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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

In re: Case No. 2:09-cv-01640-JAM
SHEPARD AND MONTE JOHNSON, Bankruptcy No. 07-25104-C-11
Debtors. ORDER AFFIRMING DECISION OF
BANKRUPTCY COURT

SHEPARD AND MONTE JOHNSON,
Appellants,

v.

THOMAS ACEITUNO,
Appellee.

Shepard and Monte Johnson (collectively "Appellants")
appeal the Bankruptcy Court's Order Granting Trustee Thomas
Aceituno's Motion to Approve Compromise With Monte Watson dated
June 5, 2009. (Appellants' Exhibit B, p. 3a). Trustee/Appellee

1 Thomas Aceituno ("Trustee") opposes the appeal. For the reasons
2 stated below¹, the decision of the Bankruptcy Court is AFFIRMED.

3 I. FACTUAL AND PROCEDURAL BACKGROUND

4 On July 3, 2007, upon the filing of a voluntary Chapter 11
5 petition by Shepard Johnson and Monte Johnson, the Bankruptcy
6 Estate was created. (Appellee's Brief at 1). On May 27, 2008,
7 for cause, Trustee Thomas Aceituno was appointed trustee for the
8 Appellants' Chapter 11 estate. Id. At the time of Trustee's
9 appointment, the Appellants were party to various adversary
10 proceedings related to their Panama real estate development
11 business, including proceedings with numerous customers and
12 investors. Id. On October 14, 2008, the Bankruptcy Court
13 granted the Trustee's motion to convert the case to Chapter 7.
14 (Appellee's Brief at 2). On October 20, 2008 the Bankruptcy
15 Court determined which entities were organized under Panama law
16 and used by Appellants to hold and manage Panama real property.
17 Id. The Bankruptcy Court held that such entities are property
18 of the Bankruptcy Estate. Id.

19 The present matter involves a dispute between Trustee,
20 Appellants, and Monte Watson, relating to real property located
21 on Isla Solarte and Playa Tranquillo, Bocas del Toro, Republic
22 of Panama. (Appellee's Brief at 6). Monte Watson is the

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27 ¹ Because oral argument will not be of material assistance,
28 the court orders this matter submitted on the briefs. E.D. Cal.
L.R. 230(g).

1 claimant under Proof of Claim Number 27, filed on October 1,
2 2007 in the Debtors/Appellants' parent bankruptcy case. Id.
3 Monte Watson has been unable to locate stock shares related to
4 his claim of interest in said real property. Id. A proposed
5 compromise between Trustee, Appellants and Monte Watson was
6 presented to the Bankruptcy Court and a hearing was held on the
7 matter on May 26, 2009. (Appellants' Exhibit B, p. 3a).
8

9 The principal terms of the compromise with Monte Watson
10 transfer all claims of interest in real property on Isla Solarte
11 and Playa Tranquillo to the Trustee. (Appellants' Appendix, Ex.
12 N). The Trustee shall transfer to Monte Watson or designee
13 title to Isla Solarte lots D-26 and D-30 and the right of
14 possession to Isla Solarte lot R-4, lot SB-45 and the "Ridge
15 Lot." Id. The Trustee will hold Playa Tranquillo in trust for
16 the equal benefit of the Bankruptcy Estate and Monte Watson.
17 The Trustee shall market and sell Playa Tranquillo with proceeds
18 to be split equally between the Bankruptcy Estate and Monte
19 Watson. Id. In exchange, Monte Watson shall withdraw his Proof
20 of Claim Number 27 and the Trustee and Monte Watson shall
21 dismiss with prejudice all claims asserted against each other in
22 two adversary proceedings. Id. Further, Monte Watson shall
23 refrain from asserting any other proof of claim against
24 Appellants' Bankruptcy Estate. Id.
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1 The Bankruptcy Court, after consideration of the evidence
2 and authorities presented, and good cause appearing, approved
3 the compromise as set for in the Settlement Agreement. See
4 Appellants' Appendix, Ex. N.

5 II. OPINION

6 A. Legal Standard

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8 A district court has jurisdiction to hear appeals from a
9 bankruptcy court pursuant to 28 U.S.C. 158(a). An order
10 authorizing a compromise in a bankruptcy case is reviewed for an
11 abuse of discretion. In re A & C Properties, 784 F.2d 1377,
12 1380 (9th Cir. 1986). The district court reviews the Bankruptcy
13 Court's embedded findings of fact for clear error and reviews
14 findings of law *de novo*. Fed. R. Bankr. P. 8013; In re Lockard,
15 884 F.2d 1171, 1174 (9th Cir. 1989).
16

17 In order to determine the "fairness, reasonableness and
18 adequacy of a proposed settlement agreement, the Court must
19 consider:
20

21 (a) The probability of success in the litigation; (b) the
22 difficulties, if any, to be encountered in the matter of
23 collection; (c) the complexity of the litigation involved,
24 and the expense, inconvenience and delay necessarily
25 attending it; (d) the paramount interest of the creditors
and a proper deference to their reasonable views in the
premises."

26 In re A & C Properties, 784 F.2d at 1381.
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1 B. The Compromise

2 The Appellants argue that the Bankruptcy Court approved the
3 compromise without making findings of fact and conclusions of
4 law on the record and therefore, the Bankruptcy Court abused its
5 discretion. This Court reviewed the transcript from the May 26,
6 2009 hearing and finds that the Bankruptcy Court did make
7 findings of fact that were supported by evidence. The
8 Bankruptcy Court adequately evaluated the entire record of the
9 bankruptcy case, applied the correct legal standard and acted
10 within its discretion when it determined that the compromise at
11 issue is fair and equitable.
12

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14 In evaluating the fairness, reasonableness and adequacy of
15 the proposed settlement, the Bankruptcy Court considered the
16 four factors required by A&C Properties. See id. The
17 Bankruptcy Court found the probability of success in litigation
18 factor to support approval of the compromise. The Court
19 determined that success was uncertain, that a considerable
20 amount of additional discovery was not necessary, that the
21 Trustee had a considerable period of time in which to assess the
22 overall nature of the disputes, that the state of the record in
23 the parent case reflected over 800 docket entries and that the
24 proposed business deal would begin progress in the parent
25 bankruptcy case. (See Appellants' Appendix, Ex. N, 141:15-25).
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1 The Court further found that the litigation complexity
2 factor supported approval of the compromise. In doing so the
3 Bankruptcy Court considered the development of the adversary
4 proceeding and the underlying dispute in the parent case and
5 determined that the litigation would be very expensive and time-
6 consuming and could potentially consume all of the net value of
7 the Estate. (Appellants' Appendix, Ex. N). The Bankruptcy
8 Court also concluded that the best interest of the creditors
9 factor supported approval of the compromise. The Court noted
10 that the compromise would permit the Trustee to market and sell
11 Playa Tranquillo, thereby receiving needed resources into the
12 Bankruptcy Estate, and if successful, could lead to an Estate
13 surplus. Id.

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16 The only factor that the Court found did not directly weigh
17 in favor of granting approval of the compromise was the
18 difficulties of collection factor. The Court found the factor
19 was a non-issue because the Trustee owns the property in
20 dispute. Id.

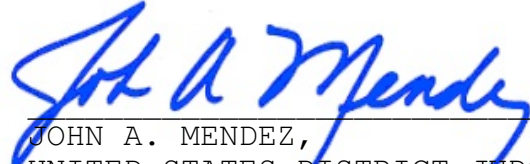
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22 The Bankruptcy Court made findings, supported by evidence,
23 and stated them on the record. The Bankruptcy Court's
24 conclusions were well reasoned and based upon application of the
25 correct rule. Accordingly, the Bankruptcy Court did not abuse
26 its discretion in approving the compromise with Monte Watson.
27
28 See In re A & C Properties, 784 F.2d 1377, 1380 (9th Cir. 1986).

III. ORDER

For the reasons stated above, the order of the Bankruptcy Court is AFFIRMED.

IT IS SO ORDERED.

Dated: February 11, 2010



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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