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Thursday, August 17, 2000

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In re

JACQUELINE GAIL KING,

No. 92-12618

[Debtor](#) (s).

Memorandum re [Claim](#) #24

A full review of all the evidence and argument in this matter has left the court with the impression that [Chapter 7](#) [trustee](#) Charles E. Sims' objection to Claim #24, filed by the Mary Gerstein Revocable Trust, involves a single, simple issue and numerous red herrings. The parties are reminded that FRBP 3008 provides for reconsideration of claims, and may be used to bring to the court's attention an issue overlooked or considered irrelevant. However, if such a motion is made the court expects complete briefs from both sides. The only issue the court can see is whether the Trust has an [unsecured claim](#) for \$24,000.00 based on a loan the Trust made to debtor Jacqueline King in 1992. The original amount of the loan was \$38,400.00. However, the parties seem to agree that \$14,400.00 in principal was forgiven in 1993. There was evidently a post-hoc attempt by King, as part of pre-bankruptcy planning, to secure the obligation with a deed of trust to her residence. The trustee obtained an agreement with the Trust to set aside the deed of trust as a preference. The court sees little or no relevance to this fact, although the parties spent some time confusing the court with it.

In her declaration, King calls the deed of trust the product of a fraudulent conspiracy concocted by some non-lawyer she had the misfortune to consult. However, she goes on to call her obligation to the Trust "contrived." The evidence does not support her assertion.

There is no written promissory note evidencing the debt. However, the Trust has produced a handwritten memo which reads: "Allan [Gerstein, the trustee of the Trust]: Here's your loan statement projected out. I'm going to have to wait until my building project is done before considering paying it off. See you soon. xxoo J." Beneath this, typewritten, the document says:

Mary Gerstein Living Trust Loan July 1, 1992: \$38,400 7% per year, compounded yearly, paid monthly Interest only payments, 30 year balloon Reduced on Jan.1, 1993 to: \$24,000

The court finds that this document is sufficient to create a clear, definite obligation. All of the evidence, much of it created by King herself, leads the court to the conclusion that while the deed of trust may have been "concocted," the obligation itself was real and enforceable.

Pursuant to § 502(b)(2) of the [Bankruptcy Code](#)ⁱ, interest is not allowable on unsecured claims. It may be that there is sufficient money in the estate to pay interest pursuant to § 726(a)(5). However, in such case the interest is computed at the legal rate and has no bearing on the allowed amount of the claim. Accordingly, the Trust will be deemed to have an allowed unsecured claim for \$24,000.00. Counsel for the Trustee shall submit an appropriate form of order, which counsel for Sims has approved as to form.

Dated: August 17, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)ⁱ

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