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Saturday, December 9, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In re

SOUTHERN HUMBOLDT COMMUNITY HEALTHCARE DISTRICT,
10200

No. 99-

[Debtor](#) (s).

Memorandum on Reconsideration

Due to a combination of circumstances, this case became procedurally messy. The court will do its best at this point to untangle things to the point where a fair and proper ruling is possible. The court notes that it shares some of the blame for the present situation. The issue before the court is whether the debtor's [Chapter 9](#) [plan](#) of reorganization should be confirmed. The only opposing [creditor](#) is Six Rivers National Bank. The Bank is the holder of the debtor's note, in the amount of \$665,000.00, which provides for payment over a period of

five years. Something over half of this obligation was in essence refinancing of credit the Bank had already extended to the debtor. The first step down the path to procedural complication was taken by the debtor. It did not file an objection to the Bank's [claim](#), even though the central issue of the case is whether the Bank has an allowable claim. Instead, the debtor filed an [adversary proceeding](#) which contains, among other things, a count for disallowance of the claim. While this procedure is at least arguably correct,⁽¹⁾ it meant that the court generated no minute sheet. Minute sheets identify the dispute before the court, the date of the hearing, and the disposition. On July 6, 2000, the court estimated the Bank's claim for voting purposes at \$350,000.00. The court arrived at this figure by considering that even if the Bank's note was unenforceable it was still owed \$350,000.00 on account of amounts owed before the refinancing. The court set August 2, 2000, as the date for the hearing on [confirmation](#) of a plan. However, before that date counsel for the debtor suffered a serious health problem. The court issued an order on July 28, 2000, continuing the confirmation hearing to October 4, 2000. The order also provided that the hearing on the debtor's objection to the Bank's claim was set for the same date. There was no minute sheet for this hearing. The court took the case under submission after the October 4 hearing. Since the only minute sheet was for the confirmation hearing, the court assumed that this was the only matter to be decided. It issued a written memorandum on October 10 estimating the Bank's claim at zero and confirming the plan. The Bank has filed a motion for reconsideration, reminding the court that it had previously estimated its claim at \$350,000.00. The easy way out of the procedural mess is for the court to enter an order disallowing the claim. There was, after all, a written and filed objection to the claim in the debtor's complaint and the court's order of July 28 gave the Bank notice that the objection would be heard on October 4. However, this solution might not be fair to the Bank. Nor is it, as the debtor argues, too late to try to be fair. Section 1144 of the [Bankruptcy Code](#) governs revoking confirmation of a plan, not reconsidering confirmation which is not yet final.

As discussed in the memorandum on confirmation, the crux of this entire case is the effect of § 32130 of the California Health and Safety Code. The Bank's sole position was that this statute was not to be given the same draconian interpretation as similar provisions in the California Constitution. Upon researching the issue, the court reached the opposite conclusion. It appeared to the court (and still does) that a restriction on borrowing by a public entity is interpreted the same way regardless whether it is contained in a constitution or a statute, and regardless of whether the entity is a city, county, school district or special assessment district. The court having rejected the Bank's sole argument assumed it was appropriate to rule in favor of the debtor. In its motion for reconsideration, the Bank argues for the first time that even if the court's conclusion regarding the effect of § 32130 is correct it still has an allowable claim which may be asserted against the debtor to the extent of any surplus in fiscal years after the year in which the debt was incurred. The court of course noted cases related to this issue in the course of its research, but assumed that if the Bank was not arguing the point it must not be applicable. While the court is not obligated to consider the matter now, its sympathy with the Bank's plight makes it inclined to do so.

Unfortunately, the Bank does not fare well on reconsideration. It argues that enforcement of a debt of a public entity incurred in one year "remains available from surplus in any subsequent year." This is directly contrary to the statute, and is not the law. "Each year's income must be paid out of each year's liability, and no part of that liability may be paid out of the income of any future year." 45 Cal.Jur.3d, Municipalities, § 523. The only exception is that if there was a surplus in the year in which the debt was incurred the creditor does not lose its claim merely because it was not actually paid in that year. [Title Guarantee and Trust](#)

Company v. City of Long Beach, 4 Cal.2d 56, 59 (1935). The two cases cited by the Bank do not support its position. They merely hold that a holder of a lawful claim against a public entity is entitled to a *judgment* on its claim, even though the judgment may not be enforceable due to indebtedness restrictions. The court clearly stated in H.S. Crocker Co, v. County of Lake, 4 Cal.App.2d 29, 34 (1935): The question as to whether the law furnishes some means of satisfying such a judgment after it has been recovered is not before us in this case. We are not called upon to determine that problem. Section 101(5)(A) of the Bankruptcy Code defines "claim" as a right to payment, regardless of whether or not the claimant has or is entitled to a judgment. The Bank had a right to payment only from any surplus in the fiscal year in which the debt was incurred. The Bank has shown no such surplus. It accordingly has no right to payment, and therefore no allowable claim. For the foregoing reasons, the Bank's motion for reconsideration of the confirmation of the debtor's plan will be denied. In addition, the court will enter a separate order disallowing the Bank's claim. Counsel for the debtor shall submit a form of order denying reconsideration and a separate order disallowing the Bank's claim.

Dated: December 9, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

1. FRBP 3007 provides that if an objection to a claim is joined with a demand for other relief, it "becomes" an adversary proceeding. The debtor didn't wait for the transformation; it just commenced an adversary proceeding. Still, the complaint was in writing and filed, which is all the rule req

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