

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT HAMMOND

IN RE:)
WILLIAM JOHN HANYZEWSKI)
GERALYN MARIE HANYZEWSKI) BANKRUPTCY NO. 10-23862
)
Debtors)

MEMORANDUM OPINION
DECISION
AND
ORDER

I

Statement of Proceedings

This Chapter 13 case is before the Court on the Objection filed on December 17, 2010 by the Chapter 13 Debtors, William John Hanyzewski and GERALYN MARIE HANYZEWSKI (“Debtors”) to Claim No. 19 (“Claim”) filed by Indiana Becknell Investors, L.L.C. (“Becknell”) on December 2, 2010.

A Response to said Objection was filed by Becknell on January 10, 2011.

Pursuant to an Order dated January 13, 2011, a Prehearing Conference was scheduled on said Objection on February 9, 2011.

At the conclusion of the Prehearing Conference the Debtors stipulated that they would file a Prehearing Statement on or before March 2, 2011, setting out their calculation of the amount of Section 502(b)(6) statutory damages that are allegedly due to Becknell. Becknell was ordered to file a Prehearing Statement in answer thereto on or before March 16, 2011, and a Telephonic Prehearing Conference was scheduled on April 6, 2011.

The Debtors filed their Prehearing Statement on February 14, 2011 and on March 16, 2011, Becknell filed its Response to the Debtors’ Pre-trial Statement. On April 11, 2011 th Debtors filed their

Reply to Becknell's Response to the Debtors' Prehearing Statement.

A Prehearing Conference was held on April 6, 2011, and on April 7, 2011 a Docket Entry Order was made wherein the Court decided that the Court must first determine, as a matter of law, whether or not the subject Lease between Becknell, as Lessor, and Thompson Printing Co., Inc. ("Thompson"), as Lessee, dated June 5, 2007 ("Lease") and/or the "Partial Guaranty Lease" appended to last page of the Lease, executed by the Debtor William only ("Guaranty") are ambiguous, and therefore whether or not parol evidence may be admitted to expand, verify, or explain the terms thereof, applying Indiana Law. The Court held a Telephonic Hearing on May 19, 2011 on the above discrete issue.

At the conclusion of the Hearing the Court entered a Docket Entry Order on May 19, 2011, whereby it stated that if the Court decided that those Lease and Guaranty are not ambiguous, it will render its decision, and if the Court decided the documents are ambiguous, the Court will issue a Scheduling an Order for a Final Evidentiary Hearing.

II

The Claim by Becknell

The Claim by Becknell is in the amount of \$97,720.81 as of the petition date, as a General Unsecured Claim. The Claim states that the basis of the Claim is for "Breach of Partial Guaranty of Lease; see Rider Attached."

The Rider alleges that Becknell, as lessor, and Thompson, as lessee, entered into a lease dated June 5, 2007 for those premises located at 235 W. 45th St, Munster, Indiana ("Lease"), and that in April, 2010, Thompson defaulted on said lease by stopping to make payments, vacated the premises and failed to cure.

The Rider further alleges that the Debtor William entered into a document which is titled "Partial Guaranty of Lease", attached as Exhibit "A". ("Guaranty"). The "Guaranty" provides as

follows:

In the event of default by Lessee on this Lease and Lessee fails to cure as provided herein then the undersigned Guarantor [Debtor] shall pay to Lessor the unamortized remaining balance of the costs expended by Lessor for tenant improvements ("Default Payment"). The beginning balance of the Default Payment shall be \$121,280. Thereafter the amount of the default payment due to Lessor shall be decreased as each monthly rent payment is received by Lessor. The decrease shall be determined by reducing the \$121,280 on a 10 year amortization schedule using 8% interest and assuming a monthly payment of \$1,455.93 (emphasis supplied).

The Rider further alleges that as of April 2010, the Default Payment owed to Becknell, as lessor, is \$97,720.81, plus interest, costs fees and other charges provided under the "Guaranty" executed by the Debtor William, the lease and applicable law. The Rider further alleges that, as provided by the "Guaranty" by the Debtor, the beginning balance of the Default Payment was \$121,280.00, and that this amount was decreased by thirty two (32) monthly payments of \$1,455.93 received by Becknell ending before April 10, 2010, based on a 10 year amortization schedule using 8% interest.¹

The Lease at Paragraph 9, ALTERATIONS, expressly provides that prior to the commencement of the term, Lessor (Becknell) shall provide improvements to the (leased) premises as described in Exhibit "B". There is no requirement whatsoever in the lease that Thompson (the Lessee) make any improvements in the leased premises. In addition, Paragraph 17, DEFAULT, sets out the events of default under the lease. The failure of Thompson to pay for the improvements by Becknell is not an event of default under the lease by Thompson.

1

The Rider also stated that although it is not clear whether the §502(b)(6) statutory cap applies it does not matter as Becknell's claim of \$146,414.32 versus Thompson is greater than Becknell's claim versus the Debtor William in the sum of \$97,720.81

III

The Objection by the Debtors to the Claim

The Objection by the Debtors asserts that the claim based on Debtor William's Guaranty of the breach of the Lease by Thompson is limited by §502 (b)(6), which provides that if an objection to a claim is made the Court shall determine the amount of such claim and allow such claim in such amount, except to the extent that -

- (6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—
 - (A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of -
 - (i) the date of the filing of the petition; and
 - (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
 - (B) any unpaid rent due under such lease; without acceleration, on the earlier of such dates;....

The Debtors assert that the Claim should be reduced to an amount for the greater of one year, or 15%, not to exceed three years, of the remaining term of the lease, following the date Thompson surrendered the leased premises in April, 2010, in that §502 (b)(6) also applies to the "Partial Guaranty" of the Lease by the Debtor William.

IV

The Response by Becknell to the Objection to Claim by the Debtors

Becknell's Response attached a copy of Claim No. 33 filed by Becknell versus the Bankruptcy Estate of Thompson. Thompson filed its Chapter 7 Petition in the Bankruptcy Court for the Northern District of Indiana, Hammond Division, under Case No. 10-22183. The Court will take judicial notice of the Record in Case No. 10-22183. ²

²

Federal Rule of Bankruptcy Procedure 9017 provides that the Federal Rules of Evidence apply in cases under the Code. See also, Fed.R.Evid 1101(a) and (b).

This claim No. 33, which was filed on May 12, 2010, in Case No. 10-22183, is in the amount of \$828,810.58, of which \$822,401.30 is alleged to be unsecured. The claim stated that the statutory cap pursuant to §502(b)(6) was applicable and the cap was \$146,414.32. The detailed Rider to the claim expressly set out a computation of the §502(b)(6) statutory cap. The Chapter 7 Trustee in Thompson's Chapter 7 Case objected to Becknell's claim, and on May 27, 2011 the Court approved an agreed entry resolving said Objection. The Agreed Order reduced the §502(b)(6) statutory cap claim to \$139,005.04, based on a \$7,409.28 security deposit applied by Becknell.

As noted previously, Becknell asserts that because the claim amount versus the Debtor William in this case in the sum of \$97,720.81 is substantially less than the §502(b)(6) claim versus Thompson in the sum of \$146,414.32 in Case No. 10-22163, the §502(b)(6) statutory cap in this case is not relevant in determining the amount of Becknell's claim versus the Debtors' estate.

V

The Prehearing Statement by the Debtors Computing the Claim by Becknell

Federal Rule of Evidence 201 provides that the Court, whether or not requested, may take judicial notice of adjudicative facts at any stage of the proceedings. Federal Rule of Evidence 201 is the only evidentiary rule on the subject of judicial notice.

This Court has held in In re Snider Farms, Inc., 83 B.R. 977, 986 (Bankr. N.D. Ind. 1988), citing, In re Woodmar Realty, 294 F.2d 785,788 (7th Cir.1961), cert.den. 369 U.S. 803,82 S. Ct. that a Bankruptcy Court is duty bound to take judicial notice of its records and files. See, United States v. Wood, 925 F.2d 1580, 1582 (7th Cir. 1991) (In nondischargeability proceedings the court can take judicial notice of matters of public record); Friedrich v. Mottaz, 294 F.3d 864, 87 (7th Cir. 2002) (bankruptcy judge did not err by taking judicial notice of schedules filed by debtor in main case in §548(a)(1) adversary proceeding); State of Florida Board of Trustees of Internal Improvement Trust Fund v. Charley Toppino & Sons, Inc., 514 F.2d 700, 704 (5th Cir. 1975) (not error for a bankruptcy court to take judicial notice of related proceeding and records in cases before a court); In re E.R. Fegert, Inc., 887 F.2d 955, 957-58 (9th Cir. 1989) (the Court may take judicial notice of the file and record in the underlying case); Matter of Missionary Baptist Foundation of America, 712 F.2d 206, 211 (5th Cir. 1983) (A court may take judicial notice of the record in prior related proceedings and draw reasonable inferences therefrom).

The Prehearing Statement by the Debtor asserts that applying §502(b)(6) to Becknell's claim, the amount of the claim should be reduced to \$17,471.16.

The Debtors arrive at this conclusion by asserting that the relevant rental balance due by the Debtor William on his Guaranty is \$97,720.81. The Debtor asserts that the sum of \$97,720.81 is capped by the greater of 15% thereof or \$14,658.12 (15% x \$97,720.81) or 17,471.60 (12 months x \$1,455.93 a month).

In the alternative, the Debtors asserts that if the Guaranty is determined not to be the guaranty of rent pursuant to §502(b)(6), but a guaranty of construction costs expended for tenant improvements, the claim should be denied in its entirety, citing In Re Gantos, Inc. 181 B.R. 903 (Bankr. W.D. Mich. 1995).

VI

The Response by Becknell to the Debtor William's Prehearing Statement Computing the Claim of Becknell

The response by Becknell to the Debtors' Prehearing statement, asserts that the Lease between Becknell and Thompson did not contain any provision which obligated Thompson in any way to pay Becknell for the costs incurred by Becknell in making improvements in the leased property, and that Becknell's Claim versus the Debtor William is based on the independent contractual agreement by the Debtor William to pay for the costs of the tenant improvements incurred by Becknell, pursuant to Paragraph 9 of the Lease with Thompson.

Becknell further asserts that although the document in issue is captioned "Partial Guaranty of Lease", this document is not controlled by the caption thereof, in that the body thereof was in fact a separate and independent contract between Becknell and the Debtor William, and thus cannot be construed as a guaranty of a debt of Becknell as primary obligation, i.e. the claim is not for the Debtor William to pay for the Claim of another, namely Becknell. Accordingly, Becknell asserts that because

its claim versus the Debtor William is not based on Thompson's default under the lease relating to the rent due by Thompson to Becknell, §502(b)(6) is not applicable.

VII

The Reply by the Debtor to The Response by Becknell

The Debtors filed their Reply to the Response filed by Becknell. The Debtors assert since the "Partial Guaranty" of the Lease by the Debtor William refers to the improvements in Paragraph 9 of the Lease, the costs of the improvements were included as part of the lease payments by Thompson to Becknell, and because the Debtor Williams's liability was reduced by each rental payment by Thompson to Becknell, the Partial Guaranty constitutes a guaranty of the rent due by Thompson to Becknell.

VIII

Conclusions of Law and Discussion

A

Subject-Matter Jurisdiction and Core Proceeding

No objections were made by the parties to the subject-matter jurisdiction of the Court. The Court finds subject-matter jurisdiction to be present, pursuant to 28 U.S.C. §1334(b). The Court also finds this contested matter is a Core Proceeding pursuant to 28 U.S.C. §157(b)(2)(B).

B

State Substantive Law is applicable to Claim

The validity of a creditor's claim is determined by the rules of State law, which as expansively used, includes all nonbankruptcy law that creates substantive claims. Grogan v. Garner, 489 U.S. 279, 111 S. Ct. 654, 657 + N.9, 112 L. Ed. 2d 754 (1991) (citing Vanston Bondholders Protective Comm.

v. Green, 329 U.S. 156, 161, 67 S. Ct. 237, 239, 91 L. Ed. 162 (1946)); Raleigh v. Illinois Department of Revenue, 530 U.S. 15, 120 S. Ct. 1951, 1955, 147 L. Ed 2d 13 (2000) (creditor's entitlements in bankruptcy arise in the first instance from the underlying law creating the debtor's obligations subject to any qualifying or contrary provisions of the bankruptcy code. The "basic federal rule" in bankruptcy is that State Law governs the substance of claims) (citing, Butner v. United States; 99 S. Ct. 914 (1979) and Vanston Bondholders Protective Committee v. Green, 67 S. Ct. 237 (1946); Travelers Casualty & Surety Co v. Pacific Gas & Electric Co 549 U.S. 443, 127 S. Ct. 1199, 1205, 167 L. Ed 2d 178 (2007) (when the Bankruptcy Code uses the word "Claim" it is usually referring to a right to payment recognized under State Law).

C

Choice of Applicable State Law

A federal court when adjudicating a claim based on state law is ordinarily required to apply the choice of law principles of the state in which it sits, i.e., the law of the forum state. Matter of Stoecker, 5 F. 3d 1022, 1029 (7th Cir. 1993); In re Air Crash Disaster Near Chicago, Illinois, on May 25, 1979, 644 F. 2d 633, 637 (7th Cir. 1981); Coldwell Banker & Co. V. Karlock, 686 F. 2d 596, 600 (7th Cir. 1982). In addition, a federal court under the Erie doctrine must follow state law in deciding whether to enforce a stipulation of choice of law. Wood v. Mid-Valley, Inc., 942 F. 2d 425, 426 (7th Cir. 1991). The Seventh Circuit in the case of In Re Jafari 569 F.3d 644, 649 (7th Cir. 2009), observed that there was a split of authority as to whether State or Federal law supplies the choice of law rules in a bankruptcy case. The Jafari Court declined to decide the issue. However it decided to apply Wisconsin choice of law rule as the Wisconsin rule was the same as the federal common law rule. Id. 569 F. 2d at 651.

In this contested matter before the Court, neither party asserted that the State law of the forum, i.e. the law of Indiana, should not apply. Neither the Lease nor the "Partial Guaranty" contains a choice

of law provision.

Where neither party has offered evidence of the applicable state law or asked the Court to take judicial notice thereof, an Indiana Court will apply the law of the forum, i.e., Indiana. See e.g., Suyemasa v. Myers, 420 N.E.2d 1334, 1342 (Ind. App. 1981). In addition, it was held in Gonzalez v. Volvo of America Corporation, 752 F.2d 295, 299 (7th Cir. 1985), that where the parties fail to raise a possible conflict of substantive laws, the better rule is that the law of the forum controls. See also, Wood v. Mid-Valley, Inc., 942 F.2d at 426 (The operative rule is when neither party raises a conflict of law issue in a diversity case, the federal court simply applies the law of the state in which the federal court sits).

Indiana has long applied what has come to be known as the "most significant relationship" test in deciding what law to apply to a contract dispute. Kolentus v. Avco Corporation, 798 F.2d 949, 955 (7th Cir. 1986), cert. den., 107 S. Ct. 878, 93 L. Ed.2d 832, (citing, W.H. Barber v. Hughes, 223 Ind. 570, 63 N.E.2d 417 (Ind. S. Ct. 1945)). See also, Secon Services Systems v. St. Joseph Bank and Trust, 855 F.2d 406, 412 (7th Cir. 1988). This approach has been applied to contract cases. See Clow Corporation v. Ross Township School Corporation, 384 N.E.2d 1077, 1082 (Ind. App. 1979); Utopia Coach Corporation v. Weatherwax, 379 N.E.2d 518, 522 (Ind. A. 1978). That test only comes into play if the parties have not otherwise agreed to the applicable state laws. Id., 379 N.E. 2d at 522 (discussing factors to be considered).

Thompson is an Indiana Corporation. The leased premises were located in Indiana and the Debtor William is an Indiana resident. Accordingly, the Court will apply the law of Indiana to Becknell's Claim.

D

Indiana Law of Parol Evidence and Contract Construction

In Indiana, parol or extrinsic evidence is inadmissible to expand vary, or explain an instrument

unless there is a showing of fraud, mistake, ambiguity, illegality, duress, or undue influence. Orme v. Estate of Kruwell, 453 N.E.2d 355, 356 (4th Dist. Ind. App. 1983); Stech v. Panel Mart, Inc., 434 N.E. 2d 97, 101 (3rd Dist. Ind. App. 1982); Hauck v. Second National Bank of Richmond, 153 Ind. App. 245, 286 N.E. 2d 852, 861 (2nd Dist. Ind. App. 1972).

In Indiana, the existence of a contractual ambiguity is a question of law for the trial judge. Superbird Farms, Inc. v. Perdue Farms, Inc., 970 F.2d 238, 243 (7th Cir. 1992). However, the interpretation of an ambiguous contract is a question of fact. Bicknell Minerals, Inc. v. Tilly, 570 N.E.2d 1307, 1310 (Ind. App. 1991); First Federal Savings Bank v. Key Markets, Inc., 559 N.E.2d 600, 604 (Ind. 1990); South Tipton School Building Corp. v. Shambaugh & Sons, Inc., 395 N.E.2d 320, 325 (Ind. App. 1979). Also, when extraneous facts and circumstances are necessary to explain an ambiguous or uncertain contract the question of construction is one of mixed law and fact. *Id.*, 395 N.E.2d at 325. By contrast, the construction of an ambiguous contract represents a question of law where the ambiguity arises by reason of the language used and not because of extrinsic facts. Bicknell Minerals, Inc. v. Tilly, 570 N.E.2d at 1310; First Federal Savings Bank v. Key Markets, Inc., 559 N.E.2d at 604; South Tipton School Building Corp. v. Shambaugh & Son, Inc., 395 N.E.2d at 325.

Under Indiana Law "[a] contract is ambiguous if a reasonable person would find the contract subject to more than one interpretation." Superbird Farms v. Perdue Farms, 970 F.2d at 243, (quoting, Orkin Exterminating Co. v. Walters, 466 N.E.2d 55, 60 (Ind. App. 1984)); see also, Ramirez v. American Family Mutual Insurance Co., 652 N.E.2d 511, 514 (Ind. App. 1995); Fort Wayne Cablevision v. Indiana & Michigan Electric Co., 443 N.E.2d 863, 865-66 (Ind. App. 1983) trans. denied; Shahan v. Brinegar, 181 Ind. App. 39, 46 390 N.E.2d 1036, 1041 (1979); Colonial Mortgage Co. Of Indiana, Inc. v. Windmiller, 176 Ind. App. 535, 539, 376 N.E.2d 529, 531 (Ind. App. 1978); Tastee-Freez Leasing Corp. v. Milwid, 173 Ind. App. 675, 678, 365 N.E.2d 1388, 1390 (1977).

But a contract is not ambiguous merely because there is a controversy as to its application in a particular situation or the parties have differing interpretations of the contract terms. Ramirez v. American Family Mutual Insurance Co., 652 N.E. 2d at 514; Pennington v. American Family Insurance Group, 626 N.E. 2d 461, 463 (Ind. App. 1993); Selleck v. Westerfield Insurance Company, 617 N.E. 2d 968, 969 (Ind. App. 1993); Meridian Mutual Ins. Co. v. Cox, 541 N.E. 2d 959, 961 (Ind. App. 1989).

In determining whether a contract is ambiguous, the court may not consider individual clauses without reference to the whole instrument. Pennington v. American Family Insurance Group, 626 N.E. 2d at 463; 100 Center Development Co. v. Hacienda Mexican Restaurant, Inc., 546 N.E.2d 1256, 1258 (Ind. App. 1989). Even where an ambiguity is present, the agreement is not considered ambiguous until the four corners of the instrument have been searched to determine if the parties' intent can be ascertained. Pennington v. American Family Insurance Group, 626 N.E.2d at 463. When a matter is expressly covered by a written instrument, the unambiguous provisions of that instrument control and the intent of the parties to the instrument will be determined from within the "four corners" of the instrument. Orkin Exterminating co. v. Walters, 466 N.E.2d 55, 60 (Ind. App. 1984); Orme v. Estate of Kruwell, 453 N.E.2d 355, 356 (Ind. App. 1983); Hauck v. Second National Bank of Richmond, 153 Ind. App. 245, 259-60, 286 N.E.2d 852, 861 (Ind. App. 1972).

When writings are executed at the same time and relate to the same subject matter, they must be construed together in determining the contract, and consideration for one instrument may be found in a contemporaneous instrument. Goeke v. Merchants Nat. Bank and Trust Co. of Indianapolis, 467 N.E.2d 760, 768 (1st Dist. Ind. Appl. 1984). This Rule however, should not be arbitrarily applied without regard to the realities of each peculiar factual situation. Keystone Square Shopping Center Company v. Marsh Supermarkets, Inc. 459 N.E.2d 420, 424 (3rd Dist. Ind. App. 1984).

E

Whether the "Partial Guaranty of
Lease" is a guaranty by the Debtor William
of the Rent Owed
by Thompson to Becknell

It is important to emphasize that the title to an agreement, i.e. the "Partial Guaranty of Lease" executed by the Debtor William cannot change the substance of its provisions. See In Re Hill 133 B.R. 126, 132-133 (Bankr. N.D. Ind. 1989) ("The label placed on an obligation by the parties or a court is not necessarily determinative of its character"); LTV Steel Company, Inc. v. Northwest Engineering and Construction Inc. 41 F.3d 332, 335 (7th Cir. 1994) ("Labels will not control over substance" in contract interpretation) (Interpreting Indiana law).

The Court in McEntire v. Indiana State Bank, 471 N.E. 2d 1216, 1223 (Ind. App. 1985) stated that "Under Indiana Law, a guaranty is an independent contract to assure liability for performance of a duty or payment of a debt if the primary obligor defaults in performance or payment". A "guaranty" is an agreement collateral to the debt itself and represents a conditional promise whereby the guarantor promises to pay only if the principal debtor fails to pay. Grabill Cabinet Company, Inc. v. Sullivan 918 N.E. 2nd 1162, 1165 (Ind. App. 2010). A guaranty agreement must consist of three parties; the obligor, the obligee and the guarantor. JSV Inc. v. Hene Meat Co. Inc. 794 N.E. 2d 555, 560 (Ind. App. 2003). Ren. Den.

The document titled "Partial Guaranty of Lease" by the Debtor William clearly does not control as to whether in fact and law it constitutes a guaranty as defined by Indiana Law. The language in the body of this document, when construed in conjunction with the Lease itself shall determine the nature and substance of the Debtor William's obligation to Becknell.

The Lease contains no provision whatsoever that Thompson, as lessee, is contractually liable to Becknell, as lessor, for any improvements made in the leased premises by Becknell, See Paragraph

9 of Lease Supra. Further, Paragraph 17 of the Lease relating to events of default by Thompson does not include any provision that should Thompson default as to any of the terms in the lease that Thompson would then become liable to Becknell for the cost of the improvements. Finally, Paragraph 6 of the Lease, TAXES, INSURANCE, EXPENSES, lists as additional rent real estate taxes, insurance and expenses relating to operating, repairing and maintaining the leased premises. There is no provision in Paragraph 6 that the leasehold improvements would be deemed additional rent by Thompson. Accordingly, there is no obligation whatsoever, running from Thompson, as an obligor, to Becknell, as an obligee under the lease, whereby Thompson can incur any liability to Becknell for the improvements in the leased premises by Becknell.

The "Partial Guaranty" does not guaranty the payment of the rent due and owing by Thompson to Becknell under the lease or any other provision thereof. The "Partial Guaranty" is expressly limited to one and only one operative event, i.e. in the event of a default by Thompson as to the Lease, the Debtor William should pay Becknell, as lessor, the unamortized remaining balance of the costs expended by Lessor for tenant improvements ("Default payments"). The "Partial Guaranty" by the Debtor William does not in any way promise to pay Becknell if Thompson defaults in the payment of rent under the lease. Thus, §502(b)(6) has no application to Becknell's claim.

As observed previously in Indiana, there must be three parties to constitute a guaranty, an obligor, an obligee, and a guarantor, JVS Inc v Hene Meat Co. 794 N. N. 560. In this case, as it relates to the tenant improvements found at Paragraph 9 of the Lease, Thompson is not an obligor to Becknell relating thereto and Becknell is not an obligee. Accordingly, the "Partial Guaranty" is not really a guaranty at all. It is an independent contractual agreement running solely between Becknell and the Debtor William to which Thompson is in no way a party by virtue of the lease between Becknell and Thompson. The "Partial Guaranty" by the Debtor William is in substance an Indemnity Agreement in

favor of Becknell as to the leasehold improvements by Becknell, rather than a guaranty of rent due and owing by Thompson to Becknell. See Mead Johnson & Co. Inc. v. Kenco Group 899 N.Ed 1, 3 (Ind. App. 2009) (an indemnity agreement is a promise by one party (the indemnitor) to reimburse the other party (the indemnitee) for the indemnitee's loss, damage, or liability).

The Lease and the "Partial Guaranty" are not ambiguous as a matter of law as they relate to the Debtor William's contractual obligation by him to Becknell and this parol evidence is not admissible to expand, vary or explain these two instruments when read together.

Accordingly, the objection by the Debtors to the Claim No. 19 by Becknell should be and is hereby DENIED, and it is **SO ORDERED**,

Clerk shall enter this Order upon a separate document.

Date: August 26, 2011

Judge, United States Bankruptcy Court

Distribution:
Debtors
Attorney Best
Attorney Jacobi
Trustee