Docket #0211 Date Filed: 12/19/2024

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Debtors.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Substantively Consolidated
STEPHEN DARR, LIQUIDATING TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. CARLOS WANZELER, et al Defendants.	Adversary Proceeding No. 16-4032

MOTION BY TRUSTEE TO APPROVE STIPULATION OF SETTLEMENT RESPECTING KATIA WANZELER AND RELATED PARTIES

Stephen B. Darr, the duly appointed Liquidating Trustee (the "Trustee") of the substantively consolidated bankruptcy estates ("Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree"), respectfully requests that the Court approve the Stipulation of Settlement filed herewith (the "Stipulation") by and among the Trustee, the Faith Nominee Realty Trust ("FNR Trust"), Forever Diamond Realty, LLC, and Katia Wanzeler (collectively, the "Parties") pursuant to Federal Rule of Bankruptcy Procedure 9019.

BACKGROUND

1. On April 13, 2014 (the "Petition Date"), the Debtors filed voluntary Chapter 11 petitions with the United States Bankruptcy Court for the District of Nevada.

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2. By order dated May 6, 2014, the Nevada Bankruptcy Court approved a motion to change venue filed by the Securities and Exchange Commission. The cases were transferred to this Court on May 9, 2014.

3. On May 30, 2014, the Court approved the motion of the Office of the United States Trustee to appoint a Chapter 11 trustee, and Stephen Darr was appointed as the Chapter 11 Trustee on June 6, 2014.

4. The principals of TelexFree were initially James Merrill, Carlos Wanzeler, and Carlos Costa (the "Principals"). Katia Wanzeler is the estranged spouse of Carlos Wanzeler.

5. The Debtors ostensibly operated a "multi-level marketing" company with its headquarters in Marlborough, Massachusetts. It represented itself as being in the business of selling telephone service plans that use "voice over internet protocol", or "VoIP" technology. The Trustee asserted that the sale of VoIP, however, constituted only a minor portion of their business, and that the Debtors' actual business was the recruitment of participants.

6. On November 25, 2015, the Court, on motion by the Trustee and after notice, entered an Order, as amended on December 21, 2015, finding that the Debtors were engaged in a Ponzi scheme and that this ruling was the law of the case in each of the jointly administered cases.

7. On July 9, 2020, the Court entered an order confirming the *First Amended Liquidating Plan of Reorganization of Stephen Darr, Chapter 11 Trustee of TelexFree LLC, TelexFree Inc., and TelexFree Financial, Inc.* The plan became effective on July 14, 2020. Stephen Darr was appointed liquidating trustee under the confirmed plan. The plan resulted in the substantive consolidation of the Debtors.

8. On or about April 1, 2016, the Trustee commenced this adversary proceeding against the Principals and certain individuals who were related to the Principals or who the Trustee alleged facilitated the implementation of the scheme.

9. On June 22, 2022, the Court entered judgment in favor of the Trustee against Carlos Wanzeler in the amount of $3,785,192 plus interest from the date of judgment at the federal judgment rate [Docket No. 142].

10. In furtherance of collection on that judgment, the Trustee commenced an investigation into transfers made by Carlos Wanzeler to or for the benefit of his estranged spouse, Katia Wanzeler, or assets held by Katia Wanzeler in which Carlos Wanzeler might have an interest.

11. On March 24, 2024, the Trustee conducted a deposition of Nicholas Wanzeler, the adult child of Carlos and Katia Wanzeler.

12. On July 2, 2024, the Trustee conducted a deposition of Katia Wanzeler.

13. As a result of these depositions, a review of documents on file with the registry of deeds, and documents produced by the deponents, the Trustee determined that Carlos Wanzeler was formerly the owner in fee of the following residential real properties: (a) 655 Plantation Street, Unit 17B, Worcester, Massachusetts ("Plantation Street"); (b) 41A Mount Avenue, Worcester, Massachusetts ("Mount Avenue"); and (c) 2321 NW 37th Ave., Coconut Creek, Florida ("Coconut Creek" and, together with Plantation Street and Mount Avenue, the "Real Properties").

14. After the commencement of this adversary proceeding, the FNR Trust was established. Nicholas Wanzeler was appointed trustee of the FNR Trust and Katia Wanzeler was

and is the one hundred percent (100%) beneficiary. Additionally, Katia Wanzeler established Forever Diamond Realty, LLC, an entity wholly owned and controlled by her.

15. Thereafter, Carlos Wanzele: (i) conveyed his interest in Plantation Street to the FNR Trust for nominal consideration; (ii) conveyed his interest in Mount Avenue to the FNR Trust for nominal consideration; and (iii) conveyed his interest in Coconut Creek to Forever Diamond Realty, LLC for nominal consideration. Katia Wanzeler has testified that she and her son reside at Plantation Street.

16. Katia Wanzeler has represented that there are no mortgages or liens other than real estate taxes totaling approximately $14,000 encumbering Coconut Creek.

17. The Trustee has asserted that the transfers of the Real Properties by Carlos Wanzeler to the FNR Trust and Forever Diamond Realty may constitute fraudulent transfers and/or that the transferees holds the Real Properties in constructive or resulting trust for the benefit of Carlos Wanzeler. Katia Wanzeler, the FNR Trust, and Forever Diamond Realty dispute these allegations.

18. There is currently pending in the United States District Court for the District of Massachusetts multi-district litigation, Case No. 4:14-md-02566-NMG (the "MDL Action"), and the plaintiffs in the MDL Action have asserted potential claims against Katia Wanzeler.

19. The Parties have engaged in negotiations in an effort to resolve the disputes pending in the Bankruptcy Court. After several months of negotiations, taking into account the claims, defenses thereto, and potential claims by other parties against Ms. Wanzeler and her affiliates, the Parties were able to reach agreement in the form of the attached Stipulation. The Stipulation provides substantially as follows:[1]

[1] To the extent of any conflict between this motion and the Stipulation, the terms of the Stipulation shall govern.

Stipulation of Settlement

A. Forever Diamond Realty, LLC shall forthwith convey its fee interest in Coconut Creek to the Trustee. The deed of conveyance shall be held in escrow by counsel to the Trustee and may be recorded upon Bankruptcy Court approval of this Stipulation.[2]

B. Katia Wanzeler, the FNR Trust, and Forever Diamond Realty (collectively, the "Defendants") covenant and agree:

(i) Not to voluntarily encumber nor to permit involuntary encumbrance of Coconut Creek prior to recordation of the deed of conveyance to the Trustee;

(ii) To insure Coconut Creek and to pay all ordinary and necessary expenses of Coconut Creek prior to recordation of the deed of conveyance to the Trustee.

C. The Trustee, on behalf of himself and the TelexFree estates, shall release the Defendants from any and all liens, debts, demands, actions, causes of action, claims, suits, dues, sum and sums of money, account reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, doings, omissions, variances, warranties of any type whether express or implied, damages, claims of every kind, nature and description whatsoever, whether known or unknown, both in LAW and EQUITY, which the Trustee now has, ever had, or ever may have, from the beginning of the world to this date, against the Defendants.

D. The Defendants shall release the Trustee and the estates of TelexFree of any and all liens, debts, demands, actions, causes of action, claims, suits, dues, sum and sums of money, account reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, doings, omissions, variances, warranties of any type whether express or implied,

[2] In furtherance of this provision, Forever Diamond Realty executed a deed in favor of the Trustee to the Coconut Creek property, a copy of which was sent to Trustee's counsel by email on or about December 12, 2024. The Trustee was sent a UPS damage report indicating that the original deed was destroyed in transit due to weather conditions. The Trustee has requested that the deed be re-executed.

damages, claims of every kind, nature and description whatsoever, whether known or unknown, both in LAW and EQUITY, which the Defendants now have, ever had, or ever may have, from the beginning of the world to this date, against the Trustee and the estates of TelexFree.

E. If any of the covenants or representations made by the Defendants herein are breached, the releases provided by the Trustee shall be void and of no effect, but the Stipulation shall otherwise be enforceable.

Standards For Approval of Compromise

20. Bankruptcy Rule 9019(a) provides, in relevant part, that "On the motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Settlements and compromises are normal parts of the process of reorganization. While the decision to approve a particular settlement lies within the sound discretion of the Bankruptcy Court, the Court should give deference to the business judgment of the estate representative. *Jeffrey v. Desmond,* 70 F.3d 183 (1st Cir. 1995).

21. The Court of Appeals has described the test to be used by Bankruptcy Courts called upon to approve or reject proposed compromises and settlements as follows:

> bankruptcy judge has the authority to approve a compromise of a claim pursuant to Bankruptcy Rule 9019(a). The ultimate issue on appeal is whether the bankruptcy court abused its discretion when it approved the compromise, which is a process requiring the bankruptcy court to "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *In re GHR Cos.,* 50 B.R. 925, 931 (Bankr. D. Mass. 1985) (*quoting In re Boston & Providence R.R.*, 673 F.2d. 11, 12 (1st Cir. 1982)). The specific factors which a bankruptcy court considers when making this determination include: (i) the probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise. *In re Anolik*, 107 B.R. 427, 429 (D. Mass. 1989).

Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995).

22. Further, the objective "is not to decide the numerous questions of law and fact raised by appellants but rather to canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *In re Healthco Int'l*, 136 F.3d at 51 (*citing Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2nd Cir. 1983)). Thus, the question is not whether a better settlement might have been achieved, or a better result reached if litigation pursued. Instead, the court should approve settlements that meet a minimal threshold of reasonableness. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994); 10 *Collier on Bankruptcy*, ¶ 9019.02, at 9019-4.

23. The proposed settlement between the Trustee and the Defendants fairly balances "the value of the claims being compromised against the value to the estates of the acceptance of the compromise proposal." It is well within the bounds of this Court's discretion to approve the proposed settlement. *Jeffrey v. Desmond*, 70 F.3d at 185.

24. Through the Stipulation, the Trustee will recover the Coconut Creek property, largely free of encumbrances, for the benefit of the Estates. This result will be achieved by the Trustee without incurring the costs, risks, and further delays associated with litigating his claims against the Defendants and taking into account the competing claims against the Defendants.

Wherefore, the Trustee prays that the Court:

1. Approve the Stipulation, direct Katia Wanzeler to execute the deed to Coconut Creek to the Trustee forthwith on behalf of Forever Diamond Realty, and authorize the Trustee to take all actions necessary to effectuate the terms of the Stipulation; and
2. Grant such other relief as is just and proper.

STEPHEN DARR AS HE IS THE
LIQUIDATING TRUSTEE OF THE
CHAPTER 11 ESTATES OF EACH OF
THE DEBTORS
By his attorneys,

/s/ Andrew G. Lizotte

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Dated: December 19, 2024
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CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that on December 19, 2024, I caused a copy of the following documents:

(1) Motion By Trustee to Approve Stipulation of Settlement Respecting Katia Wanzeler and Related Parties; and
(2) Stipulation of Settlement Respecting Katia Wanzeler and Related Parties

To be served via this Court's CM/ECF System.

Dated: December 19, 2024

/s/ Andrew G. Lizotte
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