U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **09-08746-hb**

ORDER ON APPLICATION FOR SETTLEMENT AND COMPROMISE NUNC PRO TUNC

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby ORDERED.

FILED BY THE COURT
05/05/2011

US Bankruptcy Judge
District of South Carolina

Entered: 05/06/2011

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Martin Joel Caron and Lori Anne Caron, Debtor(s).	C/A No. 09-08746-HB Chapter 13 **ORDER ON APPLICATION FOR SETTLEMENT AND COMPROMISE *NUNC PRO TUNC***

THIS MATTER came before the Court for hearing on May 5, 2011, upon the Application for Settlement and Compromise *Nunc Pro Tunc* ("Application") filed by Martin Joel and Lori Anne Caron ("Debtors") on March 25, 2011. The Chapter 13 Trustee ("Trustee") filed an Objection to Application for Settlement *Nunc Pro Tunc* ("Objection") on April 15, 2011.

The Application states and Martin Joel Caron testified that post-petition he received an insurance check for $7,075 ("insurance amount") from State Farm Insurance for a 1996 GMC Z71 truck that was determined a "total loss" after an accident. When the Debtors' attorney discovered this, the Application was filed. That truck was listed on the Debtors' schedules as owned by Mr. Caron and valued at $1,500; he also claimed an exemption in the vehicle in that amount. After a $500 deductible was applied, Mr. Caron distributed $4,500 of the insurance amount to his daughter. Debtors and their daughter testified that the daughter purchased the truck with her own funds pre-petition and paid for the insurance and all other costs associated with the truck. However, the truck was titled in Mr. Caron's name and the insurance check was issued in his name. Debtors testified that the $4,500 was distributed to their daughter in order for her to purchase a new car because she needed it to get to work and because they felt that the wrecked truck

that led to the check belonged to her. With the $4,500, Debtors' daughter purchased a 2004 Isuzu Trooper for herself and the Debtors used the rest of the funds to pay some of their bills. The Debtors' and daughter's testimony established that, despite the amount of the insurance check, the actual value of the truck is more likely only $1,500.

Debtors' Application requires the Court to consider two settlements: (1) the transfer of the truck to the insurance company in exchange for the insurance check to Mr. Caron; and (2) the disbursement of $4,500 of the insurance proceeds to his daughter.

"In order for a settlement to be approved, the Court must make an informed and independent determination that the settlement is fair, equitable, and in the best interest of debtor's estate." *In re L&L Constr., LLC*, C/A No. 07-02003-DD, slip op. at 2 (Bankr. D.S.C. Sept. 25, 2009) (citations omitted). In reviewing a settlement, the Court "may consider: (1) the probability of success on the merits; (2) the difficulties, if any, to be encountered in collection; (3) the complexity, time and expense of the litigation; and (4) the interest of creditors with a proper deference to their reasonable views." *Id.*

Applying this four factor test to the instant case, the Court finds that the settlement should be approved in part and denied in part. Mr. Caron's transfer of the truck to the insurance company in exchange for the insurance check is clearly in the best interest of all parties involved and should be approved. However, the Court cannot find from the record that Debtors have met their burden of proving that the disbursement of $4,500.00 resulting from the truck and insurance contract meets the settlement standards set forth above. The truck was listed on the schedules as property of Mr. Caron and he claimed an exemption. The insurance check was made payable to him as well. The applicants presented evidence that their daughter had an equitable interest in the truck

and that the truck was actually valued at $1,500 at the time the case was filed. However, this evidence was not sufficient to show that payment by Mr. Caron to his daughter in the amount of $4,500 was a fair settlement of a dispute between the parties over their interests in the truck or the insurance amount, or how that "settlement" is in the best interest of the estate.

For these reasons and based on the findings of fact and conclusions of law stated on the record, **IT HEREBY ORDERED** that the Application is Denied to the extent that it requests approval of the payment of $4,500 from Martin Joel Caron's funds to his daughter as a settlement and compromise and the Chapter 13 Trustee's Objection to that portion of the Application is sustained. The remainder of the Application terms is approved.