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WRITTEN DECISION – NOT FOR PUBLICATION

ENTERED 10-1-08  
FILED  
OCT 1 2008  
CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:

ECV Development, LLC, a California  
limited liability company,

Debtor.

} Bankruptcy No. 07-00052-LT7

} MEMORANDUM DECISION

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Chapter 7 Trustee Richard M Kipperman ("Trustee") requests that this Court approve a settlement of state court litigation initiated by Debtor ECV Development, LLC ("Debtor") pre-petition, decided against Debtor on procedural grounds, and currently subject to appeal (the "State Court Action"). The Trustee alleges that the settlement benefits Debtor's chapter 7 estate (the "Estate"), as it allows the Estate to recover a cash bond paid into the Superior Court during the course of the State Court Action and ends any risk or cost to the Estate as a result of the State Court Action. Debtor objects to the settlement arguing that it fails to provide adequate benefit to the Estate and that the Trustee fails to meet his burden of proof in justifying Court approval of the settlement. In particular, Debtor argues that the

1 Trustee can obtain the cash bond through other means, that the cash bond is not required to  
2 pay unsecured creditors in full, and that the settlement does not assure cash bond surrender.  
3 Thus, the Court must determine whether the Trustee meets his burden of proof and  
4 establishes that the settlement is fair and equitable within the meaning of controlling Ninth  
5 Circuit authority.  
6

### 7 8 **PROCEDURAL POSTURE**

9  
10 On May 29, 2008, the Trustee filed and served his Notice of Intended Action and  
11 Opportunity for Hearing (the "Notice of Intended Action") proposing to settle the State  
12 Court Action (the "Settlement"). The Notice of Intended Action advised parties as follows:

13 The Trustee proposes to enter into the following agreements to  
14 dismiss an appeal of an adverse judgment pending in the  
15 California Court of Appeal (4th Appellate District, Division 1)  
16 in exchange for recovering the sum of \$100,000 for the estate:  
17 (1) Agreement re: Dismissal of Appeal and Concurrent Release  
18 of Monies Deposited in Lieu of Injunction Bond; and (2)  
19 Stipulation for Release of Monies Filed in Lieu of Injunction  
20 Bond. The proposed agreements are attached hereto as  
21 Exhibits "A" and "B" respectively and incorporated herein by  
22 this reference.  
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26 The Notice of Intended Action was not supported by any declaratory evidence or  
27 memorandum of points and authorities.  
28

1           On June 30, 2008, Debtor timely filed and served a Request and Notice of Hearing in  
2 connection with the Notice of Intended Action and filed Debtor's Opposition (the  
3 "Opposition"). The Debtor requested that the Court deny approval of the Settlement due to  
4 Trustee's failure to advance evidence or argument indicating that the Settlement was fair and  
5 equitable as required by *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381  
6 (9<sup>th</sup> Cir. 1986). The Opposition also argued that approval of the Settlement should be  
7 denied because unsecured creditors could be paid in full from funds on hand such that the  
8 release of the Cash Bond as provided for in the Settlement was unnecessary. The  
9 Opposition was supported by the Declaration of Samy S. Henein concurrently filed  
10 therewith (the "Henein Declaration").

11           The Trustee filed an extensive response to the Opposition (the "Trustee Reply") on  
12 July 17, 2008. The Trustee Reply for the first time, set forth the Trustee's legal and factual  
13 argument justifying approval of the Settlement. The Trustee Reply was supported by the  
14 concurrently filed declaration of John W. Sunnen (the "First Sunnen Declaration") and a  
15 Request for Judicial Notice (the "Request for Judicial Notice").

16           Thereafter, the Debtor filed an emergency motion to strike the Trustee Reply arguing  
17 that it was not timely. The Trustee responded to Debtor's emergency motion and requested  
18 monetary sanctions in connection therewith.

19           The Court heard argument on this matter on August 20, 2008. In connection  
20 therewith, the Court issued a tentative ruling finding that the Trustee's Reply, while allowed,  
21 was not timely. Notwithstanding, given the Court's review of the matter as of that date and  
22 the Court's desire to avoid the unnecessary expense entailed in recommencing the settlement  
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1 approval process, the Court continued this matter to allow additional briefing by the parties  
2 and, in particular, to allow the Debtor to respond to the entirely new argument and evidence  
3 produced by the Trustee for the first time on reply.<sup>1</sup>  
4

5 At the hearing on August 20, 2008, the parties agreed that an additional hearing on  
6 the matter would not be necessary and that the Court should decide this matter through  
7 Memorandum Decision after review of additional briefing and evidence provided by the  
8 parties.  
9

10 On September 2, 2008, the Debtor filed its Supplemental Opposition. The Chapter 7  
11 Trustee, thereafter, on September 9, 2008 filed a Supplemental Reply. The Trustee also  
12 concurrently filed a Declaration of L. Scott Keehn (the "Keehn Declaration"), another  
13 Declaration of John W. Sunnen (the "Second Sunnen Declaration") and a second Request  
14 for Judicial Notice (the "Second Request for Judicial Notice").  
15

16 This Court, having reviewed all documents and declaratory evidence filed with this  
17 Court, and this Court, having further considered the record in this case and the arguments of  
18

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19 <sup>1</sup> The Trustee takes the position that the Local Rules do not "require" that he introduce all or,  
20 indeed, any evidence and argument at the time of the Notice of Intended Action. While this is  
21 clearly the better practice, a cost benefit analysis may justify a more truncated filing in cases where  
22 an opposition is not likely and the bona fides of the proposed settlement are such that they are  
23 otherwise ascertainable by the Court. The point at which the Court and the Trustee differ somewhat  
24 substantially, however, is the Trustee's view that the Notice of Intended Action is somehow  
25 disembodied from the litigation process such that the opposition commences a contested proceeding  
26 entitling the Trustee to leisurely file opposition (i.e. 17 days thereafter) and only at this point to  
27 introduce all his evidence and legal argument. Thus, the Trustee argues, notwithstanding that he  
28 has the burden of proof and is the party proposing the Settlement, that he is entitled to introduce all  
evidence under a timetable which allows the objector to respond to this evidence and argument only  
within the very short timeframe allowed for reply. This is not a practice acceptable to this Court.  
As in this case, where the responsive pleading provides entirely new evidence and argument, the  
objecting party must be provided a meaningful opportunity to respond fully and, as the Court has  
provided in this case, additional briefing will be allowed. Given, however, that the Local Rule is  
not completely clear in this regard and, again, given that the responsive evidence ultimately  
provided by the Trustee was persuasive that this matter was highly probable of approval, the Court  
determined to allow the additional briefing, to deny the motion to strike, and to deny the sanctions  
request as the most equitable and cost effective method for resolving this dispute.



1 (collectively, the "Cash Bond") to meet the Superior Court's bonding requirements. Henein  
2 Declaration ¶ 6; First Sunnen Declaration ¶¶ 4-6.

3  
4 On June 19, 2006, the Superior Court entered judgment in favor of the Settling  
5 Defendants (the "Judgment"). Henein Declaration ¶ 5; First Sunnen Declaration ¶¶ 7 and  
6 13; Request for Judicial Notice Ex. 2. The basis for the summary judgment was a  
7 determination by the Superior Court that the Debtor lacked standing to bring these actions.  
8 Henein Declaration ¶ 5; First Sunnen Declaration ¶¶ 7-11. The loans at issue were obtained  
9 by Olive XXIII, LLC, a California limited liability company ("Olive"). First Sunnen  
10 Declaration ¶ 7. Olive filed a chapter 11 petition in this Court in 2003 to halt then pending  
11 foreclosures. First Sunnen Declaration ¶ 8. In its schedules, Olive never identified any  
12 claims against its lenders. *Id.* Olive's bankruptcy was ultimately dismissed on July 8, 2004  
13 as Olive failed to make certain adequate protection payments. *Id.* Apparently Olive's  
14 ability to fund adequate protection payments had been financed through AtVantage Group,  
15 an entity wholly owned by Daniel Holbrook. *Id.* After dismissal of its bankruptcy case,  
16 Olive transferred the subject property to AtVantage Group, which then sold the subject  
17 property to Debtor, another entity wholly owed by Daniel Holbrook. First Sunnen  
18 Declaration ¶¶ 9 and 10. As noted above, the Superior Court concluded based on these facts  
19 that Debtor lacked standing to assert the causes of action against the Settling Defendants  
20 and, having reached this determination, did not reach a related argument advanced by  
21 Settling Defendants that these claims were also barred by principals of judicial estoppel  
22 given Olive's failure to list any lender liability claims in its bankruptcy schedules. First  
23 Sunnen Declaration ¶ 11. As a result, the Superior Court entered judgment in favor of all  
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1 Settling Defendants and against Debtor on the First, Second, Third, Fourth, Fifth, Sixth,  
2 Seventh, Tenth, Eleventh and Twelfth Causes of Action in the First Amended Complaint  
3 and entered judgment in favor of Emerald Bay and Lyle Brock and against Debtor on the  
4 Eighth and Ninth Causes of Action. Request for Judicial Notice Ex. 2.

5  
6 The Debtor filed a timely appeal from entry of this Judgment. First Sunnen  
7 Declaration ¶ 14. The appeal is now stayed pending resolution of matters in this bankruptcy  
8 case. First Sunnen Declaration ¶ 17.

9  
10 Debtor filed a voluntary chapter 11 petition in this Court on January 8, 2007. Docket  
11 No. 1; Second Sunnen Declaration ¶ 19. By Order entered August 21, 2007, this Court  
12 converted Debtor's chapter 11 case to a case under chapter 7, and Trustee was appointed.  
13 Docket No. 102; Second Sunnen Declaration ¶ 19.

14  
15 It is undisputed that, the Cash Bond remains on deposit with the Clerk of the Superior  
16 Court and constitutes an asset of the Estate.

17  
18 Apparently, following the Judgment, the relevant parties foreclosed their interests in  
19 the real property that was the subject of the quiet title and declaratory relief causes of action  
20 in the State Court Action. Supplemental Opposition 5:6-7.<sup>2</sup> The Court reasonably  
21 concludes those causes of action are moot, and that the State Court Action defendants not  
22 named in the "lender liability claims" have no continuing interest in the Appeal.

23  
24 After his appointment, the Trustee, in the exercise of his fiduciary duty to creditors of  
25 the Estate, evaluated this litigation. The Trustee also engaged in settlement negotiations  
26 which resulted in the execution and delivery of the Agreement Re: Dismissal of Appeal and  
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<sup>2</sup> While this factual assertion is not supported by a declaration, it is not disputed by the Trustee.

1 Concurrent Release of Monies Deposited in Lieu of Injunction Bond between the Trustee  
2 and the Settling Defendants (the "Settlement Agreement"). The terms of the Settlement are  
3 in most relevant detail as follows:  
4

5 1. The parties will cause the Cash Bond to be released to the Trustee for the  
6 benefit of the Estate. In order to aid this release the Settling Defendants will execute and  
7 deliver a Stipulation for Release of Monies Filed in Lieu of Injunction Bond. Settlement  
8 Agreement section 1.1.  
9

10 2. Within 5 business days of **receiving payment of the cash bond**, the Trustee  
11 will dismiss the Appeal with prejudice. Settlement Agreement section 1.2. (emphasis  
12 added)  
13

14 3. The mutual releases contained in the Settlement Agreement have no force and  
15 effect until the date on which the Appeal is dismissed.<sup>3</sup> Settlement Agreement section 4.1.  
16

17 Thus, the Settlement Agreement clearly provides that the Appeal will not be  
18 dismissed and that the releases in the Settlement Agreement will not be effective unless and  
19 until the Trustee receives the Cash Bond.  
20

21 The Notice of Intended Action approving the Settlement was served on all creditors.  
22 Docket No. 139. Only Debtor has objected to the Notice of Intended Action.  
23

## 24 DISCUSSION

25 In order for a bankruptcy court to confirm a compromise of controversy, the Court  
26 must find that the compromise is fair and equitable. *A&C Properties*, 784 F.2d at 1381. In  
27

28 <sup>3</sup> Although, once the Appeal is dismissed, the mutual releases will relate back to the date of execution and delivery of the Settlement Agreement.

1 making this determination, the Ninth Circuit requires that the Court consider, among other  
2 factors specific to the case, the following: (a) the probability of success in the litigation;  
3 (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity  
4 of the litigation involved, and the expense, inconvenience and delay necessarily attending it;  
5 and (d) the paramount interest of the creditors and a proper deference to their reasonable  
6 views in the premises. *Id.*, citing *In re Flight Transportation Corporation Securities*  
7 *Litigation*, 730 F.2d 1128, 1135 (8<sup>th</sup> Cir. 1984). The Trustee, as the party proposing the  
8 compromise, bears the burden of proof in establishing that the settlement he advances is fair  
9 and equitable and should be approved. *A&C Properties*, 784 F.2d at 1381. After evaluating  
10 this case under the specific factors set forth in *A&C Properties*, the Court concludes that this  
11 Settlement should be approved.

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15 **1. The Uncertain Probability Of Success Favors The Settlement.**

16 The Superior Court determined that Debtor lacks standing to bring claims against the  
17 Settling Defendants. Neither party has supplied this Court with copies of the appellate  
18 briefs or with complete information underlying the Superior Court's conclusion. However,  
19 general principals of comity and respect for the Courts of the State of California require that  
20 this Court assume, in the absence of evidence indicating to the contrary, that the Superior  
21 Court's conclusion was not frivolous.

22  
23 Further, the information this Court does have strongly supports the conclusion that  
24 the Superior Courts' determination was well grounded in fact and law. Debtor was not the  
25 party receiving any of the loans in question. Instead, the evidence before the Court indicates  
26 that all the Debtor acquired was ownership of the real property encumbered by deeds of  
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1 trust securing these loans. Under these facts, the Court concludes that there is no evidence  
2 of clear factual error in the Superior Court's ruling. Thus, given the existence of a not  
3 unreasonable judgment against the Debtor by another court, this Court is well justified in  
4 concluding that it is not highly probable that the Debtor will be successful in the Appeal.  
5

6 Moreover, even if the Judgment were overturned on this procedural ground, yet  
7 another procedural hurdle must be vaulted. The failure of the original borrower, Olive, to  
8 list any lender liability causes of action in its bankruptcy schedules – causes of action which  
9 by necessity must have existed at the time of Olive's bankruptcy filing – is extremely  
10 troubling to this Court and would justify additional procedural arguments by the Settling  
11 Defendants.  
12

13 Only after winning on appeal in an effort already lost at the trial court level and then  
14 surmounting yet another procedural argument would the Trustee be in a position to  
15 commence litigation on the merits. At that time, the Trustee would be forced to prosecute  
16 numerous claims on theories that the Court concludes, after review of the Second Amended  
17 Complaint, are numerous and complex. The Trustee's burden would be increased by the  
18 passage of time since the acts complained of are alleged to have occurred and the fact that  
19 Debtor was not a first hand participant in this process. The Trustee would almost certainly  
20 carry this heavy load into a jury trial on the merits as the State Court Action includes causes  
21 of action, such as fraud, which in all likelihood cannot be resolved by a summary  
22 adjudication. Based on these facts, the Court finds that the Trustee has met his burden of  
23 showing that the probability of success in this case is at best uncertain and that this factor  
24 favors settlement.  
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**2. Collection Difficulty Is A Neutral Factor.**

The Trustee does not advance evidence regarding the solvency of the Settling Defendants. Thus, the Court concludes that there will be no unusual barriers to collection. This factor is neutral at best for the Trustee.

**3. Complexity Of Litigation/Inconvenience And Delay Weigh Heavily In Favor Of The Settlement.**

As discussed above in connection with the probability of success, this litigation is complex and, in the event that it can be advanced beyond the appeal phase, will be expensive. Thus, any recovery would need to substantially exceed \$100,000.00 and be collectible to improve upon the Settlement. There is no evidence that this is the case. Further, the Debtor has provided no indication that contingent fee counsel is available to limit costs.

As a result, this Court must conclude that without the Settlement this litigation must continue through an appeal, face yet another significant administrative threat, then go forward through expensive and time consuming litigation on the merits and undoubtedly languish in more years of appeal prior to any recovery. Thus, the Court reasonably concludes that the attorneys' fees incurred in this endeavor would be significant. The Court also determines that the delay in creditor payout based on a litigation recovery – in the less than probable event that one is available – would be long. The Trustee has met his burden of establishing that this factor favors approval of the Settlement.

1           **4       Paramount Interest Of Creditors/Deference To Their Reasonable Views**

2 **Favor Settlement.**

3           In this case no creditor objects to the Settlement. The only objecting party is the  
4 Debtor who, in effect, requests that the Trustee be compelled to either roll the dice himself  
5 or provide the dice to the Debtor without any obligation on the Debtor's part to indemnify  
6 the Estate from the consequences thereof including, but not limited to, the potential loss of  
7 the Cash Bond through claims and/or litigation expense. The Court finds that the Trustee  
8 has met his burden of proof on this factor and that it favors approval of the Settlement.  
9

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11           **5.       Case Specific Considerations Also Favor Settlement.**

12           The arguments of the Debtor, in brief, are that the Settlement may not accomplish  
13 release of the Cash Bond yet provides releases, that the Settlement is unnecessary to obtain  
14 release of the Cash Bond, and that the Cash Bond is not needed to assure full payment to  
15 unsecured creditors. These arguments fail to justify disapproval of the Settlement.  
16

17           First, the Settlement Agreement is clear. Until the Cash Bond is released the Appeal  
18 is not dismissed and the releases of the Settling Defendants are not effective. The Court  
19 carefully reviewed the Settlement Agreement and believes that it clearly evidences that the  
20 Settlement was well thought out and well documented such that the Estate's leverage is not  
21 lost prior to release of the Cash Bond.<sup>4</sup>  
22

23           Second, the Debtor argues that the Cash Bond can be released even without the  
24 Settlement. The Debtor makes a credible argument in this area in that the Cash Bond was  
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27 <sup>4</sup> Further, given the foreclosures conceded by Debtor, the abandonment of the liens by the Trustee  
28 (Docket No. 124 and 127), and the evidence that only one of the Settling Defendants actively  
benefitted from the Cash Bond (See Second Sunnen Declaration ¶¶ 4-9), the risk of opposition to  
Cash Bond release appears virtually non-existent.

1 posted to stop foreclosure, and, those foreclosures having occurred, a petition to the  
2 Superior Court may result in release of the Cash Bond. The problems with the Debtor's  
3 argument, however, are two-fold. First, while California Code of Civil Procedure  
4 Section 995.430 provides that a bond remains in force and effect until the earliest of certain  
5 events including: "the purpose for which the bond was given is satisfied or the purposes  
6 abandoned without any liability having deemed incurred . . ." the Debtor's argument fails to  
7 fully address all requirements of that subsection. True, the purpose for which the Cash  
8 Bond was given has been satisfied. However, there is no evidence that the parties for whose  
9 benefit the Cash Bond was provided, including, apparently, primarily or exclusively one of  
10 the Settling Defendants,<sup>5</sup> conceded that they have not incurred liability as a result of the  
11 delay in foreclosure rights. Arguably, claims against the Cash Bond including, but not  
12 limited to, claims for any decline in value of the property at issue or and on other theories  
13 could still be made.  
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17 The Court acknowledges, however, that the Trustee has not provided evidence in this  
18 regard. To some extent this is understandable – the Trustee obviously does not want to  
19 make arguments for other parties. However, the Court can reasonably assume that some  
20 risk exists in this area, albeit perhaps minimal.  
21

22 Second, the Debtor ignores the fact that there is a cost to obtaining recovery of the  
23 Cash Bond if not done through a consensual agreement that is undoubtedly higher than that  
24 entailed in the Settlement. In short, the Trustee would have to petition the Superior Court  
25 and there is a possibility of objection. Thus, the Cash Bond cannot, as Debtor suggests, be  
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28 <sup>5</sup> Second Sunnen Declaration ¶¶ 3-9.

1 released in its entirety with no effort and no cost to the Trustee; there is a possibility of  
2 claims which could reduce the amount of the Cash Bond, and there is the certainty that there  
3 will be some attendant costs and delay in the process. Under these circumstances, the Court  
4 does not agree with the Debtor that the Cash Bond can be obtained without any effort or  
5 cost on the part of the Trustee outside the Settlement.  
6

7 Finally, the Debtor argues that the Trustee need not incur the cost and burden of  
8 litigation, that the Trustee should simply pay creditor claims with funds already in hand and  
9 abandon the litigation and, presumably, the Cash Bond proceeds, to the Debtor. This  
10 argument fails to recognize several realities in this case. First, there is a disagreement  
11 regarding the amount of unsecured claims. The Court has reviewed the claims docket<sup>6</sup> and  
12 the information supplied by the various parties and remains uncertain as to the exact amount  
13 of unsecured claims properly payable in this case. For example, numerous claims were filed  
14 by the Imperial County Tax Collector. The Trustee argues that these claims are now  
15 "unsecured" as a result of foreclosure. However, the Court believes it more likely that these  
16 claims, while properly unsecured as to the Debtor, remain secured by the real property at  
17 issue and some or all of them may have already been paid as a result of third party sales of  
18 the real property at issue. Other issues exist. However, what is clear, is that there is a body  
19 of unsecured claims whose payment would be benefitted by a turnover of the Cash Bond.  
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23 This fact is undoubtedly true because what is discussed by neither party is the  
24 obvious fact that there are administrative expenses in this case. For example, the Trustee is  
25 entitled to Trustee's fees. The Court reviewed the docket and found no evidence that  
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27 \_\_\_\_\_  
28 <sup>6</sup> The Court may take judicial notice of the records in the bankruptcy case. *See*, Fed. R.  
Evid. 201(c).

1 Trustee's fees have been paid in any amount. Similarly, the Court assumes that there are  
2 other administrative expenses, including attorneys' fees for Mr. Keehn and his firm in  
3 connection with this chapter 7 case. A review of the docket indicates that chapter 7  
4 administrative expenses have not been paid. Finally, there may be chapter 11 administrative  
5 expenses that are unpaid and properly payable. See Docket No. 115. All these  
6 administrative expenses must be paid prior to any money going to unsecured creditors. *See*,  
7 11 U.S.C. § 507(a)(2).  
8

9  
10 Thus, while the Court cannot conclude with mathematical precision the correct  
11 unsecured claims amount, the Court can readily conclude that the small amount currently  
12 available in this case is wholly insufficient to pay all administrative and unsecured claims  
13 and that prompt release of the Cash Bond will aid greatly in maximizing creditor recovery in  
14 this case.  
15

16 **6. Debtor Has Not Elected To Overbid.**

17 Finally, the Debtor was given an opportunity in this case to put its money where its  
18 mouth is. In *Michael Goodwin v. Mickey Thompson Entertainment Group, Inc. (In re*  
19 *Mickey Thompson Entertainment Group, Inc.)*, 292 B.R. 415 (9<sup>th</sup> Cir. BAP 2003), the  
20 Bankruptcy Appellate Panel for the Ninth Circuit considered a settlement between a  
21 bankruptcy estate and defendants in litigation.<sup>7</sup> The *Mickey Thompson* trustee indicated his  
22 willingness to settle the claim for \$40,000 and brought a motion seeking approval of the  
23 settlement under Federal Rule of Bankruptcy Procedure 9019. In response a creditor argued  
24 that the settlement amount was insufficient and suggested that a third party was willing to  
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<sup>7</sup> In *Mickey Thompson* the litigation at issue was a fraudulent transfer action. 292 B.R. at 417.

1 buy the claims for \$45,000. In connection with the hearing on the matter, the objecting  
2 creditor sweetened the offer by also offering the estate 15% of future recoveries.

3 Notwithstanding these offers, and notwithstanding some stated willingness on the part of the  
4 trustee to consider overbids, the *Mickey Thompson* trustee continued to support the initial  
5 settlement which was ultimately approved by the Court.  
6

7         The Bankruptcy Appellate Panel subsequently reversed, finding that the court was  
8 compelled to consider the overbid since it could not otherwise conclude that the settlement  
9 was in the "best interest of creditors" and fair and reasonable as required in connection with  
10 approval of a settlement. *Mickey Thompson*, 292 B.R. at 421-422. The Panel found that in  
11 such a circumstance a settlement is in essence a sale of potential claims to the settling  
12 parties. *Mickey Thompson*, 292 B.R. at 421.  
13

14         Based on this example, the Court invited the Debtor to overbid and guaranty the  
15 Estate a recovery greater than that available in connection with the Settlement. Obviously,  
16 such a recovery would require that the Debtor provide a realistically obtainable guaranty  
17 that the Estate receive more than \$100,000.00, that the Estate receive compensation for  
18 delay in recovery, and that the Estate be protected from all litigation costs and risk. The  
19 papers filed by the Debtor are entirely silent on this issue. The Debtor provides no overbid,  
20 no sharing proposal, and no indemnification proposal of any type. The Debtor requests the  
21 benefits of this litigation, if any, but has offered no risk protection or benefit to the Estate in  
22 exchange. As a result, the Settlement is clearly the more desirable option from the  
23 perspective of creditors.  
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**CONCLUSION**

The Court concludes that the Trustee has carried his burden, that the Debtor has failed to present a better alternative, and that the Settlement should be approved. The Chapter 7 Trustee is ordered to submit an appropriate order so providing promptly.

DATED: October 1, 2008

  
LAURA S. TAYLOR, JUDGE  
United States Bankruptcy Court