Settlement

First Interstate Bank of Or. v. Sherwood Adv. No. 89-3335

In re Latitudes Marine Towing and Salvage Case. No. 388-30337-S7

BAP No. OR-91-1941-MeAsJ

9/3/91 BAP affirming oral ruling of DDS Unpublished

The BAP affirmed Judge Sullivan in approving a compromise between the chapter 7 trustee and the defendant in a lawsuit to recover excessive compensation and fraudulent transfers from Thomas Sherwood. The panel concluded that the bankruptcy judge had not abused his discretion in concluding that the trustee's probability of success was low, and that the litigation would be complex and lengthy.

NOT FOR PUBLICATION

FILED

SEP - 3 1991

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

SEP - 3 1991 Lod 10/3/91

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UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re LATITUDES MARINE TOWING AND SALVAGE, INC., Debtor.	BAP No. OR-91-1041-MeAsJ Bk. No. 388-30337-S7 Adv. No. 89-3335
FIRST INTERSTATE BANK OF OREGON, N.A., Appellant, v. THOMAS A. SHERWOOD, ROBERT K. MORROW, TRUSTEE, UNITED STATES TRUSTEE, Appellees.	**MEMORANDUM**

Argued and Submitted
June 18, 1991 in Portland, Oregon

Filed: SEP - 3 1991

Appeal from the United States Bankruptcy Court
for the District of Oregon

Hon. Donal D. Sullivan, Bankruptcy Judge, Presiding

Before: MEYERS, ASHLAND and JONES, Bankruptcy Judges

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This appeal challenges the settlement of an adversary proceeding filed by the Chapter 7 trustee to recover allegedly excessive compensation and fraudulent transfers made by Latitudes Marine Towing and Salvage, Inc. ("Debtor") to Thomas A. Sherwood ("Sherwood"). We **AFFIRM** the $5,000 settlement.

The bankruptcy court's order approving the trustee's application to compromise the controversy is reviewed for an abuse of discretion. In re A & C Properties, 784 F.2d 1377, 1380 (9th Cir. 1986); In re MGS Marketing, 111 B.R. 264, 266-67 (9th Cir. BAP 1990). The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed. A & C Properties, supra, 784 F.2d at 1381.

In evaluating the proposed compromise, the court must consider: (a) the probability of success in the litigation; (b) any difficulties to be encountered in the matter of collection; (c) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988); A & C Properties, supra, 784 F.2d at 1381; MGS Marketing, supra, 111 B.R. at 267.

The court determined the first factor, probability of success in the litigation, to be low. This determination is evidenced in the record, as the trustee considered the facts that Sherwood was

not related to Debtor's principals and that there would be testimony that Sherwood's employment with Debtor was an arm's length transaction and that his compensation was reasonable. Further, the trustee found that Sherwood's historical compensation was significant and approached the amount the Debtor paid him. An earlier court had found that Sherwood had not been excessively compensated during his prior employment when he earned about $210,000 annually. Moreover, Sherwood had submitted an affidavit attesting to a great amount of complex work he had accomplished for the Debtor.

The second factor, ability to collect a successful judgment, was not mentioned by the court. However, according to the trustee, Sherwood had indicated he was experiencing financial difficulties.

The court did consider the third factor, the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it. It held that the trial of the complaint would be complex and lengthy and would probably keep the estate open for another one to two years. The court determined that the cost of litigation, if unsuccessful, would seriously reduce the estate.

These findings are supported in the record. The trustee also stated that a trial would be an expensive, fact-intensive undertaking. The trustee asserted that he would need three experts and noted that Sherwood had demanded a jury trial.

Finally, the court noted the objection by Appellant. While creditors' objections to a compromise must be afforded due

deference, such objections are not controlling. A & C Properties, supra, 784 F.2d at 1382.

Although a large creditor of the estate is aggrieved with the terms of the settlement, the settlement is fair when compared to the probable outcome of litigation. The litigation's probability of success is not high, collection of a judgment might be difficult and the litigation most likely would be complex, expensive and time-consuming. Therefore the bankruptcy court's order approving the settlement agreement is **AFFIRMED.**