UNITED STATES DISTRICT COURT DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

227

CLEALON B. MANN and
ANELL H. MANN,

Plaintiffs,

-vs-

ADAM M. DUNCAN,

Defendant.

ORDER AFFIRMING ORDER OF BANKRUPTCY COURT

Civil No: 87-C-95W

The debtors/appellants, Clealon B. Mann and Nanell H. Mann ("appellants") appeal from an order of the bankruptcy court which approved the trustee's proposed compromise and settlement of adversary proceedings between appellants and defendant/ appellee Adam M. Duncan ("appellee") in bankruptcy No. 84A-0101. Oral arguments relating to this appeal were heard on May 1, 1987. Appellants were represented by Jeffrey R. Stephens, appellee by William G. Fowler and Barbara K. Barrett and the trustee appeared in person. Prior to the argument the court had read all memoranda filed in connection with this appeal and had also read the record on appeal including the transcript of the proceedings before the bankruptcy court that took place on October 31, 1986. Following oral argument, the court took the matter under advisement and having now further considered the law and the

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facts renders the following order.

The facts relating to this appeal are stated in detail in the briefs on appeal of appellants, appellee and R. Kimball Mosier, trustee ("trustee"). They are not in material dispute. Accordingly, and in this order, they will be stated in brief fashion and only as necessary to understand this court's decision on the narrow issue before it on this appeal.

In April 1984 appellants filed for relief under the Bankruptcy Code. In May 1985 appellants retained appellee to represent them in a breach of contract action which later resulted in various lawsuits filed in this court by appellants against third parties with appellee acting as appellants' lawyer. These actions were later settled by order of another judge of this court. In July 1986 appellants filed a lawsuit in the state court seeking damages for alleged professional malpractice and breach of ethical canons against appellee arising out of appellee's representation of appellants in the earlier lawsuits. Because appellants were debtors under the Bankruptcy Code, appellee removed appellants' action against him to the bankruptcy court as an adversary proceeding during August 1986.

During July 1986 trustee was appointed for appellants' bankruptcy estate, which had been converted from a Chapter 11 to Chapter 7 case and thereafter trustee, as representative of the

appellants' bankruptcy estate, entered into settlement negotiations with appellee. As a result of these negotiations appellee offered the sum of $2,500.00 to the appellants' bankruptcy estate for the dismissal of the adversary proceeding, subject to the approval of the bankruptcy court. The trustee investigated the facts relating to this adversary proceeding and then determined that a settlement was appropriate and in the best interest of the appellants' bankruptcy estate.

Pursuant to Rule 9019(a), Bankruptcy Rules, trustee, in September 1986, filed a Motion for Order Approving Compromise and Settlement of Controversy. This motion and the contemporaneously filed affidavit and notice stated in detail the trustee's reasons for seeking court approval of the settlement and included the trustee's conclusion and finding that settlement was in the best interest of the bankruptcy estate and that the claims alleged against appellee by appellant were without merit.

A hearing on the trustee's motion was held before the bankruptcy court on October 31, 1986. Shortly prior to the hearing, appellants filed an objection to the proposed settlement without specifying any grounds of objection. At the hearing trustee represented to the court, inter alia, that it was his opinion there was no realistic value in the case, that the settlement sum of $2,500.00 offered by appellee represented a

nuisance value and that the settlement was fair and reasonable and it was in the best interest of the estate to enter into the settlement. At the hearing appellants renewed their objection to the settlement and offered the trustee the sum of $2,800.00 in an attempt to have the settlement abandoned or sold to them by the trustee. Appellants offered no evidence that the lawsuit had merit or in opposition to the findings and conclusions of trustee in support of the settlement. Appellants' sole argument in the bankruptcy court and in this court on appeal is that by reason of appellants' offer of $2,800.00, or $300.00 more than was offered by appellee, that the bankruptcy court abused its discretion in approving the compromise and settlement of the adversary proceeding.

At the conclusion of the hearing before the bankruptcy court, the bankruptcy judge stated his decision orally into the record. In doing so, the court specifically found that the law favors compromises to resolve disputes, that in determining whether the compromise was proper that the probability of success in the litigation and the difficulties to be encountered, as well as the paramount interest of the creditors, should be considered and that it appeared to the court that the trustee had considered all of the appropriate criteria prior to making the judgment to recommend approval of this settlement and compromise to the

court. Accordingly, the bankruptcy judge approved the trustee's motion and entered an order to that affect on January 27, 1987.

Rule 9019(a) of the Bankruptcy Rules provides as follows:

> On a motion by the trustee after a hearing on notice to creditors, the debtor and indentured trustees as provided in Rule 2002(a) and to such other persons as the court may designate, the court may approve a compromise and settlement.

It is clear that approval of settlements, pursuant to Rule 9019(a), lies within the sound discretion of the bankruptcy court and that approval or denial of a compromise will not be disturbed on appeal absent a clear abuse of discretion. In re Patel, 43 B.R. 503, (N.D. Ill. 1984).

The narrow issue before this court on appeal is whether the bankruptcy court abused its discretion in approving the settlement recommended by the trustee where the sole basis for objection to that settlement was that the appellants offered to pay $300.00 more for sale or abandonment of the claim to them than was offered by the appellee to the estate for compromise and settlement of the claim. Based on a thorough review of the entire record and particularly considering the trustee's reasons in support of his motion, and the court's findings approving that motion, this court holds that the bankruptcy court did not abuse its discretion in approving the compromise and settlement of

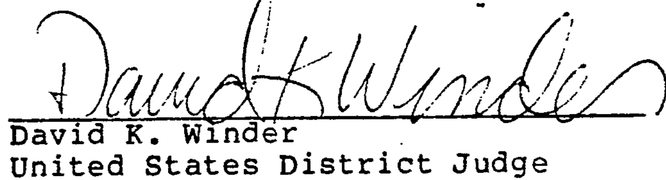
appellee's claim. To hold otherwise on the state of the record before this court on appeal would be to invite the possibility of transforming every motion filed under Rule 9019(a) into an auction or bidding contest in which the sole determining factor would be the highest amount of money offered by debtor or creditor to the estate. While that consideration is important, it is not necessarily decisive in every case. While objections of creditors to a compromise agreement must be afforded due deference, such objections are not controlling, In re A & C Properties, 784 F.2d 1377, 1383, 1384 (9th Cir. 1986). Objection to settlement by the debtor is not fatal if settlement is found to be in the best interest of the estate as a whole, St. Paul Fire and Marine Ins. Co. v. Vaughn, 779 F.2d 1003, 1010 (4th Cir. 1985). In this particular case the trustee has advanced sufficient other considerations favoring his motion for compromise and settlement of the claim that there was no clear abuse of discretion by the bankruptcy court in approving that motion.

Accordingly,

IT IS HEREBY ORDERED that the order of the bankruptcy

court approving the settlement entered into between trustee and appellee is affirmed.

Dated this 26 day of May, 1987.



David K. Winder
United States District Judge

Mailed a copy of the foregoing to the following named counsel this 26 day of May, 1987.

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