

ORDERED.

Dated: November 17, 2021


Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:17-bk-00426-FMD
Chapter 7

Franz Josef Rosinus,

Debtor.

_____ /

**ORDER DENYING AMENDED JOINT MOTION TO
APPROVE COMPROMISE OF CONTROVERSY WITH THE DEBTOR**

THIS CASE came before the Court for hearing on August 26, 2021, to consider the *Amended Joint Motion to Approve Compromise of Controversy with the Debtor and Incorporated Settlement Agreement* (the “Compromise Motion”)¹ filed by Phil Anderson Holdings (II), Inc. (“PAH”) and Franz Josef Rosinus (“Debtor”). The United States Trustee (“UST”) objects to the Compromise Motion.²

¹ Doc. No. 298.

² Doc. No. 300.

In the Compromise Motion, PAH and Debtor seek approval of a settlement providing for the dismissal of all actions against Debtor to deny his discharge, for Debtor to receive his Chapter 7 discharge under 11 U.S.C. § 727(a),³ and for PAH's own claim against Debtor to be excepted from Debtor's discharge. Having carefully considered the record, the Court finds that the proposed settlement does not benefit the estate and violates public policy concerns. Accordingly, the Court will deny the Compromise Motion.

A. BACKGROUND

On January 19, 2017, Debtor filed a Chapter 7 petition.⁴ Luis Rivera is the duly appointed Chapter 7 Trustee (the "Trustee").

In his bankruptcy schedules, Debtor listed over \$15 million in unsecured nonpriority claims,⁵ including PAH.⁶ PAH timely filed a proof of claim in the amount of \$313,971.36, asserting a lien on certain of Debtor's "Corporate and LLC Interests" by virtue of a "charging order" entered by the Lee County, Florida, Circuit Court (the "PAH Charging Order").⁷

³ Unless otherwise stated, all statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

⁴ Doc. No. 1.

⁵ Doc. No. 11.

⁶ Doc. No. 11, p. 12.

⁷ Claim No. 7-1, pp. 12-15.

The Court provided notice to all Debtor's listed creditors, including PAH, of the April 24, 2017 deadline for creditors and the Trustee to file objections to the dischargeability of a debt under § 523 (a "523 Complaint") or objections to Debtor's discharge under § 727 (a "727 Complaint").⁸ As permitted by the Federal Rules of Bankruptcy Procedure, the Trustee and a few creditors timely moved for extensions of time to file a 523 Complaint or a 727 Complaint.⁹ The Court granted several extensions of time, and, for the Trustee and creditors who had timely moved for extension, the deadline was ultimately extended to April 6, 2018.¹⁰

PAH did not timely move for an extension of time to file either a 523 Complaint or a 727 Complaint. However, several weeks after the expiration of the original deadline, PAH filed a motion seeking an extension of time (the "Extension Motion").¹¹ In the Extension Motion, PAH asserted that the April 2017 deadline had not given it adequate time to investigate Debtor's financial affairs and that Debtor had provided additional information to PAH after the deadline had passed.

⁸ Doc. Nos. 4 and 6. The deadline is established by Fed. R. Bankr. P. 4004(a) and Fed. R. Bankr. P. 4007(c), which provide that a 523 Complaint or a 727 Complaint shall be filed "no later than 60 days after the first date set for the meeting of creditors under § 341(a)." Under Rules 4004(b) and 4007(c), this deadline may be extended by the court "for cause."

⁹ Doc. Nos. 50, 53, 57, 58.

¹⁰ Doc. No. 172, *Omnibus Order on Motions for Enlargements of Time to Object to Debtor's Discharge* (Doc. 151, 152, 153, 155).

¹¹ Doc. No. 81.

PAH also contended that because a Chapter 7 trustee has standing to request an extension of time to file a 523 Complaint or a 727 Complaint on behalf of all creditors, the Court's order extending the time for the Trustee to file a 727 Complaint inured to PAH's benefit. After a hearing, the Court denied the Extension Motion.¹²

Meanwhile, on April 6, 2018, the Trustee timely filed a 727 Complaint (the "Trustee's Complaint"),¹³ and three other creditors filed their own 727 Complaints, referred to in this Order as "Adv. 178," "Adv. 179," and "Adv. 180."¹⁴

In the Trustee's Complaint, the Trustee requested that Debtor's discharge be barred on four separate grounds:

- (1) under § 727(a)(2)(A), alleging Debtor's fraudulent transfer of assets;
- (2) under § 727(a)(3), alleging Debtor's failure to keep or preserve any records from which his financial condition might be ascertained;
- (3) under § 727(a)(4), alleging Debtor's false oath in the case; and
- (4) under § 727(a)(5), alleging Debtor's failure to explain satisfactorily a loss of assets.

¹² Doc. No. 88.

¹³ Adv. Pro. No. 2:18-ap-177-FMD.

¹⁴ Adv. Pro. No. 2:18-ap-178-FMD filed by BMO Harris Bank, N.A; Adv. Pro. No. 2:18-ap-179-FMD filed by Academ AT, LLC; and Adv. Pro. No. 2:18-ap-180-FMD filed by FTTE, LLC.

The complaints in Adv. 178, Adv. 179, and Adv. 180 alleged the same claims for relief as alleged in the Trustee's Complaint. FTTE, LLC, the plaintiff in Adv. 180, also requested that its debt be excepted from discharge under § 523.

1. The Court denies the Trustee's motion to compromise.

On January 18, 2019, the Trustee filed a *Motion to Approve Compromise of Controversy with the Debtor and Dan Matousek* (the "Trustee's Compromise Motion").¹⁵ The Trustee's proposed settlement agreement provided for Debtor to pay the Trustee \$60,000.00 in installments over 12 months in exchange for the dismissal of the Trustee's Complaint, and the dismissal of Adv. 178 and Adv. 179.¹⁶

In the Trustee's Compromise Motion, the Trustee represented that a forensic accountant had reviewed documents produced by Debtor, and that the Trustee had evaluated the *Justice Oaks* factors considered by bankruptcy courts in the Eleventh Circuit to evaluate motions to compromise.¹⁷ Based on his analysis, the Trustee believed: (a) that Debtor had fact-intensive, plausible defenses to the Trustee's claims such that it was difficult to determine the Trustee's probability of success in the litigation; (b) that Debtor did not appear to have any meaningful non-exempt assets,

¹⁵ Doc. No. 194.

¹⁶ Unrelated to the issues presented here, the Trustee's Compromise Motion also provided for the settlement of a fraudulent transfer claim against Dan Matousek. The settlement agreement between the Trustee and Debtor did not require the dismissal of Adv. 180, perhaps because the plaintiff in that case, FTTE, LLC, was in its own bankruptcy case (Case No. 2:18-bk-00841-FMD) and did not appear to be actively prosecuting Adv. 180.

¹⁷ *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990).

so that collection of any judgment would be difficult; (c) that continued litigation would involve substantial risk, delay, and expense, and would require numerous depositions, the review of voluminous accounting records, and the retention of expert witnesses, among other litigation costs; and (d) that BMO Harris Bank, N.A., the plaintiff in Adv. 178 and the holder of a \$7.25 million claim¹⁸—the largest claim in Debtor’s bankruptcy case—supported the proposed compromise.

PAH objected to the Trustee’s Compromise Motion on the grounds that the proposed \$60,000.00 settlement was insufficient in light of the minimal distribution it would provide to unsecured creditors and the possibility that assets belonging to Debtor might be discovered if the litigation were permitted to proceed.¹⁹

At the March 7, 2019 hearing on the Trustee’s Compromise Motion, PAH’s attorney also argued that Debtor had violated the PAH Charging Order by diverting distributions from his limited liability companies; that Debtor had transferred money to corporate entities to avoid the effect of further charging orders by PAH and then used the money as his “personal slush fund;” that no party other than PAH was willing to investigate the missing funds; and that Debtor was a bad actor who had made fraudulent transfers and delayed discovery.

¹⁸ Claim No. 9-2.

¹⁹ Doc. No. 202.

PAH's attorney concluded his argument by stating that "this is not litigation for litigation's sake," that his firm would take over the Trustee's Complaint without charge unless there was a recovery, that a greater recovery was possible at the end of the litigation, and that Debtor was not an honest debtor entitled to a discharge.²⁰

At a hearing on March 15, 2019, the Court announced its ruling on the Trustee's Compromise Motion. Citing to decisions of bankruptcy courts that hold that 727 Complaints present special policy considerations, the Court noted that some courts have a *per se* rule against approving the settlement of a 727 Complaint in exchange for payment from the debtor because it is "against public policy to sell discharges," and also "because discharge is a statutory right undergirded by public policy considerations, it is not a proper subject for negotiation and the exchange of a *quid pro quo*."²¹

But the Court commented that it generally follows a more moderate approach adopted by other bankruptcy courts and, generally, would approve the settlement of

²⁰ Doc. No. 206.

²¹ Doc. No. 208, pp. 14-15.

a 727 Complaint if other parties in the case had been provided an opportunity to intervene and prosecute the action.²²

Here, the Court found that the Trustee and the plaintiffs in the 727 Complaints had a fiduciary role for the benefit of *all* creditors, including PAH. And in light of the minimal amount of the \$60,000.00 settlement payment that might ultimately trickle down to unsecured creditors, the Court found that PAH's objection to the compromise was a "reasonable view in the premises."²³

The Court ruled that unless Debtor consented to PAH's intervention in the Trustee's Complaint, the Court would deny the Trustee's Compromise Motion. The Court further stated that it could not compel the Trustee to use estate resources to litigate the 727 Complaint, and that it would therefore look to PAH to intervene in the Trustee's Complaint if the Trustee determined not to pursue the litigation.²⁴

When Debtor refused to proceed with the compromise if PAH were permitted to intervene in the Trustee's Complaint, the Court entered its order denying the

²² Doc. No. 208, pp. 15-16. Although not stated by the Court, the settlement of a § 727 action frequently arises in the context of an adversary proceeding in which the creditor seeks both the denial of the debtor's discharge and a determination that its particular claim is nondischargeable. In those proceedings, a proposed settlement may provide for the debt to be excepted from discharge – sometimes in a lesser amount than claimed by the creditor and payable in installments – and for the dismissal of the objection to discharge.

²³ Doc. No. 208, p. 17.

²⁴ Doc. No. 208, pp. 17-18.

Trustee's Compromise Motion and disapproving the Trustee's settlement with Debtor.²⁵

2. PAH substitutes as the plaintiff in the Trustee's Complaint.

Thereafter, the Trustee decided not to pursue the Trustee's Complaint at the estate's expense. On May 6, 2019, PAH filed a motion to substitute itself for the Trustee as the plaintiff in the Trustee's Complaint ("Adv. 177"). PAH asserted that the Trustee was concerned about his ability to prosecute the action given the estate's limited resources, and further asserted that PAH was willing to pursue the action *at its own expense*.²⁶ The Court granted the motion, and PAH was substituted for the Trustee as the plaintiff in Adv. 177.²⁷ In November 2019, PAH was also substituted as the plaintiff in Adv. 179.²⁸

On February 10, 2020, the Court entered an order consolidating Adv. 177, Adv. 178, and Adv. 179 for purposes of trial.²⁹ A three-day trial in the consolidated proceedings was initially set for August 4-6, 2020.³⁰

In October 2020, Debtor and BMO Harris Bank filed a stipulation for dismissal of Adv. 178.³¹ At the parties' requests, the Court continued the consolidated trial in

²⁵ Doc. No. 212.

²⁶ Adv. Pro. No. 2:18-ap-177-FMD, Doc. No. 26.

²⁷ Adv. Pro. No. 2:18-ap-177-FMD, Doc. No. 30.

²⁸ Adv. Pro. No. 2:18-ap-179-FMD, Doc. No. 36.

²⁹ Adv. Pro. No. 2:18-ap-177-FMD, Doc. No. 48.

³⁰ Adv. Pro. No. 2:18-ap-177-FMD, Doc. No. 47.

³¹ Adv. Pro. No. 2:18-ap-178-FMD, Doc. No. 34.

Adv. 177 and 179 several times, with the last continuance setting a trial date of June 14-16, 2021.³²

3. The Compromise Motion

On June 3, 2021, Debtor and PAH filed an initial compromise motion,³³ requesting the Court's approval of their proposed settlement, and shortly thereafter filed an amended motion (the "Compromise Motion").³⁴ The Compromise Motion incorporates a seven-paragraph settlement agreement that provides (a) for treatment of PAH's claim as "non-dischargeable;" (b) for PAH to dismiss Adv. 177; and (c) requiring, as "condition precedent," that all other pending 727 Complaints be dismissed³⁵ and Debtor "receiving a discharge as to all other claims."³⁶ Despite PAH's and Debtor's agreement that PAH's claim be "non-dischargeable," neither the Compromise Motion nor the incorporated settlement agreement refer in any way to § 523, the section of the Bankruptcy Code that provides an exclusive list of the types of debts that are excepted from discharge.

³² Adv. Pro. No. 2:18-ap-177-FMD, Doc. Nos. 60, 69, 80, 82.

³³ Doc. No. 292.

³⁴ Doc. No. 298.

³⁵ BMO Harris Bank, N.A., had already stipulated to the dismissal of Adv. 178; PAH had substituted in as plaintiff for Academ AT, LLC, in Adv. 179; and the plaintiff in Adv. 180, FTTE, LLC, has not prosecuted the adversary proceeding and did not object to the Compromise Motion.

³⁶ Doc. No. 298, pp. 2-3.

The Office of the United States Trustee (the “UST”) filed the sole objection to the Compromise Motion. The UST asserts (a) that PAH is a fiduciary for the benefit of all creditors by virtue of its substitution for the Trustee in Adv. 177, and therefore may not dismiss the 727 Complaint in exchange for the nondischargeability of its debt alone; and (b) that PAH never filed a 523 Complaint seeking the nondischargeability of its own debt and therefore is not entitled to that relief.³⁷

In addition, the UST notes that approval of the settlement would leave PAH in a better position than it would have been if it had prevailed at trial in Adv. 177 and Adv. 179, because under the proposed settlement, PAH’s claim would be the only claim excepted from discharge.

B. ANALYSIS

Under Federal Rule of Bankruptcy Procedure 9019, courts may approve a compromise or settlement on motion by the trustee and after notice and hearing.³⁸ The proponent of the settlement bears the burden of demonstrating that the proposal is both reasonable and in the best interest of the bankruptcy estate.³⁹ In the Eleventh

³⁷ Doc. No. 300.

³⁸ Fed. R. Bankr. P. 9019(a).

³⁹ *In re Vazquez*, 325 B.R. 30, 35 (Bankr. S.D. Fla. 2005) (quoted in *In re Gibson*, 2017 WL 7795950, at *6 (Bankr. M.D. Fla. June 22, 2017)).

Circuit, bankruptcy courts generally consider the *Justice Oaks* factors⁴⁰ to determine whether the settlement, at a minimum, is fair and does “not fall below the lowest point in the range of reasonableness.”⁴¹

In addition, the settlement of a 727 Complaint involves special public policy considerations because the underlying purpose of a 727 Complaint is “to protect the integrity of the bankruptcy system.”⁴² Because of this public policy interest, and also because all creditors are materially affected by an action to deny a debtor’s discharge, a 727 Complaint “inures for the benefit of the bankruptcy estate and all creditors.”⁴³ Therefore, under Federal Rule of Bankruptcy Procedure 7041, a plaintiff cannot dismiss a 727 Complaint without notice to the trustee, the United States trustee, and other interested parties, and “only on order of the court containing terms and conditions which the court deems proper.”⁴⁴

⁴⁰ The four *Justice Oaks* factors are (a) the probability of success in the litigation, (b) the difficulties, if any, in the matter of collection, (c) the complexity, expense, inconvenience, and delay involved in the litigation, and (d) the paramount interest of the creditors and a proper deference to their reasonable views. *In re Justice Oaks II, Ltd.*, 898 F.2d at 1549 (quoting *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986)).

⁴¹ *In re Soderstrom*, 477 B.R. 249, 252 (Bankr. M.D. Fla. 2021) (quoting *In re Justice Oaks II, Ltd.*, 898 F.2d at 1549, and *In re Air Safety International, L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005)).

⁴² *In re Djili*, 2012 WL 5246510, at *4-5 (Bankr. N.D. Cal. Oct. 23, 2012).

⁴³ *Id.*, at *5.

⁴⁴ Fed. R. Bankr. P. 7041.

Under Rule 7041, bankruptcy courts have an obligation to assess the dismissal of a 727 Complaint to prevent “tainted” compromises.⁴⁵ For example, a tainted compromise may occur

[W]hen the benefits of the settlement do not accrue to all creditors, where there is concern that the § 727 complaint is not well founded and the settlement is tantamount to “extorting” money from the debtor for a discharge to which he is entitled, or where the § 727 complaint is so well founded that the settlement is tantamount to the debtor “buying” a discharge to which he is not entitled.⁴⁶

Under Rule 9019 and Rule 7041, the standard for approval of the settlement of a 727 Complaint requires the Court to consider whether the settlement is fair and equitable and in the best interest of the estate and all creditors.⁴⁷ In evaluating the settlement of a 727 Complaint, courts generally focus on three considerations: (1) whether all interested parties were given notice and an opportunity to intervene, (2) whether there is a benefit to the bankruptcy estate and all creditors, and (3) in cases where a 727 Complaint is combined with a 523 Complaint, whether the objection to discharge was settled before the resolution of the dischargeability of a specific debt.⁴⁸

1. Notice and Opportunity to Intervene

PAH’s and Debtor’s settlement agreement expressly requires, as a condition precedent, that each of the pending 727 Complaints (Advs. 177, 179, and 180) be

⁴⁵ *In re Djili*, at *3.

⁴⁶ *In re Bullis*, 515 B.R. 284, 288 (Bankr. E.D. Va. 2014).

⁴⁷ *In re Djili*, at *4.

⁴⁸ *Id.*

dismissed and for Debtor to receive his discharge. The Compromise Motion was served on all creditors (including the plaintiffs in Adv. 179 and Adv. 180), and only the UST filed a written objection. On August 26, 2021, the Court held a hearing on the Compromise Motion and the UST's objection; no party other than the UST opposed the terms of the settlement at the hearing.

The Court finds that the terms of the settlement were disclosed to Debtor's creditors, the creditors had an opportunity to object to the discharge of their claims, and the creditors declined the opportunity to oppose the dismissal of the § 727 Complaints. Therefore, the Court concludes that the Compromise Motion satisfies this consideration.

2. Benefit to the Estate

However, the settlement proposed in the Compromise Motion produces no benefit to the bankruptcy estate or to any creditor other than PAH. As the substituted-in plaintiff in Adv. 177 and Adv. 179, PAH "occupies the position of a fiduciary for all of the creditors."⁴⁹ When a party serves as plaintiff in a 727 Complaint, the action "inures for the benefit of the bankruptcy estate and all creditors," so that any settlement must necessarily benefit the whole estate.⁵⁰ And here, PAH was substituted for the Trustee as the plaintiff in Adv. 177 upon PAH's express representation to the

⁴⁹ *In re Perdomo*, 2020 WL 7133546, at *4 (Bankr. E.D. Va. Nov. 25, 2020).

⁵⁰ *In re Djili*, at *5-6.

Court that it would pursue its claims that Debtor had fraudulently transferred assets *at PAH's own expense*.⁵¹

The facts here are virtually identical to those in *In re Bullis*.⁵² In *Bullis*, a creditor filed a complaint to deny the debtors' discharge under §§ 727(a)(3), (a)(4), and (a)(5). The creditor's complaint did not allege that the creditor's specific claims were nondischargeable under § 523. However, the debtors' and the creditor's joint motion for approval of a settlement provided for the dismissal of the § 727 action, for the debtors to receive their discharge, and for the creditor's claims to be declared nondischargeable. The court denied the motion, stating:

The complaint in this case alleged that the debtor was not entitled to its discharge under § 727. There is no allegation under § 523. No reason is given supporting the proposed settlement other than the conclusion of the parties that it is in their best interest. It is in their best interests. *The creditor leaves with two enforceable debts. The debtors leave with a discharge. The rest of the creditors leave with nothing.* Discharge complaints benefit all of the creditors — not a few select creditors. A settlement needs an adequate basis. *It may be that a settlement is appropriate if the complaint is at real risk of being unsuccessful and the settlement of the uncertainty provides funds to the estate for distribution to creditors.* That is not the situation in this instance. Without an adequate basis to approve the settlement and with consideration going to one creditor and not the creditor body, the settlement is inappropriate.⁵³

⁵¹ Doc. No. 202; Adv. Pro. No. 2:19-ap-177-FMD, Doc. No. 26.

⁵² 515 B.R. 284 (Bankr. E.D. Va. 2014).

⁵³ *In re Bullis*, 515 B.R. at 289 (citations omitted) (emphasis supplied).

Similarly, in *In re Djili*,⁵⁴ a creditor filed a 727 Complaint that included a claim that the creditor's debt was nondischargeable under § 523. After the dischargeability claim was dismissed, the creditor moved for approval of a settlement with the debtor providing for the dismissal of the 727 Complaint in exchange for the debtor's reaffirmation of the debt owed to the creditor.⁵⁵ The bankruptcy court denied the motion, holding that "in order for the Court to determine that the dismissal was not based upon an underlying tainted compromise, and for any settlement to be fair and equitable and in the best interest of the estate, *there must be some cognizable benefit to the bankruptcy estate and all creditors.*"⁵⁶

Here, the proposed settlement between PAH and Debtor would have exactly the same effect as those in *Bullis* and *Djili*. If the Court approves the proposed compromise, PAH, despite having failed to timely file a § 523 Complaint, will have an enforceable claim against Debtor without having met any of the § 523 exceptions to discharge, and the claims of all of Debtor's other creditors will be discharged with those creditors receiving nothing. In other words, PAH—*who volunteered to take over the Trustee's Complaint and who has fiduciary duties to Debtor's other creditors*—will have vastly improved its own position by ending up with a \$313,971.36 nondischargeable

⁵⁴ 2012 WL 5246510 (Bankr. N.D. Cal. Oct. 23, 2012).

⁵⁵ Under § 524(c), a "reaffirmed" debt survives the debtor's discharge.

⁵⁶ *In re Djili*, at *6 (emphasis supplied).

claim against Debtor, while Debtor's other debts of nearly \$15 million will have been discharged.

The Court concludes that the proposed settlement is neither fair nor equitable, nor is it in the best interest of the bankruptcy estate because it results in no cognizable benefit to the estate or to other creditors.

3. Public Policy Concerns

In settlements of adversary proceedings that combine claims under § 727 and § 523, many bankruptcy courts require that the § 727 objection to discharge be dismissed before the parties may settle the § 523 dischargeability claim. As the bankruptcy court explained in *In re Parker*,⁵⁷ 727 Complaints involve public policy concerns because they allege that the debtor engaged in wrongful conduct “that is of a magnitude and effect broader and more pervasive than fraud on, or injury to, a single creditor.”⁵⁸

In *Parker*, the court identified three potential abuses that may arise if a 727 Complaint is not resolved before any settlement of a related 523 Complaint. First, a debtor may be induced to “buy” his discharge from the objecting creditor by agreeing

⁵⁷ 2003 WL 21703528 (Bankr. N.D. Ga. July 18, 2003).

⁵⁸ *In re Parker*, 2003 WL 21703528, at *1 (citations omitted).

to pay that creditor's debt in exchange for dismissal of the 727 Complaint.⁵⁹ Second, the objecting creditor may receive a benefit, solely for itself, that would be available to all creditors if a well-supported 727 Complaint were successfully pursued. And third, a creditor could use a baseless 727 Complaint as leverage to coerce the debtor into paying that creditor's claim through the related 523 Complaint or a reaffirmation agreement. For these reasons, courts typically require "that the objection to discharge be dismissed *before* the proposed dischargeability settlement is permitted," so that each issue is evaluated separately on its own merits.⁶⁰

Here, the proposed settlement's simultaneous resolution of the 727 Complaints and the nondischargeability of PAH's claim is especially striking because PAH, having failed to file a timely 523 Complaint, does not even have a valid cause of action for nondischargeability. Thus, all three public policy concerns described in *Parker* are present in this case: Debtor may be attempting to "buy" his discharge by agreeing to the nondischargeability of PAH's claim; PAH will receive an advantage – the survival of its claim after bankruptcy – that might have been available to all creditors if PAH

⁵⁹ As the bankruptcy court in *In re Applegate*, 498 B.R. 383, 388 (Bankr. S.D. Ga. 2013) (quoting *In re Vickers*, 176 B.R. 287, 290 (Bankr. N.D. Ga. 1994)), stated, "buying a discharge" is not permitted under any circumstance because "[d]ischarges are not property of the estate and are not for sale. It is against public policy to sell discharges Selling discharges would be a disease that would attack the heart of the bankruptcy process, its integrity."

⁶⁰ *In re Parker*, at *2 (emphasis in original).

pursued the Trustee's Complaint; and PAH may have used the Trustee's Complaint to pressure Debtor into agreeing that PAH's \$313,971.36 claim is nondischargeable.

The Court concludes that the proposed settlement violates the integrity of the bankruptcy process and violates public policy.

C. CONCLUSION

In the Compromise Motion, PAH and Debtor seek the Court's approval of a settlement that provides for the dismissal of the Trustee's Complaint, and two other 727 Complaints against Debtor, in exchange for Debtor's agreement that PAH's \$313,971.36 claim is nondischargeable, despite PAH's having failed to ever allege that its claim falls within an exception to discharge under § 523.

Although the Court has concluded that all creditors and interested parties were notified of the terms of the settlement and were provided ample opportunity to object to the dismissal of the 727 Complaints, the Court cannot approve the proposed settlement because first, the proposed settlement is neither fair nor equitable, nor is it in the best interest of the bankruptcy estate because it results in no cognizable benefit to the estate or to other creditors; and second, the proposed settlement violates the integrity of the bankruptcy process and public policy.

Accordingly, it is

ORDERED:

1. The *Amended Joint Motion to Approve Compromise of Controversy with the Debtor and Incorporated Settlement Agreement* (Doc. No. 298) is **DENIED**; and
2. The Court will schedule a status conference to discuss rescheduling the trial of the consolidated adversary proceedings.

Clerk's Office to serve via CM/ECF.