

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:

Matt Garton and Associates, LLC,
EIN: 73-1684711

Debtor.

Case No.: 19-18917-TBM
Chapter: 7

**TRUSTEE’S MOTION FOR ORDER APPROVING
COMPROMISE AND SETTLEMENT WITH INDEPENDENT
BANK AS TO GARNISHED FUNDS HELD BY BBVA COMPASS BANK
PURSUANT TO FED. R. BANKR. P. 9019**

Jeffrey A. Weinman, the duly-appointed Chapter 7 Trustee of the Estate of Matt Garton and Associates, LLC (“Trustee”), pursuant to Fed. R. Bankr. P. 9019(a), submits this Motion for Order Approving Compromise and Settlement with Independent Bank as to Garnished Funds Held by BBVA Compass Bank Pursuant to Fed. R. Bankr. P. 9019 (the “Motion”), and in support of thereof, states as follows:

I. PROCEDURAL BACKGROUND

1. On October 16, 2019 (the “Petition Date”), Matt Garton and Associates, LLC (“Debtor”) filed its Voluntary Petition for relief under Chapter 7 of the U.S. Bankruptcy Code in the United States Bankruptcy Court of the District of Colorado. Dkt. No. 1.

2. Jeffrey Weinman (the “Trustee”) was appointed as the Chapter 7 Trustee of the bankruptcy estate of the Debtor (the “Estate”). Dkt. No. 6.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the Debtor's Bankruptcy proceedings pursuant to 11 U.S.C. §§ 157 and 1334. These matters constitute core proceedings under 28 U.S.C. § 157(b)(2).

4. Prior to filing, the Debtor was a Colorado limited liability company doing business in Colorado. Accordingly, venue of all of the Debtor's Chapter 7 bankruptcy proceedings is proper in this District under 28 U.S.C. §§ 1408 and 1409.

III. FACTUAL BACKGROUND

A. Debtor's Pre-Petition Operations

5. Prior to its filing for relief under Chapter 7 of the Bankruptcy Code, Debtor operated as a third-party hotel and resort booking company. Debtor conducted its business operations under five separate "dba" entities: Hotels for Everyone, All Inclusives for Everyone, Affordable Luxury Hotels, Just Right Hotels, and HotelDeck. Dkt. No. 1, at p. 1.

6. Through the Debtor's "Hotels for Everyone's, website, customers could book hotel reservations by immediately remitting credit card payment to the Debtor, which then became responsible for booking the hotel room and the costs associated with the reservation. Once a customer remitted payment, the Debtor either directly or through a third-party intermediary entity (*i.e.* Hotel Beds), later paid the hotel at which the customer made a reservation.

7. In connection with these operations, the Debtor opened a bank account (the “Account”) and entered into a deposit account agreement (together with all amendments and attachments thereto, the “Account Agreement”) with the Independent Bank (the “Bank’s”) predecessor bank, the Home State Bank¹ on September 7, 2010.

8. The Debtor also entered into a Merchant Card Processing Agreement (the “Merchant Agreement”), pursuant to which the Account received provisional credits from Independent Bank via the credit card processor, TSYS, in respect of customer credit card payments in advance of their hotel reservations booked through the Debtor.

9. In instances in which a customer made a reservation through the Debtor and later cancelled prior to the reservation or contested the hotel services provided, a chargeback was made to the Account, and that amount would be withdrawn therefrom in order to issue a refund to the customer’s credit card.

10. When Hotel Beds cancelled numerous reservations made on behalf of the Debtor’s customers, Independent Bank was notified of same due to the volume of chargebacks anticipated.

¹ The Home State Bank was acquired, by way of merger, by Guaranty Bancorp on September 8, 2016, and the successor bank’s subsidiary, Guaranty Bank and Trust Company (“GBTC”), assumed Home State Bank’s rights and obligations under the Account Agreement. On January 1, 2019, Independent Bank Group, Inc. acquired by way of merger Guaranty Bancorp and GBTC, and its subsidiary, Independent Bank, assumed Guaranty Bank and Trust Company’s rights and obligations under the Account Agreement.

B. The State Court Case (*Independent Bank v. Matt Garton & Associates, LLC, et al*; Case No. 2019CV30773 (Jefferson County District Court))

11. On May 16, 2019, Independent Bank filed a complaint against the Debtor and Mr. Garton in Jefferson County District Court asserting claims for breach of contract, fraudulent transfer, and accounting and records (the “Complaint”). See *Independent Bank v. Matt Garton & Associates, LLC and Matt Garton*, Case No. 2019CV30773, Jefferson County District Court (the “State Court Case”). The Bank alleged that the defendants were liable for transfers made from the Account to various other accounts and for payment on an American Express account, resulting in the Account being overdrawn and insufficient to cover the chargebacks, purportedly in violation of the Agreements.

12. On the same day, the Bank sought an *ex parte* writ of attachment on the Debtor’s bank accounts at BBVA Compass (“Compass”) and Wells Fargo banks on the basis that Mr. Garton had notified it that he would be out of town for ten days to attend a funeral. Writs were issued by the court the following day and Compass and Wells Fargo transferred the Debtors’ funds into internal garnishment accounts to be held pending resolution of the State Court Case (\$183,972.10 at Wells Fargo² and \$183,972.10 at Compass bank).

13. As of the Petition Date, the Compass Garnishment Account had a total of \$183,972.10, consisting of \$183,974.56 from the business account of Matt Garton

² On or about March 9, 2020, Wells Fargo released the garnished funds totaling \$183,972.10 to the Trustee.

& Associates, LLC, plus \$222.54 from the personal account of Matt and Carol Garton, (less the bank processing fee of \$150 and attorney fees of \$75). Compass returned \$224.54 from Mr. and Mrs. Garton's personal bank account to them, with the Trustee's consent, thus leaving \$183,749.56 in the Compass Garnishment Account (the "Garnished Funds").

C. Dispute as to the Garnished Funds

14. Following the Debtor's filing for bankruptcy, the State Court Case was stayed, and on February 2, 2020 the Bank filed a proof of claim for \$4,737,901.38 (the "Bank's Claim") contending that \$202,639.26 of the total claim was secured by the garnished funds via its prejudgment writ of attachment. *See* Claim No. 3.

15. The Bank contends that it is entitled to all of the Garnished Funds, to the exclusion of the Estate, because it has a perfected interest therein. The Trustee disputes the Bank's status as a perfected secured creditor as to the Garnished Funds.

16. Over the course of several months, the Trustee and the Bank engaged in good faith settlement discussions concerning the Parties' respective ownership of the Garnished Funds being held at Compass and as a result, have reached an agreement in principal resolving the division of and rights to the Garnished Funds presently held at Compass.

17. The principal terms of the parties' settlement agreement (the "Agreement") are as follows:

a. **The Garnished Funds.** The parties agree to distribution of the \$183,749.56 in the Garnishment Account as follows: the Estate shall be entitled to receive \$133,749.56 with the remainder (*i.e.* \$50,000) to the Bank.

b. **The Bank's Claim.** The Bank agrees that its Claim against the Estate shall be reduced proportionately by \$50,000.

c. **Treatment of the Bank's Remaining Claim.** The Bank's remaining Claim after such reduction, if allowed in the amount claimed, will receive payment therein in *pari passu* with other allowed general unsecured claims.

d. **Bankruptcy Court Approval.** The Agreement is subject to Bankruptcy Court approval and will be null and void if not approved.

IV. RELIEF REQUESTED AND BASIS FOR RELIEF

18. Out of an abundance of caution, Compass will not release the funds to either party absent an order from the Court. The Trustee therefore seeks entry of an order from the Court granting this Motion and approving the Agreement as the settlement of this controversy is in the best interests of the Estate and its creditors, as well as all parties in interest.

19. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure authorizes the Court to approve a settlement where it is "fair and equitable and in the best interests of the estate." *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 976 (D. Colo. 1989); *see also Connecticut General Life Ins. Co. v. United Companies Fin. Corp. (In re Foster Mtg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995) (same). The Court has discretion to approve a settlement under Rule 9019. *Kaiser Steel*, 105 B.R. at 978.

20. “To minimize litigation and expedite the administration of a bankruptcy estate, ‘compromises are favored in bankruptcy.’” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 COLLIER ON BANKRUPTCY ¶ 9019.03[1] (15th ed. 1993)). In assessing a request to approve a compromise under Rule 9019(a), “a court’s general charge is ‘to determine whether the settlement is fair and equitable and in the best interests of the estate.’” *Official Comm. of Unsecured Creditors v. W. Pac. Airlines, Inc. (In re W. Pac. Airlines, Inc.)*, 219 B.R. 575, 579 (D. Colo. 1998) (quoting *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 976 (D. Colo. 1989)). Although the Court has discretion to approve a compromise under Rule 9019(a), *see Kaiser Steel*, 105 B.R. at 978, its decision “must be an informed one based upon an objective evaluation of developed facts.” *Reiss v. Hagmann*, 881 F.2d 890, 892 (10th Cir. 1989).

21. Only if a proposed settlement or compromise falls outside the “range of reasonableness” given the facts and circumstances of the case, is approval unwarranted. *See Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994).

22. Courts have focused on four primary factors in considering approval of bankruptcy settlements: “the probable success of the litigation on the merits, any potential difficulty in collection of a judgment, the complexity and expense of the litigation and the interests of creditors in deference to their reasonable views.” *Kaiser Steel*, 105 B.R. at 977; *see Korngold v. Loyd (In re Southern Med. Arts Companies, Inc.)*, 343 B.R. 250, 256 (B.A.P. 10th Cir. 2006) (same); *Martin*, 91 F.3d at 393 (same).

In addition to those factors, the Court “must carefully weigh the value of the settled claim against the value to the estate by the settlement.” *In re The Hermitage Inn, Inc.*, 66 B.R. 71, 72 (Bankr. D. Colo. 1986). “[S]ome deference to the business judgment” of a trustee is also appropriate where a proposed settlement otherwise is fair and equitable to the estate. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006).

23. In the Trustee’s business judgment, the proposed Agreement is fair, reasonable, and in the best interests of the Estate and its creditors. The Agreement was extensively negotiated among the parties, including discussion of the parties’ legal arguments supporting their respective positions. Because the ultimate issue turns upon an unsettled area of law – whether a prejudgment writ of attachment creates a valid and perfected security interest in garnished funds over which the purported creditor has no control or access, when a final judgment has not been obtained – the likelihood of success is uncertain, and would certainly result in substantial fees and costs. Under the Agreement, the Estate will receive \$133,749.56, the Bank will receive \$50,000.00, and one of the Estate’s largest claims (the Bank’s Claim) will be reduced by \$50,000.00.

24. These funds will also allow the Trustee to pursue the remaining assets of the Estate, including preference and avoidance actions, among other legal and equitable claims, which, if successful, will ensure to the benefit of the Estate, its creditors and parties in interest.

25. Notice of this Motion has been given pursuant to Rules 9014 and 2002 of the Federal Rules of Bankruptcy Procedure, and in accordance with the Court's February 20, 2020 Order Granting Trustee's *Ex Parte* Motion for Order Authorizing Alternative Notice and Service Procedures [Dkt. No. 27].

V. CONCLUSION

WHEREFORE, Jeffrey A. Weinman, the Chapter 7 Trustee of the Debtor's Bankruptcy Estate, respectfully requests that the Court to enter an Order granting this Motion, approving the Agreement reached with Independent Bank as set forth herein, and for such other relief as deemed appropriate.

Dated: August 3, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: s/ Rachel A. Sternlieb

Patrick D. Vellone

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**ATTORNEYS FOR JEFFREY A. WEINMAN,
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V. CONCLUSION

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Dated: August 3, 2020.

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By: s/ Rachel A. Sternlieb

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**ATTORNEYS FOR JEFFREY A. WEINMAN,
CHAPTER 7 TRUSTEE**



INTERNAL SSC MEMORANDUM

<p>Scanned/Save</p> <ul style="list-style-type: none">) Save/scanned to e-file) Save Signature to pleading) Save to Index 	
<p>Sent to Client & Attorneys on:</p> <p>Sent to Attorneys Only:</p> <p>By:</p>	<p>Matrix?</p>
<p>Calendared:</p> <p>By:</p>	<p>OR</p>
<p>Notes:</p>	