UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
DEAN R. JOHNSON,	)	CASE NO. 02-32358 HCD
	)	CHAPTER 7
	)	
DEBTOR.	)	

Appearances:

Earl Raskosky, Esq., attorney for debtor; 6009 Stoney Creek Drive, Fort Wayne, Indiana 46825;

Stephen E. Lewis, Esq., attorney for Carriage, Inc.; Haller & Colvin, 444 East Main Street, Fort Wayne, Indiana 46802;

Michael F. DeBoni, Esq., attorney for Omer G. Kropf; Yoder, Ainlay, Ulmer & Buckingham, LLP, 130 North Main Street, P.O. Box 575, Goshen, Indiana 46527-0575;

David E. Swihart, Esq., attorney for Omer G. Kropf; Yoder, Ainlay, Ulmer & Buckingham, LLP, 130 North Main Street, P.O. Box 575, Goshen, Indiana 46527-0575;

Michael Ebersol, Esq., attorney for Brent Johnson, 105 East Jefferson #800, P.O. Box 11415, South Bend, Indiana 46634;

Rebecca Hoyt Fischer, Esq., Chapter 7 Trustee, 112 West Jefferson Boulevard, Suite 310, South Bend, Indiana 46601;

Alexander L. Edgar, Esq., Assistant United States Trustee, One Michiana Square, 100 East Wayne Street, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on October 29, 2003.

Before the court is the Application to Approve Sale and Release Agreement filed by Rebecca Hoyt Fischer, Esq., Trustee in the chapter 7 bankruptcy case of debtor Dean R. Johnson. Objections were filed by Maynard Johnson, Randy Johnson, Brent Johnson, Omer G. Kropf, and the debtor. Hearings on the Application and objections were conducted on September 30, 2003, and October 21, 2003. At the conclusion of the second hearing, the court determined that the Agreement was in the best interests of the creditors and the estate and that the Trustee's Application was approved. Below are the findings of fact and conclusions of law supporting the court's determination of October 21, 2003.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(N) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The debtor filed a chapter 11 bankruptcy petition on April 25, 2002. Almost eight months later, on December 20, 2002, the case was converted to a chapter 7 proceeding; Rebecca Hoyt Fischer, Esq., was appointed Trustee. The Trustee's Application to Approve Sale and Release Agreement, filed July 11, 2003, and now before the court, seeks to sell the debtor's interest in Carriage Real Estate, LLC ("the LLC") and to release the debtor's claims in the lawsuit pending in Kosciusko Circuit Court.[1] The purchaser, Glenn Cushman, agrees to pay $250,000 in exchange for the debtor's 50% interest in the LLC and his release of state court claims. The objections to the Trustee's Application basically are twofold: that the debtor's interest in the LLC is worth more than $250,000, and that the proposed settlement fails to consider all of the LLC's assets.

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[1] Currently pending in the Kosciusko Circuit Court is a complaint brought by Carriage, Inc. against the debtor in 2001. *See* Stip. Ex. 10, Second Amended and Restated Complaint. The debtor filed certain counterclaims in that lawsuit. *See* Stip. Ex. 11, Defendant's Amended Answer and Counterclaims. Those counterclaims are to be released upon approval of the Trustee's Application to approve the agreement.

The facts leading to this matter are not in dispute. The debtor held ownership interests in two business entities. The first is Carriage, Inc., an Indiana corporation located in Millersburg, Indiana, which manufactures and sells recreational vehicles. The debtor was the Chief Executive Officer and a minority shareholder of that corporation. Glenn Cushman is the President and controlling shareholder of the corporation. Carriage, Inc. is the tenant of the other business entity, the LLC. The debtor and Glenn Cushman are each 50-percent owners of the LLC; they are designated in the LLC's Operating Agreement as the "Members" who managed the LLC. Under that Operating Agreement, there is a special provision for transferring an owner-member's interest if he files bankruptcy:

> Upon bankruptcy of a Member, if the remaining Members do not agree by a unanimous vote to permit the trustee (or other legal representative) of the bankrupt Member to become a substituted Member hereunder, the Company and all the remaining Members shall have the right and option for thirty (30) days from receiving written notice of such event to purchase all, but not less than all, of the Interest of such bankrupt Member. The total purchase price for such bankrupt Member's entire interest in the Company shall be computed by taking: (i) the Fair Market Value of the assets of the Company; less (ii) the total liabilities of the Company as of the valuation date, multiplied times (iii) the Percentage Interest of the bankrupt Member; less (iv) the amount of any obligations owed by the bankrupt Member to the Company.

Stip. Ex. 2, Articles of Organization of Carriage Real Estate, LLC, ¶ 9.4(b).

On May 30, 2002, pursuant to that provision, Glenn Cushman exercised his option to purchase the debtor's interest in the LLC. In response to an inquiry from the Trustee, on January 23, 2003, Cushman renewed and confirmed his intent to purchase that interest. On July 10, 2003, the Trustee and Cushman executed a Sale and Release Agreement. Under the Agreement, the Trustee sells the debtor's interest in the LLC and releases any claims of the debtor in the Kosciusko lawsuit in exchange for a cash payment in the amount of $250,000. That sum thus represents the "total purchase price for such bankrupt Member's entire interest in the company" under ¶ 9.4(b). The price was calculated by taking the valuation of the company – the fair market value of the company's assets minus the company's total liabilities as of the valuation date – and offering the debtor 50 per cent of that figure, which represents the debtor's half interest in the business.

The Trustee and the objectors focused on the fair market value of the assets of the LLC. The primary asset is the business real estate, a 55-acre property in Millersburg, Indiana, which is subject to a mortgage of $5,096,733.25 as of January 31, 2003. *See* Stip. Ex. 3. The other major asset of the LLC is a $2 million promissory note owed to the LLC by Carriage, Inc., the tenant of the real estate. *See* Stip. Ex. 12.

At the first hearing, the Trustee told the court that she evaluated the debtor's ownership interest in the LLC by obtaining a valuation of the real estate and by assessing the collectibility of the promissory note. She was provided with an appraisal of the real estate, in the amount of $4 million, and determined that the asset was worth substantially less than the amount owed on the mortgage, approximately $5 million. *See* Stip. Ex. 6, appraisal of Lowell Griffin, MAI (stating that, as of August 7, 2002, the Carriage, Inc. property had a market value of $4 million). She also was provided with financial information concerning Carriage, Inc., the tenant of the real estate. *See* Stip. Ex. 9 (financial reports of November 26, 2000; November 25, 2001; and December 1, 2002). The Trustee turned over the information and the appraisal to an accounting expert, Lee Morton, for an evaluation. After considering his assessment of the financial data, the Trustee concluded that it was in the best interests of the creditors and of the estate that she be allowed to accept the sum of $250,000 pursuant to the terms and conditions of the Sale and Release Agreement.

The debtor, in his written Objection to the Trustee's Application, asserted that the proposed settlement inaccurately valued the real estate.[2] It also failed to take into account the accrued interest of about $977,700 on the $2 million note. Moreover, he pointed out, Carriage, Inc., has been in default on its lease payments to the LLC since July 2001 and, as of January 2003, the delinquency totaled $557,492. That lease obligation was personally guaranteed by Glenn Cushman, he informed the court; however, if the settlement is approved, the claims asserted by the debtor against Cushman and others in the state court action would be released without any compensation from those parties. He contended that the Agreement therefore was not in

[2] The debtor urged the court to consider an appraisal in the amount of $7,630,000 that he said was made in January 2001. However, the record does not contain such an appraisal.

the best interests of the bankruptcy estate and should be denied. The other written objections reiterated the debtor's claim that the sale of the debtor's interest in the LLC was unfairly valued because it was based on a low appraisal and because it failed to consider the $2 million promissory note.

At the hearing on September 30, 2003, the Trustee addressed the concerns of the objectors.[3] She stated that the appraiser placed a market value of $4 million on the property in Millersburg, Indiana. Because there is a $5 million mortgage on the property, the property has no value as an asset of the bankruptcy estate, she said. Moreover, in her view, it would be difficult to succeed in the state court litigation. The debtor had invoked his Fifth Amendment privilege many times during the 341 meeting of creditors, conducted on January 24, 2003; the Trustee therefore believed that his credibility would be a damaging issue in the state court litigation, which accused the debtor of wasting and converting business funds. For that reason, she stated, it would be difficult to pursue the counterclaims the debtor raised. Finally, the Trustee pointed out, in light of the state court litigation brought by Carriage, Inc. against the debtor, it might be difficult to collect the $2 million promissory note owed to the LLC by Carriage, Inc., whose President is Glenn Cushman. The Trustee apprised the court that the $250,000 purchase price was not the first offer made by Cushman. As result of their negotiation, the payment amount had been increased. However, Cushman may terminate the Agreement, she said, if it is not approved by November 1, 2003. She concluded that it was in the best interests of the creditors and the estate to approve the Agreement quickly.

The attorneys for creditor Omer Kropf raised objections to the Agreement at the hearing. In the creditor's view, the appraisal relied upon by the Trustee was too low. In addition, the lease agreement between the LLC and Carriage, Inc. and the $2 million promissory note needed further examination. The creditor had hired an appraiser to investigate the value of the real estate and an expert to consider the other financial issues. He requested 60 days of discovery to complete the appraisal and other assessments.

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[3] Objectors Maynard Johnson and Randy Johnson did not appear at the hearing.

The court reminded the parties that its Order of September 7, 2003, set this date for a trial, not a status conference. In the view of the court, all matters concerning the Trustee's Application were to be resolved by trial on this date. Nevertheless, because there was not sufficient information presented to the court at the hearing for its findings of fact and conclusions of law, the court permitted the parties an additional three weeks to collect evidence and to present their arguments to the court.[4]

At the continued evidentiary hearing on the Trustee's Application, held October 21, 2003, the parties set forth a full documentary record, 21 stipulated exhibits. The creditor Omer G. Kropf withdrew his objection to the Trustee's Application; however, Brent Johnson and the debtor maintained their objections.

Using one chart to demonstrate the relationship among the parties and another chart to set forth the formula for obtaining the purchase price of the debtor's interest in the LLC, the Trustee stated that the debtor's one-half interest in the LLC was calculated at 50% of the fair market value of the LLC assets (made up of the value of the real estate, the promissory note from Carriage, Inc. to the LLC, and the lease payments from Carriage, Inc. to the LLC) minus the total liabilities of the LLC (the real estate mortgage loan and other debt). The market valuation of the Carriage, Inc. real estate was presented in three appraisals by certified general appraisers:

(1) Professional Appraisal Services, LLC, appraised the property at $7,380,000 on June 23, 1999.

(2) Lowell K. Griffin, M.A.I., appraised it at $4,000,000 on August 7, 2002.

(3) Iverson C. Grove, M.A.I., S.R.A., appraised it at $5,875,000 on October 10, 2003.

See Stip. Ex. 6, 7, 8.

The Trustee's expert witness at trial was Lee Morton, a certified public accountant and trust officer at the 1st Source Bank with extensive background in valuations (particularly of closely held businesses) and tax management. He reviewed the Carriage, Inc. financial statements for 2000, 2001, and 2002, the LLC Operating

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[4] The court also sustained the Trustee's objection to Claim 43, to which there was no challenge.

Agreement, two of the appraisals, and the promissory note and subordination agreement. He pointed out that, under the Operating Agreement, the non-debtor owner has the right to buy out the owner who had filed bankruptcy.

Morton compared the Griffin and Grove appraisals. Griffin's appraisal, finding the market value of the property to be $4 million as of August 7, 2002, was well done and professional, in Morton's view. Griffin decided not to use the cost approach because the physical deterioration and functional obsolescence of the buildings made that approach subjective and unreliable. Instead, he relied on the sales comparison and income capitalization approaches. In Morton's view, Griffin chose comparable properties in locations and settings similar to the Carriage, Inc. property that were sold in small towns like Millersburg.[5] In contrast, Morton testified, Grove's appraisals compared properties from larger towns and from on or near major highways. Morton believed that Griffin's comparables were more accurate comparisons. The witness also noted that the two appraisers used different capitalization rates, 7% and 9%, and found that the 2% difference in their rates resulted in a $1 million difference in valuation.

Grove arrived at an appraisal value of $5.8 million using all three methods of valuation, the witness said. Although Griffin chose not to rely on the cost approach, Grove did calculate a replacement cost for the property and concluded that it was worth $5,885,000.[6] Griffin found, however, that the cost methodology could not be applied to that deteriorating property. Morton agreed with Griffin's decision not to use the cost approach in this case.

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[5] The court notes, from the appraisal reports, that the business utilizes 22 separate major buildings and other outbuildings to construct mobile homes. The location of the business is reasonably proximate to major roadways but is not on a highway. *See* Stip. Exs. 7, 8.

[6] Grove's appraisal report set forth its cost approach by calculating a replacement cost ($7,636,989) and the depreciation loss to value because of physical, functional or external factors ($3,189,192). After comparing 13 land sales, he determined the land value to be $1,015,000 (53.466 acres at $19,000 per acre). The site improvements, paving and a fence, were depreciated and found to be worth $423,000. Groves added together the replacement cost, the site improvements and land values, subtracted the physical depreciation value, and determined that the indicated value by cost approach was $5,885, 000. *See* Stip. Ex. 8 at 80-108.

Morton testified that the September 1999 promissory note was a demand note, not an installment contract. He stated that no payments had been made on the note. In his expert opinion, the value of the note, as an asset, is zero. He also pointed out the financial condition of Carriage Inc.: It had a net loss of $1.8 million in 2000 and a loss of $2.4 million in 2001. The value of the property, based on the Griffin appraisal that he found to be preferable, is $4 million. Because there is a $5 million mortgage on the property, the actual value of the property is a negative $1 million. Even if he were to use the Grove appraisal, he said, the value after deducting the mortgage would be $800,000, and the debtor's interest in it would be $400,000. In the opinion of this witness, the value of the property is zero.

During the debtor's cross examination, the witness agreed that the company's 2001 financial statement reflected larger losses than were reported in 2000; for that reason, there was a likelihood that taxes would be deferred, he conceded. Deferred taxes are assets of the business, he admitted. When the debtor pointed out that the company's liabilities declined from over $13 million in 2000 to almost $9 million in 2001, Morton agreed that the decline in liabilities indicated an improving situation for the company.

The creditor Brent Johnson, on cross examination, questioned the witness's opinion that the lease payments from Carriage, Inc. were without any value. Morton acknowledged that, under an amended lease agreement, Cushman personally guaranteed the lease payments through September 1, 2006. The creditor asserted that, as long as Cushman is personally solvent, the lease would be collectible. Morton responded that he was not familiar with Cushman's personal finances, but knew that the lease payments were about $50,000 a month, that they increased at 1% per month for the term of the lease, and that at least $955,000 already was owing on the lease. He concluded that those large payments probably were not collectible, even if Cushman is solvent. Although there was some dispute about whether some lease payments had been made, the witness stated that the weak financial status of Carriage, Inc. underlies his zero valuation of the lease payments. In his view, the lease payments cannot be considered an asset of the estate. He also indicated that the appraisals actually took into account the lease value. Finally, the witness explained that he was aware of the third appraisal but disregarded it as not current. The appraisal was made in August 1999 and would be invalid today, he said.

The parties then rested.

Discussion

The chapter 7 Trustee asks the court to approve the Agreement she has reached with Glenn Cushman, the 50% owner of the LLC, to sell to Cushman the other 50% interest in the LLC, held by the debtor. Through negotiation, Cushman and the Trustee have agreed that Cushman will pay $250,000 for the debtor's half interest in the LLC and his release of the counterclaims he raised in the state court lawsuit. This Agreement, involving compromise on each side, is governed by Rule 9019 of the Federal Rules of Bankruptcy Procedure:

> *(a) Compromise*. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

It is a bedrock principle of bankruptcy that compromise and settlement of claims and issues are favored. *See* 10 *Collier on Bankruptcy* ¶ 9019.01 at 9019-2 (Alan N. Resnik & Henry J. Sommer, eds-in-chief, 15th ed. rev'd 2003). A chapter 7 trustee, with the duty of marshaling the debtor's assets and liabilities, has the authority to settle the estate's accounts "on whatever grounds he, in his informed discretion, believes will net the maximum return for the creditors (on whose behalf he toils)." *LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.)*, 212 F.3d 632, 634 (1st Cir.), *cert. denied*, 531 U.S. 960 (2000). When parties come to an agreement through settlement or compromise, it must be approved by the court under Rule 9019. In this case, the rule's procedures were followed: Notice of the trustee's motion was given to the proper parties and two hearings on the objections to the Agreement were held. *See Hoseman v. Weinschneider*, 322 F.3d 468, 474-75 (7th Cir. 2003). The court must determine whether to approve the terms of the compromise Agreement.

In *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S. Ct. 1157, 20 L.Ed.2d 1 (1968), the Supreme Court offered guidance on the standards to be applied by courts in determining whether they should approve a proffered settlement or compromise of a controversy. The Court required a bankruptcy court to make an informed determination by apprising itself

> of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Id., 390 U.S. at 424, 88 S. Ct. at 1163; *see also In re Rimsat, Ltd.*, 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997). The circuit courts, following *TMT*, have established criteria for a bankruptcy court to consider when hearing a motion to approve a settlement. The compromise should be approved when it is both "fair and equitable," as *TMT* required, and "in the best interests of the bankruptcy estate." *Depoister v. Mary M. Holloway Found*., 36 F.3d 582, 586 (7th Cir. 1994); *see also LaSalle Nat'l Bank v. Holland (In re American Reserve Corp.)*, 841 F.2d 159, 161 (7th Cir. 1987) ("Central to the bankruptcy judge's determination is a comparison of the settlement's terms with the litigation's probable costs and probable benefits."). The Seventh Circuit Court of Appeals itemized the key considerations in *American Reserve Corporation*:

> Among the factors the bankruptcy judge should consider in his analysis are the litigation's probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience, and delay (including the possibility that disapproving the settlement will cause wasting of assets). The bankruptcy judge should also consider the creditors' objections to the settlement; however, the creditors' views are not controlling.

Id., 841 F.2d at 161-62 (citations omitted). The Trustee has the burden of showing that "the proposed settlement is in the best interests of the estate." *Valucci v. Glickman, Berkovitz, Levinson & Weiner (In re Glickman, Berkovitz, Levinson & Weiner)*, 204 B.R. 450, 455 (E.D. Pa. 1997).

This court has assessed the pending state court litigation in light of Cushman's buyout offer, which includes the debtor's release of the state court counterclaims. *See Hoseman*, 322 F.3d at 474-75. After reviewing the record, it finds that there is a low probability of success in that litigation. The debtor's refusal to answer numerous questions (by reliance on the Fifth Amendment privilege) in the 341 meeting put his credibility in jeopardy in other contexts, such as the state court lawsuit. The Trustee would have difficulty pursuing the facts underlying the lawsuit. The continuation of the lawsuit would be difficult, time consuming, and costly. The court finds that the risk in not accepting this compromise Agreement, in the hope of winning a larger amount in state court, is too great. By approving the Agreement, the court gives the Trustee the opportunity to fund the costs of bankruptcy and to provide a partial payment to the unsecured creditors. It finds that the Trustee's decision not to pursue the debtor's counterclaims was reasonable and well "within the universe of reasonable alternatives." *In re Mailman Steam Carpet Cleaning Corp.*, 212 F.3d at 636 (stating that "the acid test of the bankruptcy court's decision is not whether pressing onward might have produced more funds for the estate but, rather, whether accepting the settlement (and thereby forgoing the risks inherent in intransigence) fell within the universe of reasonable alternatives").

A trustee, responsible for maximizing an estate and also for administering it promptly and efficiently, is given the authority to accomplish those goals.

> [B]ankruptcy trustees, who have a fiduciary obligation to the claimants against the bankruptcy estate, are generally given broad discretion to determine the best way to pursue the administration of the bankruptcy estate, and equally broad discretion to decide whether a compromise settlement — which may include a release of future claims or a covenant not to sue — is preferable to protracted litigation.

Hoseman, 322 F.3d at 475. In this case, the Trustee's informed judgment, as an experienced trustee and business attorney, is entitled to be given weight in the court's determination. *See id.; see also Depoister*, 36 F.3d at 587 ("The fact that the trustee, an experienced bankruptcy practitioner, approved the compromise was considered significant by the bankruptcy judge.") The court finds that the Trustee reasonably has chosen to agree to a settlement rather than to prolong the disagreements with further litigation. It determines that the Trustee, after diligent investigation and negotiation, prudently "eliminate[d] the inherent risks, delays and expense of prolonged litigation in an uncertain cause." *Kowal v. Malkemus (In re Thompson)*, 965 F.2d 1136, 1145 (1st Cir. 1992) (*quoted in Mailman Steam Carpet Cleaning Corp.*, 212 F.3d at 635). In its discretion, the court approves the Trustee's Agreement as being an expeditious liquidation of estate property in the best interests of the chapter 7 estate and creditors.

The court also determines that the evidence from the only witness, Lee Morton, was credible and uncontradicted through the testimony of any other witness. At the continued trial, no one challenged the witness's conclusion that the Griffin appraisal was a more accurate assessment of the real estate property's value than the Grove appraisal. After a thorough review of the three appraisals in the stipulated record, the court agrees that the Griffin appraisal of $4 million is the most reliable.[7] Its sales comparison approach more accurately reflected the market in which the Carriage, Inc. property should be compared. The Griffin appraisal also was the valuation that was made at a time most proximate to the filing of the bankruptcy petition. *See* 11 U.S.C. § 522(a)(2). The Professional Appraisal Services appraisal, made three years before the petition was filed, was outdated. The court therefore accepts the conclusion by Griffin that the market value of the Carriage, Inc. property is $4 million. Because the mortgage lien of $5 million exceeds the value of the Griffin appraisal, the property has no value in the bankruptcy estate. The court also finds, from the evidence in the record, that the promissory note has no value and that the lease was accounted for in the appraisals.

When reviewing appraisals, the court must consider what a willing buyer would pay for the property in its present state. *See Associates Comm'l Corp. v. Rash*, 520 U.S. 953, 955-56, 117 S. Ct. 1879, 1882, 138 L.Ed.2d 148 (1997); *In re Arden Props., Inc.*, 248 B.R. 164, 172 (Bankr. D. Ariz. 2000). Glenn Cushman is willing to pay $250,000. That offer to the Trustee is the only one made. The Trustee was able, through negotiation, to obtain that offer. However, there is no reason to believe that Cushman or another bidder would increase the offer, and there is some reason for concern that the offer would be taken off the table altogether. It is logically and mathematically sensible to approve the sale of the debtor's interest in the LLC under the terms agreed to by the Trustee and Glenn Cushman. The court determines, therefore, that the sale is beneficial to the bankruptcy estate and is in the best interests of the creditors. The court, in its discretion, approves the Agreement

[7] The court finds it worthy of note that Omer Kropf, the creditor who insisted on an additional appraisal to investigate the value of the real estate and who obtained the Grove appraisal on October 10, 2003, withdrew his objection to the Trustee's Agreement with Glenn Cushman at the second hearing.

between the Trustee and Cushman to sell the debtor's half interest in the LLC and to release his claims in the state court litigation.

Conclusion

For the reasons recited above, the court finds that the Sale and Release Agreement at issue in this proceeding is in the nature of a compromise or settlement pursuant to Federal Rule of Bankruptcy Procedure 9019(a). The court has evaluated the Agreement, in light of the pending state court litigation and the appraised valuations of the property at issue, and has found that the compromise between Glenn Cushman and the Trustee is fair and equitable. It determines that the Agreement is in the best interests of the bankruptcy estate. It therefore approves the compromise reached in the Agreement.

The Trustee's Application to Approve Sale and Release Agreement is granted.

SO ORDERED.

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HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT