UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION	No: 18-cv-3309-PJM

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT AND RELEASE BETWEEN RECEIVER AND LEE NOBMANN

I. INTRODUCTION AND STATEMENT OF FACTS

This lawsuit was commenced on October 31, 2018 by the Federal Trade Commission ("FTC") with its filing of a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) ("Complaint"). The lawsuit named 17 entity defendants and seven individual defendants, in addition to five relief defendants. On November 5, 2018, the Court issued an Ex Parte Temporary Restraining Order With Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO"). Under the TRO, the Receiver became temporary receiver over all entity defendants except for Atlantic International Bank, Ltd. ("AIBL") and over the assets of Andris Pukke ("Pukke") and Peter Baker ("Baker") valued at $1,000 or more. The Court extended the duration of the TRO pursuant to the Interim Preliminary Injunction on November 20, 2018.

The FTC filed a motion to amend the Complaint and a proposed Amended Complaint for Permanent Injunction and Other Equitable Relief ("Amended Complaint") on December 28,

2018 (Doc. 87) adding Michael Santos and Newport Land Group, LLC ("NLG") as defendants. The Court granted the motion to amend on January 11, 2019 (Doc. 107) and extended the asset freeze to Michael Santos on that date. On February 13, 2019 the Court entered a Stipulated Preliminary Injunction as to Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox LLC, Michael Santos, Angela Chittenden, and Beach Bunny Holdings LLC (Doc. 195) ("Stipulated Preliminary Injunction"). Under the Stipulated Preliminary Injunction, the Receiver remained as receiver over the stipulating Receivership Entities BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners, and NLG was expressly added as a named Receivership Entity.

On October 3, 2019, the Court issued the Preliminary Injunction as to Defendants Andris Pukke, Peter Baker, Luke Chadwick, John Usher, Certain Corporate Defendants, and the Estate of John Pukke (Doc. 615) ("Pukke Preliminary Injunction"). Under the Pukke Preliminary Injunction, the Receiver was named as permanent receiver over at least 16 Receivership Entities and over Pukke, Baker and Luke Chadwick's ("Chadwick") assets valued at $1,000 or more.

On January 14, 2020, the Court entered the Stipulated Order for Permanent Injunction and Monetary Judgment Against Defendant Michael Santos (Doc. 820) ("Santos Judgment"). Under the Santos Judgment, Michael Santos permanently transferred, assigned and relinquished to the Receiver, for liquidation and ultimate payment to the FTC, all rights Michael Santos may have to the real properties commonly described as: (a) 17085 Birch Hill Road, Riverside, California ("Riverside Property"); (b) 1807 Coastal Way, Costa Mesa, California ("Costa Mesa Property"); (c) 460 Lindberg Circle, Petaluma, California ("Petaluma Property"); (d) 14070 Falling Leaf Road, Apple Valley, California ("Apple Valley Property"); and (e) 7862 Chase

Avenue, Hesperia, California ("Hesperia Property"). (The real properties described are hereafter collectively referred to as the "Santos Properties.")

Legal title to the Riverside Property is held by Michael Santos and Carole Santos, husband and wife as community property. Legal title to the Costa Mesa Property is held by Michael Santos and Carole Santos, husband and wife as joint tenants. Legal title to the Petaluma Property is held by Carole Santos and Michael Santos, wife and husband as joint tenants. Legal title to the Apple Valley Property is held by Michael Santos and Carole Santos, husband and wife as joint tenants. Legal title to the Hesperia Property is held by Michael Santos and Carole Santos, husband and wife as joint tenants. Carole Santos's interests in the Santos Properties are not expressly addressed or assigned to the Receiver in the Santos Judgment.

In January 2019, Michael Santos and Carole Santos purportedly made, executed and delivered a $1,000,000 promissory note ("Nobmann Promissory Note") to Lee Nobmann (Nobmann) for value received. Nobmann contends that on or about May 3, 2017, Nobmann authorized Michael Santos and Carole Santos to apply the proceeds of a prior $250,000 loan from Nobmann to Michael Santos and Carole Santos to be used in the purchase of the Riverside Property and that Nobmann caused a wire transfer of $754,250 to be paid directly to Stewart Title of California, Inc., as the escrow officer handling the purchase of the Riverside Property by Michael Santos and Carole Santos. The promissory note is purportedly secured by a deed of trust on the Riverside Property which was recorded in Riverside County, California on January 11, 2019 ("Nobmann Deed of Trust"), the day that the Court extended the asset freeze in the FTC Action to Michael Santos.

Michael Santos and Carole Santos purportedly made, executed and delivered a $240,000 promissory note to Geoff Richstone ("Richstone") for value received in January 2019. The

promissory note is purportedly secured by a deed of trust on the Costa Mesa Property which was recorded in Orange County, California on January 11, 2019.

Michael Santos and Carole Santos purportedly made, executed and delivered a $375,000 promissory note to Richstone for value received in January 2019. The promissory note is purportedly secured by a deed of trust on the Petaluma Property which was recorded in Sonoma County, California on January 14, 2019.

Michael Santos and Carole Santos purportedly made, executed and delivered a $125,000 promissory note to Richstone for value received in January 2019. The promissory note is purportedly secured by a deed of trust on the Apple Valley Property which was recorded in San Bernardino County, California on January 11, 2019.

Michael Santos and Carole Santos purportedly made, executed and delivered a $135,000 promissory note to Richstone for value received in January 2019. The promissory note is purportedly secured by a deed of trust on the Hesperia Property which was recorded in San Bernardino County, California on January 11, 2019. (The four promissory notes in favor of Richstone are hereafter collectively referred to as the "Richstone Promissory Notes" and the deeds of trust which purportedly collateralize the Richstone Promissory Notes are hereafter collectively referred to as the "Richstone Deeds of Trust.")

As set forth above, the Nobmann Deed of Trust and the Richstone Deeds of Trust all were recorded at or about the time that the Court issued an asset freeze on Michael Santos. For this and other reasons, the Receiver: (a) disputes the validity of the Nobmann Promissory Note and Nobmann Deed of Trust; (b) disputes the validity of the Richstone Promissory Notes and Richstone Deeds of Trust; (c) contends that the Nobmann Deed of Trust and the Richstone Deeds of Trust may be avoided as fraudulent transfers; and (d) contends that the Receiver's

interest in the Santos Properties are superior to the Nobmann Deed of Trust and Richstone Deeds of Trust.

The Receiver has preliminarily evaluated the market value of the Santos Properties and the extent to which the Santos Properties are encumbered by deeds of trust. Each of the Santos Properties is encumbered by a bona fide first lien in favor of an institutional lender and, in the Receiver's judgment, not subject to challenge. If the Nobmann Deed of Trust and Richstone Deeds of Trust, each of which is in second lien position against the respective properties, are valid and enforceable, then the Santos Properties would have no equity for the receivership estate. Under California law, Carole Santos appears to have a one-half interest in each of the Santos Properties taken as joint tenancy property and an undivided 100% interest in the Riverside Property, which was taken as community property. Michael Santos cannot unilaterally assign his community property interest in the Riverside Property without Carole Santos's consent (*see* California Family Code section 1102), rendering the assignment to the Receiver problematic unless the Receiver can successfully challenge her interest, obtain her consent or argue that the assignment operates in effect as a judgment creditor's execution levy. Therefore, Carole Santos's interest in the Santos Properties do not appear resolved by the Santos Judgment. Unless her interest can be successfully challenged, the Receiver would have to seek and obtain an order compelling the sale of the properties, and the Receiver would realize only 50% of the net equity upon sale. While the Riverside Property has the largest potential equity, in addition to the fact that it is held as community property, it also is subject to a long-term lease/purchase option through 2033, which further hinders the Receiver's ability to promptly monetize this asset. Several of the other Santos Properties are or will soon be vacant, further impeding the Receiver's ability to service debt and preserve equity in the properties.

Based on the Receiver's preliminary valuations, assuming that: (a) the second priority Nobmann Deed of Trust and Richstone Deeds of Trust can be set aside, which will require a successful legal challenge; (b) Carole Santos preserves a 50% interest in the Santos Properties; and (c) the Receiver can force a prompt sale of the Santos Properties, including the Riverside Property, despite it being held in community property and the long term lease/purchase option on that property, the Receiver estimates that gross equity in the real estate for the receivership estate, not including the costs of sale and legal expenses, would be approximately $500,000.

II. TERMS OF THE SETTLEMENT AGREEMENT

The Receiver and Nobmann have negotiated and executed a comprehensive Settlement Agreement, a copy of which is attached as Exhibit 1 to the accompanying declaration of Brick Kane in support of this Motion. The key provisions of the Settlement Agreement are:

1. In full satisfaction of all rights, claims, interests and demands the Receiver and Nobmann may have against one another, and in consideration for the Receiver's assignment to Nobmann or his assignee of all rights the Receiver may have in the Santos Properties, Nobmann shall pay to the Receiver the sum of $350,000. This amount has already been paid to and is being held by the Receiver, subject to the Court's approval of the Settlement Agreement.

2. As between the Receiver and Nobmann, the Receiver is entitled to the rents, issues and profits from the Santos Properties prior to the Court's approval of the settlement and Nobmann is entitled to the rents, issues and profits from the Santos Properties thereafter.

3. The Receiver makes no representations and warranties of any kind with respect to the Santos Properties.

4. General and mutual releases are entered into between Nobmann and the Receiver.

5. The Settlement Agreement becomes effective upon Court approval and provided

that the FTC does not file written opposition to this Motion. The Receiver understands that the FTC supports the Settlement Agreement.

III. THE SETTLEMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED

The leading treatise on receivership law states:

> The only justification for the compromise of claims is that it is done for the best interests of the receivership and the estate under the control and possession of the court.

3 Clark on Receivers § 655 (3d ed. 1992).

> The court appointing a receiver must use its discretion in determining whether it is for the best interests of the estate that the receiver be authorized to compromise a claim, and when the appointing court has not abused its discretion in giving instructions to the receiver, its orders will not be disturbed or reviewed in the appellate court.

Id. at § 770.

Under Rule 9019 of the Federal Rules of Bankruptcy Procedure, the court in a bankruptcy case may approve a proposed compromise of controversies after notice and an opportunity for hearing. In the Fourth Circuit, courts have adopted a four-part test in evaluating compromises in bankruptcy:

> In order to approve a settlement . . ., a court must consider the following factors: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily

> attending it; and (4) the paramount interest of the creditors. *Will v. Northwestern Univ. (In re Nutraquest, Inc.),* 434 F.3d 639, 644 (3d Cir. 2006) (citation omitted); *see also In re Bowman,* 181 B.R. 836, 843 (Bankr.D.Md.1995).

In Re Final Analysis, Inc., 417 B.R. 332, 341 (Bankr. D. Md. 2009); *see also In re Bowman,* 181 B.R. 836 (Bankr. D. Md. 1995), adopting this four-part standard and citing other Circuit Courts of Appeal, including the Seventh Circuit in *In re American Reserve Corp.,* 841 F.2d 159, 161 (7th Cir. 1987) and the Ninth Circuit in *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The foregoing factors have been examined by courts in receiverships in approving settlements, but the court in a federal equity receivership has even broader authority to approve proposed settlements by a receiver and to look to other factors in determining that the settlement should be approved. *See Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009) (settlement by receiver in a federal equity receivership within the receiver's discretion and should be approved if it is fair); *Securities and Exchange Commission v. Credit Bancorp, Ltd.*. No. 99 Civ. 11395, 2002 WL 1792053 at *4-5 (S.D.N.Y. Aug. 2, 2002); *Securities and Exchange Commission v. Princeton Economic International, Inc.*, No. 99 Civ. 9667, 2002 WL 206990 at *1 (S.D.N.Y. Feb. 8, 2002). "[R]eceivers benefit from the general presumption that district courts favor settlements." *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998). The District Court's determination of the fairness of a settlement by the Receiver is subject to the sound discretion of the Court and will only be overturned based on a clear showing of abuse of discretion. *Gordon v. Dadante*, 336 Fed. Appx. at 545 (holding that district court did not abuse its discretion in approving settlement agreement entered into by a receiver); *Securities and Exchange*

Commission v. Arkansas Loan and Thrift Corp., 427 F.2d 1171, 1172 (8th Cir. 1970) (court finds no abuse of discretion in trial court's approval of receiver's settlement on fidelity bond claim); *see also Sterling v. Stewart*, 158 F.3d at 1204 (affirming the district court's approval of a settlement because "the court did not abuse its discretion in concluding that the settlement decision was fair.")

Courts in the Fourth Circuit have held that there is a strong presumption in favor of finding a settlement fair. *See, e.g., Lomascolo v. Parsons Brinckerhoff, Inc.,* 2009 WL 3094955, at *10 (E.D.Va. Sept. 28, 2009) (noting the "strong presumption in favor of finding a settlement fair" in the context of a class action settlement) (internal quotation omitted). Because a settlement hearing is not a trial, the court's role is more "balancing of likelihoods rather than an actual determination of the facts and law in passing upon ... the proposed settlement." *Decohen v. Abbasi, LLC,* 299 F.R.D. 469, 479 (D. Md. 2014) (quoting *Flynn v. FMC Corp.,* 528 F.2d 1169, 1173 (4th Cir. 1975) (internal quotations omitted).)

The settlement of the dispute between the Receiver and Nobmann is a very favorable resolution for the estate and should be approved under the foregoing authorities. While the Receiver believes that it has a legitimate argument that the Nobmann Deed of Trust and the Richstone Deeds of Trust may constitute voidable fraudulent transfers pursuant to the California Uniform Voidable Transactions Act, this position is not without doubt in light of Nobmann's contention and Richstone's contention that value was provided by them to Michael Santos and Carole Santos in exchange for the subject deeds of trust. As set out above, if the Nobmann Deed of Trust and Richstone Deeds of Trust are valid and enforceable, then the Santos Properties would have no equity for the receivership estate. Even assuming that the Nobmann Deed of Trust and Richstone Deeds of Trust can be successfully avoided as fraudulent transfers or under

some other theory, Carole Santos appears to have a one-half interest in each of the Santos Properties held in joint tenancy and an undivided community property interest in the Riverside Property under applicable California law and her interest is not resolved by the Santos Judgment. Unless her interest can be successfully challenged, the Receiver would have to seek and obtain an order compelling the sale of the properties, and the Receiver would realize only 50% of the net equity upon sale. In addition to its problematic status as community property, the Riverside Property is subject to a long-term lease/purchase option through 2033, which further hinders the Receiver's ability to monetize this asset, which has the largest amount of potential equity of all of the Santos Properties. Several of the other Santos Properties are or will soon be vacant, further impeding the Receiver's ability to service debt and preserve equity in the properties.

All of these factors dictate in favor of the Receiver promptly monetizing its interest in the Santos Properties for the benefit of the FTC for the purpose of providing consumer redress under Section VI.E of the Santos Judgment. The immediate recovery of $350,000 is an excellent result when considering the uncertainty, time and expense surrounding litigation of the various disputes with Nobmann, Richstone, Carole Santos and the tenant of the Riverside Property which may be required. As explained above, assuming a successful challenge could be mounted to the Nobmann Deed of Trust and Richstone Deeds of Trust, Carole Santos's interest remained in effect, and all of the Santos Properties could be promptly liquidated, including the Riverside Property despite it being subject to a long term lease/purchase option through 2033, net equity for the receivership estate for ultimate disposition to the FTC likely would not generate more than this amount.

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IV. CONCLUSION

Based on the Motion, this Memorandum of Points and Authorities, and the supporting declaration of Brick Kane, it is respectfully requested that the Court grant this Motion to approve the Settlement Agreement between the Receiver and Nobmann in its entirety, and enter the proposed order submitted concurrently herewith.

Dated: March 24, 2020

Respectfully submitted,

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