

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re: SANDIA RESORTS, INC.,
Debtor.

Case No. 11-15-11532 JA

**ORDER TEMPORARILY ALLOWING CLAIM(S) OF LAWRENCE CASTLEMEN
FOR PURPOSES OF VOTING PURSUANT TO RULE 3018(a)**

THIS MATTER is before the Court on the Motion to Estimate Claims and for Temporary Allowance of Castlemen Claim under Rule 3018(a) (“Motion for Temporary Allowance of Claim”). *See* Docket No. 187. Lawrence Castlemen purchased two claims in Sandia Resorts, Inc.’s bankruptcy case. NCG, LLC (“NCG”) opposes the Motion for Temporary Allowance of Claim, asserting that Mr. Castlemen is an insider of the Debtor, Sandia Resorts, Inc. (“Sandia Resorts”), and has not purchased the claims in good faith.

The Court held a final hearing on the Motion for Temporary Allowance of Claim on August 26, 2016 and took the matter under advisement. Christopher Solis appeared at the hearing on behalf of Lawrence Castlemen. Richard Leverick appeared at the hearing on behalf of NCG. After considering the evidence in light of the applicable case law, Bankruptcy Code, and Bankruptcy Rules, the Court finds and concludes that it is appropriate to temporarily allow Mr. Castlemen’s claim for purposes of voting in the amounts reflected in the proofs of claim.

FACTS AND PROCEDURAL HISTORY

Sandia Resorts filed a voluntary petition under Chapter 11 of the Bankruptcy Code on June 9, 2015. Moore, Berkson & Gandarilla, P.C. (the “Moore Firm”) filed a proof of claim on August 27, 2015 in the amount of \$18,275.19 asserting a claim against Sandia Resorts based on unpaid legal fees incurred by Sandia Resorts in a prior bankruptcy case (the “Moore Claim”). *See*

Claim No. 7. Copies of the Moore Firm's billing statements supporting its claim are attached to the Moore Claim. *Id.*

Lawrence Castlemen currently works at America's Best Value Inn ("ABV"), owned and operated by Sandia Resorts. As of June 1, 2016, he became the assistant general manager of ABV. As assistant general manager, he earns \$10.00 per hour and receives paychecks biweekly. He works the front desk at ABV, checks on rooms, checks on housekeeping, and makes sure schedules are filled. Mr. Castlemen has known Sandia Resorts' principal, Harminder Sian, for many years. Previously, Mr. Castlemen worked at a hotel in Tukumcari that Mr. Sian owned, and later, Mr. Castlemen worked at another hotel in Albuquerque that Mr. Sian owned. Mr. Castlemen has a good deal of respect for Mr. Sian, and would enjoy continuing to work for Mr. Sian. Mr. Sian considers Mr. Castlemen a valuable employee who gives more than 100% to his job and is always on time. Other than receiving a paycheck from Sandia Resorts, Mr. Castlemen has no connection or affiliation with Sandia Resorts. He is not an officer, director or shareholder of Sandia Resorts.

Before working in the hotel industry, Mr. Castlemen served in the United States Air Force for twenty years, then later worked at a work-study program for the Veterans Affairs hospital, employed by the University of New Mexico Hospital. He receives a monthly Air Force pension of \$1746. Mr. Castlemen is single and has few expenses. He lives in a recreational vehicle for which he pays rent for the space, but has no utilities expense.

Although Mr. Castlemen has a bank account, he maintains a very small balance in his bank account. Instead of using his bank account, he keeps "an active cash reserve" at his home. Mr. Castlemen does not keep significant funds in his bank account because the Internal Revenue Service has levied his account in the past. Mr. Castlemen is a regular gambler. He testified that

he makes between \$2,000 and \$7,000 in cash per month from his gaming activities. No documentation to support Mr. Castlemen's gaming winnings was offered into evidence.

Mr. Sian informed Mr. Castlemen that certain claims against Sandia Resorts were available for purchase. Mr. Castlemen purchased the Moore Claim on or about July 11, 2016. The Moore Firm filed a Notice of Transfer of Claim other than for Security and Waiver of Notice on the same date. *See* Docket No. 123. Mr. Castlemen also purchased a claim from Pacific Lodging Supply ("PLS") on or about August 4, 2016. Mr. Castlemen filed a proof of claim based on PLS's claim for an unpaid invoice for goods sold to Sandia Resorts (the "PLS Claim"). *See* Claim No. 14. The PLS Claim asserts an unsecured claim against Sandia Resorts in the amount of \$815.74. *Id.* Copies of the invoices for the goods PLS supplied to Sandia Resorts in September of 2014 are attached to the PLS Claim. *Id.* A copy of an Assignment of Claim assigning PLS's interest in its claim to Mr. Castlemen is also attached to the PLS Claim. *Id.*

Mr. Castlemen purchased the Moore Claim at a significant discount. At the time he purchased the Moore Claim, Mr. Castlemen thought it would be a good investment and an opportunity to make a profit. He purchased the Moore Claim and the PLS Claim with his own funds. He obtained cashier's checks from his bank to purchase both claims. Shortly before Mr. Castlemen purchased the Moore Claim and the PLS Claim, Mr. Castlemen had a low or negative balance in his bank account. Neither Sandia Resorts, nor Mr. Sian, nor any affiliate of Sandia Resorts provided Mr. Castlemen with the funds used to purchase the Moore Claim or the PLS Claim.

Other than what may ultimately be distributed on the Moore Claim and the PLS Claim to Mr. Castlemen through the Sandia Resorts' bankruptcy case, Mr. Castlemen has no expectation

of receiving a dividend or anything else from Sandia Resorts as future consideration for his purchasing the Moore Claim and the PLS Claim. He was not coerced into purchasing the claims and was not promised anything in exchange for purchasing these claims.

The Debtor and NCG each filed a proposed Chapter 11 plan. *See* Debtor's Second Amended Plan of Reorganization Dated August 1, 2016 – Docket No. 162; and Amended Chapter 11 Liquidation Plan – Docket No. 161 (together the “competing plans”). The confirmation hearing on the competing plans is scheduled for September 26 – 27, 2016. *See* Docket No. 166. Under either plan, Mr. Castlemen will not receive payment in full on the Moore Claim or on the PLS Claim. NCG offered to purchase the Moore Claim and the PLS Claim from Mr. Castlemen for a total of \$25,000, which is well in excess of the amount of the claims. Mr. Castlemen refused the offer. He believes there is value in being able to vote the claims. He wishes to help Mr. Sian and testified that he feels there is an intrinsic reward in benefitting Sandia Resorts' other employees. He does not trust NCG or its principal, and considers NCG's offer to purchase the claims “dirty” money. He now understands that unsecured claims such as the Moore Claim and the PLS Claim will not be paid dollar for dollar under either of the competing plans, and that it is possible that he will receive less under Sandia Resorts' plan than under NCG's plan. NCG objected to the Moore Claim on August 12, 2016. *See* Docket No. 179. NCG objected to the PLS claim on August 12, 2016. *See* Docket No. 180.

DISCUSSION

Holders of allowed claims may vote to accept or reject a Chapter 11 plan. *See* 11 U.S.C. § 1126(a) (“The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan.”) A timely filed proof of claim is deemed allowed unless an interested party objects. *See* 11 U.S.C. § 502(a) (“a claim or interest, proof of which is filed under section 501 of

this title, is deemed allowed unless a party in interest . . . objects.”). To prevent an interested party from blocking a creditor’s vote by objecting to the claim shortly before the confirmation hearing,¹ Fed.R.Bankr.P. 3018(a) allows a creditor to seek the temporary allowance of its claim for purposes of voting. It provides:

Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

Fed.R.Bankr.P. 3018(a).

Neither the Bankruptcy Code nor the Bankruptcy Rules provide any guidelines for determining how to temporarily allow a claim for voting purposes. *See In re Experient Corp.*, 535 B.R. 386, 405 (Bankr.D.Colo. 2015) (“The Bankruptcy Code and Rules do not provide the courts with any guidance about how and when to temporarily allow a claim.”) (citation omitted); *In re Pac. Sunwear of Cal., Inc.*, 2016 WL 4250681, *3 (Bankr.D.Del. Aug. 8, 2016) (acknowledging that “there is no guidance in the Bankruptcy Code on how to determine the proper amount of the claim” under Rule 3018(a)). The Court, therefore, has discretion to determine the amount of a claim for the limited purpose of voting. *See Armstrong*, 294 B.R. at 354 (temporary allowance of a claim under Rule 3018(a) “is left to a court’s discretion.”) (citations omitted); *Experient*, 535 B.R. at 405 (“temporary allowance is left to the discretion of the court.”) (citation omitted); *Pension Ben. Guar. Corp. v. Enron Corp.*, 2004 WL 2434928, *5 (D.N.Y. Nov. 1, 2004) (unreported) (Rule 3018(a) “specifically and elastically provides that a court may, for the purposes of voting, temporarily allow a claim or interest *in an amount which*

¹ *See In re Armstrong*, 294 B.R. 344, 354 (10th Cir. BAP 2003) (“The policy behind temporarily allowing claims is to prevent possible abuse by plan proponents who might ensure acceptance of a plan by filing last minute objections to the claims of dissenting creditors.”) (citing *Stone Hedge Properties v. Phoenix Capital Corp. (In re Stone Hedge Properties)*, 191 B.R. 59, 64 (Bankr.M.D.Pa. 1995) (remaining citation omitted).

the court deems proper.”) (quoting *Matter of Johns-Manville Corp.*, 68 B.R. 618, 631 (Bankr. S.D.N.Y. 1986) (emphasis in *Enron*).

The claimant requesting temporary allowance of its claim under Rule 3018(a) bears the burden of presenting “sufficient evidence that it has a colorable claim capable of temporary evaluation.” *Armstrong*, 294 B.R. at 354. *See also Experient*, 535 B.R. at 405 (agreeing with *Armstrong*).² Finally, temporary allowance fixes the amount of the claim only for a limited time and only for a limited purpose; it does not conclusively establish the amount of the claim in the bankruptcy case. *See Armstrong*, 294 B.R. at 354 (“Temporary allowance of a claim under Rule 3018(a) is not dispositive as the amount of the claim.”).

The evidence before the Court is sufficient to temporarily allow Mr. Caslemen’s claim consisting of the Moore Claim and the PLS Claim for voting purposes in the amounts reflected in the proofs of claim. *See Fed.R.Bankr.P. 3001(f)* (“A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.”). There is insufficient evidence to support NCG’s contention that Mr. Castlemen did not purchase the Moore Claim or the PLS claim in good faith.³ Mr. Castlemen is not an insider⁴

² *But see Hedge Properties*, 191 B.R. at 64-65 (questioning whether the burden of proof ought to be placed on the objecting party); *Pacific Sunwear*, 2016 WL 4250681, *5 (observing that, “because a Rule 3018 proceeding is meant to enfranchise claimants, there is an inconsistency in using the burden of proof rules that apply to objections to claims.”).

³ NCG’s objection to Mr. Castlemen’s claim (comprised of the Moore Claim and the PLS Claim) includes a request to separately classify the claim as a subordinate unsecured claim in the case. The objection to claim is not now before the Court. In addition, a request to designate a claim under 11 U.S.C. §1126(e) arguably would require a separate motion. *See* 11 U.S.C. § 1126(e) (“On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith”).

⁴ The Bankruptcy Code defines “insider” of a debtor corporation as:

- (i) director of the debtor;
- (ii) officer of the debtor;
- (iii) person in control of the debtor;
- (iv) partnership in which the debtor is a general partner;
- (v) general partner of the debtor; or
- (vi) relative of a general partner, director, officer, or person in control of the debtor[.]

11 U.S.C. § 101(31)(B).

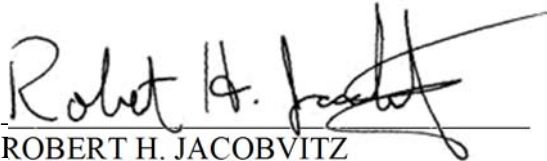
of Sandia Resorts, and has no affiliation with Sandia Resorts other than as an employee. Despite Mr. Castlemen's low bank account balance, modest income from his Air Force pension and employment income, and lack of documentation to support his gaming income, the Court will not infer that Sandia Resorts, Mr. Sian, or an affiliate provided the funds used to purchase the Moore Claim and the PLS Claim. Mr. Castlemen has no expectation of an equity interest in Sandia Resorts as a result of his purchase of the Moore Claim and the PLS Claim.

Mr. Castlemen's stated belief that purchasing the Moore Claim and the PLS Claim would be a good investment strains credibility. The Court is skeptical about his testimony that he purchased the claims to help other employees of Sandia Resorts. It appears that the real reason Mr. Castlemen purchased the claims is to help Mr. Sian and increase the prospect that Sandia Resorts' plan will be confirmed.

A creditor's preference for a debtor's proposed plan over a competing creditor's plan does not constitute bad faith. *Cf.* 7 Collier on Bankruptcy ¶ 1126.06[2] (Alan N. Resnick and Henry J. Sommer, eds., 16th ed. 2012) ("a creditor's taking a blocking position with respect to a plan, without more, is not bad faith."). "Nor does the mere purchase of claims . . . to block confirmation of a plan constitute bad faith." *Id.* Finally, "[p]urchasing claims [by a non-insider] at a discount is not bad faith." *In re Sunflower Racing, Inc.*, 226 B.R. 673, 695 (D.Kan. 1998). The Court will, therefore, temporarily allow Mr. Castlemen's claim for purposes of voting on the competing plans in the amounts reflected on the proofs of claim.⁵

⁵ A party purchasing more than one claim is entitled to vote each claim separately. See *In re Figter, Ltd.*, 118 F.3d 635, 640 (9th Cir. 1997) (creditor entitled to cast a separate vote for each purchased unsecured claim); *Square Apartments of Wood City, Ltd. v. Ottawa Properties, Inc. (In re Concord Square Apartments of Wood City, Ltd.)*, 174 B.R. 71, 74 (Bankr.S.D.Ohio 1994) (holding that a creditor "with multiple claims, has a voting right for each claim it holds."); *In re Gilbert*, 104 B.R. 206, 211 (Bankr.W.D.Mo. 1989) (creditor who purchased two claims was entitled to one vote for each claim in the same class); *In re Kreider*, 2006 WL 3068834, *3 (Bankr.E.D.Pa. Sept. 27, 2006) (pronouncing "debtor's unstated premise . . . [that] multiple claims voted by a single creditor are counted as a single vote . . . simply incorrect") (citing *Gilbert*, 104 B.R. at 211).

WHEREFORE, IT IS HEREBY ORDERED, that the Motion for Temporary Allowance of Claim is GRANTED. Mr. Castlemen is entitled to vote on the competing plans as follows: the Moore Claim as an unsecured claim in the amount of \$18,275.19; and the PLS Claim as an unsecured claim in the amount of \$815.74.


ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: October 11, 2016

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