

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

In re:

Case No. 6:06-bk-00182-ABB
Chapter 7

GREGORY S. MACK,

Debtor.

ORDER

This matter came before the Court on the Motion for Approval and Notice of Compromise and Settlement of Controversy (Doc. No. 191) (“Motion”) filed by Gene T. Chambers, the Chapter 7 Trustee herein (“Trustee”), and the Objection (Doc. No. 210) filed by Grange Mutual Casualty Company, Grange Indemnity Insurance Company, and Trustgard Insurance Company (collectively, “Grange”). A final evidentiary hearing was held on September 7, 2006 at which Gregory S. Mack, the Debtor herein (“Debtor”), counsel for the Debtor, counsel for Grange, counsel for Allstate Insurance Company, counsel for Wachovia, the Chapter 7 Trustee and her counsel appeared.

The Objection was overruled and the Motion was granted in open Court. The Trustee was directed to prepare and circulate to all parties an order reflecting the Court’s ruling. The Trustee circulated and submitted a proposed Order and proposed findings of fact and conclusions of law. Grange objects to the content of the Trustee’s submission and presented a letter and marked up copies of the Trustee’s submission detailing its objections. The Court makes the following findings and rulings after reviewing the pleadings and evidence, hearing testimony and argument, and being otherwise fully advised in the premises.

The Debtor filed this individual Chapter 7 case on February 8, 2006 (“Petition Date”).¹ The

¹ The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) was enacted on April 20, 2005. The Interim Federal Rules of Bankruptcy Procedure are effective in cases commenced on or after October 17, 2005 and only in the judicial districts that have adopted them by local rule or court order. The Interim Rules were adopted in their entirety without change by the Judges of the United States Bankruptcy Court for the Middle District of Florida by Order Adopting Interim Bankruptcy Rules on October 3, 2005 (Administrative

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and the Interim Bankruptcy Rules govern this case. Gene T. Chambers is the Chapter 7 Trustee (“Trustee”). The Debtor’s § 341 meeting of creditors was scheduled for March 10, 2006 and was concluded on March 24, 2006. The Debtor filed his Schedules, including Schedule C in which the Debtor asserts claims of exemption in various assets (Doc. No. 1), on the Petition Date. The Debtor did not amend or supplement Schedule C.² The deadline for filing objections to the Debtor’s claims of exemption, other than an objection based on § 522(q), was thirty days after the conclusion of the meeting of creditors pursuant to Federal Rule of Bankruptcy Procedure 4003(b)(1).³

Grange, Allstate Insurance Company (“Allstate”), and Liberty Mutual Insurance Company (“Liberty”) assert unsecured nonpriority claims totaling approximately \$7,423,538.00 against the Debtor (Claim Nos. 24, 25, 26)⁴ relating to alleged RICO violations and insurance fraud committed by the Debtor and others. The insurance companies received notice of the bankruptcy case (Doc. 10) and have been actively involved in the Debtor’s bankruptcy case. They were granted relief from the automatic stay to adjudicate their claims against the Debtor in the civil litigation pending in the United States District Court for the Eastern District of Kentucky, Frankfort Division (Doc. No. 153).

The Trustee timely lodged objections to the Debtor’s claims of exemption through her Objection to Debtor’s Claims of Exemption and Motion for Turnover (Doc. 21) and Amended Objection to Debtor’s Claim of Exemption and Motion for Turnover filed on March 16, 2006 (Doc. 25) (“Trustee’s Exemption Objection”). The Trustee objected to the Debtor’s homestead exemption for

Order 2005-8). The Middle District adopted certain amendments to the Interim Bankruptcy Rules in their entirety without change by Order Adopting Amendments to Interim Bankruptcy Rules on October 17, 2005 (Administrative Order 2005-9). The Debtor filed this case after the BAPCPA enactment date and after the Interim Bankruptcy Rules were adopted by this Court.

² See Doc. No. 74 (Debtor amended Schedules A, B and F), Doc. Nos. 129 and 130 (Debtor amended Schedules D and B).

³ Rule 4003(b)(2) provides: “An objection to a claim of exemption based on § 522(a) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.”

⁴ Grange filed Claim No. 24 in the amount of \$3,950,000.00.

1960 Brightwater Drive, Lake Mary, Florida 32746 (the "Property") based upon the Property being owned by a trust and § 522(q)(1) of the Bankruptcy Code, which limits a homestead exemption when a debtor owes a RICO obligation. The Trustee objected to the exemptions claimed in a timeshare and two Wachovia bank accounts. There is a substantial mortgage on the Property. The Debtor's wife asserts rights in the Property and seeks to litigate her asserted rights in state court.

Grange indicated an intent to object to the Debtor's claims of exemptions in its Motion to Continue (Doc. No. 33) the evidentiary hearing on the Trustee's Exemption Objection and "further reserves the right to object to the Debtor's claim of exemption based upon §522(q) of the Bankruptcy Code before this Chapter 7 case is closed." Doc. 33 at ¶ 4. Grange did not file an objection to exemptions or a joinder to the Trustee's Exemption Objection.

Allstate and Liberty filed an Amended Notice of Joinder in Trustee's Amended Objection to Exemptions and Motion for Turnover (Doc. No. 91) on April 25, 2006 ("Amended Notice of Joinder"). The Amended Notice of Joinder sets forth it is filed as an amendment to the Allstate's and Liberty's "original Notice of Joinder in the Trustee's Amended Objection to Debtor's Claim of Exemptions and Motion for Turnover (Doc. No. 89)" Document No. 89, which was filed by Allstate and Liberty on April 24, 2006, is a joinder by Allstate and Liberty in *Grange's* objection to the Trustee's proposed abandonment of certain estate assets and does not reference or address in any manner objections to exemptions.⁵

A non-evidentiary hearing was held on the Trustee's Exemption Objection on April 27, 2006 at which the Trustee withdrew some of her objections to exemptions. An Order was entered on May 9, 2006 (Doc. No. 112) overruling the Trustee's objections to exemptions, but without prejudice to the Trustee's § 522(q)(1)(iv) claims.⁶ The Trustee filed a Motion (Doc. No. 113) seeking a rehearing on her Exemption

⁵ The Amended Notice of Joinder was filed more than thirty days after the conclusion of the Debtor's § 341 meeting. The deadline for filing objections to exemptions, other than objections based on § 522(q), was March 24, 2006 pursuant to Federal Rule of Bankruptcy Procedure 9006(a).

⁶ The May 9, 2006 Order was apparently submitted by counsel for the Debtor to the Court as a proposed order and was sent to counsel for the Trustee electronically, but counsel could not open the document due to computer issues.

Objection on the basis the Order is incorrect in three material respects.⁷ Grange filed a Motion to Correct Order Entered May 9, 2006 (Doc. No. 118) asserting similar bases for revision of the Order. A corrective Order was entered on December 19, 2006 (Doc. No. 247).

The Trustee instituted three adversary proceedings against the Debtor: (i) Adversary Proceeding No. 6:06-ap-00094-ABB in which the Trustee seeks a denial of discharge pursuant to 11 U.S.C. § 727; (ii) Adversary Proceeding No. 6:06-ap-00097-ABB filed against the Debtor and his wife to recover alleged fraudulent transfers; and (iii) Adversary Proceeding No. 6:06-ap-00100-ABB filed against the Debtor and his wife seeking a determination of the estate's interest in the Debtor's home and the applicability of a statutory homestead exemption cap of § 522(q). She instituted Adversary Proceeding 6:06-ap-00116-ABB against T-Bones and Busters, LLC and other entities associated with the Debtor seeking turnover of assets and invalidation of alleged leases.

Grange instituted Adversary Proceeding No. 6:06-ap-00105-ABB against the Debtor seeking denial of the Debtor's discharge and a determination its debt is nondischargeable. Allstate and Liberty instituted Adversary Proceeding No. 6:06-ap-00106-ABB seeking similar relief pursuant to §§ 727 and 523 of the Bankruptcy Code.

The Trustee, the Debtor, the Debtor's wife, and entities owned or controlled by the Debtor reached a global settlement resolving all of the outstanding disputes between the Trustee, the Debtor, his wife, and the various entities. The proposed settlement agreement as set forth in the Settlement Term Sheet⁸ ("Settlement") provides, in part: (i) the Debtor will pay \$1,100,000.00 to the Trustee within ten days after the entry of a final order approving the settlement becomes nonappealable; (ii) the Trustee, the Debtor, his wife, and the other defendants in the

⁷ The Trustee states: (i) the Order fails to reserve a cause of action pursuant to § 522(q)(1)(B)(iii); (ii) the hearing was not an evidentiary hearing and there was no discussion whether the Trustee's objection were equivalent to the causes of action asserted by her in pending adversary proceedings; and (iii) it does not preserve the Trustee's objection to the exemption of tenants by the entirety property or her action to limit the Debtor's homestead exemption.

⁸ The Motion generally describes the proposed settlement and references and incorporates a "Settlement Term Sheet." The Settlement Term Sheet was not filed with the Motion but was filed with the Notice of Filing (Doc. No. 199).

adversary proceedings instituted by the Trustee will execute a mutual general release of claims; (iii) the Trustee will dismiss her adversary proceedings with prejudice; (iv) and the Trustee will convey the estate's interest in certain real property to the Debtor's wife; and (v) the Trustee consents to the entry of an order determining the Property and the bank accounts are exempt.⁹

The Settlement is contingent upon approval of the Settlement by the Court and withdrawal of the Amended Notice of Joinder or resolution of the Amended Notice of Joinder in favor of the Debtor and his wife. Allstate and Liberty withdrew the Amended Notice of Joinder on August 28, 2006 (Doc. No. 208) ("Withdrawal"). The Withdrawal provides it is made ". . . without prejudice, and [Allstate and Liberty] expressly reserve their right to re-file such further objections within the time permitted by Rule 4003 of the Rules of Bankruptcy Procedure."

Grange, Allstate, and Liberty are not parties to the Settlement. Grange filed the only objection to the Settlement. Grange objects to the Settlement ". . . because (1) the proposed settlement fails to disclose the specific source(s) of funds for making payment to the Trustee, and (2) the proposed settlement fails to acknowledge that its terms are without prejudice to any claims or relief which may be obtained through Grange's pending adversary proceeding against the Debtor styled Grange Mut. Cas. Co. v. Mack, No. 6:06-ap-00105 (Bankr. M.D. Fla.)."

The Trustee is a highly experienced Chapter 7 Panel Trustee of long-standing in bankruptcy matters. She explained the Settlement is a final disposition of substantially all of the assets of the estate and essentially concludes the liquidation process. She delineated her investigation of the Debtor and his assets, her investigation of persons and entities associated with the Debtor, the risks and costs associated with continuing the litigation, the uncertainty of results particularly involving litigation of § 522(q) exemption issues given this is a new BAPCPA statute, the difficulties of collection were

⁹ Paragraph 6 of the Settlement provides: "The trustee will consent to the entry of the order previously submitted for approval by debtor's counsel on the trustee's motion for reconsideration (Doc. No. 113) of the order overruling objection to exemptions upon approval of this agreement, such that the homestead and the tenants by the entirety bank accounts are exempt." No copy of the "order previously submitted" is included with the Settlement, does not appear on the case docket, and it is unclear what document is being referenced.

she to prevail on her claims, and the due diligence she conducted in connection with the Settlement. The Trustee conducted an extensive investigation and has vigorously carried out her duties as Trustee for the benefit of the creditors. She believes, in exercise of her business judgment, the Settlement is in the best interests of the estate and the creditors.

A bankruptcy court must consider the following factors in determining whether to approve a compromise: (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 necessary to attending to it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. Wallis v. Justice Oaks, II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959, 111 S. Ct. 387, 112 L. Ed. 2d 398 (1990). A bankruptcy court has broad discretion to approve a compromise and should do so unless the proposed settlement "falls below the lowest point in the range of reasonableness." In re Bicoastal Corp., 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993).¹⁰

In considering each of the four In re Justice Oaks II, Ltd. factors, the Court finds: (a) the outcome of the litigation between the Trustee, the Debtor, and the various other defendants is uncertain; (b) collection of a judgment against the Debtor would be difficult; (c) the legal issues involved, particularly those involving § 522(q), are complex and continued litigation will significantly delay the Trustee's administration of the estate; and (d) the best interests of all of the Debtor's creditors will be served in approving the Settlement. The proposed Settlement is reasonable and does not fall below the lowest point in the range of reasonableness.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Objection of Grange is **OVERRULED**; and it is further

ORDERED, ADJUDGED and DECREED that the Trustee's Motion is hereby **GRANTED** and the Settlement is hereby **APPROVED**; and it is further

¹⁰ (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied* 464 U.S. 822, 104 S. Ct. 89, 78 L.Ed.2d 97 (1983)).

ORDERED, ADJUDGED and DECREED that, based upon the approval of the Settlement, the Trustee's Exemption Objection is hereby **RESOLVED**, and Adversary Proceeding Nos. 6:06-ap-00094-ABB; 6:06-ap-00097-ABB, 6:06-ap-00100-ABB, and 6:06-ap-00116-ABB are hereby **DISMISSED** with prejudice.

Dated this 19th day of December, 2006.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge