

FILED**MAY - 7 2012**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**Not for Publication**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:

JAMES LARRY SACCHERI and JUDITH

ANN SACCHERI,

Debtors.

Case No.: 09-17721-B-7

Adv. No. 09-01273-B

Dept. F, Courtroom 13, Fresno,
California

Honorable Richard T. Ford

ST. LAWRENCE VALLEY DAIRY,

Plaintiff,

v.

JAMES LARRY SACCHERI and JUDITH

ANN SACCHERI,

Defendants.

FURTHER FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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2 On June 29, 2011, this Court issued its Findings of Fact and
3 Conclusions of Law finding that the Defendant is liable for a
4 debt in a unspecified amount to Plaintiff and that the debt is
5 not dischargeable pursuant to 11 U. S. C. 523(a)(2) (A) and 11
6 U. S. C. 523 (a)(4). The Court set a further trial in July, 2011,
7 to determine the amount of damages. On April 6, 2012 the Court
8 issued its additional Findings determining the Judgement to be in
9 the amount of \$399,131,35, plus attorney's fees and costs. The
10 amount set forth on page 14, line 20 (\$399,131.35) is an
11 INCORRECT amount. The correct amount of the damages is set forth
12 on page 4 at lines 22-26, wherein it states the total charges is
13 \$736,342.86, minus the total credits of \$242,336.29 equals the
14 total damages of \$492,006.57. The correct amount is also stated
15 on page 12, line 17. The Court allowed the Plaintiff fourteen
16 days to file his application and declaration for fees and allowed
17 the Defendant an additional fourteen days to file its opposition.
18 Those documents have now been filed, and the Court is ready to
19 issue its Final Findings reference attorneys fees and costs and
20 its Final Judgment for all proceedings in this case.
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23 1. On November 9, 2009, the Plaintiff filed its initial
24 complaint in this matter. In paragraph 11, it is stated that
25 defendant signed a Settlement and Release Agreement and that the
26 agreement provided for attorney's fees to the prevailing party in
27 any litigation regarding the substance of that agreement. In the
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1 Prayer, Plaintiff asked for, among other things, attorney fees
2 and costs.

3 2. In Defendants answer they denied the allegations
4 contained in paragraph 11 and in their prayer they ask that
5 Plaintiff take nothing.

6 3. The Plaintiff filed its First Amended complaint on March
7 30, 2010. In paragraph 23, Plaintiff alleged that the Defendant
8 signed a Settlement Agreement and among other things it provided
9 for attorney fees and costs to be paid to the prevailing party.
10 The prayer also requested an award of attorney fees.
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12 4. The defendants filed their answer on April 13, 2010 and
13 in paragraph 20 they allege that they signed two promissory notes
14 and the Settlement Agreement under "duress" and they further deny
15 that attorneys fees are proper because the Plaintiff is not
16 seeking to enforce the Settlement Agreement.

17 5. On May 14, 2010, Plaintiff filed its Second Amended
18 Complaint, again asking for attorneys fees.

19 6. On May 28, 2010, the Defendants answered and alleged that
20 attorneys fees should not be awarded.

21 7. On June 25, 2010, a Third Amended Complaint was filed and
22 they again asked for attorney fees and cost.
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24 8. On July 12, 2010, the Defendants filed an answer to the
25 Third Amended Complaint and asked for reasonable attorney fees
26 for Judith Saccheri under Bankruptcy Code Section 523(d).
27 Defendant also asks for attorney fees under 523(d) in favor of
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1 James Saccheri.

2 9. On July 12, 2010, the Defendant Judith Saccheri filed a
3 cross-claim and a complaint against St. Lawrence and among other
4 things , asks for attorney fees.

5 10. On July 18, 2011 a fourth Amended Complaint was filed
6 and it again asked for attorney fees.

7 11. Lastly on August 17, 2011, each Defendant filed a answer
8 denying the allegations set forth in Plaintiff's Amended
9 Complaint.

10 12. On January 5, 2012, before the Court's Order of April
11 6, 2012, Plaintiff filed its application for attorney fees and
12 costs, seeking \$58,356.25 in fees and \$2,737.50 in costs.
13 Plaintiff also filed its Declaration of Jeff Reich in support
14 thereof.

15 13. On January 26, 2012, the Defendant James Saccheri, filed
16 his brief regarding attorney fees. He denied that fees were due
17 but did not question the amount of fees or costs requested.

18 14. On February 9, 2012, Plaintiffs filed a reply.

19 15. On April 18, 2012, Plaintiff filed another application
20 for fees, this time requesting \$59,382.50 and costs in the sum of
21 \$2,737.50.

22 16. On May 1, 2012, Defendant James Saccheri filed his
23 opposition and declaration re attorneys fees.

24 There are two issues. Whether any fees or costs are due to
25 Plaintiff , and if they are, are the fees requested reasonable.
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1 The Settlement Agreement (Ex 4) and the two promissory notes
2 (Ex 5 and 6) each provide for attorney's fees if the defendant
3 breaches the agreement. The Settlement Agreement provides:

4 "11. ATTORNEY'S FEES. If either party to this
5 Agreement initiates any enforcement action or brings
6 any action for any relief against the other,
7 declaratory or otherwise, for the purpose of enforcing
8 this Agreement or pursuing a breach thereof, the losing
9 party shall pay to the prevailing party a reasonable
10 sum for attorney's fees incurred in bringing such
11 action and /or enforcing any judgment granted there."

12 This document plus the promissory notes were all received into
13 evidence. The defendant made payments pursuant to the agreements
14 for four months before defaulting.

15 In Fleischmann Distilling Corp. V. Maier Brewing Co., 386 U.
16 S. 714,717,87 S. Ct. 1404,1407, the Court said "Our reading of
17 the Bankruptcy Code's plain language is reinforced by the
18 principle that attorney fees are properly awarded to a creditor
19 prevailing in a bankruptcy claim if there exists a statute or
20 valid contract providing therefore." Since Section 523 does not
21 expressly provide for attorney fees(except in a limited case
22 under 523(d)) we must look to the provisions of the written
23 agreement (Ex 4). The agreement clearly provides for the
24 allowance of attorneys fees in the case at bar.

25 As the Bankruptcy Appellate Panel stated in the case of
26 Charlie Y v. Robert Carey in 446 B. R. 384 in March of 2011,
27 under the American Rule, " the prevailing litigant is ordinarily
28 not entitled to collect a reasonable attorneys" fee from the

1 loser. " Alyeska Pipeline Srv. Co. V. Wilderness, 421 U. S. 240,
2 247 (1975). However, this general rule can be overcome by statute
3 or by an "enforceable contract" allocating attorney's fees.
4 Fleischmann Distilling Corp. V. Maier Brewing, 3386 U. S. 714,
5 717 (1967). In California, Section 1021 of the California Code
6 of Civil Procedure provides for attorney fees by agreement,
7 express or implied.

8 In this case the Plaintiff asked for attorney fees and costs
9 in every complaint and amended complaint filed in this
10 proceeding; the defendant acknowledged the request by denying
11 plaintiff's right to fees in each of his answers, so the issue
12 was before the Court. The Court finds that the provision in the
13 Settlement Agreement and Promissory Notes are applicable in this
14 case, the defendant has no valid defenses in opposition to the
15 request, and the Court finds that Plaintiff is entitled to fees
16 and costs.

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18 The Court has reviewed Plaintiff's application for fees and
19 costs and exhibits thereto. In addition, the Court has reviewed
20 Defendant's opposition and declaration re fees. The Court finds
21 that the rates requested in said application are reasonable and
22 that the description of each service is detailed sufficiently to
23 fully describe each service.

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25 Therefore the Court awards Plaintiff attorneys fees of
26 \$59,382.50 and costs in the sum of \$2,737.50 and, as the
27 Judgment, shall state these amounts will be non-dischargable. A
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1 separate Judgment shall issue.

2 DATED: May 7, 2012.

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5 RICHARD T. FORD, Judge
6 United States Bankruptcy Court
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Service list for 09-1273:

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