

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In Re: Daniel George Feneis,

BKY 09-60317
Chapter 7

**ORDER ALLOWING AND
SUBORDINATING CLAIM**

This matter was heard May 19, 2010, on objection by the debtor to the claim of Murray Mack. Erik Ahlgren appeared on behalf of the debtor and the claimant appeared pro se. The Court, having heard arguments and reviewed briefs filed by the parties and being fully advised in the matter, now makes this **ORDER** pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I

Daniel George Feneis, as debtor in possession, objected to claim No. 26 asserted by Murray Mack in the amount of \$140,000. At the hearing held May 19, 2010, the debtor in possession withdrew his objection to allowance of the claim, but, requested its subordination under 11 U.S.C. §509(c). The Court allows the claim and subordinates it under §509(c).

II

Both Mr. Feneis and Mr. Mack jointly and severally guaranteed a Northern National Bank debt to a company, COG Partners, LLC, in the amount of \$1,762,987. Mack entered into a settlement agreement with the Bank whereby he paid \$350,000, in exchange for a release of his guarantee. Mack and Feneis are both members of COG Partners, LLC with Feneis holding a 40% membership. The claim of \$140,000 is based on 40% of the

\$350,000 paid to the Bank by Mack.

While Mack has not identified the basis for allowance of his claim, the claim is allowable under either 11 U.S.C. § 502 or § 509. Whether allowed under either section, the claim must be subordinated to the Northern National Bank debt until the Bank's claim is paid in full.¹

§ 509. Claims of codebtors.

- (c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

See In re Early & Daniel Industries, Inc., 104 B.R. 963 (Bankr. S.D. Ind., 1989); In re Dow Corning Corp., 250 B.R. 298 (Bankr. E.D. Mich., 2000); In re Medical Equities, Inc., 83 B.R. 954 (Bankr. S.D. Ohio 1987); In re Applesauce LLC, 2006 WL 942088 (Bankr. C.D. Cal 2006).

III

Accordingly, IT IS HEREBY ORDERED:

The filed claim of Murray Mack in the amount of \$140,000, is allowed as an unsecured claim, but, is subordinated to the claim of Northern National Bank until the Bank's allowed claim is paid in full.

Dated: June 24, 2010

BY THE COURT:
/e/ Hon. Dennis D. O'Brien
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 06/24/2010 Lori Vosejka, Clerk, By DLR, Deputy Clerk

¹ This Court suggested, in In re Friendship Child Development Center, Inc., 164 B.R. 625, 628 (Bankr. D.Minn. 1992), that a claim allowed under 11 U.S.C. § 502 would not be subordinated under 11 U.S.C. § 509(c). The assertion, in footnote 4, was dicta. More importantly, it was wrong.