

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: **Kenneth Ray Smoot,**
Debtor

Case No. 98-39531-DOT
Chapter 7

MEMORANDUM OPINION AND ORDER

This matter comes before the court on the motion filed by the trustee to approve a settlement and compromise in a pending lawsuit initiated by debtor after the filing of this bankruptcy case. Having considered the arguments of debtor and the trustee, the court finds that the settlement and compromise should be approved.

Discussion

After filing his bankruptcy case, debtor initiated a malpractice action in an Ohio state court against Merritt W. Green, his former attorney. This court, on November 18, 1999, entered an order that the Green litigation is property of the estate and that the trustee has the power to administer it. The trustee has determined that, given the facts of the litigation, the defenses being asserted by Green, the potential cost and expense of the litigation, the complexity of the issues raised and the potential benefit to the estate, it is in the best interests of the estate and creditors for the estate to compromise and settle the litigation and resolve all claims that the estate has against Green. Under the terms of the settlement, generally, the trustee and Green would agree that Green will pay the estate \$30,000.00 and release the estate and the trustee from any and all claims. In turn, the trustee will release Greene from any and all claims she may have against him. Accordingly, the trustee and Green entered into an agreement incorporating those terms; however, the agreement is conditioned upon court approval.

In his memorandum response to the trustee, debtor has alleged that the litigation is worth

more than \$30,000.00 to the estate. However, he has not proffered any proof on the matter, and he has not shown to the court any probative reason for the court to doubt the judgment of the trustee, who has asserted that the settlement is in the best interests of the estate and creditors. Rather, he suggests that he be allowed to pursue the action and that the trustee abandon the entire cause of action to him. However, this court has already ruled that the litigation is an asset of the estate and will not now, five years later, retract its finding.

The narrow issue before the court is whether the court should grant the trustee's motion to approve compromise. This court has previously determined that in considering a proposed compromise under Rule 9019(a), "the court is to consider the probability of the trustee's success in any ensuing litigation, any collection difficulties, the complexity, time and expense of the litigation, and the interests of the creditors with proper deference to their reasonable views. In re Austin, 186 B.R. 397, 400 (E.D. Va. 1995) (citations omitted); see also In re Frye, 216 B.R. 166, 174 (Bankr. E.D. Va. 1997).

It appears that the trustee has given a full and adequate explanation for the basis of the compromise, and she believes the settlement is fair and in the best interest of the bankruptcy estate and creditors. No creditor has timely objected to the settlement.¹ It is apparent that litigation of the various claims would be lengthy and costly. Further, the trustee has made an

¹One creditor filed an untimely objection to the trustee's motion. However, that creditor is a postpetition nonpriority creditor and as such lacks standing to object to the motion. The court has nonetheless reviewed the arguments contained in the lengthy objection and finds that they are without merit. The arguments contained in the objection focus upon the merits of the malpractice action sought to be resolved by the trustee. The court relies upon the judgment of the trustee in this matter and upon the court's own analysis of the lawsuit at issue. The court is not required, in resolving the motion to compromise, to conduct a full trial of the underlying facts but rather to apply the four-part analysis enumerated above. The court, in applying this analysis, has determined that the compromise should be approved.

informed analysis of the potential litigation; the trustee's recommendation in light of her extensive experience as a bankruptcy trustee and lawyer gives significant weight to her settlement proposal. In re Austin, 186 B.R. at 401; see also In re Culmtech, Ltd., 118 B.R. 237, 239 (Bankr. M.D. Pa. 1990). The court finds that the trustee exercised reasonable care in entering into the settlement and has fulfilled her fiduciary duties to the estate. See In re Dalen, 259 B.R. 586 (W.D. Mich. 2001). The court has reviewed the additional arguments submitted by debtor to support his objection and finds no basis to deny the motion to approve compromise.² Therefore,

IT IS ORDERED that the trustee's motion to approve compromise is GRANTED, and

IT IS FURTHER ORDERED that debtor's motions to intervene, for injunctive relief, for summary and declaratory judgment and for abandonment are DISMISSED.

Signed _____

/s/ Douglas O. Tice Jr.

DOUGLAS O. TICE JR.
UNITED STATES BANKRUPTCY JUDGE

copies:

²The court notes that debtor has included arguments in his memorandum responses to the trustee's motion that he has entitled "Motion to intervien[sic], motion for injunctive relief, motion for summary and declaritory[sic] judgment on pending issues, [and] motion to abandon." However, those demands do not comport with the requirements of Rule 7007 of the Rules of Bankruptcy Procedure, which require all motions to state with particularity the grounds therefore and to set forth the relief requested. Fed. R. Bankr. P. 7007. In addition, injunctive and declaratory relief are governed by Bankruptcy Rule 7001, which requires the initiation of a separate adversary proceeding. Fed. R. Bankr. P. 7001. Accordingly, those motions will be dismissed.

Trustee
Counsel for Trustee
Debtor