

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 95-33157

ASSOCIATED SERVICES/
68 STEEL, INCORPORATED

Debtor

**MEMORANDUM ON
MOTION TO COMPROMISE**

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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

This contested matter is before the court on the Motion to Compromise filed by the Chapter 7 Trustee, Maurice K. Guinn (Trustee), on May 30, 2003, seeking authority, pursuant to Federal Rule of Bankruptcy Procedure 9019, to compromise and settle a claim of the Debtor's bankruptcy estate. The Objections to the Trustee's Motion to Compromise (Objection) was filed by G. Burgan Chrisman, Scot T. Chrisman, and Richard J. Hunt (collectively, the Objectors) on June 17, 2003. No other party in interest objected to the Motion to Compromise.¹

The evidentiary hearing on the Motion to Compromise was held on September 22, 2003. The record before the court consists of four exhibits introduced into evidence and the testimony of the Trustee and Dr. Scot T. Chrisman (Dr. Chrisman), who is secretary/treasurer of the Debtor. The other Objectors, G. Burgan Chrisman and Richard J. Hunt, did not appear at the hearing.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A) and (O) (West 1993).

I

The Debtor filed the voluntary petition commencing its case under Chapter 11 on November 28, 1995. On February 6, 1996, the case was converted to Chapter 7, and the Trustee was duly appointed to administer the estate. On November 26, 1996, the Trustee filed a Complaint initiating Adversary Proceeding No. 96-3263, styled *Maurice K. Guinn, Trustee v. The Wallace Memorial Baptist Church, The Trustees of Wallace Memorial Baptist Church, Equitable*

¹ Although she did not participate in the trial, at the conclusion of oral argument at the hearing on the Motion to Compromise, the attorney for the United States Trustee stated that the United States Trustee supported the settlement.

Church Builders, Inc., and Jimmy E. Kelley (the Lawsuit). The causes of action pled by the Trustee mirrored those alleged in a civil action filed by the Debtor in June 1993 in the Chancery Court for Knox County, Tennessee, based upon disputes that arose related to the Debtor's providing steel for the construction of a sanctuary and daycare center at Wallace Memorial Baptist Church (the Church).² Following three orders entered by the Chancellor on November 29, 1993, October 24, 1995, and November 27, 1995, cumulatively granting partial summary judgment to the Defendants and limiting the issues pending before the court, the Debtor voluntarily dismissed the state court action, without prejudice, and filed its bankruptcy petition.³

The Lawsuit, which is still pending, was subsequently withdrawn by the United States District Court for the Eastern District of Tennessee (the District Court) and assigned Civil Action No. 3:97-CV-376. The First Amended Complaint alleges causes of action against the Defendants based on breach of contract and covenant of good faith, misrepresentation and fraud, conversion, and civil conspiracy. The Trustee seeks compensatory damages in the amount of \$500,000.00 and punitive damages in the amount of \$1,000,000.00. The Defendants have denied any and all liability, and in fact, the Church and its Trustees filed proofs of claim totaling \$476,853.93, and Jim E. Kelley asserted a claim against the bankruptcy estate in the amount of \$200.00.

² The state court action was styled *Associated Services/68 Steel, Inc. v. The Trustees of the Wallace Memorial Baptist Church, the Wallace Memorial Baptist Church, Equitable Church Builders, Inc., and Jim Kelly*, Case No. 118128-1.

³ The Chancery Court held, *inter alia*, that the Debtor was not a licensed contractor and that under the Tennessee Contractors Licensing Act, the Debtor's recovery against the Defendants was limited to the recovery of actual documented expenses established by clear and convincing evidence.

Following a hearing on various motions for summary judgment filed by the parties, the District Court, on December 17, 1997, filed a Memorandum and Order granting partial summary judgment to the Defendants on the basis of issue preclusion. *See* TRIAL EX. 1. The District Court cited the three orders entered by the Knox County Chancery Court on November 29, 1993, October 24, 1995, and November 27, 1995, that, *inter alia*, limited the issues remaining for adjudication and limited the Trustee's recovery for contract damages to actual, documented expenses provided by clear and convincing evidence due to the Debtor's "failure to comply with the version of the Tennessee Contractors Licensing Act, as amended, in effect during the pertinent time period" TRIAL EX. 1, at 2. The District Court concluded that "the plaintiff trustee in bankruptcy is bound by all of the rulings made by the chancery court in the prior litigation between the debtor in bankruptcy and the defendants." TRIAL EX. 1, at 3. Dissatisfied with this ruling, the Trustee obtained permission from the District Court for an interlocutory appeal; however, the Sixth Circuit Court of Appeals declined to hear the appeal.

Thereafter, the parties filed additional motions for summary judgment, and on June 20, 2001, the District Court filed a Memorandum Opinion denying the motions for summary judgment and setting forth the issues of material fact that remained undecided. Pursuant to this Memorandum Opinion, the District Court limited the issues remaining in the Lawsuit to

⁴ The three Chancery Court orders relied upon by the District Court are appended to the December 17, 1997 Memorandum and Order. However, the October 24, 1995 order, entitled "Order Amending Answer" does not appear to be related to the issues then before the District Court. This court, pursuant to Federal Rule of Evidence 201, takes judicial notice of the appropriate October 24, 1995 order entered in the Knox County Chancery Court, which is a part of the District Court file, granting the Defendants' motions for summary judgment. This is the order wherein the Chancellor determined that "[t]he plaintiff was not licensed under the Contractors Licensing Act set forth at Tenn. Code Ann. § 62-6-101, et seq, and accordingly, the motions for summary judgment based upon this Act are granted and the plaintiff's recovery in this lawsuit against all of the defendants is limited to the recovery of actual documented expenses only upon a showing of clear and convincing proof[.]"

allegations of (1) conversion, (2) mislocation of anchor bolts, (3) plan, specifications, and drawings deficiencies, (4) civil conspiracy, (5) misrepresentation, (6) interference with contract, (7) negligence, and (8) vicarious liability for the foregoing. *See* TRIAL EX. 2, at 9-11. Additionally, in this Memorandum Opinion, the District Court limited damages to actual documented expenses under the erection subcontract, damages incurred prior to the erection subcontract, and damages, if any, other than those related to breach of contract. *See* TRIAL EX. 2, at 10-11.

On several occasions following the entry of the District Court's orders, the Trustee and the Defendants' attorneys attempted unsuccessfully to negotiate a settlement of the Lawsuit, and the District Court recommended that the parties utilize the mediation process. Accordingly, on May 23, 2003, the Trustee, representatives of the Church, the Church's Trustees, Jimmy E. Kelley, and the parties' respective attorneys participated in a day-long mediation. Dr. Chrisman was also present at the mediation, as a representative of the Debtor. After several offers and counteroffers, as a result of this mediation, the parties reached and entered into an agreement to settle the Lawsuit for a total payment to the bankruptcy estate of \$270,000.00 (the Settlement). In addition, as part of the Settlement, the Church, its Trustees, and Mr. Kelley agreed to withdraw their claims against the bankruptcy estate. Payment of the Settlement will result in the payment in full of all administrative claims of the bankruptcy estate, along with a portion of the priority claims held by the Internal Revenue Service, the Tennessee Department of Employment Security, and the United States Trustee. Only three unsecured claims, minus those to be withdrawn by the Church, its Trustees, and Mr. Kelley, were timely filed. These claims, totaling approximately

\$6,000.00, will not receive any portion of the proceeds of the Settlement. None of the Objectors filed proofs of claim in the Debtor's bankruptcy case.

In his Motion to Compromise, the Trustee asks the court to approve the Settlement, stating that it is in the best interests of the estate, especially in light of the continued expenses and risks associated with continuing litigation of the Lawsuit, which has been pending, in one form or another, for approximately ten years, and which continues to remain unresolved and hotly contested.

II

The Motion to Compromise was filed pursuant to Federal Rule of Bankruptcy Procedure 9019, which states that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR. P. 9019. "Compromises are 'a normal part of the process of reorganization.'" *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 88 S. Ct. 1157, 1163 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 60 S. Ct. 1, 14 (1939)). "It is well accepted that compromises are favored in bankruptcy in order to minimize the cost of litigation to the estate and expedite its administration[.]" *In re Edwards*, 228 B.R. 552, 568-69 (Bankr. E.D. Pa. 1998); *see also In re W. Pointe Props., L.P.*, 249 B.R. 273, 282 (Bankr. E.D. Tenn. 2000).

In order to be approved by the bankruptcy court, any compromise or settlement of a claim between the estate and a creditor or party in interest must be "fair and equitable." *Anderson*, 88 S. Ct. at 1163; *W. Pointe Props., L.P.*, 249 B.R. at 281. The Trustee bears the burden of

persuasion that the proposed Settlement meets these standards. *In re Victoria Alloys, Inc.*, 261 B.R. 918, 920 (Bankr. N.D. Ohio 2001). In making its decision, the court may not “act as a mere rubber stamp or [simply] rely on the trustee’s word that the compromise is reasonable.” *W. Pointe Props., L.P.*, 249 B.R. at 281 (quoting *Reynolds v. Comm’r*, 861 F.2d 469, 473 (6th Cir. 1988)). Nevertheless, the bankruptcy judge has wide discretion to approve or disapprove a compromise or settlement, *Comm. of Unsecured Creditors v. Interstate Cigar Distrib., Inc. (In re Interstate Cigar Co., Inc.)*, 240 B.R. 816, 822 (Bankr. E.D.N.Y. 1999), and “the judgment of the trustee deserves some deference.” *W. Pointe Props., L.P.*, 249 B.R. at 281. In essence, the court bears the responsibility “not to decide the numerous questions of law and fact raised . . . but rather to canvass the issues and 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 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).

“In the case of approving a compromise or settlement, equitable considerations are paramount in the exercise of the Bankruptcy Court’s jurisdiction.” *Interstate Cigar Co.*, 240 B.R. at 822. “The benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.” *In re Lee Way Holding Co.*, 120 B.R. 881, 890 (Bankr. S.D. Ohio 1990) (quoting *In re Energy Coop., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989)). In order to make an “informed and independent judgment” regarding the fairness and equity of a proposed compromise, the court must examine the facts necessary to give an “objective opinion of the probabilities of ultimate success should the claim be litigated[, which includes an examination of] the complexity, expense, and likely duration of such litigation . . . and all other

factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” *Anderson*, 88 S. Ct. at 1163; *see also Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988) (“[T]he court is obligated to weigh all conflicting interests in deciding whether the compromise is ‘fair and equitable,’ considering such factors as the probability of success on the merits, the complexity and expense of litigation, and the reasonable views of creditors.”).

This examination, however, does not require the court to hold “a mini trial on the merits,” but instead requires a “review of the issues which are subject to the settlement.” *Interstate Cigar Co.*, 240 B.R. at 822. “The more complex and novel the subject litigation is, the less thorough a factual record is necessary to obtain approval of a settlement which will substantially benefit the bankruptcy estate.” *Lee Way Holding Co.*, 120 B.R. at 890. Furthermore, although the court should consider the reasonable views of creditors, “objections do not rule.” *Lee Way Holding Co.*, 120 B.R. at 891. An objection “is not controlling and will not prevent approval of the compromise where it is evident that the litigation would be unsuccessful and costly.” *W. Pointe Props., L.P.*, 249 B.R. at 282 (quoting *Official Creditors Comm. v. Beverly Almont Co. (In re Gen. Store of Beverly Hills)*, 11 B.R. 539, 541 (B.A.P. 9th Cir. 1981)).

III

The basic factors to be examined by the court are (1) the probability of success on the merits; (2) the complexity, expense, and likely duration of the Lawsuit were it to proceed to trial; and (3) any other factors that the court deems to be relevant, including the interests of creditors. *Anderson*, 88 S. Ct. at 1163; *W. Pointe Props., L.P.*, 249 B.R. at 281-82; *Lee Way Holding Co.*,

120 B.R. at 890. In order to satisfy the first factor, likelihood of success on the merits, the Trustee is not required to conclusively establish that he would either succeed or fail at trial on the merits of the Lawsuit.

Obviously, it would not be a settlement if to obtain approval the Trustee would have to demonstrate that he could not succeed had the . . . claim been pressed. All that he must do is establish to the reasonable satisfaction of the [court] that, all things considered, it is prudent to eliminate the risks of litigation to achieve specific certainty though admittedly it might be considerably less (or more) than were the case fought to the bitter end.

Fla. Trailer & Equip. Co. v. Deal, 284 F.2d 567, 573 (5th Cir. 1960) (citations omitted); *see also In re Aloha Racing Found., Inc.*, 257 B.R. 83, 88 (Bankr. N.D. Ala. 2000).

The Objectors argue that the Lawsuit is likely to succeed if allowed to proceed to trial in the District Court. In support of this assertion, the Objectors offered into evidence a letter addressed to Mr. Alt, the Trustee's attorney, from Mr. LeRoy Bible, CPA, CFE, dated May 22, 2003. *See* TRIAL EX. 3. This letter, which was marked "draft" and "for discussion purposes only," states that Mr. Bible has been provided with certain "information" by Dr. Chrisman and that his preliminary findings, based on this "information," indicate that the Debtor incurred damages exceeding \$468,000.00, with a total loss to the Debtor's investors of \$1,018,700.00, plus interest at 6% from September 1990 through May 2003 in the amount of \$1,161,100.00. The letter also states that these figures do not include any professional fees and expenses incurred by the Debtor as a result of this Lawsuit. The Objectors argue that this letter evidences that they stand to recover substantial damages and that the Settlement was insufficient.

The Trustee acknowledges that he was given a copy of Mr. Bible's letter on the day of the mediation. When questioned about the letter, the Trustee testified that he did not give it much consideration or place a great deal of weight upon its contents, considering that he does not know Mr. Bible nor has he ever discussed the case with Mr. Bible. Dr. Chrisman, on the other hand, was the party that hired Mr. Bible, who is a forensic accountant. Dr. Chrisman testified that he provided Mr. Bible with various schedules and similar documents that he prepared, compiled from computer records that the Debtor maintained from the Church project, including a document entitled "Church's Unjust Enrichment," which was entered into evidence. *See* TRIAL EX. 4. These documents purportedly evidence the Debtor's costs and expenses, as allocated to the Church project, based upon time and payroll records of employees, inefficiency costs, and extensive notes taken by the drafting department and retained by the Debtor. Dr. Chrisman testified that the computer records were available to the Defendants' attorneys in 1995, but that many of the notes had mysteriously disappeared, and thus, could not be produced. Additionally, Dr. Chrisman admitted that while he could produce payroll records, they do not indicate a break-down between the various projects worked on by each individual employee. Furthermore, Dr. Chrisman conceded that he could not produce actual documentation to support the requested damages for over-run, purported subcontractor work from an entity named Vulcraft, and purported subcontractor masonry work. *See* TRIAL EX. 4.

With respect to the likelihood of success on the merits at trial, the Trustee testified that although he does not agree with the District Court's finding that issue preclusion limited the remaining issues and damages available for adjudication, he became bound by the decision when

the Sixth Circuit declined to hear the interlocutory appeal filed following the 1997 Memorandum Opinion. Regarding the issues still pending before the District Court, the Trustee expressed his concern with being able to prove actual documented expenses related to the contractual claims and his ability to prove any of the remaining tort damages, especially in light of current Tennessee case law concerning recovery pursuant to the Tennessee General Contractors statute.⁵ When questioned about the total amount of damages that could be recovered in the Lawsuit if taken to trial, the Trustee testified that he was in possession of documentation that could establish only \$75,000.00 in contract damages, and because of this inadequate documentation, he did not believe that he could prove and recover more than \$500,000.00 in total damages on all contract and tort claims remaining before the District Court. The Trustee also testified that he was significantly influenced in his decision to settle the Lawsuit by the failure and inability of Dr. Chrisman to satisfy his requests for more adequate documentation necessary to prove damages.

The court agrees with the Trustee's opinion that Mr. Bible's letter, in and of itself, does not clearly indicate a likelihood of success on the merits if this Lawsuit proceeds to trial. First, Mr. Bible's letter is marked "draft" and "for discussion purposes only." Second, Mr. Bible's findings are based upon "information and data provided by Dr. Chrisman and his representation that there is support for all of the provided data." TRIAL EX. 3. In other words, Mr. Bible's conclusions were not based on supporting documentation. Additionally, Trial Exhibit 4, which

⁵ TENN. CODE ANN. § 62-6-101 *et seq.* This statute, known as the "Contractors Licensing Act of 1994," provides in material part that "[a]ny unlicensed contractor covered by the provisions of this chapter shall be permitted in a court of equity to recover actual documented expenses only upon a showing of clear and convincing proof." TENN. CODE ANN. § 62-6-103(5)(b) (Supp. 2002), formerly TENN. CODE ANN. § 62-6-103(3)(b) (1997). It was the finding of the Chancery Court, as upheld by the District Court, that the Debtor was an unlicensed contractor.

was prepared by Dr. Chrisman, contains, on its face, references to projects other than the Church project, and by Dr. Chrisman's own testimony, is based largely upon allocations and speculations as to the actual time expended on the Church project. Neither of these documents offers the Trustee the concrete, actual, documented evidence that he requires to prove damages pursuant to the District Court's order. Dr. Chrisman has never provided the Trustee with documentation that would enable him to establish actual damages exceeding \$75,000.00 by clear and convincing evidence.

Moreover, this Lawsuit has been pending between these parties, in some form or another, for more than ten years. It involves complex issues of Tennessee law, including issues concerning the Tennessee General Contractors statute, conversion, vicarious liability, misrepresentation, interference with contracts, and civil conspiracy, together with the defenses and damages available under each of these causes of action. Several of these issues are unsettled under Tennessee law, requiring substantial litigation and probable appeals. The potential for the Trustee's obtaining a positive result at trial is questionable, while the potential for his receiving an adverse ruling, yielding a recovery for the estate in an amount far less than the Settlement, is quite tangible.⁶ In addition, the parties share an acrimonious history throughout the pendency of this Lawsuit, including allegations by the Objectors (1) of fraud and misconduct of the attorneys, courts, and

⁶ Regardless of whether he wins or loses, the Trustee would have a right to appeal the District Court's December 17, 1997 Memorandum and Order granting the Defendants partial summary judgment on the basis of issue preclusion relative to the contractor's licensing issue. If successful on appeal, the Sixth Circuit Court of Appeals would presumably remand the damages issue back to the District Court for trial. While the Trustee believes he can win on appeal, there is no certainty. What is certain, however, is that the litigation would in all probability extend several more years at a substantial increase in administrative expenses.

Trustees of the Church,⁷ (2) of improper procedure as to the May 23, 2003 mediation, (3) that the Trustee has proposed this Settlement with an inadequate understanding of the legal issues, and (4) that the Trustee has breached his fiduciary duties to the bankruptcy estate. The Lawsuit has been

⁷ Specifically, the Objectors state in their twelve-page Objection, a copy of which is also appended to their Counsels' Brief in Support of Objections to Trustee's Motion to Compromise filed on September 15, 2003, that

(d) Unsecured claims totaling more than \$250,000.00 have inexplicably disappeared. The Trustee has stated that, other than the claims released as part of the settlement, only three unsecured claims totaling approximately \$6,000.00 were timely filed. It appears that, technically, this is accurate. However, this statement completely ignores the fact that there are additional unsecured claims exceeding \$250,000.00. Why these multiple, substantial claims do not appear on the Clerk's Claims Register is a mystery which remains to be solved.

The creditor holding the largest liquidated claim against 68 Steel is the undersigned G. Burgan Chrisman. In addition to owning one-third of the equity in 68 Steel, Mr. Chrisman loaned the corporation over \$165,000.00. The vast majority of this amount was for legal fees and costs incurred in the prosecution of 68 Steel's suit against the Offenders in the state court.

It was not until after the May 23 meeting that the undersigned found out, to their utter astonishment, that the Clerk's Claims Register lists only 11 claims. Of those on the Register, the only "creditors" (other than governmental entities and an insurer) are either the Defendants in the suit, or their co-conspirators. In its initial Chapter 11 filing, 68 Steel listed almost 80 creditors (of whom 16 had claims in excess of \$5,000.00). Yet, inexplicably, there appears to be no evidence in the Bankruptcy Court files that any of those creditors other than governmental entities filed proofs of claim.

Mr. Chrisman was represented by separate counsel in the bankruptcy. Are we to assume his counsel was unconscionably negligent in failing to file a Proof of Claim after the conversion to Chapter 7? What about the other creditors? Were they all negligent? Blind? Stupid? Since its inception, this case has been permeated with fraud and corruption, not only within the case but in the courts and the offices of public officials as well. Did these omitted creditors receive no notice? Were their claims filed and then removed? Has the claims register been altered? (There is documentary proof of other evidence tampering in this and related cases.)

This extraordinary discovery after the May 23 meeting begs another question: What was the Trustee's role in this puzzle? He was informed at the very beginning that Mr. Chrisman had invested thousands of dollars in pursuing justice in the state court, yet has never provided any indication that Mr. Chrisman and the other creditors did not appear on the Claims Register. Even more surprising was the recent statement by counsel for the Trustee that he had no knowledge at all of Mr. Chrisman's pre-filing claims.

Clearly it would be unconscionable to approve any settlement which leaves so many creditors unsatisfied before a thorough explanation for these highly suspicious omissions has been provided.

Objection at 9-10 (footnote omitted).

hotly contested throughout its history, and there is nothing in the record to indicate to the court that this would not continue throughout any future litigation. This factor weighs in favor of approving the Settlement.

The second factor, complexity, expense, and likely duration of trial, is tied into the first factor concerning the likelihood of success on the merits if the Lawsuit were to proceed to trial, requiring the court to examine the same facts and issues in a different light. Again, as previously stated, the Lawsuit is based upon complex issues of Tennessee law, many of which are unsettled by Tennessee courts. A trial in the District Court would require the involvement of many witnesses, including the hiring of experts, and would result in a voluminous record. To reiterate, this Lawsuit has been pending, first in the state court and now in the District Court, for more than ten years, and little has been resolved in that amount of time. In fact, even though the District Court outlined the issues still remaining in its 2001 Memorandum Opinion, the Objectors have continued in their attempts to argue issues precluded by the court.⁸

There is no question that the parties have already incurred substantial expense in this litigation. Dr. Chrisman testified that since the initial Chancery Court lawsuit, his family has paid more than \$300,000.00 in attorneys' fees pursuing this action. Dr. Chrisman also acknowledged that Mr. Alt had estimated for him that it would take between \$50,000.00 and \$100,000.00 to proceed and adjudicate the Lawsuit at the trial level, inclusive of expert witness fees, attorneys'

⁸ The Objectors have continued to maintain that the Chancery Court and the District Court incorrectly found that the Debtor violated the Tennessee General Contractors statute, that its damages are not limited, and that if the Chapter 7 Trustee would present certain evidence to the District Court, it would find that the Church was an illegal contractor and that all contracts it had entered into were void and unenforceable.

fees, contractor fees to “dig up” the Church’s foundation, an engineering survey as to the roof, and additional discovery to be performed. Moreover, because of the rancorous nature of the parties, the novel and complex issues being tried, and the possible damages involved, the parties stand to incur even more expense after submitting the Lawsuit to a jury trial before the District Court, followed, most likely, by an appeal to the Sixth Circuit Court of Appeals. These factors weigh in favor of granting the Motion to Compromise.

Finally, based upon the instruction of *Anderson*, the court must also look to any other relevant factors related to the proposed Settlement, including the reasonable views of creditors. *See Kelley v. Grot (In re Grot)*, 291 B.R. 204, 210 (Bankr. M.D. Ga. 2003); *Lee Way Holding Co.*, 120 B.R. at 890.⁹ Even though the court gives deference to creditors’ reasonable views, objections by even a debtor’s largest creditors will not control the court’s decision. *Lee Way Holding Co.*, 120 B.R. at 904. Likewise, the court is not bound by the acquiescence of non-objecting creditors when the first two factors are not met. *W. Pointe Props., L.P.*, 249 B.R. at 283.

In this case, the views of the Objectors are not entirely reasonable and are based upon the deep-seated emotions which were apparent at the evidentiary hearing on the Motion to Compromise. At the hearing, Dr. Chrisman, on behalf of the Objectors, argued many issues that are clearly not relevant to the Motion to Compromise presently before the court. First, the

⁹ Another factor to be considered is any difficulties in collecting a judgment if victorious at trial. *See, e.g., Johnson v. Jackson Family Televison, Inc. (In re Media Cent., Inc.)*, 190 B.R. 316, 320 (E.D. Tenn. 1994); *W. Pointe Props., L.P.*, 249 B.R. at 283. In this case, the collectibility of a judgment has not been raised by the Trustee as an issue.

Objectors expressed great dissatisfaction that the Trustee has never required the attorney for the Church to provide documentation evidencing his authorization to act on behalf of the Church, averring that the Trustee "had an obligation as an officer of the court" to investigate this authority. In response, the Trustee testified that he had no reason to doubt this attorney's authority, stating that this attorney is an officer of the court who has signed pleadings on behalf of the Church and has appeared on many occasions in court on behalf of the Church. The Trustee stated that these actions openly represent this attorney's authority by the Church to act on its behalf, without requiring any further investigation.

Second, the Objectors have focused a large amount of their argument on the failure of the Trustee and his attorney to proceed with an action to object to and disallow the Church's claims against the Debtor, which the Objectors maintain are fraudulent. In response to questioning by the Objectors as to why he did not pursue this action, the Trustee testified that although he does not believe that the Church has a valid claim and that he personally has assigned it \$0.00 value in making his decision to settle the Lawsuit, his statutory duty requires him to file a formal objection to claims only if a purpose is to be served.¹⁰ The Trustee testified that objecting to the Church's claim is not worthwhile because the Debtor's estate has never contained any assets, and thus, it is of no consequence whether the Church's claim is allowed or disallowed. Along those lines, the Trustee testified that if the bankruptcy estate had recovered sufficient funds to make distributions

¹⁰ The statutory duties of the trustee in a Chapter 7 case include "if a purpose would be served" the examination of proofs of claims and the objection to the allowance of any claim improperly filed. 11 U.S.C.A. § 704(5) (West 1993).

to unsecured creditors, he would have, at that point, considered pursuing an objection to the Church's claim against the estate.

Third, the Objectors, in their Objection and through the testimony of Dr. Chrisman, expressed their belief that the Trustee was under duress to settle the Lawsuit, being, according to them, pressured by members of his law firm, other attorneys in Knoxville, city and county officials, and the courts.¹¹ The Trustee, however, unequivocally denied being pressured by anyone to settle the Lawsuit. He testified that he entered into the mediation because he believed it to be court-ordered, that he did not feel it was critical to settle the Lawsuit at the mediation, and that he would not have settled the Lawsuit if he had not received a fair settlement. Upon cross-examination, Dr. Chrisman acknowledged that the Trustee was advised more than once by the mediator to accept lower offers from the Defendants that the Trustee refused. Nevertheless, Dr. Chrisman averred that the mediation was not actually a mediation, but was instead an "ambush" at which the Trustee used the wrong standard and did not attempt to effectuate a meaningful settlement. Additionally, Dr. Chrisman testified that the Trustee told him after the mediation that comments and actions taken by Dr. Chrisman against a local judge "undermined" his case. In explanation, the Trustee stated that after the mediation, Dr. Chrisman was visibly upset and in tears. The Trustee expounded, acknowledging that he told Dr. Chrisman that the matters concerning the local judge were not helpful to the Trustee's case because they did not go to the merits of the case, but reiterated that he never advised Dr. Chrisman that the case was

¹¹ *See supra* n. 7.

"undermined" by these actions. The court finds the allegations of the Objectors that the Trustee was pressured into the Settlement incorrect, unsupported by the record, and wholly without merit.

Fourth, much of Dr. Chrisman's testimony focused upon prior discussions and strategy sessions in which he and Mr. Alt participated, evidencing a mistaken impression by Dr. Chrisman that Mr. Alt was his attorney rather than the attorney for the Trustee. Dr. Chrisman testified to various e-mails and telephone conversations between himself and Mr. Alt concerning the matters surrounding the Lawsuit, including estimated damages and the possibility of settlement. He also testified that his family "kept it going" with Mr. Alt and the Trustee because they continued to find evidence to support the Debtor's claims, but that during the mediation, Mr. Alt was "not the attorney I've worked with for seven years." The court recognizes that these Objectors have carried on this litigation for many years and that they are passionate and committed to seeing it resolved in their favor. Clearly, however, Dr. Chrisman, the only Objector to testify, is passionate beyond the point of being objective. Similarly, the court acknowledges that the Objectors have expended a substantial amount of time and money in their pursuit of this Lawsuit. Nevertheless, none of the Objectors have timely filed a proof of claim in this bankruptcy case.¹²

¹² The Objectors have made an issue of the fact that although the Debtor listed approximately 100 creditors in its Chapter 11 bankruptcy schedules, only ten proofs of claim were filed in the Debtor's case after its conversion to Chapter 7, implying misconduct by the Trustee and the bankruptcy court itself in the "misplacement" of these claims. *See supra* n. 7. The Trustee testified, correctly, that he must rely on the addresses provided by the Debtor and that there were many returned mailings in this case without the benefit of proper forwarding address information. In this vein, the court reminds the Debtor and the Objectors that it is the responsibility of creditors to file their own proofs of claim and that the Trustee is not obligated to ensure that all creditors have timely filed their claims. Additionally, the court is concerned at the Objectors' unfounded allegations and mischaracterizations contained in the Objection that "[s]ince its inception this case has been permeated with fraud and corruption, not only within the case but within the courts and the offices of public officials as well[.]" and that "[t]here is documentary proof of other evidence tampering in this and related cases." These unsupported statements, and others, exceed the bounds of propriety. It would behoove the Objectors' counsel to thoroughly familiarize herself with the provisions of Rule 9011
(continued...)

Only Mr. G. Burgan Chrisman, who has funded the Trustee's attorneys' fees, will receive any disbursement from the estate, as his expenditures constitute an administrative claim that will receive first priority and be fully satisfied by virtue of this Settlement. The Objectors argue that funding is not an issue, in that they are prepared and capable to see this Lawsuit to an end. While it may be the case that Mr. Chrisman possesses the funds to subsidize the continuation of this Lawsuit, allowing him to do so continues to burden the bankruptcy estate, in that his financing increases the amount of his administrative claim against the estate, and in no way enhances the success of the Trustee's action.

Lastly, even though Dr. Chrisman is an officer and shareholder of the Debtor, with whom the Trustee has worked during his litigation of the Lawsuit, the Trustee does not represent Dr. Chrisman's interests, nor does the Trustee have a statutory duty to represent any interests of the Debtor. The Trustee has a duty to "collect and reduce to money the property of the estate for which [he] serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest[.]" 11 U.S.C.A. § 704(1) (West 1993). The Trustee is required to represent the interests of all unsecured creditors, be they priority or nonpriority. *See Grot*, 291 B.R. at 210. This particular Trustee has been on the Trustee Panel for approximately 13 years and has been appointed as the trustee in hundreds of Chapter 7 cases. He testified that he has participated, as the trustee, in mediations concerning both contract and tort damages in other cases. The Settlement allows the Trustee to collect \$270,000.00 for the benefit of the estate, while also

¹²(...continued)
of the Federal Rules of Bankruptcy Procedure and Rule 11 of the Federal Rules of Civil Procedure.

allowing him to reduce the unsecured claims by \$468,053.93. Based upon the proof presented, it is unreasonable for the Objectors to oppose a compromise offering such a benefit to the estate, when the alternative of prosecuting a lawsuit with the potential to yield little or nothing while depleting estate assets, does not provide a substantial and real benefit to the estate.¹³

Based upon the proof presented, the court finds that the Trustee has also met his burden of persuasion as to this factor, and that this Settlement is "prudent to eliminate the risks of litigation to achieve specific certainty . . . [as opposed to allowing the parties to fight] to the bitter end." *Fla. Trailer & Equip. Co. v. Deal*, 284 F.2d at 573. The Motion to Compromise is fair and equitable and is in the best interests of the estate and all parties in interest. Accordingly, the Settlement between the Trustee and the Church, its Trustees, and Mr. Kelley entered into on May 23, 2003, shall be approved.

An order consistent with this Memorandum will be entered.

FILED: October 2, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

¹³ The court also affords deference to the decision by the United States Trustee, who is "vested with the responsibility to oversee administration of all bankruptcy cases," in his support of the Motion to Compromise. *See Lee Way Holding Co.*, 120 B.R. at 904.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 95-33157

ASSOCIATED SERVICES/
68 STEEL, INCORPORATED

Debtor

ORDER

For the reasons stated in the Memorandum on Motion to Compromise filed this date, the court directs that the Motion to Compromise filed by the Chapter 7 Trustee, Maurice K. Guinn, on May 30, 2003, requesting authorization to settle the estate's claims pending in the United States District Court for the Eastern District of Tennessee, in Case No. 3:97-CV-376, styled *Maurice K. Guinn, Trustee v. The Wallace Memorial Baptist Church, Equitable Church Builders, Inc., and Jimmy E. Kelley*, is GRANTED. The Trustee is authorized to settle the estate's claims under the terms and conditions set forth in the Motion to Compromise.

SO ORDERED.

ENTER: October 2, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE