



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re Matt Garton and Associates, LLC,

Debtor.

Case No. 19-18917-TBM

Chapter 7

Stipulated Motion to Approve Settlement

Jeffrey Weinman, in his capacity as Chapter 7 Trustee of the Estate of Matt Garton & Associates, LLC, and Matthew G. Garton, individually, submit their stipulated motion to approve the settlement agreement between them resolving Adversary Proceeding No. 21-01215-TBM.

I. Background

1. On October 16, 2019, Debtor Matt Garton and Associates, LLC filed its voluntary petition under chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado at Case No. 19-18917-TBM. [Docket No. 1].

2. On October 15, 2021, the Trustee filed his Adversary Complaint, commencing Adversary Proceeding No. 21-01215-TBM against Matthew G. Garton, which Complaint the Trustee amended on December 9, 2021. [Adversary Proceeding No. 21-01215-TBM, Docket No. 9].

3. While the Trustee conducted due diligence, prosecuted his claims in good faith, and the Parties exchanged sufficient information to evaluate their cases, following the exchange of disclosures and discovery in the case, the Trustee determined in his business judgment that the settlement agreement described herein

is in the best interests of the Estate and its creditors. In light of the documentary evidence exchanged during this adversary proceeding and the defenses raised by Mr. Garton, the Trustee has determined in the exercise of his reasonable business judgment, that the litigation costs necessary to avoid the alleged preferential and fraudulent transfers described in the Complaint (as amended) would likely break even with the recovery sought, if successful, and if unsuccessful may result in an unrecoverable expense to the Estate.

II. Settlement Terms

4. The Trustee and Mr. Garton stipulate to the following settlement terms, subject to the Court's approval:

- a. If the Court authorizes this settlement, within three days of the entry of such an authorizing order, the Trustee shall dismiss Adversary Proceeding No. 21-01215-TBM with prejudice;
- b. The Trustee and Mr. Garton agree that each side will bear their own fees and costs;
- c. Mr. Garton will not contest efforts by the Trustee should he seek disallowance of any claims filed by Matt Garton and Associates, LLC; and
- d. The Trustee will not seek disallowance of Claim No. 71 filed by Matthew G. Garton or any claim filed by Creative Travel Brands by April 13, 2020.

III. Legal Standards

5. “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) (citation omitted).

6. “On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). 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)).

7. “In the final analysis, the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.” *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (internal citations and quotations omitted).

8. Courts have adopted a four-pronged test for considering approval of a settlement in bankruptcy: (1) the chance of success on the litigation on the merits; (2) possible problems in collecting the judgment; (3) the expense and complexity of the litigation; and (4) the interests of creditors. See *In re S. Med. Arts Co.*, 343 B.R.

250, 256 (10th Cir. BAP. 2006); *Earl E. Kopp & Carolyn Kopp v. All Am. Life Ins. Co. (In re C.K. Williams, Inc.)*, 213 B.R. 1020, 1022 (10th Cir. BAP. 1997).

9. “When augmentation of an asset involves protracted investigation or potentially costly litigation, with no guarantee as to the outcome, the trustee must tread cautiously—and an inquiring court must accord him wide latitude should he conclude that the game is not worth the candle.” *LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.)*, 212 F.3d 632, 635 (1st Cir.2000). “The court is neither to ‘rubber stamp’ the trustee's proposals nor to substitute its judgment for the trustee's, but rather to “canvass the issues” and determine whether the settlement falls “below the lowest point in the range of reasonableness.” *In re Vazquez*, 325 B.R. 30, 36 (Bankr. S.D. Fla. 2005) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir.1983)).

IV. Argument

10. Here, the factors courts consider when determining whether to approve a settlement either militate in favor of approval of the Settlement Agreement or are outweighed by other considerations.

11. First, although the Trustee believes he would ultimately prevail on the merits concerning each of his claims, all litigation necessarily entails risk. As with any litigation, and having had an opportunity for Mr. Garton to present his defenses, there is no assurance that the Trustee will prevail. The risk associated with pursuing each of the claims here to a final judgment is not limited to an adverse ruling, but

includes the possibility that the resources required to obtain a favorable ruling would outweigh the recovery. Put another way, even though the Trustee believes he may prevail, prevailing on the merits may not ultimately benefit the Estate in light of the cost. And if the Trustee does not prevail, it may result in an unrecoverable expense to the Estate.

12. The second factor concerns problems collecting the judgment. The Trustee does not believe that collecting a judgment here would be problematic per se, but acknowledges that the judgment obtained may only cover the costs associated with obtaining it. If there were any difficulties collecting the judgment, the costs associated with litigating the claims to judgment and collection might outweigh the amounts collected. This factor is outweighed by the costs associated with pursuing the Trustee's claims in light of the potential recovery.

13. The third and fourth factors concern the expense and complexity of litigation and the best interests of creditors. These factors are dispositive. Only after reviewing Mr. Garton's defenses in light of the documents disclosed in the case was the Trustee able to fully understand the economics of the litigation. In light of that understanding, the Trustee believes that the expense and complexity of the litigation outweigh the other factors in this matter. Even if the Trustee prevails, he will likely recover an amount roughly equal to the costs of obtaining a judgment. Pursuing the Trustee's claims in such circumstances is not warranted and would not serve the interests of creditors. Moreover, any unanticipated difficulty in litigation or collection

would risk the loss of even the break-even recovery the Trustee anticipates he could obtain, potentially harming the Estate. For these reasons, the third and fourth factors weigh heavily in favor of approving the settlement agreement.

14. The Trustee is convinced that this compromise with Mr. Garton is fair and equitable and in the best interests of the Estate, given that in his business judgment, the cost of proceeding is equal to or outweighed by the likely return for the Estate if the Trustee successfully avoids the transfers.

Wherefore, the Trustee and Mr. Garton respectfully request that the Court enter an order approving the Settlement Agreement between them, and for such other and further relief as the Court deems just and proper.

[Signatures on the following page]

Dated this 11th day of August 2022.

Respectfully submitted,

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.


/s/Lance Henry

Patrick D. Vellone, Colorado Bar No. 15284
Rachel A. Sternlieb, Colorado Bar No. 51404
Lance Henry, Colorado Bar No. 50864
1600 Stout Street, Suite 1900
Denver, Colorado 80202
(303) 534-4499
pvellone@allen-vellone.com
rsternlieb@allen-vellone.com
lhenry@allen-vellone.com
Attorneys for Trustee Jeffrey Weinman

and

BUECHLER LAW OFFICE, L.L.C.

/s/David M. Rich

David M. Rich, Colorado Bar No. 15211
999 18th Street, Suite 1230-S
Denver, Colorado 80202
(720) 381-0045
Dave@KJBlawoffice.com
Attorneys for Matthew G. Garton

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Order Granting Stipulated Motion to Approve Settlement

THIS MATTER comes before the Court on the “Stipulated Motion to Approve Settlement between the Trustee and Debtor Matthew G. Garton. The Court having reviewed the Motion and being fully advised in the premises, and noting the lack of objection thereto, hereby,

ORDERS that the Motion is GRANTED; and

FURTHER ORDERS that the Parties are authorized to take all actions necessary to consummate the Settlement Agreement between them resolving Adversary Proceeding No. 21-01215-TBM.

Dated: _____

BY THE COURT:

Hon. Thomas B. McNamara
United States Bankruptcy Judge