

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**

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**In re:**

**CHRISTOPHER L. BRADLEY**  
**a/k/a WHISPERING PINES CAMPGROUND LLC**  
**d/b/a GREEN MOUNTAIN FAMILY CAMPGROUND,**  
**Debtor.**

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**Chapter 7 Case**  
**# 04-11645**



*Appearances:*            *Kathleen Walls, Esq.*  
                                 *Middlebury, Vt.*  
                                 *For the Debtor*

*Raymond S. Cota, CPA*  
*Williston, Vt.*  
*Pro se, for Cota CPA, PC*

**ORDER**  
**SUSTAINING DEBTOR'S OBJECTION TO CLAIM**

On September 13, 2005, the Debtor filed an objection to the asserted claim of Cota CPA, P.C. ("Cota") on the ground that its \$13,330.14 claim is against the Debtor's former LLC, Green Mountain Family Campground, and the Debtor's former corporation, Pepperoni's, Inc. (doc. # 99) (the "Debtor's Objection"). On September 30, 2005, Cota, acting *pro se*, filed a response to the Debtor's Objection amending the amount of its asserted claim to \$8,819.61 and indicating that the Debtor personally guaranteed payment for the accounting work completed for the Debtor individually and for the Debtor's various business entities. Based upon the papers submitted and the Debtor's failure to respond, the Court initially overruled the Debtor's Objection (doc. # 102), but ultimately granted the Debtor's second motion for reconsideration (#111) when the Debtor challenged the existence of a personal guaranty. On November 29, 2005, the Court considered evidence on the Debtor's Objection and Cota's response thereto. Based upon the record before it, the Court sustains the Debtor's Objection, as amended by the Debtor's Memorandum of Law dated November 25, 2005 (doc. # 118), allows Cota's claim to the extent of \$677.25, the amount attributable to services provided to the Debtor personally, and disallows the balance of Cota's claim.

**DISCUSSION**

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. FED. R. BANKR. P. 3001(f). However, if evidence is introduced in opposition to a claim, the claimant is required to prove its claim by a preponderance of the evidence. In re Sabre Shipping Corp., 299 F. Supp. 97, 99 (2d Cir. 1969) (citing In re George R. Burrows, Inc., 156 F.2d 640 (2d Cir. 1946)).

It is undisputed that Cota provided accounting services for the Debtor personally, the Debtor's former wife, the Debtor's former LLC and the Debtor's former corporation. It is also undisputed that the Debtor and his former wife needed to have the completed tax returns of the business entities (the LLC and the corporation) in order to prepare and file their individual tax return. Cota, through its principal, Raymond Cota, argued that Cota had an understanding with the Debtor that the Debtor would be personally liable for the preparation of all tax returns, including those of the LLC and the corporation. In support of this argument, Cota stated that the firm would not have accepted the accounting work but for this arrangement, especially since the corporation was not financially viable at the time the services were provided. However, the Debtor testified that he never personally guaranteed the debt of the LLC or the corporation. Cota failed to produce any evidence to the contrary.

A member of a Vermont limited liability company is not liable for the debts of the LLC unless he consents in writing or there is a provision providing for personal liability contained within the articles of organization. 11 V.S.A. §3043. The LLC's articles of corporation specifically state that the members would not be personally liable of the debts of the LLC and no writing has been produced to support Cota's contention that the Debtor agreed to be personally liable for the services provided to the LLC. The Debtor signed a contract for Cota to provide accounting services for the 2000 tax year; however, the contract does not specifically reference the LLC, other than a handwritten notation that was added by Mr. Cota after the contract was executed (Exh. D). Although the Debtor did sign the contract for accounting services, the contract does not provide that the Debtor agrees to be personally responsible for the costs of services rendered to the LLC and the handwritten reference to the LLC does not render the contract a personal guaranty.

A shareholder of a Vermont corporation is, likewise, not liable for debts of the corporation. 11A V.S.A. §6.22. The Debtor did not sign an agreement indicating he would be liable for the debts of the corporation. The Debtor signed a contract for Cota to provide accounting services for the 2000 tax year. (Ex. B). However, the contract does not reference the corporation, other than a handwritten notation that was added by Mr. Cota after the contract was executed. Although the Debtor did sign the contract for accounting services, the contract does not provide that the Debtor agrees to be personally responsible for the costs of services rendered to the corporation and the handwritten reference to the corporation does not render the contract a personal guaranty. Although the corporation was insolvent at the time the services were provided, a dissolved corporation continues as a corporation to the extent and for the time period necessary to discharging or making provisions for discharging its liabilities. 11A V.S.A. §14.05. The record contains no basis to hold the Debtor personally responsible for the obligations of the corporation.

The Cota invoices admitted into evidence recognize that Cota considered the LLC and the corporation its clients. The evidence presented indicated that over the course of their business relationship the Debtor routinely and voluntarily paid the Cota outstanding invoices, regardless for whether Cota had rendered services to the Debtor individually or to one of the Debtor's business entities, and also indicated that the Debtor was not legally obligated to do so. Accordingly, notwithstanding the course of conduct in the past, and the expectations that historical dealings may have created on Cota's part, the Debtor's bankruptcy estate cannot be compelled to pay for services rendered to the LLC and corporation. The Debtor, and hence his bankruptcy estate, is liable only for the accounting services rendered to him personally in the amount of \$677.25.

THEREFORE, IT IS HEREBY ORDERED that:

1. The Debtor's objection to the claim of Cota CPA, PC, as amended by the Debtor's Memorandum of Law dated November 25, 2005 (doc. # 118), is sustained.
2. The Claim of Cota CPA, PC is allowed to the extent of \$677.25.

**SO ORDERED.**

December 21, 2005  
Rutland, Vermont



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Colleen A. Brown  
United States Bankruptcy Judge