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COUNSEL FOR JEFFREY BARON

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	**§**	
	§	
ONDOVA LIMITED COMPANY,	**§**	**CASE NO. 09-34784-SGJ-11**
	§	
Debtor.	**§**	**Chapter 11**

JEFFREY BARON'S OBJECTION TO PROOF OF CLAIM NO. 11
OF RASANSKY LAW FIRM AND ALDOUS LAW FIRM

Jeffrey Baron ("Baron"), a creditor and party in interest in this case, hereby files his *Objection to Proof of Claim No. 11 of Rasansky Law Firm and Aldous Law Firm* (the "Objection"), and in support thereof respectfully represents as follows:

I. JURISDICTION

1. The Court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 157 and 1334. Venue over the Objection is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Objection is a core proceeding under 11 U.S.C. § 157(b)(2).

II. FACTUAL BACKGROUND

2. On July 27, 2009 (the "Petition Date"), the Debtor filed for bankruptcy protection

under chapter 11 of title 11 of the Bankruptcy Code.

3. On September 17, 2009, the Court entered an order approving the appointment of a chapter 11 trustee (Docket No. 98).

4. The Court set the bar date for filing proofs of claim for all creditors other than governmental units as November 25, 2009 (the "Bar Date").

5. Baron files this Objection pursuant to Section 502 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

III. OBJECTION TO CLAIM

6. Pursuant to Section 502 of the Bankruptcy Code, Baron objects to Rasansky Law Firm and Aldous Law Firm's ("Rasansky & Aldous") Proof of Claim. 11 U.S.C.A. § 502(b)(1). Rasansky and Aldous filed a proof of claim on November 25, 2009 in the amount of $7,000,000.00, characterizing such claim as secured and attaching a heavily redacted Contract and Power of Attorney thereto. Baron asserts the Rasansky and Aldous claim for a $7,000,000.00 contingency fee against he and Ondova is unenforceable because Rasansky and Aldous repudiated the parties' existing contingency fee contract. Once repudiated, neither Rasansky nor Aldous ever obtained either any written agreement or secured a new written and signed instrument with Baron delineating a second contingency fee relationship on behalf of he and/or Ondova. Finally, Baron objects to the Rasansky and Aldous claim upon the theory of *quantum meruit* as unjustified as the work performed by them was not valuable and poor.

7. A claimant's Proof of Claim is deemed allowed unless a party in interest objects. 11 U.S.C.A. § 502(a). A creditor is a party in interest. *Id.*; *see also, Industrial Bank, N.A. v. City Bank*, 549 U.S. 1019 (2005). An objection, upon filing, initiates a contested matter by notifying

the parties that litigation is required to determine the allowance or disallowance of a claim. *Matter of Taylor*, 132 F.3d 256, 260 (5th Cir. 1998). Once filed, the bankruptcy judge may examine the conscionability of a claim asserted against the estate and to disallow it if the claim is without lawful existence. *In re Hinkley*, 58 B.R. 339, 343 (Bankr. S.D.Tex. 1986).

8. Section 101 of the Bankruptcy Code defines a "creditor" as an "entity that has a claim against the debtor." U.S.C.A. § 101(10)(A). "To be a creditor in bankruptcy, the debtor must owe a debt to the claimant." *In re Internet Navigator, Inc.*, 289 B.R. 133, 136 (Bankr. N.D. Iowa 2003); *see also*, *In re Colonial Poultry Farms*, 177 B.R. 291, 299 (Bankr. W.D. Mo. 1995); *Diasonics v. Ingalls*, 121 B.R. 626, 630 (Banrk. N.D. Fla. 1990). On or about April 12, 2009 Rasansky and Aldous entered into a contingency contract with the Debtor, attached hereto as **Exhibit "A."** However, on April 16, 2009, a mere 4 days later, Rasansky and Aldous repudiated the contract by email. *See* **Exhibit "B."** Therefore, such contract is not binding on the Debtor and any claims brought pursuant to such contract should be disallowed.

9. For a contingent-fee contract to be enforceable, it must satisfy section 82.065 of the government code: "(a) A contingent fee contract for legal services must be in writing and signed by the attorney and client." Tex. Gov't Code Ann. §82.065. The Texas Disciplinary Rules of Professional Conduct also require that a contingent fee agreement be in writing. Tex. Disciplinary R. Prof'l Conduct 1.04(d).

10. In Texas, it is the movant's burden to establish the existence of a contract sued upon. *Howell v. Kelly,* 534 S.W.2d 737, 739 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ); see also, V.T.C.A. Government Code §82.065(a). "Repudiation" consists of actions by a contracting party that indicate said party is not going to perform a contract in the future. *Group Life & Health Ins. Co. v. Turner,* 620 S.W.2d 670, 672 (Tex. Civ. App.—Dallas, 1981, no writ).

That is, it is conduct which shows a fixed intention to abandon, renounce and refuse to perform a contract. *Moore v. Jenkins,* 211 S.W. 975, 976 (Tex. 1919). As the only written contract between the parties was repudiated by Rasansky and Aldous, no written contract remains under which Rasansky and Aldous may assert a claim. Therefore, the claim of Rasansky and Aldous should be disallowed.

11. Furthermore, after Rasansky and Aldous repudiated the contract with the Debtor, no further agreements were reached between the parties, written or otherwise, which would support Rasansky and Aldous's claim. Therefore, no agreement existed between the parties that Rasansky and Aldous would perform work on a contingency basis for the Debtor. Thus, to the extent Rasansky and Aldous's claim is based upon any alleged agreement between the parties outside of the repudiated contract, such claims should be disallowed.

12. Finally, any work that was performed by Rasansky and Aldous was poorly performed and to the extent that Rasansky and Aldous are basing their claims on *quantum meruit*, such claims are not justified. *Quantum meruit* is an equitable theory of recovery which is based upon an implied agreement to pay for benefits received. *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992). To recover under the doctrine of *quantum meruit*, Rasansky and Aldous must prove: 1) valuable services were furnished; 2) to Baron and Ondova; 3) which were accepted by Baron and Ondova; and 4) under such circumstances as reasonably notified Baron and Ondova that Rasansky and Aldous, in performing such services, expected to be paid by the recipient. *Id.* (Emphasis added.) Baron asserts that Rasansky's and Aldous' legal services were not valuable and in some cases have created substantial additional, unnecessary and costly litigation to both Baron and Ondova. Therefore, the Rasansky and Aldous claim, to the extent they seek recovery of attorney's fees pursuant to the doctrine of

quantum meruit, should be disallowed or, alternatively, significantly limited in view of the duration and quality of legal services rendered by them.

13. Baron reserves the right to file a brief in support of this Objection. Baron further reserves the right to amend this Objection at any time to raise further affirmative defenses and counterclaims to the claims of Rasansky and Aldous.

WHEREFORE, PREMISES CONSIDERED, Baron requests that the Court enter an order sustaining his objection to Rasansky and Aldous's Proof of Claim and granting Baron such other and further relief, general or special, at law or in equity, to which he may show himself justly entitled.

Dated: February 22, 2010

Respectfully submitted

By: /s/ Gerrit M. Pronske___
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COUNSEL FOR JEFFREY BARON

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on February 22, 2010 I caused to be served the foregoing pleading upon the service list attached hereto via the Court's electronic transmission facilities and/or United States mail, first class delivery.

/s/ _Gerrit M. Pronske_____
Gerrit M. Pronske