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Thursday, May 17, 2001

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In re

JACQUELINE GAIL KING,

No. 92-12618

[Debtor](#) (s).

Memorandum of Decision

The dispute now before the court involves a \$30,000.00 loan made to debtor Jacqueline King by her mother, Mary Gerstein, in 1987. The loan was to allow King to purchase a home. According to King, in 1990 she and her mother agreed that they would be co-owners of the property in lieu of King's repayment of the loan. King executed and recorded a deed transferring title to her and her mother as joint tenants. In August, 1992, King was experiencing financial problems and felt that a bankruptcy filing might be necessary. She accordingly recorded a deed of trust against the property in favor of her mother, as [trustee](#) of the Mary Gerstein Revocable Trust. King filed a [Chapter 7](#) bankruptcy in October, 1992. She scheduled herself as the owner of the property and her mother's trust as a [secured creditor](#) in the amount of \$38,400.00, which represented the amount owing on the original

\$30,000.00 loan plus accrued interest. The Chapter 7 trustee filed an action against the trust to avoid the deed of trust as a preference. The Chapter 7 trustee and the trustee of the trust then entered into a stipulation whereby the deed of trust was avoided as a preference and the trust was allowed to file an [unsecured claim](#)ⁱ. King has objected to that [claim](#)ⁱ. The basis of King's claim is rather extraordinary, and reflects a rather cynical attitude toward the legal process. King claims that the deed of trust she recorded in August, 1992, was a sham and her [schedules](#)ⁱ were false. In truth, she says, she and her mother were co-owners and there was no actual debt. Since she actually owed her mother's trust nothing when she recorded the deed of trust, King argues that her mother's trust has no allowable unsecured claim. King is in no position to seek relief from a court of equity. Either she and her mother entered into a new agreement turning the partnership back into a loan before the bankruptcy filing, as her schedules and the deed of trust represent, or King is attempting to take advantage of her own perjury and fraud. There is strong evidence that King and her mother turned the partnership back into a loan before the bankruptcy filing. Not only do King's sworn schedules so represent, but there is also a document, signed by King and given to her brother some time in 1994, which refers to the "Mary Gerstein Living Trust Loan" with a balance due on July 1, 1992, of \$38,400.00. From this evidence, the court finds and concludes that before bankruptcy King and her mother transmuted the partnership back into a loan. Although it is not necessary in light of the court's factual finding, the court notes that King is probably judicially estopped from arguing otherwise. Judicial estoppel precludes a party from taking a factual position during the course of litigation that is contrary to one previously asserted by that party in a prior legal proceeding. Bates v. Long Island Railroad Co., 997 F.2d 1028, 1037 (2d Cir.1993), cert. denied, 510 U.S. 992, 114 S.Ct. 550, 126 L.Ed.2d 452 (1993). It protects "the sanctity of the oath and the integrity of the judicial process ... by avoiding the risk of inconsistent results in two proceedings." *Id.*; see also Rosenshein v. Kleban, 918 F.Supp. 98, 104 (S.D.N.Y.1996) ("Judicial estoppel is invoked ... to prevent the party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process"); In re Maxwell Newspapers, Inc., 189 B.R. 282, 289 (Bankr.S.D.N.Y.1995) ("Judicial estoppel prevents a party who benefits from the assertion of a certain position from subsequently adopting a contrary one"). Since King represented in her schedules that there was a loan, and the trustee acted to avoid the deed of trust as a preference (rather than a fraudulent conveyance, as King now argues it was), equity dictates that she not be allowed to change her tune at this late date. King further seems to argue that she has paid off the loan since the bankruptcy was filed. However, she has produced no sworn testimony on this point and, in any event, claims are to be determined as of the date of filing. 11 U.S.C. § 502(b). Subsequent payments are not relevant to allowability. In re Strangis, 67 B.R. 243, 246 (Bkrtcy.D.Minn.1986).⁽¹⁾ For the foregoing reasons, King's objection to the claim of the Gerstein trust will be overruled. Counsel for the trust shall submit an appropriate form of order.

Dated: May 17, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)ⁱ

1. To the extent that the dividend on the allowed claim results in overpayment to the

Gerstein trust, King may have a right to recovery. That is a matter for the state courts, not this

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