

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

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Bankruptcy Caption: In re Carlito and Edna Soriaga

Bankruptcy No. 00 B 33466

Adversary Caption: N/A

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Date of Issuance: July 23, 2001

Judge: John H. Squires

Appearance of Counsel:

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|---------------------------|---|---------------------------|
| IN RE: |) | |
| CARLITO and EDNA SORIAGA, |) | Chapter 13 |
| |) | Bankruptcy No. 00 B 33466 |
| Debtors. |) | Judge John H. Squires |
| |) | |

MEMORANDUM OPINION

These matters come before the Court on the objection of Carlito and Edna Soriaga (the “Debtors”) to Claim No. 3 filed by Peoples Gas Light & Coke Company (“Peoples Gas”) and on the motion of Peoples Gas for assessment of attorney’s fees against the Debtors and their attorney pursuant to Federal Rule of Civil Procedure 11. The main issue is whether the judgment and claim held by Peoples Gas against the Debtors has been fully satisfied or paid.

For the reasons set forth herein, the Court overrules the Debtors’ objection to Peoples Gas’s claim. The claim is allowed under 11 U.S.C. § 502. Additionally, the Court denies Peoples Gas’s motion for assessment of attorney’s fees against the Debtors and their attorney. Finally, the Court denies the request of the Debtors for the award of reasonable expenses and attorney’s fees.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain these matters pursuant to 28 U.S.C. § 1334

and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. They are core proceedings under 28 U.S.C. § 157(b)(2)(A), (B) and (O).

II. FACTS AND BACKGROUND

The ultimate issue at bar is whether Peoples Gas holds an unsatisfied claim against the Debtors, as it contends, or whether, as the Debtors argue, the claim has been satisfied and paid; whether Peoples Gas has effectively waived its claim; whether the claim has been released; and whether Peoples Gas is barred by negligence or the Statute of Frauds. Unfortunately, the background and prior litigation between the parties is complicated and involves numerous other entities. Some of the pertinent facts follow.

On June 23, 1997, Peoples Gas obtained a judgment in the sum of \$179,590.87 against, inter alia, the Debtors, which was entered by the Circuit Court of Cook County, Illinois (the “State Court”). See Exhibit No. 1 to Peoples Gas’s Revised Response to Debtors’ Objection to Proof of Claim No. 3 (“Revised Response”). Thereafter, Peoples Gas instituted supplemental proceedings, namely wage deduction and citation proceedings, to satisfy its judgment. See Group Exhibit No. 2 to Revised Response.

Peoples Gas initiated supplementary proceedings against, inter alia, Ashland Partners III Limited Partnership (“Ashland Partners”). Peoples Gas also had a claim against Ashland Partners, and the Debtors apparently guaranteed the debt owed by Ashland Partners to Peoples Gas. The judgment was entered against the Debtors, Ashland Partners and other parties. See Debtors’ Objection to Claim No. 3 at ¶ 1, p. 2. Peoples Gas issued a citation to discover assets against Parkway Bank and Trust

Company (the “Bank”) as trustee for a land trust which held legal title to commercial realty which was located at 100 South Ashland Avenue, Chicago, Illinois. See Group Exhibit No. 2 to Revised Response. Ashland Partners held the beneficial interest in the land trust. The Bank also held a mortgage upon the realty that Ashland Partners conveyed to it. In June 1998, the Bank filed a complaint to foreclose the mortgage that it held in its capacity as mortgagee and lender upon the real property.

On August 8, 1997, Peoples Gas filed wage deduction proceedings against the Debtors’ employers. Id. The wage deduction summonses were served on the Debtors’ employers, but no answers were ever filed. Consequently, on November 24, 1998, Peoples Gas filed a motion for the entry of a conditional judgment against Berger Financial Services, one of the employers, for failing to file its answer to the garnishment. See Exhibit No. 9 to Revised Response. The Debtors filed a response and Peoples Gas filed a reply, but before the scheduled hearing, the Debtors’ attorney sent Peoples Gas’s attorney a letter offering a settlement. See Exhibit No. 11 to Revised Response. The parties worked out an agreement which was titled “Stipulation To Dismiss Supplemental Proceedings–Payment Agreement” (the “Stipulation and Agreement”) and was executed on March 2, 1999. See Exhibit No. 12 to Revised Response and Exhibit C to Debtors’ Objection to Claim No. 3.

Under the Stipulation and Agreement, the Debtors agreed to tender \$153,476.30 in installments to Peoples Gas in exchange for a release and satisfaction of the judgment against them. Id. Peoples Gas and the Debtors entered into a supplemental agreement whereby Peoples Gas agreed that the Debtors’ obligation to pay the balance would be

void if Peoples Gas was able to receive payment of the remaining balance on the judgment from the foreclosure proceeding on the Ashland Partners property. See Exhibit D to Debtors' Objection to Claim No. 3.

Thereafter, in accordance with the Stipulation and Agreement, the motion for the entry of a conditional judgment was withdrawn and all supplemental proceedings against the Debtors were dismissed. See Exhibit Nos. 13 and 14 to Revised Response. Peoples Gas has received a total of \$63,467.30 from the Debtors.

On September 2, 1998, Peoples Gas obtained an order from the State Court in which the trustee for the land trust was directed to turn over the beneficial interest in the land trust to the Sheriff of Cook County (the "Sheriff"), and the Sheriff was directed to conduct a public sale. On October 6, 1998, pursuant to an order of the State Court (Exhibit A to Debtors' Objection to Claim No. 3) that was entered in the citation proceeding against Ashland Partners and the Bank, as trustee under Trust No. 11394 (Exhibit No. 3 to Revised Response), and which amended the September 2, 1998 order, the Bank executed an assignment of Ashland Partners' beneficial interest to the Sheriff for the purpose of conducting a public sale, the proceeds of which were to be utilized to satisfy the judgment.

On January 6, 1999, the Sheriff conducted a public sale pursuant to the State Court's order. Peoples Gas was the high bidder by bidding the unpaid balance of its judgment against the Debtors and received a Certificate of Sale. See Exhibit No. 4 to Revised Response and Exhibit B to Debtors' Objection to Claim No. 3. As a result of bidding in its unpaid judgment at the Sheriff's sale, the Debtors contend that the

judgment against them was “extinguished” by the Certificate of Sale. Peoples Gas never petitioned the State Court for an order confirming the sale, and it is undisputed that the Sheriff’s sale was never confirmed.

Ashland Partners did not redeem the property during the six-month period of redemption, and on July 9, 1999, Peoples Gas entered into an agreement with Patricia A. Evers (“Evers”) to sell its Certificate of Sale to her for the sum of \$135,502.36, the balance due and owing on its underlying judgment against the Debtors. See Exhibit No. 7 at ¶ 7 and Exhibit No. 8 at ¶ 2 to Revised Response (Affidavits of Paul M. Heller, counsel for Peoples Gas and Patricia A. Evers). A cashier’s check for \$135,502.36 was tendered and Evers received an Absolute Assignment (the “Absolute Assignment”) of the beneficial interest of the land trust from the Sheriff. See Exhibit Nos. 5 and 6 to Revised Response and Exhibit F to Debtors’ Objection to Claim No. 3.

The agreement between Peoples Gas and Evers involved a stipulation that Peoples Gas would not negotiate the cashier’s check and Evers would not lodge the assignment with the Bank until the Bank completed its foreclosure sale scheduled for July 13, 1999. See Exhibit No. 7 at ¶s 8 and 9 and Exhibit No. 8 at ¶s 3 and 4 to Revised Response. The stipulation further provided that if, for any reason, the foreclosure sale did not take place, or was not completed, the cashier’s check would be returned to Evers, and Peoples Gas would receive back the Absolute Assignment of the beneficial interest in the land trust. Id.

On July 13, 1999, before the foreclosure sale took place, Ashland Partners filed a Chapter 11 bankruptcy petition, which stayed all State Court proceedings against it.

Thereafter, the Debtors filed a motion in the State Court action seeking the return of the \$63,467.30 they paid to Peoples Gas in partial satisfaction of the judgment, along with a full release and satisfaction of the judgment. See Exhibit Nos. 19 and 20 to Revised Response. On August 25, 1999, the State Court denied the relief requested by the Debtors and found that Peoples Gas had not violated the Stipulation and Agreement with the Debtors. See Exhibit No. 21 to Revised Response. Specifically, the State Court found that Peoples Gas “did not violate the Stipulation to Dismiss–Payment Agreement executed by the parties.” Id. The State Court further stated that Peoples Gas “shall issue a Release & Satisfaction of Judgment form to all defendants upon receipt on an order from the Bankruptcy Court . . . allowing it to accept and retain the check it received for the assignment of its Certificate of Sale.” Id.

On September 10, 1999, Judge Sonderby entered an order in the Ashland Partners bankruptcy case which provided, in relevant part, that the Sheriff’s sale of the beneficial interest in the land trust was void. See Exhibit I to Debtors’ Objection to Claim No. 3. Then, on September 20, 1999, Judge Sonderby entered an order modifying the automatic stay in favor of the Bank which stated that “[t]he Debtor Ashland Partners III is the owner of the beneficial interest in Parkway Bank and Trust Company Trust # 11394 because the assignment of beneficial [sic] by the Sheriff of Cook County to Patricia A. Evers subsequent to the judicial sale without confirmation . . . was a nullity.” See Exhibit No. 18 to Revised Response.

Peoples Gas filed a motion to lift the automatic stay alleging that the stay should be lifted because it was a secured creditor due to its ownership of the beneficial interest in

the land trust. See Exhibit No. 22 to Revised Response and Exhibit H to Debtors' Objection to Claim No. 3. Ashland Partners then filed a motion to strike the motion of Peoples Gas to lift the stay. See Exhibit No. 24 to Revised Response. On January 20, 2000, Judge Sonderby issued a Memorandum Opinion denying the motions of Ashland Partners and Peoples Gas. See Exhibit No. 26 to Revised Response and Exhibit K to Debtors' Objection to Claim No. 3. She stated that "Peoples Gas no longer has a secured interest or any other interest in the Property. It holds an unsecured claim against the estate [of Ashland Partners]." Id. at p. 7. Further, Judge Sonderby found that the arguments of Ashland Partners and the Debtors that the judgment was paid in full were premature, and that those arguments would be more appropriately addressed as an objection to Peoples Gas's claim. Id. at p. 8.¹

¹ The Court disagrees with Peoples Gas's statement that Judge Sonderby ruled on the issue of whether Peoples Gas had been paid in full. Judge Sonderby stated in pertinent part:

Another of the arguments presented by [Ashland Partners] is that Peoples Gas has been paid in full satisfaction of its judgment by a combination of the [Debtors] and . . . Evers. The payment of \$63,000.00 made by the [Debtors] is not in dispute before this Court. The parties argue vigorously however over the validity of the sale by Peoples Gas to Evers.

[Ashland Partners] argues that Evers bought the Certificate of Sale subject to its possible infirmities and that is she is stuck with a worthless piece of paper, that is a risk she took. [Ashland Partners] attaches a document entitled "Absolute Assignment" to its papers which appears to indicate that the Property was assigned to Evers. However, the "Absolute Assignment" is incomplete, signature lines for Evers and the Bank are blank. According to Paul Heller, counsel for Peoples Gas, the transaction was never completed and was subject to conditions which never took place. He submitted an affidavit stating that the check he received from Evers was never negotiated, that it will never be negotiated

Peoples Gas returned the cashier's check to Evers and received back the Absolute Assignment of the beneficial interest in the land trust. Thus, Peoples Gas claims that to date, the judgment entered in its favor and against the Debtors, Ashland Partners and the others has not been fully paid or satisfied.

On November 14, 2000, the Debtors filed a Chapter 13 bankruptcy petition. On February 8, 2001, Peoples Gas filed a proof of claim in which it asserts that it is owed the remaining sum of \$147,622.28 based on the State Court judgment.

III. DISCUSSION

A. The Debtors' Objection to Claim No. 3 Filed By Peoples Gas

The Debtors object to the claim of Peoples Gas on the bases that it received payment and satisfaction of the underlying claim and that Peoples Gas breached the Stipulation and Agreement between it and the Debtors under which the Debtors

pursuant to an agreement between Peoples Gas and Evers and that the sum of \$135,502.36 is still due on its judgment. [Ashland Partners] has not provided any contradicting testimony or proof in response.

This is an issue that is more appropriately addressed as an objection to Peoples Gas' claim. If [Ashland Partners] has an objection to the claim it may interpose that objection.

Therefore, at this time Peoples Gas still holds an alleged claim against the estate for the balance of its judgment and may pursue that claim under the bankruptcy laws.

See Exhibit No. 26 at p.8 to Revised Response and Exhibit K at p.8 to Debtors' Objection to Claim No. 3. Based on this excerpt from Judge Sonderby's Opinion, the Court finds that she did not specifically rule on the issue of whether Peoples Gas had been paid in full. In fact, she invited the filing of an objection to Peoples Gas's claim. This Court's decision regarding the issue of whether Peoples Gas has been paid in full does not contradict Judge Sonderby's ruling in the Ashland Partners bankruptcy case, as Peoples Gas contends.

performed their obligations. Specifically, the Debtors argue that Peoples Gas received full payment of its judgment claim when it took receipt of the cashier's check from Evers. Further, the Debtors contend that Peoples Gas entered into the Stipulation and Agreement with an alleged term, the obligation to return the check if certain events did not occur, that was detrimental to the Debtors. The Debtors maintain that Peoples Gas caused this event to occur and breached its duty to the Debtors under the Stipulation and Agreement, and thus it should be estopped from taking advantage of or benefitting from its failure to act.

1. Applicable Standards for Claim Objections

Pursuant to Federal Rule of Bankruptcy Procedure 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.” Fed. R. Bankr. P. 3001(f); see also 11 U.S.C. §§ 501 and 502(a). Claim objectors carry the initial burden to produce some evidence to overcome this rebuttable presumption. In re O’Malley, 252 B.R. 451, 456 (Bankr. N.D. Ill. 1999). Once the objector has produced some basis for calling into question allowability of a claim, the burden then shifts back to the claimant to produce evidence to meet the objection and establish that the claim is in fact allowable. Id. (citation omitted). However, the ultimate burden of persuasion always remains with the claimant to prove entitlement to the claim. In re Octagon Roofing, 156 B.R. 214, 218 (Bankr. N.D. Ill. 1993).

The properly filed claim of Peoples Gas constitutes prima facie evidence of the validity and amount of the claim. The objectors to that claim, the Debtors, have the

burden of presenting evidence to rebut the prima facie validity. If that burden is satisfied, then the claimant, Peoples Gas, bears the ultimate burden of proving its claim. The parties have rested on their papers and waived their opportunity for an evidentiary hearing.

2. Peoples Gas Did Not Receive Payment and Satisfaction of Its Underlying Claim

The Court finds and concludes, based on the evidence, that Peoples Gas did not receive full payment and satisfaction of its claim for the unpaid balance of its judgment against the Debtors. Peoples Gas did receive a cashier's check from Evers in the amount of \$135,502.36 in return for an assignment of its Certificate of Sale, but, pursuant to the stipulation entered into between Peoples Gas and Evers, it was not permitted to cash or negotiate the check until the Bank completed its foreclosure sale. When Ashland Partners filed its bankruptcy petition prior to the scheduled foreclosure sale, the Bank was prohibited from taking any further action to complete the foreclosure of its interest in Ashland Partners' property. Because the Bank was unable to foreclose on that property, Peoples Gas was obligated to return the cashier's check.

Further indicia that the judgment owed to Peoples Gas was not paid in full can be found from the disposition of an adversary proceeding (00 A 00530) filed by the Debtors against Peoples Gas in the Ashland Partners bankruptcy case. See Exhibit No. 27 to Revised Response. In June 2000, the Debtors filed a complaint seeking to enjoin Peoples Gas from pursuing supplementary proceedings against them on the State Court judgment. Id. Peoples Gas thereafter filed a motion to dismiss the complaint. See Exhibit No. 28 to Revised Response. After responsive pleadings were filed (See Exhibit Nos. 29 and 30 to

Revised Response), Judge Sonderby dismissed that complaint on September 13, 2000. Accordingly, the issue of whether Peoples Gas's judgment was paid or satisfied was left open.

In addition, the State Court order entered on August 25, 1999, which required Peoples Gas to issue a release and satisfaction of judgment to all defendants upon receipt of an order from the bankruptcy court (in the Ashland Partners case) allowing it to accept and retain the check it received for the assignment of the Certificate of Sale, further demonstrates that Peoples Gas did not receive full payment and satisfaction of its judgment. See Exhibit No. 21 to Revised Response. Peoples Gas did not issue a release and satisfaction of judgment to the defendants because it never received an order from the bankruptcy court allowing it to retain and accept the check it received for the Certificate of Sale.

The Debtors further argue that the acceptance of the cashier's check by Peoples Gas was the equivalent of cash. The Debtors contend that the cashier's check was "cashed" when Peoples Gas received it.

A cashier's check is defined as a bill of exchange drawn by a bank upon itself and accepted in advance by the act of issuance. Gillespie v. Riley Management Corp., 13 Ill. App.3d 988, 991, 301 N.E.2d 506, 508 (2d Dist. 1973), aff'd and remanded, 59 Ill.2d 211, 319 N.E.2d 753 (1974). When a purchaser has paid the consideration and the bank has transferred the cashier's check to the purchaser, for delivery to the payee, the contract between the bank and purchaser has become executed, a debtor-creditor relationship takes place and, by definition, the check issues. Id. A cashier's check is included within the

definition of “check” for purposes of Article 3 of the Uniform Commercial Code–Negotiable Instruments. See Official Comment 4 to U.C.C. § 3-104. Clearly, a cashier’s check is not the equivalent of cash.

Moreover, the affidavits of Heller and Evers state that as part of the agreement between Evers and Peoples Gas, Heller agreed to refrain from negotiating the check until the Bank completed the foreclosure sale process. See Exhibit No. 7 at ¶ 8 and Exhibit No. 8 at ¶ 3 to Revised Response. Consequently, the agreement for Evers to purchase the Certificate of Sale from Peoples Gas was conditioned upon the Bank being able to complete its foreclosure sale. See Exhibit No. 8 at ¶ 2 to Revised Response. Because that condition was not fulfilled, the check was returned to Evers and thus not “cashed” as the Debtors contend. Hence, the Court rejects this argument of the Debtors because the Absolute Assignment and sale of the Certificate of Sale from Peoples Gas to Evers was never completed under all the agreed conditions.

Pursuant to Illinois law, the intent of the parties to an assignment is the key element in determining whether or not an assignment is valid. The intent of the parties to the assignment is a question of fact which can be derived not only from an instrument executed by the parties, but also from the surrounding circumstances to the transfer. Stoller v. Exchange Nat. Bank of Chicago, 199 Ill. App.3d 674, 681, 557 N.E.2d 438, 443 (1st Dist. 1990). In the matter at bar, the affidavits of Evers and Heller clearly demonstrate that the parties intended to create a valid assignment of the beneficial interest in the land trust for the agreed consideration of the cashier’s check for the Certificate of Sale, if and only if, the Bank was able to complete its foreclosure sale. Pursuant to the

agreement between Evers and Peoples Gas, the Absolute Assignment was not to be executed or lodged with the Bank unless the Bank completed the sale. If the foreclosure sale was not completed, the Absolute Assignment was to be returned to Peoples Gas. Similarly, Peoples Gas was obligated to hold the cashier's check until the sale was completed. If the sale was not completed, Peoples Gas was required to return the check. Because the foreclosure sale was never completed, Evers returned the Absolute Assignment to Peoples Gas, and Peoples Gas returned the check to Evers. Thus, the deal between Evers and Peoples Gas was never completed and Peoples Gas did not receive the proceeds of the cashier's check with which to apply in satisfaction of the balance owed under the judgment in its favor and against the Debtors.

The intent of the parties was further demonstrated by the Absolute Assignment itself. While the Sheriff executed the Absolute Assignment to Evers on July 9, 1999, she did not formally accept it or lodge it with the Bank. Because the agreement between Peoples Gas and Evers rendered the Absolute Assignment void if the Bank could not complete the foreclosure sale, and because the document itself was not completed or lodged with the Bank (which was needed to effectively transfer the beneficial interest to Evers on the land trustee's records), the Court rejects the Debtors' argument that Peoples Gas was paid in full when it initially received Evers check.

Moreover, the Court finds that the Absolute Assignment between Peoples Gas and Evers was void because the Certificate of Sale was rendered a nullity. Judge Sonderby entered a finding that the public sale conducted by the Sheriff was void because Peoples Gas failed to obtain an order of court confirming the sale. See Exhibit No. 26 at p. 7 to

Revised Response and Exhibit K at p. 7 to Debtors' Objection to Claim No. 3. The Court agrees with the Debtors that this ruling by Judge Sonderby was not made in their bankruptcy case and does not have a binding effect upon them under the doctrines of collateral estoppel or res judicata. However, the Court will follow the well-reasoned decision Judge Sonderby made. Because the Sheriff's sale was found by Judge Sonderby to be void, the Certificate of Sale issued by the Sheriff to Peoples Gas was also ineffective to satisfy and pay the balance owed Peoples Gas under the judgment it held against the Debtors. This is so regardless of whether the ruling was made in the Ashland Partners' bankruptcy case. When Peoples Gas assigned its Certificate of Sale to Evers in return for the cashier's check, Evers received the Certificate of Sale under certain conditions which were never fulfilled or satisfied, and which undisputedly resulted in the return of the uncashed check to Evers.

It is well-established that an assignee of a beneficial interest in an Illinois land trust acquires all of the assignor's interest in the transferred property and stands in the shoes of the assignor. United States v. Brown, 820 F. Supp. 374, 383 (N.D. Ill. 1993). Accordingly, when Evers received the Absolute Assignment from the Sheriff, she received whatever interest Peoples Gas and the Sheriff had in the land trust. Because the Sheriff's sale and the Certificate of Sale were found to be void by the failure of Peoples Gas to obtain an order confirming the judicial sale and lodge the Certificate of Sale with the Bank, neither Peoples Gas nor the Sheriff truly acquired ownership in the beneficial interest in the trust property. Consequently, because neither Peoples Gas nor the Sheriff had effective ownership at the time of the Absolute Assignment, they had no interest to

pass to Evers through the Absolute Assignment.

Moreover, the Absolute Assignment to Evers, as purchaser of the beneficial interest in the land trust, was not enforceable because it was never lodged with the Bank as trustee. Under Illinois law, in order for an assignment to be binding against third parties, it must be perfected in accordance with any explicit agreement between the parties. If a trust agreement expressly and on its face requires an assignment of a beneficial interest in the land trust to be lodged with and accepted by the trustee, the assignment is not effective until these steps have been completed. See Klingman v. Levinson, 114 F.3d 620, 628 (7th Cir. 1997) (citations omitted); Brown, 820 F. Supp. at 383-84; In re Schmitt Farm Partnership, 161 B.R. 429, 436-37 (N.D. Ill. 1993).

The underlying trust agreement between Ashland Partners and the Bank provided in pertinent part:

No assignment of any beneficial interest hereunder shall be binding on the Trustee until the original of an executed duplicate copy of the assignment in such form as the Trustee may approve is lodged with the Trustee and its endorsement indicated thereon. . . .

See Exhibit No. 3 at p. 1 to Revised Response (emphasis supplied). Pursuant to the trust agreement, any assignment of the beneficial interest had to be lodged with and endorsed by the trustee before the assignment would become binding. In fact, however, the Absolute Assignment from the Sheriff to Evers was neither executed by Evers nor lodged with the Bank as trustee. Moreover, as Judge Sonderby noted, the Absolute Assignment was incomplete; signature lines for Evers and the Bank were blank. See Exhibit No. 26 at p. 8 to Revised Response and Exhibit K at p. 8 to Debtors' Objection to Claim No. 3.

Consequently, because the Absolute Assignment was never completed, it did not constitute a valid and binding assignment of the beneficial interest of the land trust.

The Debtors further argue that Evers had no right to receive back the cashier's check that she tendered to Peoples Gas in return for an assignment of the beneficial interest. The Debtors cite to Dixon v. City National Bank of Metropolis, 81 Ill.2d 429, 410 N.E.2d 843 (1980) in support of their proposition. The Dixon case is inapposite to the matter at bar. In Dixon, the plaintiffs purchased an interest in real property that was sold by the sheriff at an execution sale. The sale was subsequently voided. The purchasers then sought to recover their payment from the defendant. The court in Dixon held that under the doctrine of caveat emptor, the purchasers were not entitled to recover the purchase price from the defendant absent fraud or some other act. The matter at bar does not involve a purchaser attempting to recover money paid at an execution sale that was subsequently voided. Rather, the judicial sale was never completed because the court did not confirm the sale prior to Ashland Partners' bankruptcy.

The sale here involved the sale of the beneficial interest in a land trust, which constitutes the sale of personal property, not real property. Where property of a judgment debtor is sold on execution and the sale stands, the judgment is satisfied to the extent of the net proceeds of the sale. See Benj. Harris & Co. v. Western Smelting & Refining Co., 322 Ill. App. 609, 641, 54 N.E.2d 900, 914 (1st Dist. 1944) (quotation omitted). Thus, in a situation where the sale is not completed and the judgment creditor does not receive net proceeds of the sale, the judgment is unsatisfied. While Peoples Gas did receive the cashier's check, it could not be cashed because the conditions to complete the sale were

not satisfied. Therefore, Peoples Gas did not receive the proceeds of the sale and the judgment was not paid in full.

For the foregoing reasons, the Court rejects the Debtors' objection to the claim of Peoples Gas based on the argument that it received payment and satisfaction of its debt.

3. Peoples Gas Did Not Waive Its Claim By Returning the Cashier's Check to Evers

Next, the Debtors argue that Peoples Gas waived its claim when it returned the cashier's check to Evers. The Debtors cite Leong v. Village of Schaumburg, 194 Ill. App.3d 60, 550 N.E.2d 1073 (1st Dist. 1990) and Gras v. Clark, 46 Ill. App.3d 803, 361 N.E.2d 316 (2d Dist. 1977) in support of their proposition. The doctrine of waiver is based on the principle that a party may dispense with something of value by a voluntary act done with full knowledge of the rights involved and with an intention to relinquish those rights. Leong, 194 Ill. App.3d at 69, 550 N.E.2d at 1079 (citing Gras). These cases are factually distinct and lend little support to the Debtors' position.

The Court finds that Peoples Gas did not waive its claim against the Debtors. The agreement between Peoples Gas and Evers provided that no action was to be taken to either negotiate the cashier's check or lodge the Absolute Assignment with the Bank unless the Bank completed the foreclosure sale. Peoples Gas's assignment of the Certificate of Sale to Evers, and Evers receipt of the cashier's check in return therefor, does not, ipso facto, mean that the doctrine of waiver prohibited Peoples Gas from returning the check to Evers when the foreclosure sale did not take place. The Court finds that the Debtors failed to proffer any evidence to show that Peoples Gas intended to relinquish its rights. Hence, the Court rejects the Debtors' argument that Peoples Gas

waived its claim.

4. Peoples Gas Did Not Make a Gift to Evers When it Returned the Cashier's Check

Further, the Debtors contend that Peoples Gas made a gift to Evers when it returned the cashier's check to her. A "gift" is a voluntary, gratuitous transfer of property by one person to another where the donor manifests an intent to make such a gift and absolutely and irrevocably delivers the property to the donee. Moniuszko v. Moniuszko, 238 Ill. App.3d 523, 529, 606 N.E.2d 468, 472 (1st Dist. 1992) (citation omitted). Under Illinois law, the requirements for a valid gift are: (1) donative intent; (2) the donor's parting with exclusive dominion and control over the subject of the gift; and (3) delivery. See Dubisky v. United States, 62 F.3d 182, 185 (7th Cir. 1995) (citing Frey v. Wubbena, 26 Ill.2d 62, 185 N.E.2d 850 (1962)); Moniuszko, 238 Ill. App.3d at 529, 606 N.E.2d at 472. To establish a gift, the proof must be clear and convincing, and the burden is upon the alleged donee to prove the existence of a donative intent. Schramm v. Schramm, 13 Ill.2d 281, 288, 148 N.E.2d 799, 803 (1958) (citations omitted); Hall v. Eaton, 258 Ill. App.3d 893, 895, 631 N.E.2d 833, 836 (4th Dist. 1994).

The Court concludes that the Debtors failed to demonstrate by clear and convincing evidence that Peoples Gas made a gift to Evers when it returned the cashier's check to her. The un rebutted affidavits of Heller and Evers show that the transfer of the check to Peoples Gas was not intended as an absolute and irrevocable delivery of property. Rather, it was conditioned upon the completion of the foreclosure sale by July 13, 1999. That condition was not fulfilled because Ashland Partners filed a bankruptcy petition thereby staying the foreclosure sale. Accordingly, under the agreement, Peoples

Gas was obligated to return the cashier's check to Evers. The Debtors failed to proffer any evidence to establish a donative intent on the part of Peoples Gas. Therefore, the Court concludes that the Debtors did not show the requisite elements for a valid gift.

5. Peoples Gas Did Not Release Its Claim Against the Debtors

Next, the Debtors maintain that Peoples Gas released its claim against the Debtors when it returned the cashier's check to Evers in violation of the Stipulation and Agreement. The Debtors argue that when Peoples Gas relinquished the consideration it received from Evers, it thereby materially changed the Debtors' obligation to their detriment, in violation of the Stipulation and Agreement, by attempting to reinstate or resurrect its recourse against them. The Debtors contend that pursuant to their agreements with Peoples Gas, it had no right to return the cashier's check to Evers without their consent.

The Court concludes that the facts do not support the Debtors' argument that Peoples Gas released its claim against the Debtors. The two cases cited by the Debtors, Lillie v. McFarlin, 304 Ill. App. 27, 25 N.E.2d 896 (2d Dist. 1940) and Conerty v. Richtsteig, 379 Ill. 360, 41 N.E.2d 476 (1942), do not support their argument. Both of those cases involved the release of parties to a mortgage and are thus distinct from the situation at bar.

A release is an abandonment of a claim to the person against whom the claim exists. International Ins. Co. v. Sargent & Lundy, 242 Ill. App.3d 614, 622, 609 N.E.2d 842, 848 (1st Dist. 1993). A release is a contract and is to be construed under traditional contract law. Farm Credit Bank of St. Louis v. Whitlock, 144 Ill.2d 440, 447, 581 N.E.2d

664, 667 (1991); Simmons v. Blauw, 263 Ill. App.3d 829, 832, 635 N.E.2d 601, 603 (1st Dist. 1994). Illinois courts have uniformly held that the intention of the parties controls the scope and effect of the release; intent is determined from the language of the document when read in light of the circumstances surrounding the transaction. See Gladinus v. Laughlin, 51 Ill. App.3d 694, 696, 366 N.E.2d 430, 432 (5th Dist. 1977) (citations omitted).

Peoples Gas entered into the Stipulation and Agreement with the Debtors. See Exhibit No. 12 to Revised Response and Exhibit C to Debtors' Objection to Claim No. 3. That document required Peoples Gas to withdraw its motion for conditional judgment against Berger Financial Services and to dismiss all citation proceedings against the Debtors. Id. In return, the Debtors agreed to make certain periodic payments totaling \$153,476.30. Id. Thereafter, Peoples Gas withdrew its motion and dismissed all supplemental proceedings against the Debtors, and the Debtors began making the required periodic payments. See Exhibit Nos. 13 and 14 to Revised Response. The Court concludes that the Debtors failed to proffer any evidence to show that Peoples Gas intended to release its claim against the Debtors.

6. Peoples Gas Did Not Act Negligently

Furthermore, the Debtors argue that Peoples Gas had an obligation to them to "responsibly prosecute its effort to obtain a return from its assignment of the Certificate of Sale." The Court does not fully understand the Debtors' point. Nevertheless, the Court finds that this argument lacks factual and legal merit.

The Court notes that the only express duties owed by Peoples Gas under the

Stipulation and Agreement were to issue to the Debtors a release and satisfaction when they paid the \$153,476.30 in installments in full (which they did not pay) and assign to them, in that event, Peoples Gas's judgment against the other defendants. The timeliness of the installment payments under the Stipulation and Agreement was "of the essence" and Peoples Gas's dismissal of its supplement proceedings was without prejudice and with leave to reinstate if the Debtors defaulted in their payments. See Exhibit Nos. 13 and 14 to Revised Response.

Moreover, under the March 9, 1999 supplemental letter agreement between Peoples Gas and the Debtors' State Court counsel, Peoples Gas "agreed if there are funds available to pay [Peoples Gas's] total debt from either a refinancing of the property or the proceeds of the pending foreclosure sale, the existing settlement agreement between Peoples Gas and the [Debtors] will be null and void." See Exhibit D to Debtors' Objection to Claim No. 3. As Peoples Gas never received either the installment payments the Debtors agreed to pay or collected proceeds from the foreclosure sale, the Court concludes that Peoples Gas has neither breached the Stipulation and Agreement nor acted negligently with respect to the Debtors.

The Debtors fail to cite any legal authority for the proposition that Peoples Gas had a duty or obligation to prosecute supplemental proceedings which it negligently failed to fulfill for the benefit of the Debtors. The Debtors did not cite, and the Court is unaware of, any authority for the proposition that a judgment creditor owes a duty to a judgment debtor regarding the collection or satisfaction of the judgment. Perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are

waived. See United States v. Lanzotti, 205 F.3d 951, 957 (7th Cir.), cert. denied, 530 U.S. 1277 (2000) (collecting cases). The Court does not have a duty to research and construct legal arguments available to a party. Head Start Family Educ. Program, Inc. v. Cooperative Educ. Serv. Agency 11, 46 F.3d 629, 635 (7th Cir. 1995). Because the Debtors' argument that Peoples Gas acted negligently is unsupported by any legal authority, it is therefore rejected and denied.

7. The Debtors Failed to Develop the Statute of Frauds Argument

Further, the Debtors maintain that the agreement between Peoples Gas and the Bank related to real property and was subject to the Statute of Frauds and should have been in writing. The Debtors argue that because Peoples Gas has not produced any writing to evidence its agreement with the Bank, it should be estopped from enforcing any putative agreement that Peoples Gas would be obligated to return the check to Evers once the Bank tendered it and received the Certificate of Sale in return.

Like the above discussion concerning the Debtors' argument that Peoples Gas was negligent, the Debtors failed to cite any case authority or develop this argument. Consequently, this argument has been waived and forfeited. See Lanzotti, 205 F.3d at 957.

8. Peoples Gas Did Not Breach Its Duty Under the Stipulation and Agreement By Failing to File Liens Against the Debtors' Co-Defendants' Real Property

Next, the Debtors maintain that at the time the State Court entered judgment against the Debtors and their co-defendants, certain of those co-defendants owned real property. The Debtors contend that Peoples Gas could have filed liens against that real property. If it had, according to the Debtors, the claim, which Peoples Gas now asserts

against the Debtors, would have been satisfied. The Debtors allege that the failure of Peoples Gas to pursue the other co-defendants violated a duty owed to the Debtors under the Stipulation and Agreement. The Debtors do not further develop this contention.

The Stipulation and Agreement does not impose a duty on Peoples Gas to pursue the co-defendants of the Debtors. Rather, that document provided that Peoples Gas agreed to accept from the Debtors the sum of \$153,476.30 in return for a release and satisfaction of judgment against them and an assignment of the judgment it obtained against all of the other defendants in the State Court action. See Exhibit No. 12 to Revised Response and Exhibit C to Debtors' Objection to Claim No. 3. Nowhere in that document was there a duty upon Peoples Gas to file liens against real property owned by the co-defendants of the Debtors. Accordingly, the Debtors' argument lacks merit. Moreover, the Debtors failed to develop this argument and support it with pertinent authority. As a consequence, the Court finds that the Debtors forfeit and waive this argument. See Lanzotti, 205 F.3d at 957.

In summary, after considering all of the evidence, the Court concludes that Peoples Gas has sufficiently proven its underlying claim against the Debtors, which is allowed over the objection thereto. The Court concludes that the claim has not been satisfied or paid in full.

B. The Motion of Peoples Gas for Attorney's Fees

On April 27, 2001, Peoples Gas filed a motion for assessment of attorney's fees against the Debtors and their attorney pursuant to Rule 11. Peoples Gas contends that the claim objection filed by the Debtors is "spurious in nature and content." Specifically,

Peoples Gas maintains that the argument set forth in the claim objection--that Peoples Gas has been paid in full--is not based on actual facts nor is it supported by any case law. Peoples Gas alleges that as a result of the Debtors' spurious pleading, its attorney had to spend many hours searching and compiling all relevant documents from the previous State Court and bankruptcy court cases, as well as perform research relating to the law of the case doctrine. Peoples Gas requests that the Court make a finding that the Debtors and their attorney violated Rule 11 and that an evidentiary hearing be set for the imposition of attorney's fees.

Bankruptcy Rule 9011 is modeled after Federal Rule of Civil Procedure 11 and is "essentially identical" to Rule 11. In re Park Place Assocs., 118 B.R. 613, 616 (Bankr. N.D. Ill. 1990). Rule 11 was amended in 1993 to add certain notice requirements² and these same amendments were later made to Bankruptcy Rule 9011, effective in 1997. Thus, in applying the current version of Bankruptcy Rule 9011, courts frequently look to Rule 11 and the cases decided thereunder. See In re Famisaran, 224 B.R. 886, 894 (Bankr. N.D. Ill. 1998). Some Rule 11 cases decided prior to the procedural amendment are still applicable today in analyzing Bankruptcy Rule 9011 because the substantive

² Rule 11 was amended in 1993 to broaden the obligations of the parties to refrain from conduct which frustrates the judicial process while also placing greater constraints on the imposition of sanctions. Fed. R. Civ. P. 11, Advisory Committee Notes, 1993 Amendments. To this end, the provisions of (c)(1)(A) were included to provide parties with notice and an opportunity for "curing" offensive pleadings before a remedy could be sought in court. Bankruptcy Rule 9011 was amended in 1997 in order to bring it in conformance with Rule 11's earlier 1993 revision. Commonly known as the "safe-harbor provision," this notice requirement is at issue in the instant matter and will be discussed hereinafter.

provisions were not altered. See In re Collins, 250 B.R. 645, 659 (Bankr. N.D. Ill. 2000); State Bank of India v. Kaliana (In re Kaliana), 207 B.R. 597, 601 (Bankr. N.D. Ill. 1997) (citations omitted).

The goal of the sanctions remedy provided under Bankruptcy Rule 9011 is to deter unnecessary filings, prevent the assertion of frivolous pleadings, and to require good faith filings. Szabo Food Serv., Inc. v. Canteen Corp., 823 F.2d 1073, 1077-80 (7th Cir. 1987), cert. dismissed, 485 U.S. 901 (1988). The Rule is not intended to function as a fee shifting statute which would require the losing party to pay costs. Kaliana, 207 B.R. at 601 (citing Mars Steel Corp. v. Continental Bank N.A., 880 F.2d 928, 932 (7th Cir. 1989)). Thus, the Rule focuses on the conduct of the parties and not the results of the litigation. Bankruptcy Rule 9011 provides in relevant part:

(a) SIGNATURE. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. . . .

(b) REPRESENTATIONS TO THE COURT. *By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,--*

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual

contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) SANCTIONS. If, after notice and a reasonable opportunity to respond, *the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.*

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. *The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b).* If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. . . .

(2) Nature of Sanction; Limitations. *A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.*

Subject to the limitations in subparagraphs (A) and (B), *the sanction may consist of, or*

include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanctions imposed.

Fed. R. Bankr. P. 9011 (emphasis supplied).

Under Bankruptcy Rule 11(c)(1)(A), “sanctions proceedings may be initiated in two ways, by motion or at the initiative of the trial court.” Divane v. Krull Elec. Co., Inc., 200 F.3d 1020, 1025 (7th Cir. 1999). When sanctions are requested upon a party’s motion, two requirements must be met: (1) the motion must be made separate and apart from other motions or requests and “[must] describe the specific conduct alleged to violate” representations to the court, and (2) “the motion may not be presented to the court unless, within twenty-one days of service, the non-movant has not withdrawn or corrected the challenged behavior.” Id. A court that imposes sanctions by motion without adhering to the twenty-one day safe harbor abuses its discretion. Id. (citing Johnson v. Waddell & Reed, Inc., 74 F.3d 147, 150-51 (7th Cir. 1996)). Rule 11 was designed to ensure due process and give the potentially offending party a “full and fair opportunity to respond and show cause before sanctions are imposed. Id.

The present version of Bankruptcy Rule 9011 provides that upon presenting in the manner of signing, filing, submitting or later advocating documents to the court, a party

or their counsel represents that to the best of that person's knowledge, information and belief, formed after a reasonable inquiry under the circumstances, such document is not presented (1) for any improper purpose, (2) based upon frivolous legal arguments, (3) without adequate evidentiary support for its allegations, and (4) without a basis for denials of fact. These provisions essentially create two grounds for the impositions of sanctions: (1) the "frivolousness clause," which looks to whether a party or an attorney made a reasonable inquiry into both the facts and the law; and (2) the "improper purpose clause," which looks to whether a document was interposed for an illegitimate purpose such as delay, harassment, or increasing the costs of litigation. Kaliana, 207 B.R. at 601 (citations omitted).

With respect to the "frivolousness clause," the relevant inquiry has two prongs: (1) whether the attorney made a reasonable inquiry into the facts and (2) whether the attorney made a reasonable investigation of the law. Home Savs. Ass'n of Kansas City, F.A. v. Woodstock Assocs. I, Inc. (In re Woodstock Assocs. I, Inc.), 121 B.R. 238, 242 (Bankr. N.D. Ill. 1990) (citation omitted). In making the determination of whether a reasonable inquiry was made with respect to the facts of a case, courts must consider five factors: (1) whether the signer of the document had sufficient time for investigation; (2) the extent to which the attorney had to rely on his client for the factual foundation underlying the pleading; (3) whether the case was accepted from another attorney; (4) the complexity of the facts and the attorney's ability to perform a sufficient pre-filing investigation; and (5) whether discovery would have been beneficial to the development of the underlying facts. Id. In sum, the investigation of the facts must have been

reasonable under the particular circumstances of the case. In re Excello Press, Inc., 967 F.2d 1109, 1112-13 (7th Cir. 1992).

A pleading is well-grounded in fact if it has some reasonable basis in fact. Woodstock, 121 B.R. at 242 (citations omitted). On the other hand, a pleading is not well-grounded in fact if it is contradicted by uncontroverted evidence that was or should have been known by the attorney signing the document. Id. (citation omitted). Nonetheless, the Rule does not require investigation to the point of absolute certainty. Kaliana, 207 B.R. at 601 (citation omitted).

The Court must deny Peoples Gas's motion for sanctions because it violated the safe-harbor provision contained in Bankruptcy Rule 9011(c)(1)(A). The safe-harbor provision of Bankruptcy Rule 9011 provides that the motion may not be filed with the court until at least twenty-one days after service of the motion on the offending party. "If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion should not be filed with the court." Fed. R. Civ. P. 11 Advisory Committee Notes, 1993 Amendments. The intention of the Rule is that counsel will give "informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion." Id. The safe-harbor provision is a mandatory procedural prerequisite and sanctions imposed without compliance are improper. See Elliott v. Tilton, 64 F.3d 213, 216 (5th Cir. 1995); Hedges v. Yonkers Racing Corp., 48 F.3d 1320, 1328 (2d Cir. 1995); In re VMS Sec. Litig., 156 F.R.D. 635, 641 (N.D. Ill. 1994); In re McNichols, 258 B.R. 892, 902-03 (Bankr. N.D. Ill. 2001) (collecting cases).

Pursuant to the certificate of service attached to the motion for sanctions, Peoples Gas served the Debtors' attorney with the motion on April 27, 2001. The motion was filed with the Court on that same day and presented in Court on May 11, 2001. In its reply to the Debtors' response to the motion for sanctions, Peoples Gas attached an affidavit from Paul M. Heller, its attorney, in which he admits that he did not serve the motion for sanctions on the Debtors' attorney twenty-one days before filing it with the Court. Specifically, Heller states that his reason for not serving the motion was "because based on our previous conversations I knew that he was not interested in either correcting or withdrawing the debtors' objection to the claim filed by Peoples Gas." See Exhibit A at ¶ 15 to Reply to Debtors' Response to Motion for Sanctions. Admittedly, Peoples Gas violated the twenty-one day safe-harbor period. The fact that Heller believed that complying with the safe-harbor provision would be of no avail based on a conversation he had with the Debtors' attorney does not obviate the lack of compliance with the mandatory twenty-one day safe-harbor period. The Rule does not allow for litigants and/or their counsel to make a determination that compliance with that safe-harbor period would be a useless act and not effectuate the withdrawal or correction of the offending pleading and, therefore, need not be followed.

Consequently, this mistake is fatal to Peoples Gas's request for sanctions. Bankruptcy Rule 9011 is crystal clear on this point. The safe-harbor provision requires that the motion may not be filed with the court until at least twenty-one days after service of the motion on the offending party. Peoples Gas filed the motion on the same date that it served the motion of the Debtors' attorney. Because Peoples Gas failed to comply with

the safe-harbor provision of Bankruptcy Rule 9011, the Court will not further address the substantive arguments made regarding the alleged violation of Bankruptcy Rule 9011.

Hence, the Court hereby denies Peoples Gas's motion for sanctions.

C. The Debtors' Request for Reasonable Expenses and Attorney's Fees

In their response to Peoples Gas's motion for sanctions, the Debtors contend that they are entitled to recover their fees and costs incurred in defending Peoples Gas's motion for sanctions. The Debtors argue that Peoples Gas's motion constitutes a frivolous pleading under Bankruptcy Rule 9011. The Court denies the Debtors' request for attorney's fees pursuant to Bankruptcy Rule 9011(c)(1)(A). Bankruptcy Rule 9011(c)(1)(A) provides in pertinent part that "[i]f warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in . . . opposing the motion." Fed. R. Bank. P. 9011(c)(1)(A).

The Court declines to award the Debtors their reasonable expenses and attorney's fees. The Court does not agree with the Debtors that Peoples Gas's request for sanctions constitutes an unnecessary filing and reflects no inquiry into the law. To the contrary, Peoples Gas's arguments and the underlying material and relevant facts support its position that it has not received satisfaction or payment in full of its underlying judgment; that it has not acted negligently towards the Debtors; and that it has not effectively waived its claim against them. Because Peoples Gas's failure to comply with the safe-harbor provision was fatal to its motion, the Court did not address the substantive

allegations of the motion. Thus, the Court finds that an award of expenses and attorney's fees to the Debtors is not warranted under the circumstances at bar.

IV. CONCLUSION

For the foregoing reasons, the Court hereby overrules the Debtors' objection to Claim No. 3 of Peoples Gas and allows the claim. Further, the Court denies Peoples Gas's motion for sanctions against the Debtors and their attorney. Finally, the Court denies the request of the Debtors for the award of reasonable expenses and attorney's fees.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|---------------------------|---|---------------------------|
| IN RE: |) | |
| CARLITO and EDNA SORIAGA, |) | Chapter 13 |
| |) | Bankruptcy No. 00 B 33466 |
| Debtors. |) | Judge John H. Squires |
| |) | |

ORDER

For the reasons set forth in a Memorandum Opinion dated the 23rd day of July, 2001, the Court hereby overrules the objection of Carlito and Edna Soriaga to Claim No. 3 filed by Peoples Gas Light & Coke Company. The claim is allowed under 11 U.S.C. § 502. Additionally, the Court denies the motion of Peoples Gas Light & Coke Company for assessment of attorney’s fees against Carlito and Edna Soriaga and their attorney pursuant to Federal Rule of Civil Procedure 11. Finally, the Court denies the request of Carlito and Edna Soriaga for the award of reasonable expenses and attorney’s fees under Federal Rule of Bankruptcy Procedure 9011(c)(1)(A).

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List