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Central District of California
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

EDWARD S AHN and
HELEN AHN,

Debtor(s).

Case No: 2:13-bk-15807-WB

CHAPTER 11

**MEMORANDUM OF DECISION RE
MOTION TO DISALLOW CLAIM NO. 9
OF HANIL DEVELOPMENT INC.**

Date: October 24, 2013
Time: 10:00 a.m.
Place: Courtroom 1375
255 E. Temple Street
Los Angeles, CA 90012

The Motion of the debtors Edward S. Ahn and Helen Ahn (“Debtors”) for Entry of Order Disallowing Hanil Development Inc.’s Filed Proof of Claim No. 9 (“Motion”), pursuant to 11 U.S.C. § 502(b) and Bankruptcy Rule 3007, was heard on October 24, 2013. The Court took this matter under submission. The Court considered the Motion, the Opposition filed by Hanil Development, Inc. (“HDI”) and Debtors’ Reply thereto, as well as the arguments of counsel at the hearing. The Court finds and rules as follows:

1 On March 6, 2013, Debtors filed a chapter 11 bankruptcy petition. On May 21, 2013, HDI
2 timely filed a proof of claim, Claim No. 9, in the amount of \$100,000 (the "Claim"). The basis for the
3 Claim is listed as "Promissory Note." Attached to the Claim are the following: a summarized
4 breakdown of the claimed amount, a promissory note dated August 10, 1999 signed by Edward S. Ahn
5 and Helen Ahn, a check issued by HDI, in the amount of \$100,000 dated August 10, 1999 made
6 payable to Edward and Helen Ahn, an unsigned promissory note dated January 16, 2000 in the amount
7 of \$100,000 and a partial transcript of proceedings in the Superior Court of the State of California,
8 County of Los Angeles, in the case of Hanil Development, Inc., et al. v. Edward Ahn, et al., case
9 number BC 253701. The proof of claim does not state that the Claim is secured and therefore it is an
10 unsecured claim.
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13 Debtors assert that the Claim is unenforceable under 11 U.S.C. § 502(b)(1) because the statute
14 of limitations has expired as to actions upon a written agreement under California Code of Civil
15 Procedure § 337 which requires that an action of this type be brought within four years of breach of the
16 underlying contract. Cal. Code Civ. Proc. § 337(1). Here, the promissory note was signed over
17 fourteen years ago, on August 10, 1999, with a maturity date one year later. Thus, according to
18 Debtors, enforcement under the note is barred by Section 337.
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20 Rule 3001(c) of the Federal Rule of Bankruptcy Procedure ("FRBP") provides that if a claim is
21 based on a writing, the original or a duplicate of the writing shall be filed with the claim. Under Rule
22 3001(f), a proof of claim executed and filed in accordance with the FRBP constitutes prima facie
23 evidence of the validity and amount of the claim. To overcome the presumption of validity created by a
24 timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal
25 grounds and provide a memorandum of points and authorities setting forth the legal basis for the
26 objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form
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1 of declarations under penalty of perjury) to create triable issues of fact. In re G.I. Indus., Inc., 204 F.3d
2 1276, 1280 (9th Cir. BAP 2000); In re Medina, 205 B.R. 216, 222 (9th Cir. BAP 1996); In re
3 Hemingway Transport, Inc., 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim
4 provides “some evidence as to its validity and amount” and is “strong enough to carry over a mere
5 formal objection without more.” See Lundell v. Anchor Constr. Spec., Inc., 223 F.3d 1035, 1039 (9th
6 Cir. 2000) (citing In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden
7 and must “show facts tending to defeat the claim by probative force equal to that of the allegations of
8 the proofs of claim themselves.” Holm, 931 F.2d at 623. When the objector has shown enough
9 evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to
10 prove the validity of the claim by a preponderance of evidence. See Lundell, 223 F.3d at 1039 (citation
11 omitted).

14 As filed, the Claim is prima facie valid. HDI timely filed the Claim and included an attachment
15 with a sufficient summary of the claimed amount, a copy of the note, and a check made payable to
16 Debtors in the amount of the note. Thus, Debtors have the initial burden to overcome the presumption
17 of validity. Debtors have met that burden. Debtors challenged the Claim on legal grounds, arguing in a
18 memorandum of points and authorities that the Claim should be disallowed because the Claim is time-
19 barred under California Code of Civil Procedure § 337(1). Under section 337, there is a four-year
20 statute of limitations for actions upon any contract, obligation, or liability based upon a writing. Cal.
21 Code Civ. Proc. § 337(1). The Claim seeks recovery of \$100,000 based on a promissory note (“Note”)
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1 dated August 10, 1999 pursuant to which Edward Ahn and Helen Ahn¹ agreed to pay \$100,000 to HDI
2 on the terms provided in the Note. The Note provides that the unpaid principal and accrued interest
3 will be due in full on August 10, 2000. Claim No. 9 also includes a check for \$100,000 dated August
4 10, 1999 payable to Edward and Helen Ahn.² This Note became due and payable in full on August 10,
5 2000, more than 14 years ago. Debtors further argue that even if the written waiver of limitation
6 contained in the Note is given effect, this does not save the Claim from the expiration of the statute of
7 limitations. Under Cal. Code Civ. Proc. § 360.5, such a waiver provides a four year extension beyond
8 the statute of limitations. See also California First Bank v. Braden, 216 Cal. App. 3d 672, 676 (1989).
9 Under this analysis, the statute of limitations ran, at the latest, on August 10, 2008.
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12 HDI's response is that its claim is prima facie valid and that Debtors have not met their burden
13 since they did not produce any evidence to refute that the amount is owing. This argument
14 misconstrues the burden on the party objecting to the Claim. Debtors have objected to the Claim on
15 legal grounds and have provided authority for the proposition that the Claim is barred by the applicable
16 statute of limitations. The Court agrees and finds that the Claim, as an affirmative claim for relief, is
17 barred by the statute of limitations under California Code of Civil Procedure Section 337.
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22 ¹ The body of the Note states that Edward S. Ahn is the promissor. However, the Note is signed by
23 both Edward Ahn and Helen Ahn.

24 ² Claim No. 9 includes an unsigned Promissory Note dated January 16, 2000 in the amount of \$100,000
25 with a signature line for Helen Ahn. This unsigned note does not support the claim. The partial
26 Reporter's Transcript of Proceedings on December 11, 16, 2002 in the case Hanil Development, Inc. et
27 al. v. Edward Ahn, et al., is limited to pages 1114 and 1115, plus a copy of the Note dated August 10,
28 1999. The transcript is of no probative value as it does not provide the identity of the witness testifying
at that hearing. Claim No. 9 also includes a Reporter's Transcript of Proceedings in the same case for
December 17, 2002 and January 13, 2003, again without identifying the witness testifying in the
excerpted pages. This also has no probative value.

1 HDI also argues that the Claim should not be disallowed because HDI has the right to setoff this
2 debt against any recovery Debtors receive in their pending state court action against HDI. Section
3 553(a) of the Bankruptcy Code preserves a creditor’s right to setoff a claim that arose pre-petition
4 against a claim of the debtor that also arose pre-petition. 11 USC § 553(a). A right of setoff is treated
5 as a secured claim under section 506(a)(1) of the Bankruptcy Code. 11 USC § 506(a)(1).
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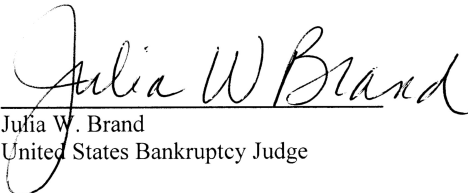
7 Because section 553 preserves an existing right of setoff, the court must look to state law to
8 determine whether such a right of setoff exists. Both Debtors and HDI acknowledge that the operative
9 statute is section 431.70 of the California Code of Civil Procedure. Under that section, a defendant is
10 entitled to assert as a defense a setoff of any demand for money that the defendant has against a
11 plaintiff. Cal. Code Civ. Proc. § 431.70. That section provides: “Where cross-demands for money
12 have existed between persons at any point in time when neither demand was barred by the statute of
13 limitations, and an action is thereafter commenced by one such person, the other person may assert in
14 the answer the defense of payment in that the two demands are compensated so far as they equal each
15 other, notwithstanding that an independent action asserting the person’s claim would at the time of
16 filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred
17 by the statute of limitations, the relief accorded under this section shall not exceed the value of the
18 relief granted to the other party.” *Id.* Under California law, a right of setoff may be asserted even if the
19 party asserting this right would be barred from affirmatively recovering on its claim as a result of the
20 expiration of the statute of limitations. *Id.*; Construction Protective Services, Inc. v. TIG Specialty
21 Insurance Co., 29 Cal. 4th 189, 198 (2002); Safine v. Sinnott, 15 Cal. App. 4th 614, 618 (1993). The
22 Claimant may assert a right of setoff provided that the two claims co-existed at a time when neither was
23 barred by the statute of limitations, and if successful, the Claimant’s relief may not exceed the relief
24 granted to the other party. Cal. Code Civ. Proc. § 431.70.
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1 Here, Debtors assert that the claims did not co-exist because the lawsuit filed by Debtors was
2 commenced in 2010, at least two years after the statute of limitations expired on HDI's right to recover
3 on the Note.³ This does not end the inquiry. The question is not whether the claims co-existed at the
4 time the complaint was filed but whether the claims co-existed at a time when neither was barred by the
5 statute of limitations. HDI's only response on this issue is that it may still raise the right to setoff in the
6 state court litigation and that this is a matter best left to the state court. HDI did not produce any
7 evidence to establish that its right to setoff co-existed with the claims asserted by Debtors in their state
8 court action. Once Debtors established that the Claim was barred by the statute of limitations the
9 burden shifted to HDI to demonstrate that it had a viable setoff claim. HDI failed to do so.
10 Accordingly, the Court will sustain the objection to Claim No. 9.
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13 An order will be entered by the Court consistent with this memorandum.

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25 Date: February 6, 2014 _____


Julia W. Brand
United States Bankruptcy Judge

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27 ³ Debtors attach to their Reply an answer to Debtors' state court complaint. However, the answer was
28 filed by Hanil Cement Co., Ltd. and Hanil Engineering & Construction Co., Ltd., not HDI.