

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

IRA LEONARD GRAND a/k/a  
LEONARD GRAND,

Debtor.

Chapter 7  
Case No. 803-82112-511  
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**MEMORANDUM DECISION**

Before the Court is a motion which finds two creditors competing for priority status. Because there are limited funds within this Chapter 7 estate, the challenge has significance for each of them now that the case is nearing a close. The motion is presented by Laura Grand Millard (“Millard”), the estranged spouse of the Debtor, who objects to the Section 507(a)(4) priority status of a claim filed by the Plumbers and Pipefitters National Pension Fund (the “Fund”) in the amount of \$4,187.41. Millard holds a \$201,676.73 claim for alimony, maintenance or support which is entitled to priority under Section 507(a)(7) and is not in dispute. While the Fund’s claim is not large in comparison to her own, in view of the limited estate monies, any distribution to the Fund impacts Millard’s claim.

Upon consideration of the arguments and for the reasons that follow, the Court grants Millard’s motion. As noted more fully below, the Court finds that the Fund has failed to establish that the Debtor has personal liability on the claim and, accordingly, disallows the Fund’s claim in its entirety. For this reason, the Court declines to reach the priority issue under Section 507(a)(4).

## **BACKGROUND**

On April 1, 2003 (the “Filing Date”), Ira Leonard Grand, a/k/a Leonard Grand (the “Debtor”), filed a voluntary petition for relief pursuant to Chapter 7 of the Bankruptcy Code.<sup>1</sup> The Debtor was president and sole shareholder of L.G. Plumbing, Inc. (“LG Plumbing”) which, prior to the Filing Date, entered into a collective bargaining agreement with the Plumbers and Gasfitters Local Union No. 1. LG Plumbing is currently in its own Chapter 7 bankruptcy proceeding, which is pending before Judge Dorothy D.T. Eisenberg. *See In re L.G. Plumbing, Inc.*, Case No. 800-13489. LG Plumbing filed a voluntary Chapter 11 petition on March 31, 2000, and remained in Chapter 11 until October 28, 2003, when its case was converted to Chapter 7.

Laura Grand Millard is the Debtor’s former spouse and is a creditor by virtue of certain monetary obligations due to her under the terms of a Stipulation of Settlement and Judgment of Divorce entered by the Supreme Court of the State of New York for Nassau County. On November 18, 2004, Millard filed a priority claim in this case asserting a priority claim under 11 U.S.C. § 507(a)(7) in the amount of \$201,676.73 (the “Millard Claim”). Her claim was designated as Claim No. 10 by the Clerk of the Bankruptcy Court. The Fund filed two proofs of claim in this case. The first, Claim No. 1, was dated April 16, 2003, in the total amount of \$12,274.59, of which amount the Fund asserted a total priority claim of \$8,301.54. The second, Claim No. 3, amends

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Because of the date of filing of this bankruptcy petition, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 does not apply.

Claim No. 1 and seeks a total claim of \$5,508.46, of which the Fund asserts a priority claim of \$4,187.41. The asserted basis for this priority standing is “for hours worked by employees of LG Plumbing Plumbing, Inc. and the Debtor during the months of January through March 2003, a period of time clearly within 180 days before the filing of the petition of the Debtor on April 1, 2003.”

On January 6, 2005, the Chapter 7 Trustee filed a Final Report with the Office of the United States Trustee and the final hearing was scheduled to take place on June 8, 2005. Two days before the final hearing, Millard filed an Objection to the Trustee’s Final Report. Millard argued in her objection that the Chapter 7 Trustee improperly afforded the Fund priority status for its claims in the Proposed Distribution Report when it should be treated, at best, as a general unsecured claim. *See* Exhibit D annexed to the Trustee’s Final Report.

Because of the late filing of Millard’s objection, the final hearing was adjourned to afford an opportunity for the Fund to respond. On June 20, 2005, the Fund responded and stated that on “October 20, 2000 the Debtor signed the Combination “A” Field and Mechanical Equipment Service Division collective bargaining agreement with Plumbers Local No. 1 in his capacity as the President and Master Plumber of LG Plumbing, Inc.” *See* Response ¶ 2. The Response further states that, by “operation of that collective bargaining agreement, the Debtor became personally liable for the obligations of LG Plumbing Plumbing, Inc. as the ‘individual signatory’ to the

agreement, including the obligation to remit timely reports and contributions to the fund.” See Response ¶ 3.

The Court declined, without prejudice, to rule upon Millard’s objection to the Trustee’s Proposed Distribution in the absence of a direct challenge to the Fund’s proof of claim. Consequently, the Court granted Millard’s request for an adjournment of the final hearing and distribution pending such a motion as is here presented.

### ***Milliard’s Objection to Claim Motion***

By motion, dated July 14, 2005, Millard objected to the Fund’s claim. As before, Millard argues that the Fund does not have standing to assert a priority claim against the Debtor based upon 11 U.S.C. § 507(a)(4) because the plain language of the statute provides that, in order for priority to attach, the Debtor must have been the *employer* of the employees asserting the claim and here the Debtor was not the employer. See *In re Chateaugay Corp.*, 115 B.R. 760, 785 (Bankr. S.D.N.Y. 1990), *vacated by consent order*, 1993 WL 388809 (S.D.N.Y. June 16, 1993). Based on the *Chateaugay* case, Millard argues that, at best, the Fund is entitled to a general unsecured claim.

The Fund opposes the Motion by asserting that the Debtor is personally liable for the obligations of LG Plumbing under the express terms of the collective bargaining agreement and that it may collect the outstanding balance due from either the Debtor or LG Plumbing. The Fund further contends that because the liabilities arose

during the statutory priority period under 11 U.S.C. § 507(a)(4), they are entitled to priority treatment in this case.

### ***DISCUSSION***

As a threshold matter, the Court first addresses whether the Debtor has liability under the collective bargaining agreement. The Fund argues that the collective bargaining agreement imposes personal liability on the Debtor because his signature is on that document. On its face this document does not, however, impose personal liability for corporate obligations upon the Debtor. In fact, the Fund in its response to Millard's Objection to the Final Report, admits that the Debtor signed the Collective bargaining agreement "in his capacity as the President and Master Plumber of LG Plumbing Plumbing, Inc." *See* Response ¶ 2.

The signature lines on the Collective bargaining agreement read exactly as follows:

Employer (Individual/Firm/Corporate)

**PLEASE PRINT CLEARLY**

Business Name: LG Plumbing Plumbing, Inc.

Address: 217-03 Merrick Blvd.  
Queens, NY 11413

Telephone#: 718 276 2220

Fax #: 718 949 0358

Name of Gov't Agency Issuing Plumber's License: NYC Dept of Buildings

License #: 337

Name of Person Signing: Ira L. Grand

Signature: /s/ Ira L. Grand

Title of Person Signing: President

Date of Signing: 10/20/00

There is no signature line for the Debtor to sign in his individual capacity nor is there any other indication that the Debtor was consenting to become personally obligated or was guaranteeing LG Plumbing's obligations under the Collective bargaining agreement. Thus, the Court can conclude only that the Debtor executed the Collective bargaining agreement in his corporate capacity as President, not in an individual capacity.

It is well settled law in New York that a corporate officer or agent is not personally obligated under an agreement, even where there is a contract clause purporting to bind the officer individually, when the person signing links his signature with his corporate title only. *See Salzman Sign Co. v. Beck*, 176 N.E.2d 74, 75-76 (N.Y. 1961). Accordingly, as the signature on the Collective bargaining agreement clearly is solely that of the Debtor as an officer of LG Plumbing Plumbing, the Court rejects the Fund's assertion that the Debtor assumed personal liability under the terms of the Collective bargaining agreement.<sup>2</sup>

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There is authority under state law to statutorily impose personal liability upon the ten largest shareholders of a corporation for unpaid debts, wages or salaries owing to an employee. *See* N.Y. BUS. CORP. LAW § 630 (McKinney 2003). Nonetheless, the Fund has not argued that the Debtor is liable under this statute and, in any event, it appears that this provision is not applicable to contributions to an employee benefit plan, which is the essence of the Fund's claim. Section 630 also imposes a requirement that the claimant first exhaust its remedies as against the primary corporate obligor before seeking relief from the shareholders. *See Grossman v. Sendor*, 392 N.Y.S.2d 997, 1001 (N.Y.Sup. 1977) (so long as it is theoretically possible to collect the debt from the corporation, stockholders are not liable since the purpose of the statute is to create an exception to the rule of limited liability only where employees cannot collect their wages because of the insolvency of the corporation). Here, the primary corporate obligor is LG Plumbing, which remains in a pending Chapter 7 case where additional distributions are theoretically possible. Indeed, the Fund's claim for unpaid contributions from January through March 2003 (at issue here) would most likely be a first priority administrative claim in the LG Plumbing bankruptcy case because those expenses were incurred while the company's bankruptcy case was pending. *See* 11 U.S.C. §§ 503(b), 507(a)(1).

In the absence of separate statutory or other authority to hold the Debtor personally liable, the Court finds that the Debtor has no personal liability under the collective bargaining agreement and the Fund's claim against the Debtor must be disallowed and not merely re-classified.

In light of this holding, the Court declines to rule on whether the Fund's claim should be given Section 507(a)(4) priority status in the Debtor's individual bankruptcy case.

### **CONCLUSION**

The Fund has failed to meet its burden of establishing its claim against this Debtor based upon a contractual obligation owed by the Debtor. Accordingly, Claim Numbers 1 and 3 as filed by the Fund are disallowed and expunged in their entirety.

The Court will enter a separate Order consistent with this Memorandum Decision.

Dated:

December 27, 2006  
Central Islip, New York

/s/ **Melanie L. Cyganowski**  
Melanie L. Cyganowski  
Chief U.S. Bankruptcy Judge