

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
ASSET RECOVERY OF ST. JOSEPH) CASE NO. 10-30338 HCD
COUNTY, LLC,) CHAPTER 11
)
DEBTOR.)

Appearances:

Kenneth A. Manning, Esq., counsel for debtor, Manning & Gonzalez, PC, 200 Monticello Drive, Dyer, Indiana 46311;

Mark J. Adey, Esq., counsel for AFG, LLC, Barnes & Thornburg LLP, 600 1st Source Bank Center, 100 North Michigan Street, South Bend, Indiana 46601;

R. William Jonas, Jr., Esq., counsel for Mr. Sheneman, Hammerschmidt, Amaral & Jonas, 137 North Michigan Street, South Bend, Indiana 46601;

Andrea Kurek Slagh, Esq., counsel for Z/2 Partners, Hahn, Walz and Knepp, 509 West Washington Avenue, South Bend, Indiana 46601; and

Alexander L. Edgar, Esq., Assistant United States Trustee, One Michiana Square, 100 East Wayne Street, Suite 555, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 4, 2011.

There are two issues before the court: (1) the value of the claim filed by secured creditor AFG, LLC (“AFG” or “creditor”) in the bankruptcy case of Asset Recovery of St. Joseph County, LLC (“Asset Recovery” or “debtor”), and (2) the authority of the debtor’s agents, Steven Kollar, Homebuyers, L.L.C., and Faith Zehner, to make a legally binding contract with AFG. Presently before the court are the Debtor’s Objection to Claim #7 of AFG; Debtor’s Motion to Determine Amount of Secured Claim of AFG; and Objection by Interested Party, Michael Sheneman, to the Claim of AFG. The creditor AFG filed a Response

to the objections, and an evidentiary hearing on the issues was held on January 19 and 20, 2011. After the parties filed post-trial briefs and responses, the court took the matter under advisement.¹

BACKGROUND

Asset Recovery filed its voluntary chapter 11 petition on February 5, 2010. The secured creditor AFG filed Proof of Claim # 7, with attached copies of loan documents in support. Its claim is based upon a Promissory Note (“Note”) and “Future Advance Mortgage” (“Mortgage”) executed by the debtor, 115 Land Trust, and Steven Kollar on March 12, 2007, and duly recorded on March 19, 2007.² The collateral securing the mortgage is La Casa Estate Apartments in Elkhart, Indiana. There were also collateral assignments of rents and numerous modifications of the Note and Mortgage executed among the parties. Together, these loan documents form the basis of AFG’s claim. The court considers first the debtor’s challenges to the amount of the claim; it then addresses Mr. Sheneman’s objections to the claim.

AFG’s claim against the debtor was established, at trial, in the amount of \$2,510,950.56. (*See* Trial Ex. 32.) At trial and in the post-trial briefs, the debtor made clear that it accepted AFG’s claim as a secured claim and agreed that AFG was entitled to the principal amount due and owing from the debtor, to 15% interest, to repayment of the funds given in advance of the tax sale, and to reasonable attorney fees. The debtor acquiesced that the claim should be allowed in the total amount of \$1,887,399.48. However, it objected to the other expenses added to AFG’s claim: default interest at 21%, a 2% exit fee, the Blue Water fee and Love Funding fee, extension fees due under agreement amendments, and late payment damages (of 15% upon maturity on 10/31/09).

DISCUSSION – DEBTOR’S OBJECTION TO CLAIM

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

² The Note and Mortgage originally were executed in favor of Asset Funding Group, LLC, but were assigned to AFG on October 3, 2007.

AFG is an oversecured creditor, the parties agree. Under § 506 of the Bankruptcy Code, a creditor holding an oversecured claim is entitled to “interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement . . . under which such claim arose.” 11 U.S.C. § 506(b); *see also United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 103 L.Ed.2d 290 (1989). With respect to the award of interest, however, the Seventh Circuit Court of Appeals held that there “is a presumption in favor of the contract rate subject to rebuttal based upon equitable considerations.” *In re Terry Ltd. P’ship*, 27 F.3d 241, 243 (7th Cir. 1994). In determining AFG’s entitlement to specific amounts of its claim, therefore, the court begins with the terms of the contract between a creditor and debtor, but may review the circumstances of the parties and weigh elements of fairness when determining an interest award.

Having reviewed the loan documents evidencing AFG’s claim, and having considered the equities as presented by the parties in their testimony, evidentiary exhibits, and briefs, the court now applies § 506(b) and the *Terry* considerations. It begins by pointing out the parts of AFG’s claim about which there is no disagreement. The parties do not dispute that AFG is an oversecured creditor and that Asset Recovery owes AFG the principal amount of \$1,400,000. Nor do they challenge AFG’s entitlement to (a) interest at the stated interest rate of 15%, (b) the advance tax sale payment, and (c) reasonable attorney fees. For that reason, the court finds that the claim is allowed, by agreement of the parties, to this extent:

\$1,400,000.00	principal
307,808.21	stated interest @ 15% (Sept. 1, 2009 to 2/17/11)
36,263.27	stipulated advance tax sale payment
<u>143,328.00</u>	reasonable attorney fees
\$1,887,399.48	Total undisputed amount of claim

One explanation is in order, however, concerning the amount of interest claimed. AFG claimed interest in the amount of \$320,250.33 and stated that the interest accrued from “August 2009 to 2/17/11.” Trial Ex. 32. However, the CEO of AFG, Christopher T. Gharrity, testified at trial that the August 2009 interest had been paid and that the amount of interest that had accrued from September 1, 2009, through February 17, 2011 was \$307,808.21. The court found Mr. Gharrity’s testimony to be thorough, credible,

and reasonable. It therefore calculated the amount of interest due to AFG from September 1, 2009, through February 17, 2011, according to the terms of the contract between the parties. The relevant contract is the Promissory Note. It contains the following term:

All interest accruing under the terms of this Note shall be computed on the basis of the actual number of days in the year. Interest shall accrue hereunder beginning on the date hereof on a simple interest basis, and shall accrue up to and including the date of repayment.

Trial Ex. 1A, Note, at p.1. The court finds the provision in the Note clear. Applying its terms, therefore, the court computed the interest for 365 days, “the actual number of days” of the year, and determined, as did the debtor, that interest accrued at the rate of \$575.34 per day. Because there are 535 days between September 1, 2009, and February 17, 2011, the amount of interest calculated by the court is \$307,808.21.

The court now considers the other charges listed by AFG on Trial Exhibit 32.

A. Default Interest of an additional 6% interest (Feb. 2008 to 2/17/11)

AFG claimed a default interest 6% above the predefault amount of 15%. The Note specifies that a default rate of 21% applies:

From and after the maturity of this Note, whether by acceleration or otherwise, or from the occurrence of an event of default until such default is cured, the entire amount of the principal, interest and any other amount remaining unpaid under this Note shall bear interest at an annual rate of twenty-one percent (21%) (the “Default Rate”).

Trial Ex. 1A, Note, at p.3. The debtor objected to AFG’s charge of an additional 6% default interest as unreasonable and as an unenforceable penalty. It insisted that default interest should not be allowed because: (a) 6% additional interest was too high and was inequitable; (b) non-insider claims were at risk because of the default interest; and (c) AFG gets a “double recovery” because default interest was charged to cover added costs and expenses for the borrower’s default, such as extra monitoring of the loan, attorney fees, and travel, and thus were penalty charges rather than interest.

AFG responded that, as an oversecured creditor, it was entitled to post-petition interest on its claim under § 506(b). The Note specifically provided a default interest rate of 21%, and that contract rate

should be allowed, it insisted. AFG pointed to specific testimony and evidence at trial that demonstrated that the rate was reasonable, was calculated to compensate AFG for the unforeseen additional costs and expenses associated with the debtor's default under the Note and Mortgage, and was unrefuted.

The court confirmed that the testimony of Christopher T. Gharrity, the CEO of creditor AFG, represented the sole evidence on the riskiness of AFG's loan to the debtor, the market conditions in Elkhart, Indiana at that time, and the reasonableness of that default interest rate in the commercial marketplace. The court found that Gharrity's testimony upheld the presumption in favor of the contract rate established between the parties, and Asset Recovery offered no evidence to rebut that presumption or to challenge the timing of the default from February 2008. The court was concerned that the default interest rate, six percentage points higher than the predefault rate, was a significantly higher rate. However, Gharrity justified the default rate by explaining that its contract rate was in the middle of the range in the prevailing lending market and its default rate was a little below the customary market range. No evidence was presented to rebut his credible and thorough testimony. The court finds, therefore, that the contract default rate was not excessive; it was a reasonable means of protecting against the unforeseeable consequences of a default. It further found that, because the parties had agreed to the rate of interest to be paid in the event of a default, AFG should not be deprived of its bargained-for rights, and equity does not require it. *See In re Terry*, 27 F.3d at 244-45; *Invex Holdings, N.V. v. Equitable Life Ins.*, 179 B.R. 111, 115 (N.D. Ind. 1993). It therefore allows AFG to claim entitlement to default interest in the amount of \$216,378.06.

B. Exit Fee of 2%

AFG claimed it was entitled to \$112,000.00 in exit fees charged on four occasions, in April, August, September and October 2009. Gharrity testified that exit fees were typical in the industry. Asset Recovery denied that entitlement on the ground that they were not included in any of the loan documents. At trial, Gharrity admitted that the only document providing an exit fee was the Seventh Promissory Note.

See Ex. 1L, ¶ 9. It stated that, if the loan was not paid off by September 15, 2009, an exit fee “equivalent to 2 points of the then existing loan amount shall accrue and become payable to Lender.” *Id.*

The creditor charged an exit fee of \$112,000.00 for four occurrences. Because only one document executed by the parties called for an exit fee, the court allows AFG to claim an exit fee for only that one occurrence, in the amount of \$28,000.00.

C. Blue Water fee and Love Funding fee, wired per Kollar

AFG claims that it should be reimbursed for two wire transfers, in the amounts of \$15,020.00 and \$20,000.00, that the creditor advanced to help Asset Recovery in its attempt to refinance. Gharrity testified that he spoke with the Love Funding and Blue Water agencies and paid the debtor’s application fees for those loans. The debtor presented no evidence to refute that the wire transfers were made (other than a surmise that there might have been some refunded amount) and gave no legal argument challenging the allowance of that amount. The court finds that AFG is entitled to claim that the debtor owes the amounts wired for the Blue Water and Love Funding fees in the amounts of \$15,020.00 and \$20,000.00.

D. *Extension Fees*

The creditor claimed that the sixth, seventh, and eighth amendments provided for extension fees to be paid. Gharrity, upon cross examination, acknowledged that there was no eighth amendment, and therefore no possible extension fee under that nonexistent document. He also admitted that the sixth amendment did not include a provision for an extension fee. The only document providing for an extension fee is the Seventh Promissory Note. *See* Trial Ex. 1L. AFG claimed that the extension fee due under that seventh amendment was \$10,327.00. *See* Trial Ex. 32. The court finds that amount to be incorrect; the “Extension Fee due to Lender is \$7,000.00 (0.5% of the outstanding amount of \$1,400,000.00).” *Id.* The creditor had added to that amount additional fees listed in that paragraph: title endorsement fees,

underwriting fees, and attorneys' fees. Such fees were not extension fees, however, and must be denied as part of AFG's claim. The court finds that AFG is entitled to claim only \$7,000.00 in extension fees.

E. Late Payment Damages – 15% upon maturity on 10/31/09

AFG's claim includes the amount of \$218,050.05 for "late payment damages" which were calculated at 15% upon maturity on October 31, 2009. AFG's CEO Chris Gharrity testified that it was a late penalty used by a lender if a borrower did not pay off an amount in the expected time and the lender was required to continue servicing the administration of the loan years later. In its brief, AFG stated that those late charges were "deemed by the parties to cover the estimated additional costs and expenses that would result from the debtor's failure to remit periodic payments timely." R. 150 at 8. AFG also described the 21% default rate as "a reasonable rate calculated to compensate AFG for the unforeseen additional costs and expenses associated with the Debtor's default under the Loan Documents." *Id.* at 4-5. Although it asserted that the loan documents provided for those late charges, AFG did not point to any contract with such a term.

The court examined the creditor's late payment damages along with the default rate of interest. It previously had found that AFG's default interest in the amount of \$216,378.06 was allowable. It found clear justification for the default rate: It was provided for in the Note, agreed to by the parties, and served the traditional purpose of compensating a lender for unforeseen costs associated with a defaulting borrower. Nevertheless, the court had noted its concern that the default rate of 21% was a significant increase over the pre-default rate of 15%. The *Terry* court expressed a similar concern about a significant increase in the default rate, particularly when amounts were due under both the default interest rate and under added charges for late fees also stemming from the debtor's default. Because the default rate and late fees "would have in effect enabled the creditor to recover twice for the same losses," the default rate amounts were rejected. *In re Terry*, 27 F.3d at 244.

The additional “late payment damages” claimed herein were listed in almost the identical amount as the default interest amount and were charged for the same reason. The court found that the combination of the two charges for the debtor’s default had the effect of enabling the creditor to recover twice for the same losses upon default. After considering the underlying agreements of the parties and the equities of the case, the court finds that AFG is not entitled to claim \$218,050.05 as late payment damages.

In summary, therefore, the court finds that the following items detailed in AFG’s payoff statement, Trial Exhibit 32, are reasonable under § 506(b), and it allows AFG’s claim for the following amounts:

\$1,400,000.00	principal
307,808.21	stated interest @ 15% (Sept. 1, 2009 to 2/17/11)
36,263.27	stipulated advance tax sale payment
143,328.00	reasonable attorney fees
216,378.06	default interest
28,000.00	exit fee
15,020.00	Blue Water fee
20,000.00	Love Funding fee
7,000.00	extension fee
<u>0.00</u>	late payment damages of 15%
\$2,173,797.54	total allowed amount of claim

Accordingly, the court grants the Debtor’s Objection to Claim in part and denies it in part, and it allows AFG’s claim in the amounts listed above.

DISCUSSION – SHENEMAN’S OBJECTION TO CLAIM

Interested party Michael Sheneman (“Sheneman”) filed an Objection to the secured claim of AFG. He asserted that AFG’s claim should be disallowed on the grounds that Steven Kollar, Homebuyers, L.L.C., and Faith Zehner lacked the authority to act on behalf of the debtor, in particular to borrow money on behalf of the debtor or to execute the Note, Mortgage, and modifications of those loan documents in favor or AFG. The court begins by examining how authority is delegated in limited liability companies.

Asset Recovery is an Indiana Code limited liability company governed by the Indiana Business Flexibility Act (“Act”), Indiana Code § 23-18-1-1 et seq. On March 3, 2006, its registered Agent and attorney, Donald E. Wertheimer, filed its Certificate of Organization and Articles of Organization (“Articles”) in the Office of the Indiana Secretary of State. *See* Trial Ex. 6. The initial member of the company was Homebuyers, L.L.C.³ Certificates of Amendment and Amended Articles were later filed with the Indiana Secretary of State on the following dates with the following amendments (*see* Trial Exs. 7-10):

1. July 2, 2007 – The initial member was named as Faith Zehner. She signed as “managing member.”
2. July 27, 2007 – Faith Zehner remained the sole initial member. The Articles added Article IX, “Single Purpose Entity Bankruptcy Remote Covenant” and were submitted by the LLC’s attorney Mr. Wertheimer.
3. October 16, 2007 – The initial members were Michael P. Sheneman and Steven Kollar. The Articles did not contain Article IX. They were submitted by Asset Recovery’s attorney Mr. Wertheimer.
4. December 10, 2007 – The initial member was Faith Zehner, and she signed the Articles. The Articles included Article IX. The registered Agent was Rosemarie Apple. An Amended Operating Agreement, dated July 25, 2007, and signed by attorney Wertheimer, was attached.⁴ It presented the company’s management authority and operating procedures. In particular, it set forth the authority of the Manager, Steven Kollar:

1.5 Authority. Members agree in fact . . . and appoint Steven Kollar, a resident of St. Joseph County, Indiana as Manager with authority to act as the soul [*sic*] member of Asset Recovery of St. Joseph County, LLC and thereby having the following authority in reference to any and all entity operations and any and all properties it may hold in title to: Buy, sell, mortgage, encumber,

³ Homebuyers, L.L.C. filed its Articles of Organization on October 16, 2001. Its initial members were Steven Kollar and his brother Phillip Kollar, and Steven Kollar was its registered Agent. One limited liability company can be a member of another LLC. *See* Ind. Code § 23-18-1-15, § 23-18-1-17. When the Articles provide for more than one manager, the consent of the majority is required to decide business matters. Ind. Code § 23-18-4-3. Neither the statute nor the Articles, though, require a written vote or recorded approval of a majority of the members, and nothing in the record indicates that Steven Kollar did not have the consent of Phillip Kollar when he conducted business on behalf of Homebuyers, L.L.C. *See* Ind. Code § 23-18-3-1.1 (“ . . . each member is an agent of the limited liability company for the purpose of the limited liability company’s business or affairs . . .”).

⁴ An operating agreement establishes the company’s business conduct and authorizes the agents who can act on behalf of the LLC. It is binding upon the members. *See* Ind. Code § 23-18-1-16. The original Operating Agreement is not in the court’s record.

convey, rent, lease, . . . and to execute appropriate deeds, conveyances or other instruments including contracts, warranty deeds, security deeds, or any documents required. . . . This power is limited to business conducted with Asset Funding Group, LLC a Colorado Limited Liability Company.

Trial Ex. 10. Finally, it stated that the sole member, Faith Zehner, held 100% interest in the LLC.

Sheneman argued that Steven Kollar misrepresented that he was the sole member of Homebuyers, L.L.C. and that he had authority to execute documents on behalf of Homebuyers. According to Sheneman, Steven Kollar could not represent Homebuyers without authorization from the co-member Phillip Kollar. Without Phillip's consent, therefore, Asset Recovery did not have authority to borrow from Asset Funding Group, LLC.

Having reviewed the documents submitted to this court at trial, the court first finds that the debtor Asset Recovery met its burden of demonstrating that its formation as a limited liability company was authorized and proper under the Act. It was organized to conduct business for a lawful purpose. It observed the formalities when forming the limited liability company and complied with the statute regulating the company's business, Indiana Code § 23-18-1-1 et seq. *See* Ind. Code § 23-18-2-1, -3, -4. Steven Kollar, as one of the two members of Homebuyers, L.L.C., was able to conduct the business of Asset Recovery as long as he had the consent of his brother, the other member of Homebuyers. *See* Ind. Code § 23-18-4-3. Now that the debtor and Kollar have shown that the establishment of the limited liability company was authorized and proper, the burden of proving that Kollar lacked authority is upon Sheneman, the person asserting the lack of it. *Cf. U.S. v. Kitsos*, 94 F.3d 647 at *2 (7th Cir. 1996) (finding that the challenger failed in his burden of proving that the U.S. Attorney lacked the authority to proceed); *In re Real Homes, LLC*, 352 B.R. 221 (Bankr. D. Idaho 2005) (finding that evidence to demonstrate that the debtor was properly authorized to file bankruptcy was not presented). In this case, Sheneman was required to prove that Kollar, either on behalf of Homebuyers, L.L.C. or on behalf of Asset Recovery, was without authority to engage in business dealings with Asset Funding Group, LLC and, later, AFG, LLC.

On March 12, 2007, when the Note and Mortgage underlying AFG's claim were executed, Asset Recovery was operating under the Articles filed on March 3, 2006; the only named member of the company was Homebuyers, L.L.C. Steven Kollar signed the Note on his own behalf and on behalf of Asset Recovery's member, Homebuyers. Co-member of Homebuyers, Phillip Kollar, was not called to testify at the hearing on January 19 and 20, 2011, about whether he consented to Steven Kollar's conduct. Asset Recovery's original Operating Agreement (which must have preceded the Amended Operating Agreement of July 25, 2007) was not produced to demonstrate that Steven Kollar was or was not delegated the power to act as sole member at that time. Nothing in this record indicates that Steven Kollar lacked the authority on March 12, 2007, to execute documents on behalf of Asset Recovery. Sheneman's charge, without proof, is insufficient.

Sheneman also challenged AFG's due diligence investigation by asserting that, if AFG had examined Homebuyers's Articles of Organization, it would have realized that Kollar could not unilaterally sign the documents. Mr. Gharrity testified that AFG had conducted due diligence reviews of these borrowers. He received a lengthy legal opinion from his attorney that Asset Recovery was in good standing with the State of Indiana and had the requisite power and authority to carry on its business. *See* Trial Ex. 21. The title company conducted its review of the documents and found no disability to report to AFG. *See* Trial Ex. 24. In addition, Steven Kollar executed a three-page Borrower's Affidavit with representations, warranties and indemnities concerning his business dealings. *See* Trial Ex. 21. The court finds that AFG's due diligence was conducted appropriately and acceptably. Moreover, it is clear that a limited liability company like Asset Recovery had the power to sell, purchase, or mortgage real property, and that its member, Homebuyers, as sole member of Asset Recovery, had "the right and authority to make all decisions of the limited liability company." Ind. Code § 23-18-4-1; *see also* Ind. Code § 23-18-2-2 (powers of limited liability companies). As long as Steven Kollar's brother Phillip approved the transaction (and the court has no reason to doubt his affirmation of it), Steven Kollar had full authority to culminate the deal. Sheneman

has failed to sustain his burden of proving that Steven Kollar acted without authority in the execution of the Note, Mortgage, and other loan documents at issue herein.

Sheneman also insisted that Steven Kollar did not have authority to execute subsequent documents on behalf of Asset Recovery. In fact, Sheneman repeatedly stated that Steven Kollar “lied about his status and authority on behalf of the Debtor.” R. 148 at 14. He challenged Kollar’s signature as “sole member” or “manager” on the October 3, 2007, Assignment of the Note and Mortgage to AFG, and on the later loan installments and modifications. At trial, Steven Kollar testified that he thought he had the right to sign in those capacities. The court notes that the Amended Operating Agreement of July 25, 2007, gave Steven Kollar power to act as the “sole member” of Asset Recovery; had it been filed with the Amended Articles on July 27, 2007, his authority under that title would have been clear at that time. In any case, his authority was ratified time and again in subsequent modifications of the Note and Mortgage.

Sheneman’s objections to the AFG claim fail, however, at a much more fundamental level. He describes himself as an “interested party,” and he claims 50% ownership in the debtor, but he appears to have no standing to challenge AFG’s claim. Sheneman was a member of Asset Recovery only from October 16, 2007, until December 10, 2007; he was not a member during the bankruptcy period, and he has no personal stake in the operation of the limited liability company. It is generally held that only a member of an LLC may bring suit on behalf of the LLC. *See, e.g., In re Estate of Bender*, 806 N.E.2d 59, 65 (Ind. App. 2004) (concluding that only other members and managers of an LLC have standing to challenge an operating manager’s exercise of authority). The *Estate of Bender* court found that the non-member Estate had no personal stake to challenge any injury to the LLC and therefore was not the proper party to invoke the court’s power. This court finds that Sheneman, who is not a member of Asset Recovery, does not have any power to manage the debtor’s business and does not have standing to contest the claim of AFG.

Sheneman presented one more argument, nevertheless. He claimed that this court recognized his 50% ownership of the debtor in its Agreed Order of March 30, 2010. *See* Trial Ex. 2 at 3. It is not clear

that his ownership is determinative of his standing in this claim proceeding, since he is not a member of the debtor, but the court notes that it approved the Agreed Order “as to form and content” only. No evidence was presented at the trial to prove that Sheneman holds a 50% ownership interest. Nor was evidence presented that Sheneman (a) prepared and executed documents to evidence the ownership of the debtor, (b) filed the documentation with the Indiana Secretary of State, and (c) filed with the Recorder of Elkhart County the documents necessary to release the Notice of Lis Pendens he recorded earlier, as the Agreed Order mandated. *See id.* Even though the parties included that statement of ownership in the Agreed Order, the court finds no justification for the statement. The evidence before the court, which included the last Amended Articles of Organization of Asset Recovery, demonstrates conclusively that Faith Zehner holds a 100% interest in Asset Recovery, in terms of capital contributions, percentage interest and units. *See* Trial Ex. 10, Ex. B. Accordingly, the court now strikes the portion on page 3 of the Agreed Order which states:

ORDERED that the ownership of the Debtor, Asset Recovery of St. Joseph County, LLC, is determined to be held (i) fifty percent (50%) by Faith Zehner, and (ii) fifty percent (50%) by Sheneman.

Having found that Sheneman is neither a member nor an owner of the debtor and holds no authority to speak on behalf of Asset Recovery as an “interested party,” the court concludes that Sheneman has no standing to challenge the claim of AFG. It therefore denies his objection in its entirety.

CONCLUSION

For the reasons presented in this Memorandum of Decision, the court denies the Objection by Interested Party Michael Sheneman to the Claim of AFG, LLC. It denies in part and grants in part the Debtor’s Objection to Claim #7 of AFG, and grants the Debtor’s Motion to Determine Amount/Value of Secured Claim in the total allowed amount of \$2,173,797.54. Finally, the court strikes the portion of the Agreed Order of March 30, 2010, which states that Michael Sheneman holds a 50% ownership interest in the debtor Asset Recovery, LLC.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT