ZFI argues that that language precludes the Debtors from
6 litigating the question of offsets for certain assets because
7 those assets were in existence on June 1, 1996 and any question
8 as to their ownership should have been raised at that time. By
9 affidavit, Thomas Owen contends that it was his understanding
10 that the arbitration agreement was not intended to resolve the
11 ownership of personal property because, at that time, he did not
12 know that there was any dispute concerning the assets in
13 question.

14 The arbitrator's opinion does not deal with any of the
15 assets whose ownership is now disputed and neither does the
16 arbitration agreement define the term "claims." The Circuit Court
17 judgment entered on the arbitrator's findings states in paragraph
18 4 that "All other claims made by any party are disallowed and
19 judgment is entered dismissing all other claims by all parties,
20 with prejudice." There is no indication in the judgment,
21 however, as to what other claims may have been made by the
22 parties. In an affidavit in support of the motion for summary
23 judgment, George McKallip, ZFI's attorney, states that Zorn, Inc.
24 attempted during the arbitration to establish ownership to
25 certain personal property, but failed in the attempt. Thomas
26 Owen, by affidavit, disputes the fact that the arbitration was

1 meant to resolve issues concerning personal property. Assuming,
2 *arguendo*, that the ownership of certain personal property was
3 brought up during the arbitration, the fact that the arbitrator's
4 opinion fails to discuss the ownership of any personal property
5 would provide at least some evidence that the arbitration was not
6 meant to cover those items.

7 Neither the arbitration agreement, the arbitrator's opinion,
8 nor the judgment based on the arbitrator's opinion provides the
9 court with a clear and unambiguous answer as to whether the
10 failure to resolve the ownership of the disputed items of
11 personal property during the arbitration precludes subsequent
12 litigation of that issue. The parties do not agree as to the
13 intent of the parties prior to and during the arbitration. More
14 to the point, they dispute what they intended at the time. A
15 release cannot be construed to bar claims not within the
16 contemplation of the parties. Patterson v. American Medical
17 Products, Inc., 141 Or.App. 50, 916 P.2d 881 (1996).

18 I find that a material issue of fact is in dispute which
19 precludes this court from resolving the Debtors' objection to
20 ZFI's claim by summary judgment.

21 CONCLUSION

22 ZFI's motion for summary judgment is denied. An order
23 consistent with this opinion will be entered.

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26 FRANK R. ALLEY, III
 Bankruptcy Judge