ORDERED.

**Dated: March 27, 2020**

Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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| In re | ) | |
| | ) | |
| ERIC JOEL ORTIZ, | ) | Case No. 6:18-bk-05222-KJ |
| | ) | Chapter 7 |
| Debtor. | ) | |
| | ) | |

**ORDER DENYING TRUSTEE'S MOTION TO APPROVE COMPROMISE**

Prior to filing bankruptcy, Debtor received collection telephone calls from creditors Wells Fargo Bank ("Wells Fargo") and Capital One Bank ("Capital One") attempting to collect their respective debts. Arvind Mahendru, the Chapter 7 Trustee appointed in this case ("Mahendru" or "Trustee"), filed complaints alleging the creditors' telephone calls violated either federal or state consumer protection statutes. Mahendru settled the claims against Capital One, which this Court approved, and now seeks court approval of a second settlement[1] he reached with Wells Fargo for $3,900. Approval of the compromise with Wells Fargo is denied.

Bankruptcy Rule 9019 authorizes a bankruptcy court to approve a settlement agreement between interested parties. Although a settlement agreement must, at a minimum, be fair and "not

[1]The Motion to Approve Compromise was filed on September 6, 2019. Doc. No. 26. Two supporting legal memoranda were filed. Doc. Nos. 31 and 32. A trial on the compromise was held on December 13, 2019.

fall below the lowest point in the range of reasonableness,"[2] the ultimate decision to approve a settlement lies within the sound discretion of the bankruptcy court.[3] A bankruptcy court must "apprise itself of all necessary facts to make an intelligent evaluation and to make an independent judgment as to whether the settlement presented is fair and equitable."[4]

The Eleventh Circuit in *In re Justice Oaks II, Ltd.*[5] established the following factors to determine fairness and reasonableness of a proposed settlement:

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

The Trustee bears the burden of establishing that the compromise is fair and equitable.[6] While the Court does not have to conduct a "mini-trial" on the merits of the underlying litigation, "[a]pproval of a compromise under Bankruptcy Rule 9019 requires more than just a 'rubber-stamping' of an agreement."[7] This Court agrees with the general policy of encouraging settlements and favoring compromises to reduce the costs of litigation.[8]

In evaluating the Trustee's proposed compromise, "the court's role is to ensure that the trustee has exercised proper business judgment in making the decision to agree to the proposed settlement."[9] Courts give trustees considerable deference to exercise their business judgment with

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[2] *In re Martin*, 490 F.3d 1272, 1275-76 (11th Cir. 2007).
[3] *In re Chira*, 367 B.R. 888, 896 n. 10 (S.D. Fla. 2007) (citing *In re Air Safety Intern., L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005)); *In re Harbour East Development, Ltd.*, No. 10–20733–BKC–AJC, 2012 WL 1851015, at *5 (Bankr. S.D. Fla. May 21, 2012).
[4] *Romagosa v. Thomas*, No. 6:06–CV–301–ORL–19, 2006 WL 2085461, at *5 (M.D. Fla. July 25, 2006) *aff'd sub nom.*
[5] 898 F.2d 1544, 1549 (11th Cir.), *cert. denied* 498 U.S. 959 (1990).
[6] *In re Kay*, 223 B.R. 816, 819 (Bankr. M.D. Fla. 1998).
[7] *See id.* at 819.
[8] *In re Soderstrom*, 477 B.R. 249, 254 (Bankr. M.D. Fla 2012).
[9] *In re Ballou*, 3:10–bk–2735–PMG, 2011 WL 4530314, at *5 (Bankr. M.D. Fla. Sept. 13, 2011) (quoting *In re Arkoosh Produce, Inc.*, 03.3 I.B.C.R. 149, 153 (Bankr. D. Idaho 2003)).

respect to settlements.[10] The Trustee's business judgment, however, is not without limits.[11] "There must be at least some rational business purpose to support the disinterested trustee's decision."[12]

Here, no party objected to settlement. And, the first three *Justice Oaks* factors—probability of success, difficulty of collection, and complexity of litigation—are not really at issue. The key factor instead is whether Mahendru used appropriate and reasonable business judgment in considering the paramount interest of creditors.

Prior to November 2018, Chapter 7 Trustees in the Orlando Division filed sporadic adversary proceedings under consumer protection statutes, including the Telephone Consumer Protection Act,[13] the Florida Consumer Collection Practices Act,[14] and the Fair Debt Collection Practices Act[15] (collectively the "Consumer Protection Statutes"). They would analyze pre-petition claims of debtors and, if merited, file an appropriate adversary proceeding against the offending debt collectors.

Starting in November 2018, Mahendru embarked on a new litigation strategy. He hired two lawyers, Gus Centrone and Brian Shrader (the "Collection Attorneys"), to aggressively pursue claims under the Consumer Protection Statutes. Between November 1, 2018 and November 30, 2019, Messrs. Centrone and Shrader filed 147 such adversary proceedings. Although the attorneys' fee payment structure changed during this year, these attorneys received between 40-50% of any

[10] *See In re HyLoft, Inc*., 451 B.R. 104, 110 (Bankr. D. Nev. 2011) (citing *In re Churchfield*, 277 B.R. 769, 773-74 (Bankr. E.D. Cal. 2002); *In re Ashford Hotels, Ltd*., 226 B.R. 797, 802 (Bankr. S.D.N.Y. 1998); *In re 110 Beaver Street Partnership*, 244 B.R. 185, 187 (Bankr. D. Mass. 2000); *In re Adley*, 333 B.R. 587, 608 (Bankr. D. Mass. 2005)).

[11] *In re Engman*, 331 B.R. 277, 300 (Bankr. W.D. Mich. 2005). *See also HyLoft*, 451 B.R. at 110 (citing cases wherein courts gave minimal deference to the trustee's business judgment)

[12] *Engman*, 331 B.R. 277 at 300 (trustee's proposed settlement was outside the bounds of what an informed businessperson would have accepted and as a result, could not be approved by the court).

[13] 47 U.S.C. § 227.

[14] Fla. Stat. § 559.72, *et. seq*.

[15] 15 U.S.C. § 1692.

recovery. In addition, Mahendru received his Chapter 7 Trustee's statutory compensation[16] totaling 25% of any recovery under $5,000. Mahendru also would need to pay the adversary proceeding filing fee of $350 per action.

He proposes a settlement here for $3,900. Mr. Shrader's attorney fees are $1,560. Mahendru could receive compensation of $975 and have to pay the filing fee of $350. These amounts total $2,885, which when deducted from a settlement of $3,900, leaves $1,015 to pay creditor claims. The percentage of administrative, professional fees and costs equal 74% of the total recovery. Mahendru argues this a reasonable settlement. I disagree considering there is a sole "independent" creditor to pay with a claim of only $125.18, and all creditors and the Debtor would be harmed if the settlement were approved.

Eric Ortiz filed his Chapter 7 bankruptcy to get a fresh financial start.[17] His case was uneventful and uncontested. At the meeting of creditors, Mahendru asked the Debtor about calls he received from debt collectors before filing bankruptcy. Based on the Debtor's answers, Mahendru hired the Collection Attorneys[18] to file two adversary proceedings—one against Capital One[19] and one against Wells Fargo.[20]

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[16] Under 11 U.S.C. § 326(a), a Chapter 7 Trustee is entitled to receive reasonable compensation of 25% of the first $5,000 or less and 10% of any amount when the recovery is between $5,000 and $50,000. Most consumer protection claims settle for under $5,000. *In re Gonzalez*, Case No. 8:12-bk-19213-RCT, 2019 WL 1087093 at *3 (Bankr. M.D. Fla. March 5, 2019). So, the Court will assume a 25% reasonable compensation to the Chapter 7 Trustee is permitted.
[17] Debtor filed this Chapter 7 case on August 28, 2018. Doc. No. 1. He received a Discharge on December 7, 2018.
[18] Doc. Nos. 12 and 13.
[19] *Mahendru v. Capital One Bank*, Case No. 6:19-ap-00004-KSJ, filed on January 4, 2019.
[20] *Mahendru v. Wells Fargo Bank*, Case No. 6:19-ap-00005-KSJ, filed January 4, 2019. The Complaint asserts three claims under Consumer Protection Statutes. Doc. No. 1. Defendant, Wells Fargo Bank, filed an answer. Doc. No. 4. Two pretrial conferences were held on April 16 and July 22, 2019. Then, the current Motion to Approve Compromise was filed in the Main Case at Doc. No. 26. Typical of these consumer adversary proceedings, little record activity occurs and then a settlement for a *de minimus* amount is reached.

The litigation against Capital One settled for $4,000 with approximately $1,050 available to pay creditor claims.[21] Now, I am asked to approve a similar settlement with Wells Fargo for $3,900 with only $1,015 of this amount available to pay creditor claims; professional fees and costs account for 74% of the recovery.

So, if this second compromise between the Trustee and Wells Fargo were approved, who would get paid? Only three proof of claims were filed totaling $8,832.48.[22] Two claimants are the Defendants in the two adversary proceedings filed against them by the Trustee. Both have agreed their claims would be treated as late claims, thus receiving payment after all other creditors.[23] Claim 1, for $875.54, was filed by Capital One, the Defendant who settled the sister adversary proceeding for $4,000. Claim 3 was filed by Wells Fargo for $7,831.76. The only other creditor was Synchrony Bank for who filed Claim 2 for $125.18.

If the settlement were approved, the Trustee would have $2,065 available for distribution to creditors. Synchrony Bank would get $125.18, and Capital Bank and Wells Fargo would split *pro-rata* the balance of $1,939.82, each receiving approximately 22% of their filed claims. Capital One (who paid $4,000 under its settlement) would receive approximately $192; Wells Fargo (who agreed to pay $3,900 under its settlement) would receive approximately $1,748.

However, if I **deny** approval of the settlement, **ALL** creditors and the Debtor will benefit. Trustee will distribute the $1,050 from the Capital One settlement to pay Capital One's and Synchrony's claims—totaling $1,000.72—in full, leaving about $50 surplus to return to the

[21] The Court approved the Trustee's compromise for $4,000 with Capital One (Doc. Nos. 19 and 21), and the Adversary Proceeding later was dismissed and closed. Doc. Nos. 5 and 6 of Case No. 6:19-ap-00004-KSJ. Mr. Centrone received $1,600 (40% of the recovery) (Doc. Nos. 20, 23, and 24), and with the Trustee's allowed compensation of $1,000, and payment of filing fee of $350, the estate will receive approximately $1,050 to pay creditors.

[22] Trustee sent out a notice of recovery of assets setting a claims bar date of June 24, 2019. Doc. No. 16. All three claims were timely filed.

[23] Doc. No. 26, paragraph 10; Doc. No. 19, paragraph 8.

Debtor. Wells Fargo would benefit from NOT paying the $3,900 settlement, and simply withdrawing (or the Court disallowing) its Claim 3 in exchange for forgoing receipt of the lesser amount of $1,748. Wells Fargo would benefit by $2,152.

A Chapter 7 Trustee must use estate resources prudentially to maximize recoveries for creditors. Section 704 of the Bankruptcy Code,[24] sets forth the duties of a Chapter 7 Trustee, which provides "The trustee shall—(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible *with the best interests of parties in interest*...."[25] "Although a Chapter 7 trustee is a fiduciary obligated to treat all parties fairly, his primary duty is to the estate's unsecured creditors."[26]

Mahendru, here, never looked at the claims filed or the identity of Mr. Ortiz' creditors or lack thereof. Why would anyone sue when the only independent creditor claim totals $125.18 and the settlement actually harms the creditors? I conclude that Mahendru has failed to exercise his reasonable business judgment. Both the creditors and the Debtor are better off if the settlement is denied. Accordingly, it is

**ORDERED:**

1. The Motion to Approve the Compromise (Doc. No. 26) is denied.

2. The Court will dismiss Adversary Proceeding Case No. 6:19-ap-00005-KSJ with prejudice in 14 days unless the Trustee files a request for a trial.

3. If Adversary Proceeding Case No. 6:19-ap-00005-KSJ is dismissed and to maximize the benefit to Wells Fargo, the Court will enter an order disallowing Claim 3 in 21 days,

[24] All references to the Bankruptcy Code refer to 11 U.S.C. § 101 et. seq.
[25] 11 U.S.C. § 704(a)(a).
[26] *In re Payne*, 512 B.R. 421, 427 (Bankr. E.D.N.Y. 2014). *See also In re Steffen*, 425 B.R. 907, 914 (Bankr. M.D. Fla. 2010) ("The primary role of a Chapter 7 Trustee is to liquidate property for the benefit of unsecured creditors").

unless Wells Fargo files an objection or withdraws Claim 3. Wells Fargo will receive a larger distribution by not making the compromise payment even with the disallowance of its claim.

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Attorney Brian L Shrader is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within 3 days of entry of the order.