ORDERED.

Dated: August 15, 2023

Grace E. Robson
United States Bankruptcy Judge

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

In re	)	
	)	
Huckleberry Partners LLC,	)	Case No. 6:22-bk-02159-GER
	)	Chapter 11
Debtor.	)	
	)	

ORDER GRANTING MOTION TO APPROVE COMPROMISE OF CONTROVERSY BETWEEN LIQUIDATING AGENT AND H. JAMES HERBORN III

THIS CASE came before the Court on August 1, 2023 at 9:30 a.m. (the "Trial") for a trial on the *Motion to Approve Compromise of Controversy Between Liquidating Agent and H. James Herborn III* (the "Motion to Approve Compromise") (Doc. No. 312), the Objection[1] (Doc. Nos. 344 and 359) thereto filed by Adam Kanter ("Mr. Kanter"), and the Response to Objection[2] (Doc. No. 390). After the Trial, Mr. Kanter filed the Reply in Support of Objection[3] (Doc. No. 405).[4]

[1] *Objection to Motion to Approve Compromise of Controversy Between Liquidating Agent and H. James Herborn III* (Doc. No. 344) and *Supplement to Objection to Motion to Approve Compromise of Controversy Between Liquidating Agent and H. James Herborn III* (Doc. No. 359) (collectively, the "Objection").
[2] *Debtor's Response to Kanter's Objections to Motion to Compromise and Memorandum of Law* (the "Response to Objection") (Doc. No. 390).
[3] *Reply in Support of Objection to Motion to Approve Compromise of Controversy Between Liquidating Agent and H. James Herborn III* (the "Reply in Support of Objection") (Doc. No. 405).
[4] While the filing of the Reply in Support of Objection was not authorized by this Court, the Court has reviewed the pleading and finds that Mr. Kanter fails to raise any new arguments for consideration.

In the Motion to Approve Compromise, Liquidating Agent Mark C. Healy[5] (the "Liquidating Agent") seeks approval of a settlement between the Liquidating Agent, Debtor Huckleberry Partners LLC (the "Debtor"), and H. James Herborn, III ("Mr. Herborn"), the sole manager of the Debtor (collectively, the "Settling Parties").

The Court directed the Settling Parties to participate in a mediation,[6] which resulted in a settlement resolving all claims between the Settling Parties including: (a) *Liquidating Agent Mark C. Healy's Objection to Claim of H. James Herborn, III* (the "Objection to Herborn Claim") (Doc. No. 174);[7] (b) the complaint against Mr. Herborn for breach of fiduciary duty, to avoid and recover transfers, and for unjust enrichment, initiating Adversary Proceeding No. 6:23-ap-00053-GER (the "Adversary Proceeding"); (c) the Debtor's objections[8] to Liquidating Agent's settlements[9]

[5] As part of the Debtor's *Plan of Liquidation Submitted by Huckleberry Partners, LLC* (Doc. No. 76), as modified by the *Modification to Plan of Liquidation* (Doc. No. 101), Mark C. Healy was appointed as Liquidating Agent. The *Order (1) Approving Disclosure Statement, (2) Confirming Plan of Reorganization, as Modified, (3) Approving Certain Relief on Final Basis, and (4) Setting Deadlines and Post-Confirmation Status Conference* (Doc. No. 124) and *Agreed Order Granting Motion for Clarification and to Alter or Amend Confirmation Order [Doc. No. 128] and Amending Order Approving Disclosure Statement and Confirming Plan of Reorganization, as Modified, Submitted by Huckleberry Partners, LLC [Doc. No. 124]* (Doc. No. 137) (collectively, the "Confirmation Order") contemplated that the Liquidating Agent would have 60 days to file an objection to certain claims and file its own claims.

[6] *Order (1) Granting Ore Tenus Motion for Order Directing Mediation and (2) Directing Mediation* (Doc. No. 260).

[7] As part of its bankruptcy petition (Doc. No. 1) and schedules (Doc. No. 43), the Debtor listed Mr. Herborn as a creditor holding an unsecured claim in the amount of $1,500,000 (the "Herborn Claim").

[8] *Debtor's Objection to Motion by Liquidating Agent, Mark C. Healy, to Approve Settlement Agreements with Buckles Pursuant to Bankruptcy Rule 9019* (Doc. No. 298); *Debtor's Limited Objection to Motion by Liquidating Agent, Mark C. Healy, to Approve Settlement Agreements with Seiler, Sautter, Zaden, Rimes, & Wahlbrink Pursuant to Bankruptcy Rule 9019* (Doc. No. 299); *Debtor's Objection to Motion by Liquidating Agent, Mark C. Healy, to Approve Settlement Agreement with DSK Law Pursuant to Bankruptcy Rule 9019* (Doc. No. 302); *Debtor's Limited Objection to Motion by Liquidating Agent, Mark C. Healy, to Approve Settlement Agreement with Bloodworth Law Pursuant to Bankruptcy Rule 9019* (Doc. No. 307).

[9] *Motion by Liquidating Agent, Mark C. Healy, to Approve Settlement Agreement with DSK Law Pursuant to Bankruptcy Rule 9019* (Doc. No. 253); *Motion by Liquidating Agent, Mark C. Healy, to Approve Settlement Agreement with Buckles Pursuant to Bankruptcy Rule 9019* (Doc. No. 270); *Motion by Liquidating Agent, Mark C. Healy, to Approve Settlement Agreement with Seiler, Sautter, Zaden, Rimes, & Wahlbrink Pursuant to Bankruptcy Rule 9019* (Doc. No. 271); *Motion by Liquidating Agent, Mark C. Healy, to Approve the Compromise Between Bloodworth Law, PLLC and the Liquidating Agent on Behalf of the Debtor's Bankruptcy Estate and the Release of All Claims by the Debtor and the Bankruptcy Estate with Respect to the Liquidating Agent's Objection to Claim No. 4-1 of Bloodworth Law, PLLC* (Doc. No. 295) (collectively, the "Law Firm Settlements").

regarding objections to the claims of four Law Firms,[10] and (d) Mr. Herborn's right to appeal, revoke, or otherwise seek relief from the Confirmation Order (the "Settlement"). The Settling Parties entered into a written agreement memorializing the Settlement, and the Liquidating Agent filed the Motion to Approve Compromise.

The Settlement requires: (a) a $500,000 payment to Mr. Herborn on account of the Herborn Claim; (b) withdrawal of the objections to the Law Firm Settlements; (c) withdrawal of the Objection to Herborn Claim; (d) dismissal of the Adversary Proceeding; and (e) Mr. Herborn not to appeal, seek to vacate, or otherwise challenge the Plan or certain orders of the Court.

The Court, having reviewed the Motion to Approve Compromise, the Objection, the Response to Objection, the exhibits admitted into evidence, and the testimony of Liquidating Agent Mark C. Healy, R. Scott Shuker, and Mr. Kanter, finds that the Settlement does not fall below the lowest point in the range of reasonableness and the Motion to Approve Compromise should be granted.

Federal Rule of Bankruptcy Procedure 9019 provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."[11] Whether to approve a compromise or settlement is in the bankruptcy court's discretion, and there are four factors that the court must consider when making the decision as set out by the Eleventh Circuit in *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*[12]:

> (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,

[10] The four law firms are de Beaubien, Simmons, Knight, Mantzaris & Neal, LLP ("DSK Law"), Buckles Law Firm, P.L., Seiler, Sautter, Zaden, Rimes & Wahlbrink, and Bloodworth Law, PLLC (collectively, the "Law Firms"). The objections to claims are the *Liquidating Agent Mark C. Healy's Objection to Claim No. 5 of DSK Law* (Doc. No. 146); *Liquidating Agent Mark C. Healy's Amended Objection to Claim No. 11 of Buckles Law Firm, P.L.* (Doc. No. 152); *Liquidating Agent Mark C. Healy's Objection to Claim No. 6 of Seiler, Sautter, Zaden, Rimes, & Wahlbrink* (Doc. No. 165); and *Liquidating Agent Mark C. Healy's Objection to Claim No. 4-1 Filed by Bloodworth Law, PLLC* (Doc. No. 218).

[11] Fed. R. Bankr. P. 9019(a).

[12] *Wallis v. Just. Oaks II, Ltd. (In re Just. Oaks II, Ltd.)*, 898 F.2d 1544 (11th Cir. 1990).

> and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.[13]

The court "consider[s] these factors to determine 'the fairness, reasonableness and adequacy of a proposed settlement agreement.'"[14] The bankruptcy court should decline to approve a proposed compromise only when the compromise falls "below the lowest point in the range of reasonableness."[15] The Court has considered the four *Justice Oaks* factors, as discussed below.

DISCUSSION

First Factor: Probability of Success in Litigation

The Court finds that the first factor, the probability of success in the litigation, slightly weighs in favor of approving the Motion to Approve Compromise. As to the Objection to Herborn Claim, Mr. Herborn asserts that the objection was untimely based on the language in the Confirmation Order and the timing of the signing versus entry of the Confirmation Order on the docket.[16] The Court denied the timeliness defense[17] and has denied Mr. Herborn's request for reconsideration on that point.[18] However, Mr. Herborn has indicated an intent to appeal the issue. While the Court finds it is more probable that the Liquidating Agent would prevail on the merits of the Objection to Herborn Claim, if Mr. Herborn prevails on the issue of timeliness, the Herborn Claim would be allowed in the full amount of $1,500,000. As to the Adversary Proceeding, the claims are for breach of fiduciary duty, avoidance and recovery of transfers, and unjust enrichment,

---

[13] *Id.* at 1549 (quoting *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986)).
[14] *Chira v. Saal (In re Chira)*, 567 F.3d 1307, 1312-13 (11th Cir. 2009) (quoting *In re A & C Props.*, 784 F.2d at 1381).
[15] *Martin v. Pahiakos (In re Martin)*, 490 F.3d 1272, 1275 (11th Cir. 2007) (citing *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983)).
[16] *Response in Opposition to Liquidating Agent Mark C. Healy's Objection to Claim of H. James Herborn, III* (Doc. No. 222).
[17] *Order Denying Affirmative Defense of H. James Herborn, III* (Doc. No. 241).
[18] The *Order Denying Motion for Reconsideration* (Doc. No. 268) denied the *Motion for Reconsideration of Order Denying Affirmative Defense of James Herborn, III* (Doc. No. 263).

which are fact-intensive causes of action and not likely the subject of adjudication without a trial. At the time of Trial, it was not clear whether the Liquidating Agent would likely prevail in the Adversary Proceeding. While it is more likely that the Liquidating Agent would prevail in the prosecution of the Law Firm Settlements, if any of the objections to the Law Firm Settlements were sustained, the Liquidating Agent would have to litigate the substance of the objections to the claims of the Law Firms whose settlement was not approved. The claim of each Law Firm is a separate and distinct claim, and the issues of corporate authority, the amount of the claim, extent of services rendered to the Debtor, charging liens, and other issues would likely require trials on each claim. The Settlement would alleviate the need to proceed to trial, and the uncertainty attendant to litigation.

Second Factor: Difficulties in Collection

The second factor—the difficulties, if any, to be encountered in the matter of collection—does not weigh for or against approving the Settlement because the Liquidating Agent did not take collectability into consideration, and there was no evidence presented on whether it would be difficult to collect a judgment against Mr. Herborn.

Third Factor: Complexity, Expense, Inconvenience, and Delay

The third factor—the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it—weighs in favor of approving the Settlement. The complexity of the settled matters is discussed above. Some of the creditors have been waiting to be paid for 5 years. The Settlement would allow creditors to be paid once the order approving the Settlement is final.[19] On the other hand, litigation would delay distributions until the conclusion thereof, which

[19] The Court notes one exception: Bloodworth Law, PLLC could not be paid once the order approving the Settlement is final as Mr. Kanter filed an *Objection to Motion by Liquidating Agent, Mark C. Healy, to Approve the Compromise Between Bloodworth Law, PLLC and the Liquidating Agent on Behalf of the Debtor's Bankruptcy Estate and the*

would take more than one year. Finally, as to the expense, R. Scott Shuker testified as an expert witness that the legal fees associated with further litigation would be $740,000. The Court finds Mr. Shuker's testimony was credible and that the Settlement would avoid the legal fees associated with litigating the multiple matters at issue. Mr. Kanter's proposal to have his counsel represent the Liquidating Agent on a contingency fee was offered in the Reply in Support of Objection after the conclusion of the evidence. There is no evidence of whether such terms would be acceptable to the Liquidating Agent, or whether creditors would oppose the Settlement based on Mr. Kanter's proposal to fund the litigation in this manner. Therefore, based on the evidence admitted at the Trial, the Court finds this factor weighs in favor of approving the Settlement.

Fourth Factor: Paramount Interest of Creditors and Deference to Their Reasonable Views

As to the fourth factor, the paramount interest of the creditors and a proper deference to their reasonable views in the premises, the Court finds this factor weighs in favor of approving the Settlement. The only objecting party was Mr. Kanter, who is a dissociated member and therefore not a creditor, but has a financial interest in the Debtor. While no creditor expressed a view for or against the Settlement, the Settlement would result in approval of the Law Firm Settlements, which would in turn result in a negotiated reduction in the claims of the Law Firms, as well as the ability to make distribution to creditors immediately, as opposed to having to wait until the conclusion of litigation.

CONCLUSION

In making a determination of the *Justice Oaks* factors, the Court must consider more than the merits of the underlying claims.[20] Further, the Court did not have to decide the numerous

Release of All Claims by the Debtor and the Bankruptcy Estate with Respect to the Liquidating Agent's Objection to Claim No. 4-1 of Bloodworth Law, PLLC (Doc. No. 323).

[20] *In re Just. Oaks*, 898 F.2d at 1549.

questions of law and fact raised by the objecting party, but canvass the issues to see whether the Settlement falls below the lowest point in the range of reasonableness.[21]

In sum, the Settlement eliminates the inherent risk associated with litigation, mitigates the attendant costs, and reduces the delay in making distributions to creditors. Because the Settlement is fair and reasonable, falls within the reasonable range of possible litigation outcomes, and is in the best interests of the estate and creditors, the Court finds that the Settlement meets the standard for approval set forth in *Justice Oaks*.

Accordingly, it is

ORDERED:

1. The Motion to Approve Compromise (Doc. No. 312) is **GRANTED**.

2. Except as provided in paragraph 3 below, the Settling Parties are authorized to take all actions and otherwise perform under the Settlement.

3. The Liquidating Agent is not authorized to make any distribution to Bloodworth Law, PLLC, pending adjudication of the *Motion by Liquidating Agent, Mark C. Healy, to Approve the Compromise Between Bloodworth Law, PLLC and the Liquidating Agent on Behalf of the Debtor's Bankruptcy Estate and the Release of All Claims by the Debtor and the Bankruptcy Estate with Respect to the Liquidating Agent's Objection to Claim No. 4-1 of Bloodworth Law, PLLC* (Doc. No. 295) and *Liquidating Agent Mark C. Healy's Objection to Claim No. 4-1 Filed by Bloodworth Law, PLLC* (Doc. No. 218).

# # #

Attorney Paul N. Mascia 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 three (3) days of entry of this Order.

[21] *Pullum v. SE Prop. Holdings, LLC (In re Pullum),* 598 B.R. 489, 492 (Bankr. N.D. Fla. 2019) (quoting *In re W.T. Grant Co.*, 699 F.2d at 608).