IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_In re_ LABRUM & DOAK	:	**CIVIL ACTION**
	:	
	:	
	:	**NO. 98-4780**

_In re_ LABRUM & DOAK	:	**CIVIL ACTION**
	:	
	:	
	:	**NO. 98-4913**

M E M O R A N D U M

WALDMAN, J. **August 22, 2000**

I. Introduction

Labrum & Doak (“the Debtor”), a dissolved partnership, instituted an adversary proceeding in bankruptcy court to obtain a declaratory judgment approving its proposed allocation of tax recapture liability under 26 U.S.C. § 467 to all of its partners and former partners who received the benefit of the recapture, as opposed to only the partners who remained with the Debtor at the time of its dissolution. Defendants/Appellants Daniel J. Ryan and Perry S. Bechtle, former partners of the Debtor, appeal from the Opinion and Order entered by the Bankruptcy Court on July 30, 1998 which allocated to them shares of the Debtor's taxable income for tax years 1996 and 1997 (Civil Action No. #98-4780). Appellant the Official Committee of Former Partners (“Former Partners”) appeals from the same Opinion and Order of the Bankruptcy Court (Civil Action No. #98-4913).

II. <u>Jurisdiction and Standard of Review</u>

This court has appellate jurisdiction over final orders of the bankruptcy court pursuant to 28 U.S.C. § 158(a)(1). The district court reviews <u>de novo</u> the bankruptcy court's conclusions of law and applies a clearly erroneous standard of review to the bankruptcy court's findings of fact. <u>See</u> <u>Meridian Bank v. Alten</u>, 958 F.2d 1226, 1229 (3d. Cir 1992); <u>In re Equipment Leassors of Pennsylvania</u>, 235 B.R. 361, 363 (E.D. Pa. 1999).

III. <u>Factual Background</u>

Labrum & Doak is a Pennsylvania general partnership which, prior to its dissolution on July 31, 1997, engaged in the practice of law. On January 6, 1998, six of the Debtor's former partners filed an involuntary bankruptcy petition under Chapter 7 of the Bankruptcy Code, which, in response to the Debtor's motion, the Bankruptcy Court converted to Chapter 11.

On April 20, 1998, the Debtor filed an adversary proceeding seeking a declaratory judgment approving its proposed allocation of tax recapture liability among its existing and former partners. The tax recapture liability issue stems from a ten-year lease the Debtor entered into in 1992 for office space with 1818 Market Partnership ("Landlord"). The terms of the lease commenced September 1, 1992 and extended through August 31, 2002. As an incentive to the Debtor to enter the lease, the Landlord abated the rent during the first year and for portions of the subsequent three years.

In order to take advantage of the tax benefits offered by the lease, the Debtor adopted in 1994 the constant rental accrual method of accounting provided in the tax code at 26 U.S.C. § 467. This method allowed the Debtor to prorate for tax purposes the total rents due under the lease over the entire length of the lease, resulting in increased tax deductions for rental expenses for the first four years of the lease and thus permitting the partners to declare taxable income significantly less than actual income earned. Beginning in 1996, however, the Debtor was required to pay its rent in full, even though its rent expense deductions were limited to the constant rate previously established. This effectively increased the taxable income of the Debtor's partners during that second period.

Through 1995, the Debtor's partners had received a cumulative tax benefit of $2,056,458, with Mr. Ryan receiving deductions of $110,407 and Mr. Bechtle receiving deductions of $64,721.[1] Over the entire lease term, the tax benefit experienced in the beginning of the lease offsets the tax liability experienced at the end of the lease. Therefore, from 1996 to 2002, the tax liability would increase to offset the received benefit.

[1]Upon the adoption of the constant rental accrual method, the firm filed amended partnership returns and issued amended Schedule K-1 forms to its partners for tax years 1992 and 1993, allowing the partners to file amended returns and to obtain tax refunds for those years.

To help provide for the tax liabilities upon recapture, the Debtor withheld significant sums from the partners' cash distributions of profits and established a reserve fund as part of each partner's capital account. The intention was to create a risk management device which would assist a departing or retiring partner to pay the accelerated tax liability upon his or her departure. When the firm experienced financial difficulty, however, the partners' capital accounts were depleted.

In 1995-1996, nine of the Debtor’s partners left the firm, either by withdrawal or retirement. Appellants Bechtle and Ryan, the only partners who retired from the firm, did so effective December 31, 1996. They entered into agreements with the partnership providing for post-retirement payouts beginning in January 1997 and extending for five years thereafter.

The firm then operated under a 1989 Amended and Restated Partnership Agreement (the “Partnership Agreement”). That Agreement contained several provisions concerning liabilities of former partners for defined losses and pending claims.

Article 19.7(a) defines “Losses” as “any and all actions, causes of action, litigation, claims, debts, dues, accounts, demands, losses, deficiencies, damages, liabilities, obligations, and expenses of any nature whatsoever, including court costs and legal fees, arising from or in connection with or in any manner relating to the partnership” and “Excepted Losses” as those arising from a partner’s “willful misconduct or fraud or breach of this Agreement or other written Agreement with or relating to the partnership” or willful breach of applicable rules of professional conduct. “Pending Claims” are defined as “any Losses pending against or known to the partnership or a partner at the time of such partner's voluntary withdrawal or expulsion from the partnership.”

Article 19.7(b) provides that “(u)pon the termination of the interest of a partner in the partnership by reason of death, disability, or retirement, then the partnership and the remaining partners shall assume and satisfy as they become due and shall defend, indemnify and hold harmless such deceased, disabled or retired from, any and all Losses with the sole exception of such partner's Excepted Losses.”

Article 19.7(c) provides for indemnification to withdrawn and expelled partners for “ordinary business expenses, ordinary obligations, and ordinary liabilities of the partnership incurred in the normal course of partnership business with the following exceptions:

(i) The Executive Committee shall have the right in its sole discretion to determine the portion or amount of any loans, lease obligations, Pending Claims, and Excepted Losses to be assessed against and borne by such expelled or withdrawing partner. It is the intention of the parties that any expelled or withdrawing partner shall remain liable for the share of Pending Claims and Excepted Losses which could have been assessed against and borne by such partner had such partner remained a partner after the date of withdrawal or expulsion; and

(ii) The partnership shall have no obligation to defend, indemnify, and hold harmless any such expelled or withdrawing partner from any Pending Claim or Excepted Losses, except to the extent of insurance coverage provided by the partnership's applicable insurance policies, and such withdrawal or expulsion shall not exonerate or release any such partner from liability to the partnership or to any third party with respect to any Pending Claims or Excepted Losses."

In January 1997, the remaining partners voted to adopt an amendment ("the First Amendment") to the Partnership Agreement, which purported to apply retroactively to January 1, 1996.[2] The First Amendment expressly allocated to each present and former partner whose equity in the firm had not yet been completely liquidated a share of the tax recapture income that was to be recognized in the tax years 1996-2002. For those partners who had retired or otherwise terminated their interest

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[2]It appears that Defendants Bechtle and McDonald were the only former partners who retired or withdrew prior to June 1997 to sign the First Amendment. The Bankruptcy Court held that this amendment, along with the Second Amendment discussed infra, was not valid for lack of consideration. None of the parties challenge this decision on appeal.

in the partnership, however, the total amount of the tax recapture income that would be allocated to them throughout the 1996-2002 period would be accelerated and allocated to them in the years that they received returns of capital from the Debtor. The percentage of their tax recapture income for each year would be the same as the percentage of their capital account which was distributed in that year.

In April 1997, the remaining partners voted to approve a second amendment to the Partnership Agreement (“Second Amendment”), also purportedly retroactive to January 1, 1996. It clarified that the allocations of additional income were for tax purposes only.[3]

On June 5, 1997, Labrum & Doak’s remaining partners voted to dissolve the firm effective July 31, 1997. The Debtor then negotiated with its Landlord to vacate most of the space and reduce its rent. Consequently, all of the tax deductions which were meant to be recaptured through 2002 became due in 1997, resulting in an outstanding tax liability of $1,684,289. The Debtor allocated the tax liability to the present partners and those former partners who had left the firm but were partners at the time of inception of the lease and had received a tax benefit while partners, apparently proportional to the tax benefits received by the partners in 1992-1995.

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[3]None of the former partners signed the Second Amendment.

A number of the Debtor's former partners challenged the validity of the Debtor's allocations of the tax recapture liability to them. The Debtor initiated the underlying proceeding seeking a declaratory judgment approving its proposed allocation of tax recapture liability among its existing and former partners who received the benefit of the recapture.

Following a trial, the Bankruptcy Court issued an opinion holding that it had jurisdiction over the proceeding, that the proceeding was "core," that the amendments to the Partnership Agreement were not valid or enforceable against partners who had previously withdrawn and that an implied contract existed under which partners were individually liable for recapture of the tax benefits which they received.

Messrs. Bechtle and Ryan and the Former Partners filed Notices of Appeal. They assert that the Bankruptcy Court lacked jurisdiction over the adversary proceeding underlying the appeal and erred in finding an implied in fact contract. Messrs. Bechtle and Ryan also claim that the Bankruptcy Court erred by failing to recognize as a defense a right of retiring partners to indemnification pursuant to Article 19(b), although they admittedly did not assert this defense before that Court. As the two appeals raise overlapping issues and as the appellee filed one brief in response to both, the two appeals are treated together in this memorandum.

IV. Discussion

A. Bankruptcy Court Jurisdiction and Authority

Appellants argue that a proceeding to determine the allocation of tax liabilities among the present and former partners of the Debtor does not affect the administration of the estate and is not related to the bankruptcy for purposes of 28 U.S.C. § 1334(b) because the parties ultimately liable for the taxes at issue are the individual partners.[4]

In its Order and Opinion, the Bankruptcy Court reaffirmed its earlier decision that it had jurisdiction and held "that the Debtor's obligation to allocate the tax liability of its partners and former partners on its returns, albeit that the ultimate payment responsibility lies with the partners, renders the matters at issue 'related to' the Debtor's bankruptcy for purposes of 28 U.S.C. § 1334(b), since it is not only conceivable but quite apparent that resolution of this issue is critical to the administration of the case." In its initial opinion, the Bankruptcy Court reasoned that the Debtor has positive duties, subject to penalties for failure to perform them, to allocate responsibility for the taxes among its partners and to report an

[4]The Former Partners, and one individual partner, raised this issue in a motion to dismiss the underlying proceeding. The Bankruptcy Court denied the motion, holding that the Debtor's responsibility to file and defend the § 467 tax allocation made in its returns rendered the matter "related to" the Debtor's bankruptcy under §1334(b) and "core" under §§ 157(b)(2)(A) and (b)(2)(O).

appropriate allocation in its tax returns and Schedule K-1 statements. As the positive obligations of the Debtor under the Internal Revenue Code ("IRC") may be affected by the proceeding, the Bankruptcy Court held that it had jurisdiction.

Whether the Bankruptcy Court has jurisdiction must be determined solely by reference to 28 U.S.C. § 1334. See Quattrone Accountants, Inc. v. Internal Revenue Service, 895 F.2d 921, 926 (3d Cir. 1990).[5] That statute provides in pertinent part that "(n)otwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). Therefore, a proceeding must at least meet the threshold "related to" test for jurisdiction to exist.

Under § 1334, the reach of "related to" jurisdiction is very broad, extending to any proceeding whose outcome "could conceivably have any effect on the administration of the estate

[5] 11 U.S.C. § 505 neither authorizes nor prohibits the bankruptcy court to determine the tax liability of non-debtors. It merely clarifies the bankruptcy court's jurisdiction over tax claims. Quattrone Accountants, 895 F.2d at 924-26; In Re Wolverine Radio Co., 930 F.2d 1132, 1140 (6th Cir. 1991)(agreeing with the Third Circuit's analysis of § 505(a) in Quattrone in holding that bankruptcy court's jurisdiction over a case involving nondebtors is to be determined solely by 28 U.S.C. § 1334(b)).

being administered in bankruptcy." Quattrone, 895 F.2d at 926 (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)). See also Belcufine v. Aloe, 112 F.3d 633, 636 (3d Cir. 1997)(recognizing the broad reach of "related to" jurisdiction); In re Titan Energy Inc., 837 F.2d 325, 330 (8th Cir. 1988)("even a proceeding which portends a mere contingent or tangential effect on a debtor's estate meets the broad jurisdictional test articulated in Pacor"). A proceeding is thus "related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." Halper v. Halper, 164 F.3d 830, 837 (3d Cir. 1999); Pacor, 743 F.2d at 994. A proceeding may be "related to" the bankruptcy even if the particular dispute ultimately has no effect on the debtor, so long as the court cannot conclude that it will have no conceivable effect. In Re Wolverine Radio Co., 930 F.2d at 1143.

The action brought by the debtor involves its allocation of § 467 tax recapture liability among the partners. The IRC places positive obligations on the Debtor to file tax returns, to issue Schedule K-1 statements reflecting the proper allocation of tax liability and, as appropriate, to supply corrective information. See 26 U.S.C. § 6031. The Debtor's failure to comply with the IRC could result in the assessment of penalties against it. See 26 U.S.C. § 6698. Although the Debtor is not ultimately responsible for payment of the taxes, the action is at least “related to” the bankruptcy and the District Court has jurisdiction over the proceeding. As the District Court may refer bankruptcy matters within their jurisdiction to the Bankruptcy Court, that Court had jurisdiction in this case. See 28 U.S.C. § 157(a); Halper, 164 F.3d at 836.

If a proceeding is core, the Bankruptcy Court may hear and determine the case, and may enter appropriate orders and judgments. See 28 U.S.C. § 157(b)(1); Halper, 164 F.3d at 836. In such a case, the District Court reviews de novo the Bankruptcy Court’s conclusions of law and applies a clearly erroneous standard of review to its findings of fact. See Meridian Bank, 958 F.2d at 1229; In re Equipment Leassors of Pennsylvania, 235 B.R. at 363.

If a proceeding is non-core but otherwise related to a case under Title 11, the Bankruptcy Court may hear the proceeding, however, its power is limited to submitting proposed findings of fact and conclusions of law. See 28 U.S.C. § 157(c)(1); Halper, 164 F.3d at 836. The District Court must then enter any final order or judgment after consideration of the proposed findings and conclusions, and after de novo review of those matters to which any party has objected. See 28 U.S.C. § 157(c)(1); Halper, 164 F.3d at 836.

To determine whether a proceeding is core, the court first looks to § 157(b) which provides a noninclusive list of proceedings that may be considered core. See 28 U.S.C. § 157(b)(2)(A)-(O). The Bankruptcy Court determined that the proceeding was core under § 157(b)(2)(A).[6] Section 157(b)(2)(A) provides that core proceedings include matters that concern the administration of the estate.

The Debtor contends that the proceeding is core because of its obligation to file tax returns, to issue Schedule K-1 statements reflecting a proper allocation of recapture liability and to file any appropriate corrective information with the IRS, and because a determination of the distribution of tax recapture liability was deemed essential to allow the Debtor to prepare a confirmable Chapter 11 plan for an orderly liquidation of assets of the estate under § 157(b)(2)(O). The Bankruptcy Court held that it was a core proceeding under § 157(b)(2)(A) as the Debtor's proper filing of its tax returns is important to the administration of the estate. The court agrees with the Debtor and the Bankruptcy Court. The proceeding involved a matter significant to the administration of the bankruptcy estate and is core.

[6]None of the parties raised the issue of whether the proceeding was core or non-core at trial and only the Debtor, arguing that the proceeding was core, raised the issue in briefs. None of the appellants argued that the proceeding was non-core and although they argue on appeal that the proceeding is not related to the bankruptcy for jurisdictional purposes, they do not specifically address the core/non-core issue.

B. Determination of Implied in Fact Contract

Appellants contend that the Bankruptcy Court erred in holding that they were parties to an implied in fact contract by which they agreed to accept the deferred tax liability. The Bankruptcy Court determined that all of the partners who received a tax benefit agreed to accept the corresponding deferred tax liability.

A contract implied in fact is an enforceable contract which arises where an agreement, although not expressed in words, is inferred from the conduct of the parties in light of the surrounding circumstances. See In re Penn Cent. Transp. Co., 831 F.2d 1221, 1228 (3d Cir. 1987); Halstead v. Motorcycle Safety Found. Inc., 71 F. Supp. 2d 455, 459 (E.D. Pa. 1999); Healthcare Servs. Group, Inc. v. Integrated Health Servs. of Lester, Inc., 1998 WL 231265, *3 (D. Del. April 23, 1998)(construing Pennsylvania law); Ingrassia Constr. Co., Inc. v. Walsh, 486 A.2d 478, 483 (Pa. Super. 1984)(contract implied in fact can be found by looking to the surrounding facts of the parties' dealings). Neither the offer and acceptance nor the moment of formation need be identifiable. Id.

The findings of the Bankruptcy Court, which are supported by the record and not clearly erroneous, establish an implied in fact contract.

In 1994, the Debtor adopted the § 467 constant rental accrual method of accounting for the 1992 Lease, after discussion by the partners at several partnership meetings. The partners specifically discussed the effects of utilizing this method including the tax effect on each partner. The partners understood that each partner who obtained the tax benefit during the first four years of the lease would be responsible for the corresponding tax burden. The adoption of the accrual method occurred prior to the departure of any of the appellants.

After adoption, the Debtor filed amended tax returns for tax years 1992 and 1993 which resulted in tax refunds for the partners. The partners accepted these tax benefits, totaling $2,056,458. The partners allowed the Debtor to withhold sums from their cash distributions of profits for retention in their capital accounts for the purpose of satisfying the eventual tax recapture liability.

Appellants' argument that the Bankruptcy Court's conclusion regarding lack of consideration for the First Amendment is inconsistent with the existence of consideration for an implied in fact contract is rejected. The reason the Bankruptcy Court found no consideration for this amendment is that the partners had a pre-existing duty to pay their share of the tax recapture liability by virtue of an implied in fact contract. The receipt of tax benefits for the first four years of the lease is ample consideration for the obligation proportionately to absorb the offsetting tax liability in the later years.

Appellants contend that the Bankruptcy Court should have applied a clear and convincing evidence standard in determining the existence of an implied in fact contract. They analogize an implied in fact contract to an oral agreement and argue that "any oral modification" had to be established by clear and convincing evidence because "¶19.10 [of the Partnership Agreement] stated it was the complete agreement among the parties."

A written contract may be modified by subsequent agreement through words, written or oral, or by conduct of the parties. A. Valey Engineers, Inc. v. Rouse Co., 1989 WL 89984, *5 (E.D. Pa. Aug. 9, 1989); Cedrone v. Unity Sav. Ass'n., 609 F. Supp. 250, 254 (E.D. Pa. 1985); Dora v. Dora, 141 A.2d 587, 590-91 (Pa. 1958); Bonczek v. Pasco Equip. Co., 450 A.2d 75, 77 (Pa. Super. 1982). Proof of a subsequent oral modification of a written contract does not require clear and convincing evidence. See Sferra v. Urling, 188 A. 185, 186 (Pa. 1936) (evidence required to prove oral agreement modifying terms of prior written one is no greater than that necessary to prove any oral agreement); Bentz v. Barclay, 144 A. 280, 282 (Pa. 1928) (rejecting jury instruction requiring heightened standard of proof to show subsequent oral modification of written contract); Koeune v. State Bank of Schuylkill Haven, 4 A.2d 234, 237 (Pa. Super. 1939).

Proof of an oral modification of a written contract by clear and convincing evidence is required only where there is an express provision specifically prohibiting non-written modifications. See First Nat. Bank of Pa. v. Lincoln Nat. Life Ins. Co., 824 F.2d 277, 280 (3d Cir. 1987); Nicolella v. Palmer, 248 A.2d 20, 23 (Pa. 1968). Article 19.10 merely provides that "This Agreement constitutes the entire agreement among the parties and supersedes all prior arrangements and writings with respect to the partnership." The Agreement does not expressly require that any subsequent modification must or may only be in writing.[7]

The parties conduct, in light of the surrounding circumstances, amply demonstrates the partners understood that they were individually liable for the recapture of the tax benefit which they had received, without regard to whether they

[7]The Bankruptcy Court thus may have used an overly stringent standard in assessing the existence of an oral contract. In any event, an absence of an express oral agreement is not inconsistent with the existence of an implied in fact contract evidenced by conduct. Also, the agreement in question addresses a discrete tax issue not literally encompassed by the 1989 Partnership Agreement. No one has suggested that the adoption of the constant rental accrued accounting method required to secure the tax advantage was, or had to be, in writing.

left the partnership.[8]

The Bankruptcy Court's determination that an implied in fact contract exists under which partners who accepted the tax benefit agreed to accept the corresponding tax liability is sound.

As it found an implied in fact contract, the Bankruptcy Court chose not to rely on the Debtor's equitable theories including unjust enrichment and the tax benefit rule. The Bankruptcy court nevertheless expressly noted that the Debtor's equitable arguments support its claims and specifically discussed the applicability of the tax benefit rule. The Court agrees and believes that on the record, in the absence of an agreement, the Bankruptcy Court's decision is also supportable under the equitable theory of unjust enrichment.[9]

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[8]Appellants' suggestion that the implied in fact contract violates the statute of frauds because it is an unwritten promise to answer for the debt of another and IRC restrictions on the allocation of partnership income is unpersuasive. The agreement in question is one to answer for one's own debt. The IRC provisions relied on by appellants do not prohibit or conflict with the implied in fact agreement and indeed essentially provide for allocation of income or loss as agreed to by the partnership. <u>See</u> U.S.C. §§ 704(a) & 704(b); 26 CFR §§ 1.704-1(b)(1)(i) & (b)(v). <u>See</u> <u>also</u> 26 CFR § 1.73601(a)(ii) (retired partner treated for tax purposes as partner until complete liquidation of partnership interest). The IRC does not preclude the making and enforcement of an agreement by persons then partners regarding their personal responsibility effectively to pay for a benefit derived while a partner.

[9]The court may affirm a correct decision on a ground or theory different from that relied upon by the Bankruptcy Court. <u>See</u> <u>In re Anes</u>, 195 F.3d 177, 180 (3d Cir. 1999); <u>University of Maryland v. Peat Warwick Main & Co.</u>, 923 F.2d 265, 275 (3d Cir. 1991).

Appellants received a benefit, they reasonably should have expected to pay the cost associated with that benefit and their retention of the benefit without such payment would be unjust. See Martz v. Kurtz, 907 F. Supp. 848, 855 (M.D. Pa. 1995); Styer v. Hugo, 619 A.2d 347, 340 (Pa. Super. 1993). Substantial tax benefits flowed to the former partners for four years. The expectation of all partners was that those who benefitted would be responsible for their share of the corresponding liability through the end of the lease term. It would be inequitable to allow a partner to retain such benefit and then escape the corresponding cost or offsetting liability by forcing others to absorb it. Requiring partners to be responsible for liabilities proportional to the benefit each obtained is clearly just and equitable.

C. Indemnification

Appellants Bechtle and Ryan now argue that they are entitled to indemnification pursuant to Article 19.7(b). They did not present this defense or legal theory in the Bankruptcy Court.

It is generally inappropriate to entertain an issue or new legal theory first raised by a party on appeal. See Gardiner v. Virgin islands Water & Power Auth., 145 F.3d 635, 646-47 (3d Cir. 1998); United Parcel Serv. v. International Bhd. of Teamsters, 55 F.3d 138, 140 n.5 (3d Cir. 1995). In any event, the argument is not persuasive.

While the definition of losses in Article 19.7(a) is quite broad, they are obligations for which one is liable simply by being a member of the partnership. They do not include personal tax obligations merely because these result from income earned or deductions claimed as a lawyer practicing with the firm.[10] To read the language “arising from,” “in connection with” and “relating to the partnership” as appellants suggest would entitle retired partners to indemnification for personal tax liability resulting from the disallowance by the IRS of a business expense or loss reported by the firm’s accountant, and even from negligent underpayment of taxes on income earned as a partner. Even putting aside the requirement that indemnification provisions are to be construed narrowly,[11] appellants’ suggested reading could not be sustained. Moreover, as the Bankruptcy Court concluded, appellants Bechtle and Ryan were parties’ to a valid subsequent implied in fact agreement to pay their fair share of the liability occasioned by their acceptance of tax benefits.

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[10]It also seems most unlikely that an experienced and accomplished attorney such as appellant Bechtle would have signed the First Amendment, albeit invalid for lack of additional consideration, if he did not believe he had undertaken an obligation to pay a proportionate share of the tax recapture liability or believed that he was entitled to indemnification.

[11]See Fox Park Corp. v. James Leasing Corp., 641 A.2d 315, 318 (Pa. Super. 1994).

V. **Conclusion**

The court has carefully considered the respective positions of the parties. Consistent with the foregoing discussion, the court concludes that the ultimate decision of the Bankruptcy Court is correct. Accordingly, the order of the Bankruptcy Court herein will be affirmed. Appropriate orders will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re LABRUM & DOAK:	:	**CIVIL ACTION**
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	:	**NO. 98-4913**

O R D E R

AND NOW, this day of August, 2000, upon consideration of the Appeal of the Official Committee of Former Partners, the submissions of the parties and the record herein, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that the Order of the Bankruptcy Court of July 30, 1998 is **AFFIRMED** and the above action accordingly is closed.

BY THE COURT:

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JAY C. WALDMAN, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re LABRUM & DOAK	:	**CIVIL ACTION**
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O R D E R

AND NOW, this day of August, 2000, upon consideration of the Appeal of Daniel J. Ryan and Perry S. Bechtle, the submissions of the parties and the record herein, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that the Order of the Bankruptcy Court of July 30, 1998 is **AFFIRMED** and the above action accordingly is closed.

BY THE COURT:

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JAY C. WALDMAN, J.