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May 9, 2012

VIA ECF & E-MAIL TO CHAMBERS
Honorable Rosemary H. Gambardella, U.S.B.J.
United States Bankruptcy Court
P.O. Box 1352
50 Walnut Street, 3rd Floor
Newark, New Jersey 07102-1352

Re: In re Farida Hadad
Chapter 7; Case No. 11-29988 (RG)
Proposed Settlement of Controversy
Adjourned Hearing Date: May 21, 2012 @ 11:00 a.m.

Dear Judge Gambardella:

My firm represents the Debtor. Pursuant to the April 25, 2012 Scheduling Order, please accept the Declaration of Farida Hadad and this letter memorandum in response to the objections filed by Atta Hadad and David Perlman.

As a preliminary matter, during the last hearing I distinctly recall Your Honor instructing Mr. Perlman to retain an attorney because he was appearing on behalf of his corporate entity (Evan Alan, Inc.) which is the holder of the judgment against the Debtor. In fact, Schedule F of the Debtor's petition identifies Evan Alan, Inc. as the holder of a $62,963.27 judgment. Because corporate entities can only enter appearances in federal court through a licensed attorney of record, the Court should completely disregard Mr. Perlman's objection. There is simply no excuse for a seemingly sophisticated businessman like Mr. Perlman to have deliberately ignored Your Honor's directive.

For the sake of brevity, I will not repeat the statements set forth in Ms. Hadad's Declaration. Instead, for the Court's benefit I will simply highlight some significant points of fact and law as relating to both objections.

A. ATTA HADAD'S OBJECTIONS ARE IRRELEVANT, AND OTHERWISE RAISE ISSUES OF EQUITABLE DISTRIBUTION WHICH CAN AND SHOULD BE RESOLVED IN THE PARTIES' PENDING MATRIMONIAL ACTION IN THE SUPERIOR COURT OF NEW JERSEY

Beginning with Atta Hadad's objection, none of his allegations bear any relevance to the central issue before this Court: whether the Trustee's business judgment to accept $15,000 to settle any and all claims of the bankruptcy estate against the Debtor's stock ownership in a hair salon in Ridgewood should be rejected? In fact, Mr. Hadad, the Debtor's estranged husband, incessantly rambles about equitable distribution issues which ultimately will be resolved in the matrimonial case between them pending in the Superior Court of New Jersey, Family Division, Bergen County, Docket No.: FM-02-112-11-F (the "Matrimonial Action"). Mr. Hadad, himself a partial owner of the stock in the hair salon, is free to advance whatever positions he deems appropriate in the matrimonial case. In fact, one must question why Mr. Atta would want to challenge the Chapter 7 Trustee under these circumstances given that Mr. Atta is a partial stockholder in the business?

B. THE COURT SHOULD REJECT THE UNSWORN PRO SE OBJECTION FILED BY DAVID PERLMAN ON BEHALF OF HIS CORPORATION

Next, turning our attention to Mr. Perlman's objection which he neglected to serve me with, Mr. Perlman and his corporation's lawyer appeared at the creditors' meeting scheduled and conducted on August 5, 2012. I have listened to a recording of the creditors' meeting conducted by the Chapter 7 Trustee. Without belaboring the point, Mr. Perlman's attorney was given ample opportunity to ask the Debtor a series of questions about her assets and liabilities. Even Mr. Perlman himself made a comment at the meeting which was picked up on the recording. No further word was heard from either of them in this case until Mr. Perlman showed up in Court on April 17th to raise a verbal objection to the proposed settlement.

Even if the Court were to forgive the inappropriateness of Mr. Perlman's *pro se* appearance and filing made on behalf of his corporation, his "letter" objection fails to meet the most basic evidentiary requirements. Bankruptcy Rule 9017 makes the Federal Rules of Evidence and Rule 43 of the Federal Rules of Civil Procedure applicable in bankruptcy cases. Under Rule 43, a motion may rely on an affidavit for factual support. Fed. R. Civ. P. 43(c). Affidavits, being substitutes for live testimony, may thus contain only admissible evidence from a competent witness with personal knowledge. See, e.g., Fed. R. Civ. P. 56(c)(4) ("An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated."); Fed R. Evid. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.").

By statute, a witness may make an unsworn declaration under penalty of perjury as a substitute for making an oath before a notary or other official. 28 U.S.C. § 1746. The declaration may take the form of a certification, verification or statement, but it must be subscribed in substantially the following form, "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct." Id.

A cursory review of Mr. Perlman's letter objection reveals his non-compliance with the above evidentiary requirements. His letter does not set forth that his statements are based on personal knowledge, nor does it contain the required language to be considered an "unsworn declaration under penalty of perjury" pursuant to 28 U.S.C. § 1746.

Going one step further, assuming the Court was to forgive Mr. Perlman for a second time by considering his unsworn objection on its merits, he recites allegations of fraud which on the surface support a cause of action to object to the Debtor's discharge and/or to object to the discharge of his company's debt. Yet, despite Mr. Perlman receiving actual notice of the October 4, 2011 deadline in which to file such objections he elected not to do so. Having chosen to ignore that deadline, Mr. Perlman waived his rights to assert fraud and thus cannot be heard to complain about it almost 7 months later. Whatever claims Mr. Perlman's corporation could have asserted vis-à-vis its pre-petition judgment were discharged on November 4, 2011 – the date this Court entered an order of discharge. (Docket entry #25).

I must also point out that Mr. Perlman's company did not file a proof of claim in response to the Trustee's Notice of Assets filed on August 14, 2011 which established a proof of claim filing deadline of November 14, 2011. According to the claims register, only two (2) creditors filed proofs of claim; namely, American Express in the amount of $7,975.22, and Capital Retail Bank in the amount of $538.69. Thus, the total claims on file are $8,513.91. At the initial hearing held on April 17, 2012, the Trustee's counsel mentioned the nominal amount of claims on file as factoring into his decision to accept $15,000 from the Debtor in exchange for releasing the estate's claims against her stock. Allowing for the Trustee's statutory commissions and a reasonable attorneys' fee, the $15,000 settlement should be sufficient to provide a 100% distribution to those creditors who timely filed a proof of claim.

C. NEITHER MR. HADAD NOR MR. PERLMAN OBJECTED TO THE DEBTOR'S CLAIMED EXEMPTION IN HER STOCK IN THE HAIR SALON

In addition, it must be emphasized that neither Mr. Hadad nor Mr. Perlman or his corporation ever objected to the Debtor's claimed exemption of her stock interest in the hair salon. On Schedule C of her bankruptcy petition, the Debtor stated that she and her estranged spouse together own 55% of the company which operates as a small business hair salon. Pursuant to Fed. R. Bankr. P. 4003(b)(1), Messrs. Hadad and Perlman had 30 days from the date of the creditors' meeting to file an objection to the Debtor's claimed exemption in the stock. Neither of them did, however.

D. SUMMARY OF BUSINESS JUDGMENT RULE AS IT APPLIES TO CHAPTER 7 TRUSTEES, SETTLEMENTS AND COMPROMISES

Lastly, for the Court's benefit I am including a brief summary of the business judgment test that applies to bankruptcy trustees. I did raise this issue at the initial hearing held on April 17, 2012. I now wish to expand upon this point because I believe it governs the Court's analysis.

A bankruptcy trustee has a fiduciary relationship with all creditors of the bankruptcy estate. In re Martin, 91 F.3d 389, 394 (3rd Cir. 1996)(citing 11 U.S.C. § 704(1)(other internal citations omitted)).

> Indeed, under the Code a trustee must investigate all sources of income for the estate and "collect and reduce to money the property of the estate." 11 U.S.C. § 704(1). She has the duty to maximize the value of the estate, *Weintraub,* 471 U.S. at 353, 105 S.Ct. at 1993, and in so doing is "bound to be vigilant and attentive in advancing [the estate's] interests."

Martin, 91 F.3d at 394.

Bankruptcy trustees are cloaked with the protection of the "business judgment" rule regarding decisions they make in carrying out their fiduciary duties. "The purpose of the business judgment rule is to protect corporate directors from personal liability that would result from second-guessing undertaken by courts with the benefit of 20/20 hindsight and to promote the free exercise of managerial power." In re Classica Group, Slip Copy, 2006 WL 2818820 (Bankr. D.N.J. 2006)(internal citations omitted). Bankruptcy courts routinely apply the business judgment test to evaluate bankruptcy trustee's administration of assets. See e.g. Matter of Taylor, 103 B.R. 511 (D.N.J. 1989)(Remarking that the only test to employed to aid judicial review of a trustee's decision to reject an executory contract is the business judgment test); In re Eastwind Group, Inc., 303 B.R. 743, 750 (Bankr. E.D.Pa. 2004)(In evaluating whether to approve or reject a settlement proffered by a bankruptcy trustee, the court should avoid second-guessing the bankruptcy trustee's exercise of business judgment); In re Federal Mogul Global, Inc. , 293 B.R. 124 (D.Del. 2003); In re Interpictures, Inc., 168 B.R. 526, 535 (Bankr. E.D.N.Y. 1994)(Courts defer to trustee's judgment and place the burden on the party opposing abandonment of property to prove a benefit to the estate and an abuse of the trustee's discretion).

The business judgment test is encompassed within Fed. R. Bankr. P. 9019 governing compromises and settlements. "[T]he decision whether to approve a compromise under Rule 9019 is committed to the sound discretion of the court. . . ." In re Louise's, Inc., 211 B.R. 798, 801 (D.Del. 1997); see In re Marvel Entertainment Group, Inc., 222 B.R. 243 (D.Del. 1998). In passing on a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the Trustee." Depo v. Chase Lincoln First Bank, N.A., 77 B.R. 381, 384 (N.D.N.Y. 1987). Instead, the bankruptcy court is to "canvass the issues to see whether the settlement fall[s] below the lowest point in the range of reasonableness." Cosoff v. Rodman (In re W.T. Grant Co., 699 F.2d 599, 608 (2nd Cir. 1983), cert. denied, 464 U.S. 822 (1983).

Settlements and compromises should be approved where it is shown that they are "fair and equitable." Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 88 S.Ct. 1157, 1163 (1968); In re Mavrode, 205 B.R. 716, 721 (Bankr. D.N.J. 1997). In determining whether a settlement is fair and equitable, the Court should consider "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) t he complexity of

the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of creditors." Martin, 91 F.3d at 393. Each of these factors is met here.

Accordingly, for all of these reasons and authorities cited the Court should approve the Settlement Agreement between the Trustee and the Debtor. Thank you for Your Honor's assistance in this matter.

Respectfully,

/s/Glenn R. Reiser
Glenn R. Reiser

Cc: Joseph Newman, Esq., Attorney for Chapter 7 Trustee
Farida Hadad (Via E-Mail)
Atta Hadad
David Perlman