

Interpretation  
Plan interpretation

In Re Claudine Beckner District Ct. # 00-6090-HO  
Bankruptcy Ct. # 698-66668-aer13

5/10/00 Hogan (affirming Radcliffe) Unpublished\*

Debtor's confirmed Chapter 13 plan required surrender and return of a leased restaurant awning in full satisfaction of the obligation owed to the lessor. Debtor then objected to the lessor's proof of claim on the basis of the plan's language re: full satisfaction. However, Debtor had not returned the awning. The bankruptcy court interpreted the plan's language to require Debtor to detach and return the awning rather than requiring the lessor to pick it up. The court then overruled the Debtor's objection.

On appeal, the District Court affirmed, holding the bankruptcy court had correctly interpreted the plan's plain language.

\*On occasion the Court will decide to publish an opinion after its initial entry (and after submission of this summary). Please check for possible publication in WESTLAW, West's Bankruptcy Reporter, etc.

*L. J. ...*  
USBC,  
FILED 5-11-00  
*[Signature]*

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CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE, OREGON

BY *[Signature]*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re:

CLAUDINE Y. BECKNER,  
Debtor.

*Bankr. Case 98-66668 aer 13*

Case No. 00-6090-HO

ORDER

Debtor appeals from the order denying her objection to the claim of creditor, Lords of London.

STANDARD

The bankruptcy court's findings of fact shall not be set aside unless clearly erroneous. Fed. R. Bankr. P. § 8013. Issues of law are reviewed de novo. U.S. v. Horowitz, 756 F.2d 1400, 1403 (9<sup>th</sup> Cir. 1985).

1 - ORDER

FACTUAL BACKGROUND

Debtor filed a Chapter 13 petition on November 9, 1998. The Chapter 13 plan filed by the debtor contained the following provisions related to creditor, Lords of London:

The debtor shall surrender any collateral not otherwise addressed by the terms of this plan no later than upon confirmation of this plan to the following...:

Lords of London-Awning

Exhibit 1 (Chapter 13 Plan dated November 5, 1998)) (attached to Excerpt of Record (#28)) at ¶ 2(b)(2).

The Awning lease with Lords of London is rejected, and the awning shall be returned in full satisfaction of any obligation to Lords of London. Said obligation is disputed.

Chapter 13 Plan at ¶ 10.

Lords of London filed a proof of claim. The plan was confirmed on January 20, 1999.

The restaurant upon which the awning is attached was sold by debtor. However, the new owners have not objected to plaintiff removing the awning.

On July 28, 1999, debtor filed an objection to the claim of Lords of London in the amount of \$31,710.96. In her objection the debtor stated:

Said claim was disputed as a violation of Federal and State disclosure requirements, as well as being unconscionable. Paragraph 10 of the plan, which has been confirmed and not disputed by Lords of London, provided that returning the awning shall satisfy any obligation to Lords of London in full. Lords of London received notice of the plan as soon as the plan was filed. Lords of

London should be required to re-pay to the trustee everything that they have already received.

Exhibit 4 (attached to #28) at p. 2.<sup>1</sup>

Lords of London requested a hearing claiming that debtor failed to surrender the awning in accordance with the plan.

In support of her objection, debtor noted that she was 59 years old, ill, and did not have the physical strength nor the knowledge to remove the awning. Exhibit 7 (attached to #28) at ¶ 3. Debtor concluded that she did "not believe that there is anyway that [she could] remove the awning and return it to Lords of London." Id at ¶ 5.

At the hearing, the bankruptcy court found:

The debtor wants to interpret the plan as meaning the creditor is free to come pick it up at their expenses any time they want to do that. And, be that as it may, the position taken here by the creditor is the correct position based upon the wording of the confirmed plan. The plan does not provide that the creditor is free to pick up its awning in full satisfaction of the lease. It says that the awning shall be returned.

So, notwithstanding the affidavit of the debtor that she's 59 and in ill health, and in no position to return the awning, I guess the question boils down to who has the responsibility to detach and return it, and at whose expense should that be? And based on the wording of the plan, one cannot conclude that it is the creditor's responsibility to do this at their expense.

The plan specifically states the awning shall be returned. The plan of course was not drafted by Lords of London. The plan was drafted by the debtor. So, in this instance I believe the position taken by the creditor is the correct position. And since the awning has not been returned ... the objection to the creditor's claim is not well-founded and will be denied.

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<sup>1</sup>Debtor apparently did not pursue any argument regarding disclosure requirements or unconscionability.

Exhibit 8 (attached to #28) at pp. 5-6.

### DISCUSSION

The issue presented in this appeal is whether the bankruptcy court correctly interpreted the plan. Debtor argues that when considering paragraph 10 of the order confirming the plan and real world practices in conjunction with the plan, it becomes clear that the plan requires the creditor to assume responsibility for removing the awning. Paragraph 10 of the order provides:

All creditors to which the debtor is surrendering property pursuant to the plan are granted relief from the automatic stay to effect possession and to foreclose.

Exhibit 3 (attached to #28). The debtor then argues that in practice, easily returned items are generally returned by the debtor prior to confirmation and that large immovable objects such as houses or apartment buildings cannot be returned and the lender is almost always required to commence some type of foreclosure. However, the awning is not a piece of real property. The plan is clear and unambiguous that the debtor shall return the property.

Plaintiff next argues, based on extra-record evidence<sup>2</sup> that Lords of London does not want the property. On appeal the scope of review is limited to the record and to that which was presented to

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<sup>2</sup>Plaintiff submitted exhibit 15 which is part of a letter from creditor's counsel stating that "Its position is that failing to return the awning after a year from the date of the confirmation of the plan violates the plan's provisions. Moreover, my client has no use for that awning and it is no longer in business."

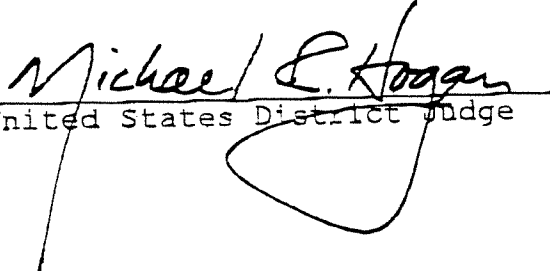
the bankruptcy court. Furthermore, the extrinsic evidence does not demonstrate that plaintiff complied with the terms of the plan regarding the return of the awning. Debtor further argues that the only address provided to her for creditor is a post office box. Nonetheless, the plan puts responsibility for the return of the awning on the debtor. Debtor has not provided any indication that the creditor refused any attempts at returning the awning.

This is a simple matter of interpretation of the plan. The plain language of the plan is clear. The words "the awning shall be returned" may not reasonably be interpreted to require creditor to take responsibility for removing the awning from the building to which it is attached.

#### CONCLUSION


For the reasons stated above, the bankruptcy court's decision to deny debtor's objection to the claim of creditor, Lords of London, is affirmed.

DATED this 10<sup>th</sup> day of May, 2000.

  
United States District Judge

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a-H. Y. Wells, Trustee  
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+ Entered

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CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE, OREGON

BY 

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CLAUDINE Y BECKNER

Appellant,

v.

Civil No. 00-6090-HO

LORDS OF LONDON

USBC No. 98-6668 out 13

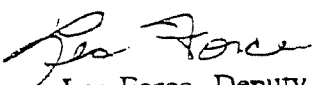
Appellee.

JUDGMENT

The bankruptcy court's decision to deny debtor's objection to the claim of creditor, Lords of London, is affirmed.

Dated: May 11, 2000.

Donald M. Cinnamond, Clerk

by   
Lea Force, Deputy

JUDGMENT

DOCUMENT NO: \_\_\_\_\_



