UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	CASE No.	19-20400 (JJT)
DONNA J. BARNES, DEBTOR.	CHAPTER	11
DONNA J. BARNES, PLAINTIFF V. JAMES R. BARNES, UBS BANK, USA, SHEM CREEK HAYSTACK, LLC, RTM CAPITAL PARTNERS, INC., LPV-15, HERMITAGE, LLC, MATTHEW CURTIS, DANIEL SOLAZ, REINHART FOODSERVICE, LLC, MARK BRETT, LH VT HOUSE, LLC, DEFENDANTS	ADV. PROC. No.	19-02025 (JJT)
	RE: ECF Nos.	195[1]
	BR-ECF Nos.	283, 309, 310, 312

ORDER GRANTING MOTION FOR APPROVAL OF COMPROMISE

I. INTRODUCTION

This matter came before the Court on Donna J. Barnes' (the "Debtor") Motion for Approval of Compromise (ECF No. 195, BR-ECF No. 283, the "Motion"), in which the Debtor seeks, under Rule 9019 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 363(j), a Court Order approving a settlement (the "Settlement") entered into by and among the Debtor and defendants RTM Capital Partners, Inc. ("RTM"), LPV-15, Hermitage, LLC ("LPV"), and

[1] Citations to the docket of this Adversary Proceeding are noted by "ECF No." Citations to the docket in Case No. 19–20400 are noted by "BR-ECF No."

Matthew Curtis ("Curtis") (collectively, the "RTM Parties"). The Settlement aims to resolve a final issue in this case regarding the distribution of the remaining net proceeds of a Court-ordered sale (the "Sale") of certain real property.

Defendant Reinhart Foodservice, LLC ("Reinhart") objected to the Motion (BR-ECF No. 309, the "Objection"), arguing that the Settlement "will unjustly impair Reinhart's rights and claims in this case." Objection at p. 2. The Objection labels the Settlement as "contrived" and claims that the Debtor and the RTM Parties are "cooperating" so as to "paper over the RTM Parties' waiver of any right to half of the net proceeds" and to "avoid pending disputes and arguments raised by Reinhart . . . that Donna Barnes legally and voluntarily surrendered her tenancy by the entireties protections under controlling Rhode Island law." *Id.* at p. 1.

The RTM Parties responded to Reinhart's Objection (BR-ECF No. 310), arguing that, based on the amount of net proceeds from the Sale and the order of priority of all lienors on the Property (specifically, Reinhart's priority position in relation to the RTM Parties and other defendants), that under *any* circumstance, Reinhart is simply "out of the money" and "no longer holds a financial stake in [these proceedings]." *See* BR-ECF No. 30.

The Court held a hearing on the Motion and Reinhart's Objection, whereat counsel for the Debtor, the RTM Parties, and Reinhart advanced their respective arguments. After all parties were fully heard, the Court took the matter under advisement. For the reasons provided herein, the Debtor's Motion is GRANTED and Reinhart's Objection is OVERRULED.

II. JURISDICTION

The United States District Court for the District of Connecticut has jurisdiction over the instant proceedings under 28 U.S.C. § 1334(b), and the Bankruptcy Court derives its authority to hear and determine this matter on reference from the District Court under 28 U.S.C. §§ 157(a)

and (b)(1) and the General Order of Reference of the United States District Court for the District of Connecticut dated September 21, 1984. This Adversary Proceeding constitutes a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O).

III. BACKGROUND

On March 14, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As of the Petition Date, the Debtor and her non-debtor spouse, James R. Barnes ("Mr. Barnes"), were co-owners as tenants by the entirety of certain residential real estate located in Watch Hill, Rhode Island (the "Property"). The Debtor's Schedules disclosed her interest in the Property, *see* BR-ECF No. 17, and under the Debtor's plan of reorganization (BR-ECF No. 128, the "Plan"), the Debtor sought to sell the Property and utilize her share of the sale proceeds to satisfy all allowed claims.

To effectuate the Plan, the Debtor filed a complaint (ECF No. 8, the "Complaint"), seeking the Court's approval for the sale of both the Debtor's interest in the Property and the interest of Mr. Barnes, free and clear of any and all liens, claims or interests pursuant to 11 U.S.C. § 363. The Complaint named as defendants Mr. Barnes and all lienholders on the Property—including the first and second mortgagees holding joint claims against the Debtor and Mr. Barnes, and other lienholders, including the RTM Parties and Reinhart, whose liens encumbered only the interest of Mr. Barnes.

The Property was encumbered by several liens, listed in the following order of recording or priority:

1. The statutory property tax liens of the Town of Westerly and Watch Hill Fire District[2];

[2] As the Debtor noted in the instant Motion, "[t]he property tax lien of the Town of Westerly arises statutorily under R.I. Gen. Laws §§ 44-9-1 and, with exceptions not relevant here, is 'superior to any other lien, encumbrance, or interest in the real estate whether by way of mortgage . . . or otherwise.' The same is true of the lien of the Watch

2. A mortgage lien on the joint interests of the Debtor and Mr. Barnes held by UBS Bank, USA ("UBS"), in the asserted amount of $2,018,585.34 (Claim #3);

3. A mortgage lien on the joint interests of the Debtor and Mr. Barnes held by Shem Creek Haystack, LLC ("Shem Creek"), in the asserted amount of $4,300,332.68 (Claim #7);

4. A judicial lien solely against the interest of Mr. Barnes held by the RTM Parties, in the asserted amount of $6,285,173.17 (Amended Schedule D, 2.6);

5. A judicial lien solely against the interest of Mr. Barnes held by Dan Solaz, in the asserted amount of $320,917.16 (Amended Schedule D, 2.1);

6. A judicial lien solely against the interest of Mr. Barnes held by Reinhart, in the asserted amount of $1,523,229.11 (Claim #12);

7. A judicial lien solely against the interest of Mr. Barnes held by Mark Brett, in the asserted amount of $350,000.00 (Amended Schedule D, 2.3);

8. A judicial lien solely against the interest of Mr. Barnes held by LH VT House, LLC ("LH"), in the asserted amount of $1,182,639.80 (ECF No. 8).

Prior to the trial on the Complaint, Reinhart filed a Motion to Dismiss, challenging the Debtor's ability, as well as the Court's authority, to sell the Property free and clear of its lien, wherein it argued that because the Debtor and Mr. Barnes held the Property as tenants by the entirety, each owner took a 100% undivided interest in the estate, and thus, the claims of Reinhart and other lienors with claims solely against Mr. Barnes would attach to Mr. Barnes' alleged 100% interest of the Property, thereby preventing the Debtor from realizing any proceeds of the Property unless Reinhart's lien is satisfied (ECF No. 17, "Motion to Dismiss").[3] Following extensive argument at the hearing on Reinhart and LH's Motions to Dismiss, the Court issued a ruling denying the motions (*see* ECF No. 36). Regarding the arguments as to the nature, validity,

Hill Fire District (in the asserted amount of $6,077.21 (Claim #6)). *See* R.I. Gen. Laws § 44-9-3." The Motion, footnote 2.

[3] Defendant LH also filed a Motion to Dismiss, raising similar arguments as to the propriety of a sale of the Property free and clear of its lien (ECF No. 18).

extent, priority, and enforceability of the liens that would attach to Mr. Barnes' interest on the Property, the Court's ruling concluded that those issues were not yet ripe.

The parties proceeded to a trial on the Complaint and judgment ultimately entered in favor of the Debtor, with the Court approving a sale of the Property free and clear of any and all liens, claims and interests in the amount of $10,403,000 to the highest bidder at the Court approved auction (ECF Nos. 180, 181). With respect to the liens on the Property, the Court's Decision specified that "[u]nless the Lien holders have agreed to other treatment, any party holding a right, lien, claim, interest or encumbrance on the Property is granted a replacement right, lien, claim or interest in the sale deposit and the Closing proceeds to the extent, priority and validity to be determined by a subsequent order of this Court, with all parties reserving their rights until such a determination." ECF No. 180, ¶ 26.

In accordance with the Court's Judgment, *see* ECF No. 181, the Debtor paid from the gross sale proceeds the first mortgage held by UBS, the second mortgage held by Shem Creek, and the statutory tax liens on the Property. From the remaining proceeds, an additional $180,250.00 has since been paid to the auctioneer involved in the Sale (*see* BR-ECF No. 304), with other outstanding administrative claims still to be paid, including $25,000.00 earmarked for the Debtor's professionals as part of the Court approved settlement between the Debtor and Shem Creek (*see* BR-ECF No. 274). The remaining net proceeds of the Sale are currently being held by the Debtor's counsel in an interest-bearing account in the amount of approximately $3,200,000.

From these remaining net proceeds, the Settlement proposes to distribute approximately 50%, or $1,593,033.67, to the RTM Parties for their lien rights against the interests of Mr. Barnes. Given the ultimate sale price of the Property, the significant disbursements made from

the gross sale proceeds, and the priority position of the lienors yet to be paid, both the Debtor and the RTM Parties contend that the only lienor who holds a stake in the distribution of the remaining net proceeds, and who may thereby claim an entitlement to the proceeds, is the RTM Parties. Where the RTM Parties' lien is now first in line to be paid after payment of the statutory liens and joint mortgage obligations, and where the amount owed to the RTM Parties ($6,285,173.17) far exceeds the amount of the remaining net proceeds, the Debtor and the RTM Parties contend that Reinhart simply has no remaining possibility for recovery whether or not Mr. Barnes' secured creditors are paid in full before the Debtor receives any proceeds, and therefore, the Court need not decide the tenancy by entirety arguments in order to approve the Settlement.

On the other hand, Reinhart argues that the Settlement will unjustly impair its rights and claims in this case. In support of this argument, Reinhart relies, as it has since filing its Motion to Dismiss, on the notion that because the Debtor and Mr. Barnes held the Property as tenants by the entirety, each owner took a 100% undivided interest in the estate and as such, Reinhart's claim solely against Mr. Barnes attached to his 100% interest in the Property. Notwithstanding the factual reality that there is simply not one imaginable situation—given the ultimate Sale price, the disbursements already made, and Reinhart's priority position—under which Reinhart stands to recover any remaining net proceeds, it nonetheless seeks to frustrate what is an otherwise reasonable compromise between the Debtor and the RTM Parties.

The Court finds that, at this juncture, a determination as to Reinhart's tenancy by the entirety argument as to the nature, validity, extent, priority, and enforceability of the liens that would attach to Mr. Barnes' interest on the Property is not necessary in order to rule on the instant Motion and to approve the Settlement. The Court further finds that, based on the factual

realities of this case, Reinhart lacks standing to object to the Settlement, and that the Settlement between the Debtor and the RTM Parties is nonetheless within the range of reasonableness and is fair, equitable, and in the best interests of the estate and creditors. Accordingly, the Motion for Approval of Compromise is hereby GRANTED and Reinhart's Objection is hereby OVERRULED.

IV. DISCUSSION

1. Reinhart Lacks Standing to Oppose the Settlement

At the outset, the Court must consider whether Reinhart has standing to object to the Debtor's Motion and the Settlement. "To have standing in bankruptcy court, a party must meet three requirements: (1) Article III's constitutional requirements, (2) federal court prudential standing requirements, and (3) the 'party in interest' requirements under Bankruptcy Code 1109(b)." *In re Old Carco LLC*, 500 B.R. 683, 690 (Bankr. S.D.N.Y. 2013) (citations omitted). Article III standing "imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "To establish Article III standing, a party must show (1) an injury in fact that is actual or imminent rather than conjectural or hypothetical, (2) the injury is fairly traceable to the conduct complained of, and (3) it is likely, as opposed to speculative, that the injury will be redressed by a favorable decision." *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 531 B.R. 439, 449 (Bankr. S.D.N.Y. 2015) (*citing Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

A "theory of standing, which relies on a highly attenuated chain of possibilities," does not satisfy constitutional requirements. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). "If the [objector's] injury is not redressable, that is, if he will not obtain any relief from the

successful prosecution of the claim, he lacks Article III standing." *In re SunEdison, Inc.*, 2019 WL 2572250, at *5 (Bankr. S.D.N.Y. June 21, 2019) (*citing Golden Pac. Bancorp. v. F.D.I.C.*, 375 F.3d 196, 205 (2d Cir. 2004), *cert. denied*,126 S. Ct. 621 (2005)). Here, there is approximately $3.2 million in remaining sale proceeds available for distribution, with the RTM Parties next in line in the order of priority and holding a claim of $6,285,173.17. The Settlement purports to distribute approximately 50% of the remaining proceeds, or $1,593,033.67, to the RTM Parties for their lien rights against the interests of Mr. Barnes. Both the Debtor and the RTM Parties contend, based on the amount of remaining proceeds and Reinhart's priority position, that Reinhart no longer holds a financial stake in the proceeds, and as such, lacks continued standing to object to the Settlement. This Court agrees.

If the Court accepted Reinhart's position that Mr. Barnes' secured creditors are to be paid in full before the Debtor receives any sale proceeds, the RTM Parties and Dan Solaz—both prior in right to Reinhart—must collectively receive over $6.6 million before Reinhart would be entitled to payment. This is a factual impossibility. There is nothing in the record to suggest that, under any circumstance, there are sufficient remaining sale proceeds to satisfy the claims of the RTM Parties and Dan Solaz before any distribution could be made to Reinhart. These facts preclude Reinhart from obtaining any relief should it prevail on its claim, and thus deprive Reinhart of constitutional, Article III standing.

For the sake of argument, even if Reinhart had Article III standing, the Court finds that Reinhart is not a party in interest as required under 11 U.S.C. § 1109(b). Section 1109(b) of the Bankruptcy Code sets forth the standing requirement to be heard in a Chapter 11 proceeding, and provides that, "[a] party in interest, including the debtor, the trustee, a creditor's committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee,

may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). As Reinhart, holding a claim solely against Mr. Barnes, does not fall into any category specified under § 1109(b), it therefore must be deemed a "party in interest" in order to have standing on the instant matter.

While the term "party in interest" is not defined by the Bankruptcy Code, the Second Circuit has recognized that under § 1109(b), "parties in interest typically have a financial stake in the outcome of the litigation. . . ." *In re Teligent Inc.*, 640 F.3d 53, 60 (2d Cir. 2011); *see also* 7 COLLIER ON BANKRUPTCY ¶ 1109.02 (16th Ed. 2020) ("In general, a 'party in interest' under section 1109(b) is any person with a direct financial stake in the outcome of the case . . ."). What's more, "a party in interest in a case may be precluded from participating in a particular matter for lack of standing if the party has no cognizable interest (whether directly or indirectly) in the outcome of the proceeding." *In re MF Global Holdings Ltd.*, 469 B.R. 177, 188 (Bankr. S.D.N.Y. 2012) (citation omitted).

Reinhart contends that it may challenge the Settlement because "[its] lien confers sufficient standing," and because the "Debtor herself conferred standing on Reinhart by naming Reinhart in the Amended Complaint, and the court has preserved Reinhart's claims and interests, and thus its standing, throughout its rulings in this case." Objection, ¶ 6 at 3. While Reinhart has, in fact, qualified as a party in interest at various junctures of this case, standing of an objector must be analyzed by its specific stake in each issue that it raises. *See Matter of Ofty Corp.*, 44 B.R. 479, 481 (Bankr. D. Del. 1984) ("An entity may be [a] real party in interest and have standing in one respect while [it] may lack standing in another respect."). "Whether a party qualifies as a 'party in interest' is determined on a case-by-case basis, taking into consideration whether that party has a 'sufficient stake' in the outcome of that proceeding, which can include

having a pecuniary interest directly affected by the bankruptcy proceeding." *In re Heating Oil Partners, LP*, 422 Fed. Appx. 15, 17 (2d Cir. 2011) (citations omitted).

As discussed, approximately $3.2 million of remaining sale proceeds are available for distribution, with the RTM Parties and Dan Solaz next in line in the order of priority and holding claims totaling an excess of $6,600,000. Even if Reinhart's tenancy by the entirety claims were meritorious, it would recover nothing. This fact is sufficient to convince the Court that Reinhart has no pecuniary interest in the instant proceeding, and therefore, no standing to object to the Debtor's Motion or to the reasonableness of the Settlement.

2. The Settlement is Fair and Equitable

Even if Reinhart had standing to object—which this Court finds it unequivocally does not—the Court nonetheless finds the Settlement to be fair, equitable, in the best interest of the estate, and above the lowest point in the range of reasonableness. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that "[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). A court may only approve a settlement under Rule 9019 if it is fair, equitable and in the best interest of the bankruptcy estate. *In re Dewey & LeBoeuf LLP,* 478 B.R. 627, 640 (Bankr. S.D.N.Y. 2012). Rather than "conduct[ing] a 'mini trial,'" the Court only needs to "be apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement." *In re Adelphia Commc'ns Corp.*, 327 B.R. 143, 159 (Bankr. S.D.N.Y. 2005) (citation omitted). Ultimately, "[a] decision to either accept or reject a compromise and settlement is within the sound discretion of the Court. . . ." *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991) (citation omitted).

It is also well-settled in this Circuit that "[i]n undertaking an examination of the settlement . . . th[e] responsibility of the bankruptcy judge . . . is not to decide the numerous questions of law and fact raised by [the objector] but rather to canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re W.T. Grant Co.,* 699 F.2d 599, 608 (2d Cir. 1983) (citation and internal quotation marks omitted). While a court "may consider a creditor's objection to the proposed compromise, the objection is not controlling, and will not bar approval when a review of the settlement shows it does not 'fall below the lowest point in the range of reasonableness.'" *In re Drexel Burnham Lambert Group, Inc., supra,* 134 B.R. at 506 (*quoting In re W.T. Grant Co., supra,* 699 F.2d at 608).

When considering whether to approve a proposed settlement,

> courts in this Circuit have set forth factors . . . based on the original framework announced [by the Supreme Court] in *TMT Trailer Ferry.*[4] Those interrelated factors are: (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay . . . ; (3) the paramount interests of the creditors . . . ; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting . . . the settlement; (6) [any] releases to be obtained by officers and directors; and (7) the extent to which the settlement is the product of arm's length bargaining.

In re Iridium Operating LLC, 478 F.3d 452, 462 (2d Cir. 2007) (citations and internal quotation marks omitted; footnote added) (hereafter, the "*Iridium* Factors").

The Debtor has met her burden of showing that the Settlement is fair, equitable, and in the bests interest of the estate, and the Court finds that an examination of the *Iridium* Factors favors the approval of the Settlement. Absent the Settlement, the Debtor and other parties, including Reinhart, will continue to be involved in time consuming, costly, protracted litigation

[4] *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968).

over an area of law that is, quite frankly, unsettled. The outcome of further litigation is uncertain to all parties involved based on the complex and novel legal issues raised, and the increased administrative costs associated with further litigation all but assures a diminished return to creditors. The sale proceeds currently available to those parties who actually have a stake in their distribution will undoubtedly be siphoned away while a party without a fathomable chance of recovery seeks, as the Debtor and the RTM Parties have stated, what is ostensibly an advisory opinion from this Court. The Settlement is unopposed by every party in this case other than Reinhart, a non-creditor of the Debtor who lacks standing, a chance of recovery, and a pecuniary interest in the instant matter.[5] The Settlement was negotiated by competent, experienced, and sophisticated counsel and was achieved after months of extensive arguments regarding the distribution of the sale proceeds.[6]

Recognizing the uncertainties of law in this case and the associated costs and risks inherent in additional litigation, the Court is convinced that the Settlement will preserve the value of the Debtor's bankruptcy estate, maximize the return to the Debtor's creditors, and provide the Debtor the opportunity to successfully and expeditiously exit bankruptcy. Having considered the relevant *Iridium* Factors, the Court finds that the Settlement falls within the range of reasonableness and is fair and equitable. Accordingly,

BASED ON THE FOREGOING, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Settlement between the Debtor and the RTM Parties is APPROVED;

2. The Debtor's Motion is GRANTED;

[5] While the Court finds that Reinhart lacks standing to object to the Settlement, its Objection was nonetheless considered.

[6] The reasonableness of the Settlement is further supported by the Rhode Island Bankruptcy Court's ruling in *In re Gibbons*, wherein Judge Votolato stated that, "[i]n the event of such a sale [of a tenancy by the entirety property under section 363] by the trustee, one-half of the proceeds goes to the non-debtor spouse, and the other half remains in the estate for distribution to creditors, subject to the debtor's exemptions allowed by federal or state law." *In re Gibbons*, 52 B.R. 861, 864 (Bankr. D. R.I. 1985).

3. Reinhart's Objection is OVERRULED;

4. Upon entry of this Order, Debtor's counsel shall disburse, from the remaining Sale proceeds, $1,593,033.67 to counsel to the RTM Parties.

IT IS SO ORDERED at Hartford, Connecticut this 24th day of August 2020.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut