

1 **NOT FOR PUBLICATION**

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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 In re) Case No. 04-00769-B11
12 NORTH PLAZA, LLC,)
13 Debtor.)
14)

15 This matter came on for evidentiary hearing on the debtor's
16 motion to approve a settlement debtor reached with two creditors
17 who asserted the first and second secured positions on the
18 debtor's real property. Those creditors are Dynamic Finance
19 Corporation and Angela C. Sabella, respectively. Angela Sabella
20 is president of Dynamic Finance, as well as its parent, Dynamic
21 Holdings, and of its affiliates.

22 The debtor is a limited liability company which owned a
23 piece of land in Temecula, California, which was over 40 acres in
24 size. The debtor's manager is William Johnson, who holds his
25 interest in the debtor through his and his wife's wholly owned

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1 company, Shining city, Inc. Shining City holds 55% of the
2 debtor.

3 This case was commenced as an involuntary bankruptcy, and
4 the filing was not contested. The avowed purpose was to prevent
5 the foreclosure on the land for the benefit of the petitioning
6 secured creditor. The land was subsequently sold, yielding net
7 proceeds in excess of \$17 million. Subsequently, debtor brought
8 a motion to settle with four levels of secured creditors, which
9 was opposed. By written order, the court determined there were
10 several issues which required an evidentiary hearing. Discovery
11 was undertaken, and the hearing has been held.

12 The Court has subject matter jurisdiction over the
13 proceeding pursuant to 28 U.S.C. § 1334 and General Order No.
14 312-D of the United States District Court for the Southern
15 District of California. This is a core proceeding under 28
16 U.S.C. 157(b)(2)(B), (O).

17 The standard for assessing whether to approve a settlement
18 agreement was set in a case called In re A & C Properties, 784
19 F.2d 1377 (9th Cir. 1986). There, the court wrote:

20 It is clear that there must be more than
21 a mere good faith negotiation of a settlement
22 by the trustee in order for the bankruptcy
23 court to affirm a compromise agreement. The
24 court must also find that the compromise is
25 fair and equitable [Citation omitted.]

26 In determining the fairness,
reasonableness and adequacy of a proposed
settlement agreement, the court must
consider:

(a) The probability of success in the

1 litigation; (b) the difficulties, if
2 any, to be encountered in the matter of
3 collection; (c) the complexity of the
4 litigation involved, and the expense,
5 inconvenience and delay necessarily
6 attending it; (d) the paramount interest
7 of the creditors and a proper deference
8 to their reasonable views in the
9 premises.

6 [Citation omitted.] . . .

7 The trustee, as the party proposing the
8 compromise, has the burden of persuading the
9 bankruptcy court that the compromise is fair
and equitable and should be approved.

10 In In re JMS Automotive Rebuilders, Inc., 2002 WL 32817517
11 (C.D. CA. 202), the court elaborated on each of the elements of
12 the A & C Properties test. In explaining "the probability of
13 success" prong, the court wrote:

14 [T]he court must ascertain whether the
15 bankruptcy estate would be likely to succeed
16 on the merits of the subject controversy.
17 [Citation omitted.] The court is responsible
18 for determining the estate's litigation risk,
19 and then determining whether the amount
20 tendered in settlement is commensurate to
21 that litigation risk. Id. However, the
22 court's ultimate obligation is to "canvass"
the above-mentioned issues and see whether
the settlement falls below the lowest point
in the range of reasonableness. [Citation
omitted.] The court should not conduct a
minitrial as to the merits of the compromised
claims and defenses absent a showing of
necessity.

23 Turning to another prong of the test, the court stated:

24 For purposes of determining the
25 complexity of litigation, the court is
26 required to determine whether pursuing the
controversy on its merits would produce a
sufficient net benefit to the estate.

1 [Citation omitted.] Items to consider in
2 determining the complexity of the case are:
3 (1) likely burden on the trial court and the
4 parties; (2) likely amount of administrative
5 - expense claims; (3) and other factors which
6 would reduce the real value of any collected
7 judgment in comparison to the in-hand present
8 value of the settlement.

6 Background

7 There are at least seven trust deeds securing creditors'
8 interests against the net sale proceeds from the real estate.
9 They are Dynamic's claim number 16, Ms. Sabella's claim number
10 14, the Suprunuks claim, the Clifford Douglas claim, and the
11 claim of the Brees and South Temecula Gateway (STG). In
12 addition, there is Dynamic's claim number 15. In the original
13 settlement motion, the debtor sought to compromise all the above
14 claims except that of the Brees and STG, who objected.
15 Following the court's order on the first motion, a second
16 settlement motion was filed, addressing only Dynamic's claim 16
17 and Sabella's claim 14. That is the motion which was the subject
18 of the evidentiary hearing.

19 The gist of the settlement is that Dynamic has agreed to
20 settle for about \$1.3 million less than the full face amount of
21 its claim. The debtor is candid in pointing out that
22 approximately \$800,000 of that \$1.3 million is default-rate
23 interest, which could be avoided in a confirmed plan. The
24 Dynamic claim, including default interest, exceeds \$15 million.
25 In compromise, Dynamic would agree to a first priority secured
26 claim of \$14,297,500, plus interest at 10% on the unpaid

1 principal balance of \$3,797,500 (the court previously allowed a
2 paydown of \$10.5 million to slow the interest added to the debt).

3 The Sabella claim is asserted to be in excess of \$1.7
4 million. She would agree to a second priority secured claim in
5 the amount of \$1,315,000 plus 10% interest on that amount after
6 February 1, 2006.

7 The net sale proceeds from the real property were
8 \$17,659,100.31. Debtor's Schedule D listed total secured claims
9 against the property as \$21,400,000, only \$2,000,000 of which was
10 disputed (that is the claim of the Brees, objecting parties
11 here). Not listed was what has become known as Dynamic's claim
12 15. So, not all undisputed secured creditors would get paid in
13 full if the debtor's schedules are accurate, unless the senior
14 secured creditors are willing to leave something on the table for
15 them.

16 When the first settlement motion was filed, the debtor
17 calculated that the settlement agreements reached with Dynamic,
18 Sabella, the Suprunuks, and Clifford Douglas would leave
19 \$1,027,581 to pay junior secured creditors (not including the
20 Brees) and unsecured creditors. That number has since been
21 eroded by intervening interest and attorney fee accruals, as
22 reflected by the revised settlement figures. Under the current
23 proposal, Dynamic's unpaid principal balance increased almost
24 \$700,000, from \$3,100,000 to \$3,797,500, presumably for nine
25 months of interest on the unpaid balance, plus attorneys fees.
26 The proposed unpaid compromised balance on the Sabella loan

1 increased from \$1,200,000 to \$1,315,000 over the same nine
2 months. A ballpark subtraction of those amounts from the
3 remaining net proceeds would leave approximately \$2,000,000 to
4 address the scheduled \$2,000,000 claim of the Brees (to which the
5 debtor has objected), the \$1,200,000 claim of Clifford Douglas,
6 the \$2,000,000 claim of the Suprunuks, and \$300,000 of junior
7 secured claims, as well as \$467,000 of scheduled unsecured
8 creditors. Ahead of them are the administrative claims of the
9 debtor's bankruptcy professionals.

10 Very much related to the question of what will be gained for
11 creditors is the question of why the debtor would agree to this
12 compromise, and why Dynamic and Sabella would agree to compromise
13 their claims in favor of junior secured and unsecured creditors.
14 Are the probability of success and litigation risk the only
15 factors, or at least the predominant ones? The objecting parties
16 argue they are not.

17 As noted, the manager of the debtor is William Johnson.
18 Mr. Johnson has had multiple business dealings with Dr. Chambers,
19 the Suprunuks, Dynamic Finance, Angela Sabella, and Isaac Lei.
20 He testified he or entities he is involved with have borrowed
21 "tens of millions of dollars" from Dynamic over a period of
22 years. He also testified he and his wife have millions of
23 dollars of personal guarantees outstanding on loans made by
24 Dynamic. The objecting parties have characterized him as "an
25 economic captive" of Dynamic and Ms. Sabella. At the same time,
26 there are multiple state court lawsuits among the parties

1 concerning their respective interests in various projects, or
2 obligations issued by those projects.

3 One example of the foregoing brought out by the objecting
4 parties is the debtor's apparent settlement of the \$50,000 claim
5 of Isaac Lei. Apparently, the proof of claim was reviewed and
6 submitted by counsel for Dynamic and Sabella. However, it was
7 filed about two months after the claims bar date. The debtor's
8 initial position was to not allow the claim at all. Evidence
9 adduced at the hearing indicated the debtor agreed to allow the
10 late-filed claim at \$45,000. Then it was brought out that the
11 original claim had failed to credit \$7,500 Mr. Lei had received,
12 so the claim was overstated from the outset.

13 In the context of a motion to approve a proposed compromise,
14 it is not the Court's function to make findings of fact, or
15 conclusions of law. But the Court is charged with determining
16 whether the proponent of the settlement has met its burden of
17 showing the settlement is fair and equitable, as A & C Properties
18 directs. The objecting parties have argued the settlement cannot
19 meet the test because the person making the decisions for the
20 debtor, William Johnson, has so many other obligations involving
21 the same parties, as to whom he should be at arm's length. The
22 Court has been sensitive to that concern for some time, as
23 reflected in its November, 2005 written order. The circumstances
24 and interrelations clearly call for heightened scrutiny, but they
25 do not mean that a legitimate settlement could not be reached
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1 that benefits junior creditors. The question remains whether the
2 proposed settlement is in the zone of reasonableness.

3 Discussion

4 Again, in the context of the instant motion, it is not the
5 Court's role to make findings of facts and conclusions of law,
6 notwithstanding that a lengthy evidentiary hearing has been held.
7 And the Court will not do so. As a separate matter, counsel for
8 Dynamic and Ms. Sabella have advised the Court that the
9 settlement is a package, and if either part fails to meet the
10 A & C Properties test, the whole settlement fails.

11 Sabella's Claim 14

12 The Sabella claim has a lot of convoluted history. The
13 central issue, however, will be whether Ms. Sabella acquired the
14 promissory note on which it is based as a holder in due course
15 pursuant to California Commercial Code § 3302. In order to
16 answer that question for purposes of the instant motion, the
17 Court will review its understanding of the history of the
18 obligation on which Ms. Sabella relies.

19 According to Dr. Chambers, Chambers Family Trust loaned
20 the debtor \$600,000 to aid in acquiring the real estate.
21 Dr. Chambers was the managing member of the debtor, and Shining
22 City and the Suprunuks were the other members. In return for the
23 loan, the Chambers Family Trust received a promissory note for
24 \$600,000 and collateral in the form of a trust deed on the
25 property. Dr. Chambers testified he did not know if the note
26 provided for interest or what the due date was, although he

1 probably signed the note on behalf of North Plaza at the time.
2 The whereabouts of that note are unknown.

3 Dr. Chambers testified that Mr. Johnson wanted to borrow
4 money against North Plaza's land. Dr. Chambers did not want to
5 subordinate to a new lender, so it appears an agreement was
6 reached. In November, 1997 Dr. Chambers executed a full
7 reconveyance of the Family Trust's interest in the 1996 trust
8 deed securing the \$600,000 loan. Then, on or about January 28,
9 1998 Dr. Chambers, as manager of North Plaza, executed a
10 promissory note to the Chambers Family Trust for \$739,064.07.
11 The note was to be secured by a deed of trust. This note is at
12 the center of the Sabella claim.

13 A Short Form Deed of Trust was prepared at some point, and
14 dated January 28, 1998 - the same date as the date of making of
15 the note. However, the signature of Dr. Chambers as manager of
16 North Plaza was not notarized until October 21, 1998, and the
17 trust deed was not recorded until October 23, 1998, almost ten
18 months after the making of the note. It is quite relevant that
19 in between January and October, 1998 Dynamic made its loan to
20 North Plaza of \$4,400,000 and acquired its first position deed of
21 trust. Testimony indicated that Dynamic would only loan money on
22 real estate if it received a first position trust deed as
23 collateral.

24 On the same date, October 23, 1998 there was also recorded
25 an assignment of the January 28, 1998 deed of trust to an entity
26 named B C Lake Villas, LLC, managed by Mr. Johnson. The

1 assignment indicated that while the North Plaza trust deed was
2 dated January 28, 1998 it was recorded "concurrently herewith".
3 Because it was not recorded until October 23, it was junior in
4 priority to Dynamic's first position. The Court does not know if
5 Dynamic was informed of North Plaza's obligation under the note,
6 but no title report would have shown it at the time because
7 nothing concerning it was recorded.

8 Dr. Chambers wrote a memo he signed, and Mr. Johnson
9 countersigned, dated October 21, 1998 in which he states:

10 I am hereby, as manager of North Plaza LLC,
11 executing a note for \$739,064.97 to myself as
12 trustee of Chambers Family Trust dated
13 3/3/92. Further as trustee I am assigning
14 this note to BC Lake Villas LLC and
15 delivering it to you as manager. This is in
16 exchange for a note in similar amount from BC
17 Lake Villas LLC to me as trustee which is
18 expected to be paid on November 15, 1998.

19 With the effect of confusing the reader, the memo continued:

20 There is still outstanding a 1996 note for
21 \$600,000 from North Plaza, LLC to me as
22 trustee which is to provide protection until
23 BC Lake Villas LLC makes the expected payment
24 in November. Until that event that 1996 note
25 is to be paid instead of the current
26 \$739,064.97 note by North Plaza LLC, and is
to be covered by the latter's deed of trust.
Upon receipt of the expected payment from BC
Lake Villas LLC I am to cancel the \$600,000
note.

27 The memo referenced that its contents were in accordance
28 with an assignment Dr. Chambers had prepared, and the Suprunuks
29 had signed. That assignment explained in much greater detail the
30 claimed origins of the \$739,064.07 note. It stated that the
31 original \$600,000 note bore interest at 14%, and was due January

1 16, 1998. Thereafter, the assignment recites, the note principal
2 was increased by \$25,681.07 for additional loans by the Chambers
3 Family Trust. Then it recites that the interest on the adjusted
4 note, when added to the outstanding principal, brought the total
5 to \$739,064.07 as of November 5, 1997. Then, the Agreement
6 portion of the document recited:

7 A Chambers Family Trust 3/3/92 hereby
8 assigns to BC Lake Villas, LP any and
9 all interest and property rights in the
10 note to it from North Plaza, LLC
11 originally dated July 16, 1996 except to
 the extent that the principal and
 interest on the BC Lake Villas note to
 Chambers Family Trust dated November 5,
 1997 remains unpaid.

12 Still on October 23, 1998, BC Lake Villas recorded the
13 assignment of the North Plaza January 28, 1998 deed of trust to
14 Iraj Ameri, dba Corporate Funding. The assignment was executed
15 by William Johnson as manager of BC Lake Villas. Then, on
16 December 10, 1998 Ameri reassigned the January 28, 1998 North
17 Plaza trust deed back to BC Lake Villas, LLC. Then the trust
18 deed was assigned by BC Lake Villas to the Goldbergs and Ameri as
19 collateral. That assignment was also recorded December 10.
20 Mr. Johnson testified that BC Villas held the North Plaza-to-
21 Chambers note and needed to get money out of it. So they
22 borrowed from the Goldbergs and assigned them the North Plaza
23 note and trust deed.

24 According to the testimony, the BC Lake Villas property sold
25 in March, 1999, although there were not enough proceeds to pay
26 all secured creditors in full. Dr. Chambers received \$450,000 in

1 cash, and a promissory note from Shining City, Inc. for \$385,000.
2 The theory appears to be that the \$600,000 North Plaza-to-
3 Chambers note of 1996 was extinguished by BC Lake Villas' payment
4 to Dr. Chambers, and that the January 28, 1998 note for
5 \$739,064.07 became the property of BC Lake Villas in exchange for
6 its own note and trust deed, although when that might have
7 happened is confusing in light of the Assignment and Agreement
8 referenced in Dr. Chamber's memo.

9 The evidence at the hearing indicated that Ms. Sabella was
10 interested in acquiring the second trust deed position, and note,
11 from BC Lake Villas as early as February, 1999. Memos were
12 introduced indicating the note now reflected a loan of \$833,000,
13 had an 8% interest rate and a June 30, 1999 due date, and that
14 Mr. Johnson held the note. Subsequently, the transaction was
15 structured as a loan from Ms. Sabella to the Johnsons,
16 individually, in the amount of \$617,256.79. That loan was
17 reflected in a note dated May 26, 1999. The security offered by
18 Mr. Johnson was the "Chambers note" and trust deed.
19 Notwithstanding that the \$617,256 note was made by the Johnsons,
20 individually, the last page (p. 6) purports to be signed by
21 Mr. Johnson for BC Lake Villas, LLC, as well as separately by he
22 and his wife. BC Lake Villas is nowhere identified as a borrower
23 on the note.

24 The proceeds of the Sabella loan to the Johnsons were
25 disbursed on behalf of Sabella to the Goldbergs and Ameri, who
26 were the senior assignees on the "Chambers note", presumably to

1 buy them out. In addition, \$75,000 was disbursed to Peter
2 Suprunuk, and over \$26,000 to the Johnsons. Actual disbursements
3 totalled \$518,353.70 on a loan for \$617,256.79, which apparently
4 included prepaid interest and a reserve of \$30,000 for an RV park
5 project. For that, Ms. Sabella became the assignee of the
6 "Chambers note" for \$739,064.07 plus accrued interest, and
7 received an assignment of the second trust deed as collateral.
8 At least one way of looking at the transaction is that
9 Mr. Johnson bought out the obligations to the Goldbergs and Ameri
10 with the proceeds of his loan from Ms. Sabella, and assigned his
11 successor position to her, although the actual assignments came
12 directly from the Goldbergs and Ameri to her.

13 When Ms. Sabella received the assignments from the Goldbergs
14 and Ameri, all she could obtain is what they held, which was the
15 right to repayment of the debts owed to them by BC Lake Villas,
16 secured by the "Chambers note" and trust deed. It appears that
17 BC Lake Villas was the owner of the "Chambers note", having
18 exchanged its own obligation for it, and had pledged it, and the
19 supporting trust deed, as collateral for repayment of the loans
20 made by the Goldbergs. When and how Ms. Sabella became the owner
21 of the "Chambers note", or other circumstances which would
22 authorize her to enforce its terms, was not made clear during the
23 hearing. So far as appears from the record, the note and trust
24 deed remain as collateral for the Johnsons' performance under the
25 terms of the \$617,256.79 loan.

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1 Assuming, without deciding, that Ms. Sabella somehow does
2 have the right to enforce against the North Plaza estate the
3 terms of the "Chambers note", it is of concern that it will be
4 because of some ostensible default by the Johnsons under their
5 loan, for which the note is collateral. If North Plaza pays the
6 obligation, it may relieve the Johnsons of their obligation on
7 that loan, or put North Plaza in the position of having to pursue
8 its own manager if it somehow may become subrogated. More
9 troubling is that Mr. Johnson is the manager of the debtor asking
10 this Court to approve the settlement. It is also troubling that
11 the terms of the settlements also include releases. The debtor
12 has not explained how, if at all, it can recover for the benefit
13 of the estate any such obligation to which it may become
14 subrogated, much less whether the releases would or would not
15 impact its ability to recover.

16 Based on the foregoing, the Court concludes that the
17 debtor has not carried its burden of demonstrating that the
18 proposed settlement is within the zone of reasonableness, and
19 should therefore be denied, without prejudice, at least in part
20 because it has not been shown that Ms. Sabella "owns" the
21 "Chambers note" such that she can enforce it against the North
22 Plaza estate.

23 Assuming she crossed that threshold, then the Court would
24 get to the issue raised at the outset - whether she is a holder
25 in due course. Section 3302 of the California Commercial Code
26 provides in relevant part:

1 (a) . . . "holder in due course" means the
2 holder of an instrument if both of the
3 following apply:

4 (1) The instrument when issued or
5 negotiated to the holder does not bear
6 such apparent evidence of forgery or
7 alteration or is not otherwise so
8 irregular or incomplete as to call into
9 question its authenticity.

10 (2) The holder took the instrument (A)
11 for value, (B) in good faith, (C)
12 without notice that the instrument is
13 overdue or has been dishonored or that
14 there is an uncured default with respect
15 to payment of another instrument issued
16 as part of the same series, (D) without
17 notice that the instrument contains an
18 unauthorized signature or has been
19 altered, (E) without notice of any claim
20 to the instrument described in Section
21 3306, and (F) without notice that any
22 party has a defense or claim in
23 recoupment described in subdivision (a)
24 of Section 3305.

25 Ms. Sabella testified that she relied on her broker, Isaac
26 Lei, for all the work and due diligence on this transaction
because she was focused on resolving a matter in Utah. It
appears by her testimony that Mr. Lei was acting as her agent in
the transaction, and she is chargeable with his knowledge. It
does not appear she can insulate herself as a holder in due
course by delegating.

According to a February 25, 1999 memo from Mr. Lei to
Ms. Sabella, it seems they understood the second trust deed on
North Plaza secured an \$833,000 obligation. By a similar memo
dated April 28, 1999 Mr. Lei still thinks it is an \$833,000
obligation, and that Mr. Johnson holds the note. He also

1 understood the loan was due June 30, and that Johnson was asking
2 Dr. Chambers, as a manager of North Plaza, for a 90 day
3 extension. Importantly, Mr. Lei understood the note had an 8%
4 interest rate. The same memo reflects that Mr. Lei understood
5 the Goldbergs held the \$833,000 note and trust deed as collateral
6 for a loan that was past due as of March 19, 1999.

7 The real issue arose when Mr. Lei received a copy of the
8 "Chambers note" because virtually nothing about it resembled what
9 he had understood it to be. The face amount of the note was
10 \$739,064.07, not \$833,000. The second line of the note had typed
11 in: "On or before January 12, 1999," followed by the preprinted
12 words "after date, for value received, I/we promise to pay . . ."
13 That language indicates a one year due date because interest was
14 to commence January 12, 1998. The rate of interest provided was
15 13%. Then, typed in after the preprinted words "interest
16 payable" were the words "and principal payable on June 12, 1999."
17 The word "June" had been altered by someone putting white-out
18 or correcting tape over whatever was under it, and then writing
19 the word "June". So Mr. Lei was faced with information that
20 showed the note was at variance with what he had understood its
21 interest rate to be, and it had at least two possible due dates
22 neither of which were what he expected. Moreover, the later one,
23 June 12, was clearly an alteration, and was for an unusual period
24 of time, 17 months, as distinct from the one year set out
25 elsewhere in the note. Interestingly, Dr. Chambers testified
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1 those are his initials near the correction to "June", and he
2 assumes he must have put them there when the correction was made.

3 There were other changes on the note, such as the change to
4 one digit of the year of the date of the Chambers Family Trust.
5 In addition, the date then did not match the date of the Chambers
6 Family Trust in the assignment of the note to BC Lake Villas.
7 The Court is not persuaded the latter changes were ones Mr. Lei
8 should necessarily have observed. However, the former give rise
9 to much greater concern. Section 3103 of the California
10 Commercial Code defines "Good Faith" to mean "honesty in fact and
11 the observance of reasonable commercial standards of fair
12 dealing." Mr. Lei is an experienced broker. He had been
13 communicating with others, including Ms. Sabella, about his
14 understanding of the contents of the note. Then he saw the note,
15 and little, if anything, resembled what he understood and
16 expected - not the amount, not the due date, and most notably,
17 not the interest rate. There is an irony of sorts involved
18 because Ms. Sabella testified she likely would not have been
19 interested in the note if it carried only an 8% interest rate.
20 Yet that is what Mr. Lei told her in a memo. Instead, the rate
21 of interest on the face of the note was 13% which, under the
22 circumstances, should have been a red flag for Mr. Lei 1) if he
23 thought it was supposed to be 8%; and 2) because he knew the rate
24 was usurious unless the note was somehow exempted from the usury
25 provisions. Notwithstanding those facts, there was no testimony
26 of any effort to ascertain whether the note was exempt. With

1 facts like that staring him in the face, he cannot play ostrich.
2 Almost nothing about the note was what he expected, and the Court
3 is inclined to think that "reasonable commercial standards" would
4 require some effort to reconcile the due date and the interest
5 rate, and whether the note was exempt from the usury law.

6 In sum, because of the tangle of interrelations, the
7 Court is unable to ascertain whether the proposed settlement
8 package was the product of good faith negotiation. The Court is
9 persuaded that no sufficient showing has been made that
10 Ms. Sabella would succeed in establishing a right to receive the
11 face amount of the Chambers note plus interest accrued at 13%
12 because there is no sufficient showing that she took the note as
13 a holder in due course, assuming she owns it as distinct from
14 holding it as an assignment of collateral on an obligation. The
15 Court recognizes that litigation of the Sabella claim will delay
16 distribution and, if she does prevail, will cost the estate
17 accrued interest, which would further erode what was left for
18 junior creditors, not to mention administrative claims.

19 In the last analysis, at least for purposes of the present
20 motion, the debtor as the proponent, has the burden of persuading
21 the Court that the proposed settlement is fair and equitable, and
22 should be approved. It has not done so.

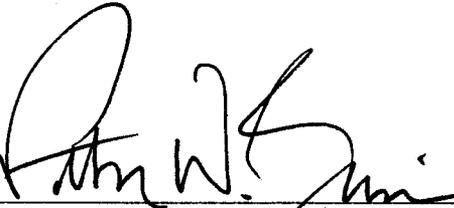
23 Because Dynamic and Ms. Sabella have stated that the
24 settlement proposal is a package, denial of the motion as to
25 Ms. Sabella's claim effectively constitutes a denial of the
26 motion as to Dynamic, as well. Therefore, the Court need not

1 separately address the objections to settlement of Dynamic's
2 claim.

3 Accordingly, and for the foregoing reasons, the debtor's
4 motion to improve its settlement with Dynamic and Ms. Sabella
5 shall be, and hereby is, denied.

6 IT IS SO ORDERED.

7 DATED: APR 17 2006

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9 _____
10 PETER W. BOWIE, Chief Judge
11 United States Bankruptcy Court
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