

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:03-bk-4926-JAF

BRUCE LEE JENNINGS,

Debtor.

Chapter 7

**ORDER ON MOTION FOR RECONSIDERATION OF ORDER
ON OBJECTION TO NOTICE OF INTENT TO COMPROMISE**

THIS CASE came before the Court to consider the Motion for Reconsideration of Order on Objection to Notice of Intent to Compromise. (Doc. 1513). The Motion for Reconsideration was filed by Brandon James Maxfield (Maxfield), a creditor in this Chapter 7 case. Gregory K. Crews, as Chapter 7 Trustee (the Trustee), joined in the Motion. (Doc. 1514).

The Trustee is the plaintiff in Adv. Pro. 06-84. The defendants in the adversary proceeding are Quarles & Brady, LLP, Quarles & Brady LLP d/b/a Quarles & Brady Streich Lang LLP, and Ned Nashban (collectively, Quarles).

On October 15, 2010, the Court entered an Order approving an Amended Mediated Settlement Agreement entered by the Trustee and Quarles.

In the Motion for Reconsideration, the Trustee and Maxfield assert that the Court should not have approved the Settlement Agreement because it had expired by its terms on July 31, 2010.

The Motion should be denied because (1) the Settlement Agreement construed in its entirety shows that the parties did not intend for the Settlement to be invalid if not approved by July 31, 2010, and

because (2) the parties' purpose in providing for Court approval of the Agreement has been satisfied in this case.

Background

Bruce Lee Jennings (Jennings) and ten related debtors filed petitions under Chapter 11 of the Bankruptcy Code on May 14, 2003. Quarles represented all of the debtors in connection with the filing of the bankruptcy cases.

Maxfield is the primary creditor in Jennings' bankruptcy estate.

On May 13, 2005, Maxfield filed a Complaint against Quarles in the Circuit Court for Duval County, Florida. The Complaint contained two Counts: an action for legal malpractice, and an action for breach of fiduciary duty.

On June 7, 2005, Jennings' Chapter 11 case was converted to a case under Chapter 7.

The malpractice action that had been filed by Maxfield in state court was subsequently transferred to the Bankruptcy Court, and the Trustee was substituted for Maxfield as the plaintiff in the adversary proceeding.

On April 4, 2010, the Trustee filed a Motion for Leave to Amend the Complaint. Quarles opposed the Motion.

On May 24, 2010, the Trustee and Quarles entered into an Amended Mediated Settlement Agreement. Paragraph 2 of the Agreement provides for Quarles to pay the Trustee the sum of \$500,000.00 in complete settlement of all claims.

Paragraph 6 of the Agreement provides:

6. Bankruptcy Court Approval. This Agreement is subject to bankruptcy court approval following such notice as may be required by law. The parties will file a joint motion to approve this Mediated Settlement Agreement and for entry of a "Bar Order" which would prohibit and/or enjoin interested parties, including all known creditors of

the Debtor and parties in interest, with notice of this settlement, from pursuing claims against the Defendants, whether directly or indirectly, based on the facts and circumstances set forth in the Trustee's Amended Complaint in the Adversary Proceeding. The Agreement shall be null and void if such approval is not obtained for any reason by July 31, 2010.

(Emphasis supplied).

Paragraph 7 of the Agreement provides for Quarles to withdraw its objection to the Trustee's Motion for Leave to Amend Complaint, and thereafter to file an Answer to the Amended Complaint.

Paragraph 5 of the Agreement states that the Settlement was drafted by the attorneys for both parties.

On June 1, 2010, Quarles filed a written withdrawal of its objection to the Trustee's Motion to Amend Complaint in accordance with Paragraph 7 of the Agreement.

On June 7, 2010, the Trustee filed an Amended Complaint. The Amended Complaint contains three Counts: an action for legal malpractice, an action for breach of fiduciary duty, and an action for punitive damages.

Also on June 7, 2010, the same date that the Amended Complaint was filed, Quarles filed an Answer and Affirmative Defenses to the Amended Complaint.

On June 10, 2010, the Trustee filed a Notice of Intent to Compromise. A copy of the Amended Mediated Settlement Agreement was attached to the Notice. In the Notice, the Trustee asserted that he had considered the status of the litigation with Quarles, together with the impact of the litigation on the estate, and recommended the Settlement Agreement for approval.

On July 1, 2010, Maxfield filed an Objection to the proposed compromise. In the Objection, Maxfield expressly stated that he had "no objection to the Trustee resolving the malpractice action by settlement, or to the amount of the proposed settlement." Instead, Maxfield only opposed the entry of

the Bar Order described in Paragraph 6 of the Agreement. Specifically, Maxfield objected to “the extent that the proposed settlement and ‘bar order’ would extinguish his rights and the rights of other non-party creditors, to sue on claims and subjects having nothing whatever to do with legal malpractice committed by Quarles & Brady and/or Mr. Nashban against Bruce Jennings and/or his bankruptcy estate.” (Doc. 1495, ¶ 5). Two other creditors joined in Maxfield’s Objection.

On August 31, 2010, Quarles filed a Motion for Approval or Enforcement of Settlement Agreement and for Entry of Bar Order. (Adv. Pro. 06-84, Doc. 237).

On September 10, 2010, the Trustee filed a Reply to the Motion to Enforce Settlement Agreement. According to the Trustee, the Settlement Agreement was “null and void” because no Court approval had been obtained by July 31, 2010, in accordance with Paragraph 6 of the Agreement. The Trustee further asserted that the Court lacked the power to rewrite the settlement that had been negotiated by the parties.

A hearing to consider approval of the compromise was conducted on September 13, 2010.

On October 15, 2010, the Court entered an Order on (1) Notice of Intent to Compromise and (2) Motion for Approval or Enforcement of Settlement Agreement and for Entry of Bar Order. In the Order, the Court found that it possessed both the subject matter jurisdiction and the authority to enter the Bar Order, and that entry of the Bar Order was fair and equitable. Consequently, the Court approved the Settlement Agreement that had been entered by the Trustee and Quarles.

On October 22, 2010, Maxfield filed a Motion for Reconsideration of the Order. In the Motion, Maxfield does not challenge the determination that entry of the Bar Order is within the Court’s authority and jurisdiction, or that entry of the Bar Order is fair and equitable. On the contrary, Maxfield

contends only that the Order failed to address the preliminary issue regarding whether the Settlement Agreement had expired by its terms on July 31, 2010, and was therefore null and void.

Discussion

Paragraph 6 of the Amended Mediated Settlement Agreement provides that the Agreement shall be null and void if Bankruptcy Court approval is not obtained for any reason by July 31, 2010. The Court finds that the Settlement did not automatically expire on July 31, 2010, pursuant to Paragraph 6 of the Agreement.

First, the Agreement construed as a whole shows that the parties did not intend for their settlement to be void if not approved by the date specified. Additionally, the purpose in providing for Court approval of the Agreement under Rule 9019 has been satisfied in this case.

A. The parties' intent

The interpretation of a settlement agreement is generally governed by state law. In re Chira, 567 F.3d 1307, 1311 (11th Cir. 2009).

Under Florida law, courts should “construe a contract as a whole and give effect, where possible, to every provision of the agreement.” Philip Morris Inc. v. French, 897 So.2d 480, 488 (Fla. 3d DCA 2004)(citing Story v. Culverhouse, 727 So.2d 1128, 1130 (Fla. 2d DCA 1999)).

If an agreement is ambiguous, the Court is required to follow a construction that best expresses the intent of the parties. Philip Morris Inc. v. French, 897 So.2d at 488-89. In other words, where the terms of a contract are ambiguous, the Court “can inquire into the intent of the parties as evidenced by the entire document.” Avery Development Corp. v. Bast, 582 So.2d 150, 151 (Fla. 4th DCA 1991).

In this case, the Amended Mediated Settlement Agreement is ambiguous. The ambiguity is apparent when Paragraph 6 is considered in the context of the entire Agreement.

Specifically, Paragraph 6 provides that the Agreement is null and void if Court approval is not obtained by July 31, 2010. Paragraph 7 of the Agreement, however, requires Quarles to withdraw its objection to the Trustee's Motion to Amend Complaint within five days of the Agreement, and to file an Answer to the Amended Complaint within ten days of the withdrawal. Additionally, Paragraph 9 of the Agreement requires Gregory A. Anderson, Esquire to dismiss a District Court action against Quarles, with prejudice, within five days of the Agreement.

The Agreement is dated May 24, 2010. Consequently, Paragraphs 7 and 9 require Quarles and Gregory Anderson, Esquire to take action on the record no later than May 29, 2010.

Construing Paragraph 6 literally, therefore, would lead to the irrational result of requiring performance by the parties under Paragraphs 7 and 9, at a time when the Agreement was subject to invalidation under the last sentence of Paragraph 6. In other words, reading Paragraph 6 literally would place Quarles and the Trustee in the untenable position of taking action to their detriment by May 29, 2010, with the risk that the entire agreement could be void if Court approval was not obtained by July 31, 2010.

The Agreement is ambiguous. "If an agreement is ambiguous, the court should follow a construction that best comports with logic, reason, and the purposes underlying the parties' agreement." Philip Morris Inc. v. French, 897 So.2d at 488.

The logical interpretation in this case is that the parties did not intend for the Settlement Agreement to be null and void if Court approval was not obtained by July 31, 2010. The Court reaches this conclusion after considering the Agreement in its entirety.

Paragraph 2 of the Agreement, for example, provides that the settlement funds are to be paid within twenty days after several contingencies have occurred, but does not refer to a deadline for Court

approval. Additionally, according to Paragraph 6, the request for Court approval of the Agreement was to be initiated pursuant to the filing of a joint Motion by the Trustee and Quarles. The Agreement therefore contemplates the advocacy of the settlement by both parties, and does not expressly provide either party with the right to revoke its acceptance of the Agreement prior to approval.

Finally, as set forth above, Paragraph 7 requires Quarles to withdraw its objection to the Trustee's Motion to Amend Complaint within five days of the Agreement. The record shows that Quarles filed a written Withdrawal and Consent to the Trustee's Motion on June 1, 2010. Thereafter, on June 7, 2010, the Trustee filed an Amended Complaint, and Quarles filed an Answer and Affirmative Defenses to the Amended Complaint. Consequently, the parties proceeded under the Settlement Agreement, and changed their position in reliance on its terms, as if the Agreement was not subject to invalidation on July 31, 2010.

The parties did not intend for the Settlement Agreement to be automatically null and void if Court approval was not obtained by July 31, 2010.

B. Rule 9019

The Settlement Agreement was entered by the Trustee and Quarles. Paragraph 6 of the Agreement provides that the parties will file a joint motion to approve the Agreement.

The provision is consistent with the well-established rule that settlements with a Chapter 7 trustee must be approved by the Court. "When a bankruptcy trustee seeks to compromise a dispute, [he] must seek court approval on notice and hearing." In re Nationwide Sports Distributors, Inc., 227 B.R. 455, 458 (Bankr. E.D. Pa. 1998).

Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides:

Rule 9019. Compromise and Arbitration

(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.

F.R.Bankr.P. 9019(a). The reason that Chapter 7 trustees are required to submit their agreements to the court for approval is to protect creditors, and to obtain an objective determination that the agreement is in the best interest of the estate. In re Seminole Walls & Ceilings Corp., 388 B.R. 386, 394 (M.D. Fla. 2008). The purpose of Rule 9019 is to protect creditors against “bad deals” that adversely affect their interests. In re Fortran Printing, Inc., 297 B.R. 89, 96 (Bankr. N.D. Ohio 2003).

In this case, the Trustee filed the Settlement Agreement with the Court, and provided notice to creditors in accordance with Rule 9019 and Rule 2002. No objections were asserted to the amount that the Trustee would receive in settlement of the estate’s claims against Quarles. Several creditors, however, objected to the entry of a Bar Order that would prohibit them from pursuing claims against Quarles based on matters set forth in the Trustee’s Amended Complaint.

Following a hearing on the Notice of Intent to Compromise and Objections, the Court entered an Order approving the Settlement. Specifically, the Court found that it possessed the jurisdiction and authority to enter the Bar Order. After evaluating the barred claims, the prior litigation, and the expense of further litigation, the Court also found that entry of the Bar Order was fair and equitable.

In other words, the Settlement Agreement provided for the Trustee and Quarles to file a joint motion for approval of the Agreement, and the Trustee timely filed a Notice of Intent to Compromise on June 10, 2010. Creditors asserted certain limited objections to the settlement, and the Court issued its determination that the challenged provision was fair and equitable.

The purpose in providing for Court approval of the Agreement has been satisfied in this case. The objections of the creditors were considered, and the Court determined that the Settlement was in the best interest of the estate. Under these circumstances, the Trustee should not be permitted to unilaterally repudiate his Agreement after approval had been requested. In re Seminole Walls & Ceilings Corp., 388 B.R. at 392-95. See In re Inacom Corp., 2003 WL 21087137, at 3 (Bankr. D. Del.)(listing cases which held that parties are not generally entitled to revoke their acceptance of an agreement while court approval is pending).

Conclusion

Maxfield and the Trustee request that the Court reconsider its Order approving the Settlement Agreement entered by the Trustee and Quarles. The request should be denied. The Agreement construed in its entirety shows that the parties did not intend for their Agreement to be null and void if not approved by July 31, 2010. Additionally, the parties' purpose in providing for Court approval of the Agreement has been satisfied in this case.

Accordingly:

IT IS ORDERED that the Motion of Brandon James Maxfield for Reconsideration of Order on Objection to Notice of Intent to Compromise is denied.

DATED this 24 day of March, 2011.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
Chief Bankruptcy Judge