

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 10-11965  
)  
VIVEK R. GUPTA, ) Chapter 7  
)  
Debtor. ) Chief Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**  
) **AND ORDER**<sup>1</sup>

The chapter 7 trustee requests authority to compromise the fraudulent transfer claim which he brought against the debtor's estranged spouse, Niyati Gupta. The debtor Vivek Gupta opposes the compromise. The court held a hearing on December 22, 2011 and took the matter under submission at that time. For the reasons stated below, the debtor's opposition is overruled and the trustee's motion is granted.<sup>2</sup>

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O), and this decision is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

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<sup>1</sup> This opinion is not intended for commercial publication, either in print or electronically.

<sup>2</sup> Docket 116, 118, 120, 121.

### **THE FRAUDULENT TRANSFER CLAIM**

The trustee's complaint against Niyati Gupta alleges that she and the debtor jointly owned a Raymond James account, that the debtor was the sole or primary source of the funds in the account, and that Niyati Gupta directed that a \$150,000.00 check be issued out of the account payable to her; the trustee seeks to avoid this transfer and recover the funds as a fraudulent transfer.<sup>3</sup> The complaint also objects under Bankruptcy Code § 502(d) to Ms. Gupta's \$147,000.00 priority claim for temporary support filed in the debtor's chapter 7 case.<sup>4</sup>

### **THE MOTION TO COMPROMISE**

The trustee proposes to compromise the claim for \$17,800.00, subject to these conditions:

- (1) if the debtor is awarded cash assets of \$17,800.00 or more in his pending divorce case with Ms. Gupta, Ms. Gupta will owe nothing to the trustee. If the debtor is awarded less than \$17,800.00 in cash assets, Ms. Gupta is to pay the trustee the amount necessary to ensure that the estate receives the sum of \$17,800.00. For this purpose, cash assets are defined as non-exempt cash or cash-related assets (not limited to funds in bank and investment accounts) owned by the debtor and/or Ms. Gupta and located in the United States.
- (2) if Ms. Gupta is required to pay the trustee funds under the agreement, she agrees to subordinate her claim to both the administrative expenses of the estate and other unsecured creditors to the extent of \$35,600.00.

### **THE POSITIONS OF THE TRUSTEE AND THE DEBTOR**

The trustee argues that the settlement is fair and equitable and in the best interests of creditors and the estate. In his view, the settlement will generate \$17,800.00 for creditors and

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<sup>3</sup> *Wojcik, Trustee v. Niyati Gupta*, Adv. No. 11-1069.

<sup>4</sup> *See* Ms. Gupta's amended claim no. 9.

will provide them with a level of certainty. The debtor, on the other hand, argues that the interest of creditors demands that the trustee conduct a more thorough investigation of the debtor's claims against Ms. Gupta and demand a more realistic settlement.

## **DISCUSSION**

### **A. Approval of a Compromise**

Bankruptcy Rule 9019 establishes the procedure for approval of a trustee's compromise of an estate claim. FED. R. BANKR. P. 9019(a). The debtor is entitled to notice and an opportunity to object to a proposed compromise. *Id.*; *Fry's Metals, Inc. v. Gibbons (In re RFE Indus., Inc.)*, 283 F.3d 159, 163-63 (3d Cir. 2002). "In considering a proposed compromise, the bankruptcy court is charged with an affirmative obligation to apprise itself of the underlying facts and to make an independent judgment as to whether the compromise is fair and equitable. The court is not permitted to act as a mere rubber stamp or to rely on the trustee's word that the compromise is reasonable." *Reynolds v. Comm'r of Internal Revenue*, 861 F.2d 469, 473 (6th Cir. 1988) (citations omitted). When considering a compromise, the 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."<sup>5</sup> *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th

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<sup>5</sup> In determining whether to compromise the estate's cause of action and in what amount, a trustee is required to consider the debtor's interest in any surplus that may remain after the trustee pays debts, fees, and administrative expenses. *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988). The debtor here is not arguing that there will be such a surplus. Instead, he argues that the settlement prejudices the rights of creditors, an argument that he may not have standing to make. Nevertheless, the court will consider the points that the debtor raises.

Cir. 1988); *accord Reynolds*, 861 F.2d at 473 (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

These four factors are used to evaluate a proposed compromise: (1) the probability of success in the litigation; (2) the difficulty of collection; (3) the complexity of the litigation, including any attendant expense, inconvenience, and delay; and (4) the paramount interest of creditors. *Bard v. Sicherman (In re Bard)*, 49 Fed. App. 528, 530 (6th Cir. 2002) (unpublished opinion); *Fishell v. Soltow (In re Fishell)*, 47 F.3d 1168 at \*3 (6th Cir. 1995) (unpublished opinion).

### **B. Evaluation of the Proposed Compromise**

In evaluating the proposed compromise, the court has read and considered the parties' submissions and counsel's arguments made at the December 22, 2011 hearing. Additionally, the court is familiar with the extremely contentious nature of the debtor's and Ms. Gupta's pending divorce, having presided over the chapter 7 case and other related adversary proceedings.<sup>6</sup>

Although the debtor requested an evidentiary hearing, an evidentiary hearing is not required under the circumstances.<sup>7</sup> Bankruptcy Rule 9011 does not require the court to hold an evidentiary hearing with respect to every proposed settlement. *Depoister v. May M. Holloway*

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<sup>6</sup> By way of example, this is how the debtor described the situation in December 2010 when he moved (unsuccessfully) to dismiss his bankruptcy: "The divorce in Cuyahoga County is highly contentious, has been the subject of ongoing litigation since December 31, 2008 and has no foreseeable conclusion, due to the animosity of the parties and level of adversary litigation." Case no. 10-11965, docket 73, at 2. In the year that has passed since that statement, matters have not improved.

<sup>7</sup> The court also notes that the request was not timely, having been made after the court stated that it was taking the matter under submission. Regardless of timing, however, a hearing is not necessary or appropriate under the facts of this case.

*Found.*, 36 F.3d 582, 586 (7th Cir. 1994). This is because the court’s role in evaluating a proposed compromise “is 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)). Indeed, “[t]he very purpose of such a compromise agreement ‘is to allow the trustee and the creditors to avoid the expense and burdens associated with litigating sharply contested and dubious claims.’” *In re Bard*, 49 Fed. Appx. at 530 (quoting *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986)).

**1. The probability of the trustee’s success in the litigation**

The debtor argues that the trustee is likely to succeed because Ms. Gupta fraudulently took control of the debtor’s funds and she has not offered any credible explanation as to her disposition of those funds, as well as other funds.<sup>8</sup> He argues further that the trustee has a duty to conduct formal discovery before settling the matter.

The trustee, on the other hand, believes that he would face significant obstacles in prosecuting the fraudulent transfer claim. He met with Ms. Gupta and her counsel, and they gave him the documentation he requested. Based on his investigation, he believes that the compromise is warranted because: (1) it will be difficult to prove that the debtor was insolvent at the time the transfer occurred; (2) Ms. Gupta appears as the co-owner of the account where the

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<sup>8</sup> The debtor’s objection alleges that Ms. Gupta withdrew additional amounts from joint accounts and misstates the amount the trustee is seeking to recover as \$450,000.00, rather than \$150,000.00.

transfer originated; (3) the documentary evidence suggests that some of the proceeds of the transfer were used to pay the expenses of the debtor's children and other creditors; and (4) the debtor's testimony is likely to be needed to make the trustee's case. On the latter point, the debtor resides in India and has not been fully cooperative to date.

The court finds that this factor weighs in favor of the compromise. The trustee has identified significant evidentiary issues which he would have to overcome to obtain a judgment. These include proving his allegations that the transferred funds were the debtor's and that the debtor was insolvent at the time of the transfer.<sup>9</sup> The fact that Ms. Gupta is a co-owner of the account is clearly an obstacle to proving that the funds belonged to the debtor. More significantly, it may be quite difficult for the trustee to prove that the debtor was insolvent because his schedules state that his total assets exceeded his total liabilities, and he has stated in another court filing that he has sufficient assets to pay his creditors 100%.<sup>10</sup> Additionally, based on the debtor's conduct in this case, the trustee's concern that the debtor will not appear for trial and/or will otherwise fail to cooperate is a reasonable one. These same issues will pose obstacles to recovery even if the trustee were to continue the litigation and conduct the discovery the debtor proposes.

## **2. The difficulty of collection**

The trustee argues that Ms. Gupta is not employed full time and that he would be required to commence additional proceedings to collect any judgment. His ability to collect will depend

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<sup>9</sup> See 11 U.S.C. § 544(b) and OHIO REV. CODE §§ 1336.01- 1336.12; and 11 U.S.C. § 548.

<sup>10</sup> See Debtor's Motion to Dismiss (docket 73) and Summary of Schedules (docket 1), case no. 10-11965.

on whether Ms. Gupta is awarded assets in the pending divorce and any collection efforts will require him to incur additional administrative expense. The debtor argues that the trustee will not have a problem collecting; however, his argument on this issue is not cogent. On the one hand, he posits that there will be no difficulty collecting because the remaining marital assets exceed \$1,000,000.00.<sup>11</sup> On the other, he argues that it is likely that Ms. Gupta may receive nothing in the divorce.<sup>12</sup>

The court finds that the trustee would encounter difficulties in collecting a judgment against Ms. Gupta, and that this factor weighs in favor of the settlement.

**3. The complexity of the litigation, including expense, inconvenience, and delay**

The trustee acknowledges that the fraudulent transfer action is not complex, but argues that the expense of continuing the litigation and the potential cost and delay of an appeal weigh in favor of the settlement. In his reply brief, the trustee states that he is willing to continue litigating the claim if the debtor will agree to permanently advance the proposed settlement amount of \$17,800.00; however, the debtor has not agreed to this proposal.<sup>13</sup>

The court finds that this factor does not weigh either for or against the settlement.

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<sup>11</sup> Debtor's objection at p.5, docket 118.

<sup>12</sup> *Id.*

<sup>13</sup> At the motion hearing, counsel for the debtor proposed that \$500,000.00 of the marital assets be distributed to the bankruptcy estate to pay claims, with any remaining funds being returned to the parties. He did not; however, explain how such a compromise could be effected given the pending divorce proceeding.

#### **4. The interest of creditors**

The trustee argues that the compromise is in the creditors' best interest because it assures a recovery on the claim. Additionally, Ms. Gupta's agreement to subordinate her priority claim to administrative expenses and unsecured creditors to the extent of \$36,500.00 provides further benefit, because without that agreement any recovery on the fraudulent transfer claim would be applied to pay Ms. Gupta's priority claim rather than unsecured creditors.<sup>14</sup> The debtor challenges this assessment and argues that it is in the best interests of creditors to continue with the litigation, conduct discovery, and demand a larger settlement. He suggests that Ms. Gupta's agreement to subordinate her claim may have little value, because he is contesting that claim in the divorce proceeding.

On balance, the court finds that this factor weighs in favor of the settlement, which provides a concrete benefit to creditors. Continuing the litigation would require the trustee to incur additional expense and there is no reason to conclude that those efforts would yield a higher settlement offer from Ms. Gupta.

#### **CONCLUSION**

Although the trustee proposes to compromise his claim against Ms. Gupta for a small percentage of the amount sought in his complaint, on balance the relevant factors weigh in favor of finding that the settlement is fair and equitable. The debtor's objection appears to reflect his frustration with the divorce proceedings and his perceived inability to obtain information in that

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<sup>14</sup> See 11 U.S.C. § 507(a)(1) (providing first priority for unsecured claims for domestic support obligations); and 11 U.S.C. § 726(a)(1) (providing that property of the chapter 7 estate shall first be distributed to priority claims).



proceeding, rather than a well-reasoned challenge to the compromise. Therefore, for the reasons stated, the debtor's opposition is overruled and the trustee's motion to compromise is granted.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Pat E. Morgenstern-Clarren". The signature is written in a cursive, flowing style. The first name "Pat" is written with a large, stylized "P". The last name "Clarren" is written with a long, sweeping underline that extends to the right.

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Pat E. Morgenstern-Clarren  
Chief Bankruptcy Judge