

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

PAUL S. HUDSON,

Debtor.

Case No. 00-11683

APPEARANCES:

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Pro Se

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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

MEMORANDUM-DECISION & ORDER

Currently before the court is the motion of Gregory Harris (“Trustee”) to approve a settlement pursuant to Fed. R. Bankr. P. 9019 (the “Settlement Motion”). Paul S. Hudson (the “Debtor”) and Creditors Trustco Bank (“Trustco”) and Sunset Partnership (“Sunset”) support the Trustee while Creditor Richard Corvetti (“Corvetti”) opposes the Settlement Motion.

JURISDICTION

The court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 157(a), 157(b)(1) and 1334.

FACTS / BACKGROUND

The Settlement Motion originated with Corvetti’s request for payment of an administrative expense claim. On May 27, 2004, Corvetti requested that he and his attorney, Kenneth Varley, Esq., be allowed an administrative expense claim for the substantial contributions they made in the case (the “Corvetti Motion”). The Corvetti Motion generated opposition from some parties and requests for more specific information from others. That motion has been transposed into the pending Settlement Motion that is extensive in scope.¹

At the original hearing on the Corvetti Motion, it became clear that the parties were discussing matters more global in nature, and the framework for a far-reaching agreement was placed on the record.² Specifically, the parties stipulated that: (1) general releases would be exchanged among Corvetti, the Debtor, and the Trustee; (2) Trustco and Sunset would release

¹The Corvetti Motion was eventually withdrawn by Corvetti by letter to the court dated September 9, 2004 (Docket No. 294).

² In places the transcripts from the hearings are somewhat garbled, and the court had to rely on the original voice recordings of the hearings involved to correct portions of the transcripts cited in this decision. Those changes are indicated by italics.

the Debtor from any further liability on his prepetition obligations and thereby limit their recovery to the distributions received from the chapter 7 Trustee; (3) Corvetti would be allowed an administrative expense claim of \$10,000; (4) Corvetti would file amendments to his existing proofs of claim to clarify that only two remain; (5) Corvetti and the Debtor and the Debtor's family would execute a covenant not to sue one another; (6) Corvetti would agree to submit no further papers regarding the remand of this court's decision denying the discharge of the Debtor, and if contacted by any court regarding the matter, Corvetti would submit a letter stating that he would rely on the record already before the court. (May 27, 2004 Tr. at 4-5.)

Despite the foregoing negotiated terms, the subsequent colloquy among the parties reveals unresolved questions about the covenant not to sue, severability issues, and the court's retention of jurisdiction to address noncompliance issues. (*Id.* at 6 - 20.) In addition, both Attorneys Pastore and Kriss needed time to obtain the consent of their clients, and the Debtor wanted counsel to review the proposed agreement. (*Id.* at 20 -23.)

The court expressed concern regarding whether any agreement would ultimately emerge.

Court: I'm not going to have anybody do a lot of work on this until we know that you're comfortable
....
(*Id.* at 22.)

Court: How much time do all of you need ... so we know that we've got a deal that Mr. Harris can try and reduce to writing?
(*Id.* at 23.)

Court: So we're going to call Mr. Hudson, Mr. Corvetti and then we'll see Mr. Harris, Mr. Pastore, Mr. LeFebvre, and Mr. Purcell if he wishes to appear, next week, and we'll see where we are.
(*Id.* at 26.)

The Corvetti Motion and, by implication, the global settlement discussion, was adjourned to June 3rd, then to June 10th, and then to July 8th. The court docket does not reflect a record of any proceedings on those dates. On July 15th, the matter was recalled at which point the Trustee

stated that he had forwarded a proposed stipulation of settlement to the relevant parties and had received some comments and requests for some changes.³ He thought everyone was substantially on board and that he did not consider any of the proposed revisions to be “deal breakers.” However, he also interjected that in the past, negotiations in this case had produced terms he had not considered deal breakers which ultimately were. The Trustee then requested that the Corvetti Motion be adjourned until August 5th to coincide with the return date of his proposed Fed. R. Bankr. P. 9019 motion for an order approving the parties’ global settlement.

At the August 5th hearing, the Trustee indicated that “with respect to my application for a 9019 compromise, we seem to be in substantial agreement...” (Aug. 5, 2004 Tr. at 4.) However, the Trustee went on to state:

[b]ut I’ve reached a point where there have been some requests what I would deem to be substantive changes to what is a universal settlement. I’m not going to make those changes, because to me that will get us absolutely nowhere, and there are other litigations pending that make that fruitless. So I’m going to change the document. I’m going to circulate the document for signature. I am asking the Court to allow me to submit an order and a fully-executed stipulation on or before the close of business Friday the 13th. We may want to change that date, or *deem my* motion withdrawn, and Mr. Corvetti and Mr. Hudson can have... back *at it*.

(*Id.* at 5)

Regarding the proposed changes to be made by the Trustee, Attorney Varley responds:

I think they’re going to be acceptable, but I just don’t feel comfortable signing it obviously without my client having *reviewed* it.

(*Id.* at 6.)

The court then granted the Trustee’s request to submit an order on or before a date certain or the motion would be marked withdrawn. The Trustee responded, “[b]ut I’m going to give you

³ The July 15th hearing was not transcribed; thus, the court relied solely on the voice recording of the proceeding.

a new order today that allows me to submit the order by the 16th. Right Judge?” (*Id.* at 11.)

The court docket does not reflect either (1) an order from the Trustee granting his request to have until August 16th to submit a settled order or have his Rule 9019 motion deemed withdrawn, or (2) any actual settled order by August 16th. Instead, the Trustee requested a conference with the court based upon on the parties’ inability to agree on the terms of a proposed order regarding the supposed settlement agreement emanating from the May 27th hearing. That lead to the court requesting competing orders from the parties. The Trustee submitted his version of the proposed order. Corvetti did not, submitting instead argument against the entire settlement. The court has received further written submissions from the parties, and the question of whether there is a valid settlement is ripe for decision.

ARGUMENTS

In support of the Settlement Motion, the Debtor presents three arguments: (1) the law favors settlement; (2) Corvetti is estopped from withdrawing or repudiating the settlement; and (3) allowing Corvetti to withdraw would be expensive to the parties, damaging to the integrity of the court, and violative of public policy. The Debtor points to portions of the August 5th transcript to establish that the court approved the settlement with an order to be submitted. The Debtor asserts that Corvetti was in agreement with the proposed settlement on May 27th, and it was only he, the Debtor, that needed the input of independent counsel.

Trustco Bank submitted a statement in support of the Trustee’s proposed order. It basically argues that there was a meeting of the minds and that the court should bless that agreement.

Corvetti argues against the enforcement or even existence of any alleged settlement

agreement. He further argues he is not estopped from opposing any alleged settlement agreement because he is not advocating any new or contrary legal positions. Corvetti summarizes his position, in effect, as follows: “[i]t appeared on August 5th that the parties were close to executing a written stipulation of settlement, but the fact remains that there were no further discussions, the stipulation was not executed, and there is no written settlement agreement.” (Corvetti Mem. of Law at 9.)

DISCUSSION

The granting of the Settlement Motion would end years of acrimonious litigation between the Debtor and Corvetti; current lawsuits in both the state and federal courts would be discontinued; and the parties would get on with their lives. Unfortunately, a close reading of the transcripts from the hearings held in connection with the Corvetti Motion and the Settlement Motion does not lead to the conclusion that there was ever a meeting of the minds and, thus, the Settlement Motion must be denied.

While this court is firmly convinced of the benefits of the proposed settlement to all parties, it cannot create a settlement where none exists. This court indicated on multiple occasions during the May 27th hearing that no purported agreement would be approved until it had been reduced to writing. The Trustee obviously shared concerns about the existence of any agreement; at the August 5th hearing, he requested that the court allow him approximately 10 days to submit a written stipulation of settlement or his motion would be deemed withdrawn, and the parties could continue their litigious ways. That is the only request that the court granted on that day; there was no approval of any settlement because at that point there was no settlement. The court did not adjourn the Settlement Motion to a future control date; it acquiesced to the

Trustee's request that either a global settlement order on consent would be submitted within a relatively short period of time, or the settlement process would be abandoned.

Although the prospect of peace among the parties would have been beneficial to all, the court does not find the existence of an enforceable settlement agreement or, alternatively, that the motion was withdrawn when a stipulated order was not submitted by August 16th as required by the court's ruling on August 5th. The court therefore declines to sign the proposed order of the Trustee, and instead denies the Settlement Motion.

Regarding the remaining bankruptcy litigation between the Debtor and Corvetti, the court docket reflects two open matters: (1) the remand from the District Court of this court's denial of the Debtor's discharge (Adv. Pro. No. 00-90091)(the "Remand"), and (2) Corvetti's adversary proceeding (Adv. Pro. No. 04-90005) seeking a declaratory judgment as to whether he has standing in the Remand. A telephonic § 105 conference with the Debtor and Corvetti will be held on **January 3, 2005 at 10:00 a.m.** to discuss the status of these two adversary proceedings and to clarify any issues regarding the scheduling orders issued therein.

It is so ORDERED.

Dated: December , 2004

Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge