ORDERED.

Dated: November 22, 2023

Grace E. Robson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re	)	
	)	
Huckleberry Partners LLC,	)	Case No. 6:22-bk-02159-GER
	)	Chapter 11
Debtor.	)	
	)	

ORDER GRANTING MOTION TO APPROVE COMPROMISE BETWEEN LIQUIDATING AGENT AND BLOODWORTH LAW, PLLC

THIS CASE came before the Court on November 8, 2023 at 9:30 a.m. for a trial (the "Trial") on 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* (the "Motion to Approve Compromise") (Doc. No. 295) and the Opposition[1] (Doc. No. 323) thereto filed by Adam Kanter ("Mr. Kanter"). The Court, having considered the Motion to Approve Compromise, the

[1] *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 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* (the "Opposition").

Opposition, the witness testimony, exhibits admitted into evidence, authorities cited by the parties, and the record, FINDS as follows:

A. On February 2, 2018, H. James Herborn, III ("Mr. Herborn"), "as managing member of Huckleberry Partners, LLC," executed an engagement letter by and between Bloodworth Law, PLLC ("Bloodworth") and Huckleberry Partners, LLC ("Debtor") (the "Engagement Letter").[2] Pursuant to the Engagement Letter, Bloodworth was engaged to represent Debtor in an ongoing member dispute pending in state court.[3]

B. Pursuant to the Engagement Letter, Debtor was to pay Bloodworth $200 per hour for attorneys' fees and $100 per hour for paralegal fees. The Engagement Letter also provided that the firm would be entitled to a 20% contingency fee to be assessed against the "Gross Value of any Recovery." "Recovery" was defined in the Engagement Letter as "any settlement, award, or judgment obtained from the resolution of this case or as the result of this case."

C. L. Reed Bloodworth ("Mr. Bloodworth") credibly testified at Trial that the firm agreed to reduce its ordinary hourly rate by half because it was a hybrid-fee agreement.

D. On January 15, 2021,[4] Bloodworth and the attorney for Mr. Herborn, John P. Seiler of Seiler, Sautter, Zaden, Rimes & Wahlbrink ("Seiler"), filed the Third Amended Complaint on behalf of Debtor and Mr. Herborn, individually and derivatively on behalf of Debtor, in the State Court Case.[5]

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[2] *See* Liquidating Agent's Ex. 4 (Doc. No. 478-4).
[3] *Huckleberry Partners LLC v. Kanter*, No. 2016-CA-001357-O (Fla. Orange County Ct. filed Feb. 15, 2016) (the "State Court Case"). This matter was removed to this Court on June 17, 2022. *Notice of Removal of State Court Civil Action, Huckleberry Partners LLC v. Kanter (In re Huckleberry Partners LLC)*, Ch. 11 Case No. 6:22-bk-02159-GER, Adv. No. 6:22-ap-00050-GER (Bankr. M.D. Fla. June 17, 2022), Doc. No. 1.
[4] While the *Liquidating Agent's Exhibit List* (Doc. Nos. 478 and 479) and the Certificate of Service provide the date of the Third Amended Complaint was January 14, 2021, the State Court Case docket reflects the Third Amended Complaint was originally filed January 15, 2021.
[5] Liquidating Agent's Ex. 5 (Doc. No. 478-5).

E. As part of the State Court Case, Bloodworth and Seiler filed a motion for partial summary judgment on behalf of Debtor and Mr. Herborn, individually and derivatively on behalf of Debtor. On June 22, 2021, the state court found that Mr. Kanter became dissociated from Debtor pursuant to section 605.0602(8)(a) of the Florida Statutes when he filed for bankruptcy on November 14, 2019, and that there was no genuine dispute as to Mr. Herborn's 30% membership interest in Debtor.[6]

F. On March 31, 2022, Bloodworth and Seiler filed the Fourth Amended Complaint on behalf of Debtor and Mr. Herborn, individually and derivatively on behalf of Debtor.[7]

G. Debtor filed for bankruptcy on June 17, 2022.[8]

H. On August 19, 2022, Bloodworth filed Proof of Claim No. 4 asserting an unsecured claim in the amount of $140,715.97 (the "Bloodworth Claim") for "[l]egal services rendered."

I. As part of Debtor's *Plan of Liquidation Submitted by Huckleberry Partners, LLC,*[9] as modified by the *Modification to Plan of Liquidation*,[10] Mark C. Healy was appointed as Liquidating Agent (the "Liquidating Agent").

J. On March 24, 2023, the Liquidating Agent timely filed[11] the Objection to Bloodworth Claim.[12]

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[6] Liquidating Agent's Ex. 7 (Doc. No. 478-7).
[7] Liquidating Agent's Ex. 6 (Doc. No. 478-6).
[8] *Voluntary Petition Under Chapter 11* (Doc. No. 1).
[9] Doc. No. 76.
[10] Doc. No. 101.
[11] 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), as amended by the *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]* (the "Amended Confirmation Order") (Doc. No. 137), contemplated that the Liquidating Agent, with certain exceptions, would have 90 days from the date of the Amended Confirmation Order to file objections to claims. The Court later entered an *Order Granting Uncontested Motion by Liquidating Agent, Mark C. Healy, to Extend the Time to Object to Claim No. 4-1 of Bloodworth Law, PLLC* (Doc. No. 187), giving the Liquidating Agent until March 24, 2023 to file an objection to the Bloodworth Claim.
[12] *Liquidating Agent Mark C. Healy's Objection to Claim No. 4-1 Filed by Bloodworth Law, PLLC* (the "Objection to Bloodworth Claim") (Doc. No. 218).

K. In the Motion to Approve Compromise, the Liquidating Agent seeks approval of a settlement between the Liquidating Agent and Bloodworth (collectively, the "Settling Parties").

L. According to the Motion to Approve Compromise, the settlement resolves the issues, disputes, and controversies between the Settling Parties that relate to or arise from the Bloodworth Claim and Bloodworth's potential administrative claim arising from Bloodworth's partial contingency fee agreement with Debtor. As set forth in the Motion to Approve Compromise, under the settlement: (1) Debtor shall pay Bloodworth the lump sum of $105,000 (the "Settlement Amount") within 10 days following the expiration of the applicable appeals period following the entry of a final order approving the Motion to Approve Compromise (the "Effective Date"); and (2) upon receipt of the Settlement Amount, the Settling Parties "**shall be deemed to have provided mutual full and general releases in favor of one another for all matters**, claims, liabilities, rights, actions, causes of action and issues, from the beginning of time through the Effective Date, related or pertaining to Bloodworth's representation of the Debtor in any matter and, specifically, including the Bloodworth Claim" (the "Settlement").

M. Mr. Kanter filed his Opposition to the Settlement, arguing that the factors set out by the Eleventh Circuit in *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*[13] weigh in favor of disapproving the Settlement.

DISCUSSION

The Court, having reviewed the Motion to Approve Compromise, the Opposition, the exhibits admitted into evidence, and the testimony of the Liquidating Agent and Mr. Bloodworth, 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.

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

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."[14] 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 approving a settlement as set out by the Eleventh Circuit in *Justice Oaks*:

> (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; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.[15]

The court "consider[s] these factors to determine 'the fairness, reasonableness and adequacy of a proposed settlement agreement.'"[16] The bankruptcy court should decline to approve a proposed compromise only when the compromise falls "below the lowest point in the range of reasonableness."[17] The Court has considered the four *Justice Oaks* factors, as discussed below.

First Factor: Probability of Success in Litigation

The Court finds that the first factor—the probability of success in litigating the Objection to Bloodworth Claim—weighs in favor of approving the Motion to Approve Compromise. In the Objection to Bloodworth Claim, the Liquidating Agent initially asserts Mr. Herborn did not have authority to execute the Engagement Letter. The Liquidating Agent also asserts that after the filing of the Third Amended Complaint in the State Court Case, no causes of action were being pursued by Debtor, they were all in the name of Mr. Herborn, either in his personal capacity, or derivatively; that Bloodworth had stated its claim was $137,785.97 and the claim therefore needed

[14] Fed. R. Bankr. P. 9019(a).
[15] *In re Just. Oaks*, 898 F.2d at 1549 (quoting *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986)).
[16] *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).
[17] *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)).

to be amended; and that the reasonableness of the fees incurred in the underlying litigation is in question.

As part of his Opposition, Mr. Kanter argues that there is a strong likelihood of success in pursuing the Objection to Bloodworth Claim because section 605.0805(2) of the Florida Statutes[18] and case law should be read to conclude that Bloodworth cannot be paid out of Debtor's funds; specifically, that derivative counsel represents a member seeking to enforce corporate rights and does not represent the company and a limited liability company cannot agree to pay counsel if there are derivative claims. However, the case law cited by Mr. Kanter does not speak directly to the issue and, given the parties' conflicting views of the statute and the lack of authority interpreting the statute, the Court finds that Bloodworth may have a reasonable chance of success in defending against the Objection to Bloodworth Claim. Furthermore, at a minimum, Bloodworth may have a claim for quantum meruit because there is no dispute that the firm expended time providing services and obtained a ruling that resolved the dispute regarding corporate authority to act on behalf of Debtor.

The Settlement would alleviate the need to proceed to trial, and the uncertainty attendant to litigation; accordingly, the Court finds the first factor weighs in favor of approving the Settlement.

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. The Court agrees with the Liquidating Agent that collectability does not need to be taken into consideration because he is settling a claim

[18] Section 605.0805(2) provides: "If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company."

against Debtor's assets rather than settling a potential claim of Debtor that would increase the Estate's assets.

Mr. Kanter argues that collectability is an issue because the Motion to Approve Compromise precludes a "highly collectable avoidance action against Bloodworth" since Bloodworth was paid over $100,000 pre-bankruptcy in connection with representation in the derivative matter. However, no evidence was presented at the Trial on the alleged avoidance action against Bloodworth. In addition, the Court finds this argument is not as definite as Mr. Kanter contends and, as discussed above, Mr. Herborn may have had the authority to sign the Engagement Letter, and even if that was not the case, Bloodworth arguably provided a benefit to Debtor and would be entitled to compensation on a legal theory of quantum meruit. Furthermore, the Court finds that Mr. Kanter's argument goes more towards the first factor, probability of success, which the Court has found weighs in favor of granting the Motion to Approve Compromise.

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. Mr. Kanter argues that the complexity of litigation is not enough to outweigh the probability of success and fairness to creditors. However, as discussed above, the issue of whether Mr. Herborn had the authority to engage Bloodworth is not as clear as Mr. Kanter contends. Litigating the settled matter would require time, effort, and expense that would likely exceed the amounts at issue in the Settlement. Litigating the matter would also cause delay. 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 is Mr. Kanter,[19] who is not a creditor, but has a financial interest as a dissociated member of Debtor. The Settlement would eliminate the risk of the Bloodworth Claim being allowed in full as well as the additional possibility of Bloodworth being entitled to a contingency fee from any recovery from the removed State Court Case. The Settlement removes the risk of reducing recovery available to the remaining creditors or parties in interest by eliminating further expense associated with litigating the Objection to Bloodworth Claim. Accordingly, the Court finds that the Settlement is in the best interest of the creditors.

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 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] 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:

[19] Debtor filed an objection that was later withdrawn. *See 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); *Notice of Withdrawal of Objections* (Doc. No. 466).
[20] *In re Just. Oaks*, 898 F.2d at 1549.
[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).

1. The Motion to Approve Compromise (Doc. No. 295) is **GRANTED**.

# # #

Attorney James A. Timko 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 this Order.