NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:	)	CHAPTER 7
BARBARA J. MILAZZO,	)	CASE NO. 00-33721 (ASD)
DEBTOR.	)	RE: DOC. I.D. NO. 120

RULING AND ORDER ON MOTION TO APPROVE SETTLEMENT

I. INTRODUCTION

The matter before the Court is the Motion For Authority To Compromise Claim of the Estate and For Approval of Settlement Agreement (hereafter, the "Motion"), Doc. I.D. No. 120, through which Ronald I. Chorches, as Chapter 7 Trustee, (hereafter, the "Trustee") seeks authority to settle an adversary proceeding arising in this bankruptcy case for a $20,000.00 cash payment from the Defendants Michael G. Milazzo, and Barbara J. Milazzo, and for approval of a related Settlement Agreement.

CadleRock Joint Venture II, L.P. (hereafter, "Cadle") objects to the Motion and the Agreement, see Objection of CadleRock Joint Venture II, L.P. to Trustee's Motion For Authority To Compromise Claim of the Estate and for Approval of Settlement Agreement (hereafter, the "Objection"), Doc. I.D. No. 125, and Supplemental Objection of CadleRock Joint Venture II, L.P. to Trustee's Motion For Authority To Compromise Claim of the Estate and for Approval of Settlement Agreement (hereafter, the "Supplemental Objection"), Doc. I.D. No. 131 (collectively, the "Objections"), and has submitted to the Trustee its own offer to purchase the claims sought to be compromised which it asserts is "higher and better in every respect than the proposed settlement with the Defendants", Doc. I.D. No. 125, p.3.

As the Trustee has rejected Cadle's offer, Cadle urges the Court to deny the Motion, and compel the Trustee to either accept Cadle's offer, or file a notice of intent to sell the relevant cause of action at a sale subject to opportunity to make higher and better offers pursuant to Section 363(b). A hearing on the Motion and Objections was held on March 31, 2009 (hereafter, the "Hearing") at which the Court heard the testimony of the Trustee, and received documentary evidence. Upon consideration of the testimony and evidence presented at the Hearing, the arguments of counsel, the files and records of this case and proceeding, and for the reasons stated hereafter, the Motion shall be granted and the Agreement approved.

II. BACKGROUND

On August 23, 2000, Barbara J. Milazzo (the "Debtor") initiated the above-captioned bankruptcy case by filing a voluntary petition seeking relief under the provisions of chapter 7 of the Bankruptcy Code. On August 23, 2002, the Trustee filed a Complaint which initiated Adversary Proceeding No. 02-3101 (the "Adversary Proceeding") which sought to avoid certain transfers of real property interests and personal property from the Debtor to her husband, Michael G. Milazzo, as fraudulent transfers under applicable bankruptcy and non-bankruptcy law. On September 23, 2002, this Court entered an Order appointing Edward P. Jurkiewicz, Esq. as special counsel to represent the Trustee in connection with the Adversary Proceeding.

Following the completion of a protracted discovery process, the parties engaged in settlement discussions and reached an agreement for settlement (heretofore and hereafter, the "Agreement") now before the Court for consideration as to approval. The Agreement resolves the Adversary Proceeding for a $20,000.00 cash payment to the

Bankruptcy Estate, together with the filing of a stipulation of voluntary dismissal, with prejudice, of the Adversary Proceeding, the exchange of mutual releases, with no admission of liability or fact by any party.

By letter to the Trustee dated November 12, 2008 (Exhibit 1), Cadle, *inter alia*, offered $22,500.00 for the purchase and assignment of the estate's interest in the relevant avoidance claims, conditioned on the Motion and Agreement being withdrawn, or rejected by the Court. In the letter, Cadle agrees, should its offer be approved, "to remit any and all funds recovered to the Trustee, and represents it will not object to the fees requested by the Trustee's current counsel in the amount of $6,666,67.

It is undisputed that Cadle's offer is "higher" than the proposed settlement by approximately 10% ($20,000 vs $22,500). At the Hearing the Trustee testified that if Cadle's offer was accepted and approved it was "possible" Cadle might recover as much as but no more than $50,000. However, the Trustee qualified that testimony by noting that in light of the amount of the transfers at issue, the various defenses raised, the complexity of the factual issues to be tried, the anticipated expense and duration of the trial, and the competence and aggressiveness defendant's counsel, it was not realistic to believe a significant additional monetary recovery for the estate would occur. Cadle offered no evidence to support a finding that the estate would eventually benefit in a monetary amount greater that the initial $22,500 payment. Simply stated, the Trustee believed and testified it was in the best interest of the estate to resolve the Adversary on the basis of his compromise, ending the matter now, as Cadle's proposal, at most, would enhance the estate's recovery by a small amount, but saddle an already prolonged case and proceeding with further and significant delay.

III. DISCUSSION

The standards for approval of settlements in bankruptcy cases are well established. In Protective Committee for Independent Stockholders of TNT Trailer Ferry v. Anderson, 290 U.S. 414 (1968), *reh'g denied*, 391 U.S. 909 (1968), the United States Supreme Court held that the trial court must make an informed, independent judgment as to whether a settlement is fair and equitable, and explained as follows:

> There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all the factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Anderson, 309 U.S. at 424 (citations omitted).

A court's function, with respect to motions to compromise, is not to determine the ultimate merits of the underlying matter, but rather to "canvass" the issues to determine whether, given all the circumstances of the case, the compromise is within a range of reasonable settlements. Having been apprised of the facts necessary and relevant to this compromise, there is no doubt in the Court's mind that the proposed settlement is well within the range of reasonable settlements of matters of this nature. Here, no substantial benefit will be gained from the Trustee continuing the litigation. The creditors of this estate will realize an *immediate* and tangible benefit through the settlement, and their paramount interests will thus be best served. See In re Drexel Burnham Lambert Group, 134 B.R. 493, 497 (Bankr. S.D.N.Y. 1991)

The Court now turns to the focus of the Objections – the relative merits of the Trustee's proposed settlement vis-a-vis Cadle's offer. The Trustee proffers, and the Hearing record reflects, compelling and sound reasons for accepting the proposed settlement, as opposed to Cadle's offer, as being in the best interests of this estate. Regarding Cadle's offer, it appears to the Court that it is unlikely to benefit the estate beyond the initial 10% enhancement – it offers no realistic prospect for further enhancement. No substantial additional benefit to the estate is to be gained from continuing the litigation prosecuted by Cadle. Moreover, Cadle's offer is attended by further and substantial delay in a case already so infected. The settlement recognizes that the low potential for a more favorable result through continued litigation via the Cadle offer, with attendant and further delay, is not justified. The avoidance of unjustified and unnecessary litigation lies at the heart of "the Congressional infusion of a power to compromise" In Re Carla Leather, Inc., 44 B.R. 457, 470 (Bankr. S.D.N.Y. 1984), *citing*, Florida Trailer and Equipment Co. v. Deal, 284 F.2d 567, 571 (5th Cir. 1960). See also In Re Purofied Down Products Corp., 150 B.R. 519, 522-23 (S.D.N.Y. 1993).

The Court also notes that the Trustee and his counsel, both experienced and capable attorneys, carefully considered and balanced the merits of settlement versus Cadle's offer, and have concluded that the settlement is not only fundamentally fair and equitable, but preferable to Cadle's offer, in light of the totality of the circumstances.

In addition, for all of these same reasons, and against the background of the Trustee's proposed settlement, Cadle's offer cannot be deemed "necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings," a requisite for approval of Cadle's proposed claim purchase. In re Boyer, 354 B.R. 14, 35 (Bankr. D.Conn. 2006).

See also In re Housecraft Industries USA, Inc, 310 F.3d 64 (2d Cir. 2002).

IV. ORDER

For the reasons stated above,

IT IS HEREBY ORDERED that the Motion is **GRANTED**, the Settlement Proposed by the Trustee – the Agreement – is **APPROVED,** and the Objections are **OVERRULED**

Dated: March 31, 2009 BY THE COURT

Albert S. Dabrowski
Chief United States Bankruptcy Judge