U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-02003

ORDER

The relief set forth on the following pages, for a total of 6 pages including this page, is hereby ORDERED.

FILED BY THE COURT
09/25/2009

US Bankruptcy Court Judge
District of South Carolina

Entered: 09/28/2009

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 07-02003-DD
L&L Construction LLC,	Chapter 7
Debtor(s).	**ORDER**

THIS MATTER is before the Court on Chapter 7 Trustee Robert F. Anderson's ("Trustee") Application for Settlement ("Application"). An objection to the Application was filed by Barbara Lawrence, by and through counsel, on September 9, 2009. The Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

L&L Construction, LLC ("Debtor") filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on April 16, 2007. The members of the Debtor are William Lawrence and Brandon Lawrence. Debtor's Statement of Financial Affairs discloses a breach of contract, negligent misrepresentation, and unfair trade practices lawsuit pending in the United States District Court, District of South Carolina filed by Debtor against McCrory Construction Company, LLC ("McCrory")[1].

Debtor's dispute with McCrory stems from a shopping mall construction project in Florence County, South Carolina. Debtor was a subcontractor for McCrory, performing grading and paving work. The Debtor began work before a written agreement was signed between the parties. McCrory asserts that it insisted that any work on the project by Debtor be under bond. No bond was ever issued. After beginning work on the project in December of 2005, Debtor sought a draw from McCrory of

[1] This case is captioned "L&L Construction, LLC v. McCrory Construction Co., LLC and OFP-Summerville, Ltd., Case No. 2:07-cv-02790-JFA."

approximately $150,000.00. McCrory paid Debtor approximately $50,000.00. Subsequent to the payment by McCrory, Debtor's equipment was repossessed by Caterpillar Financial and Debtor was unable to complete the project. McCrory paid money to get replacement subcontractors to finish the project. Litigation ensued.

Trustee seeks approval of a settlement agreement with McCrory whereby McCrory will pay the Debtor's estate $50,000.00 and withdraw its $204,958.39 Proof of Claim in exchange for a full and complete release. Barbara Lawrence, the wife and mother of Debtor's members and a creditor, objects to the proposed settlement on the ground that the cause of action is worth more than the settlement.

CONCLUSIONS OF LAW

Bankruptcy trustees may settle lawsuits on behalf of a bankruptcy estate with the approval of the Court after notice and a hearing. Fed. R. Bankr. P. 9019(a). 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. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *St. Paul Fire & Marine Ins. Co. v. Vaughn*, 779 F.2d 1003, 1010 (4th Cir. 1985). "In essence the court must determine whether the settlement falls below the lowest point in the range of reasonableness." *In re Austin*, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995).

Courts 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. *In re Steinmetz*, C/A No. 07-00628-hb, slip op. at 15 (Bankr. D.S.C.

June 18, 2008); *In re Roman*, C/A No. 04-13373-jw, slip op. at 3 (Bankr. D.S.C. Oct. 4, 2006). The Trustee bears the burden of proof in demonstrating that the settlement is in the best interest of the estate. *In re McNallen*, 197 B.R. 215, 221 (Bankr. E.D. Va. 1995).

Applying the four factor analysis to the facts of this case leads the court to approve the settlement as in the best interest of Debtor's estate. First based upon the testimony presented to the Court, it appears that a legitimate controversy exists between Debtor and McCrory. Trustee characterizes the lawsuit as a tossup. Allen Amsler, the President/CEO of McCrory, testified that while he believed his company would prevail in the pending litigation, there was no upside for McCrory in going to trial since a judgment against the Debtor would likely not be collectable.

Three factors affect the probability of success on the merits. First, it is not clear what the agreement of Debtor and McCrory was. McCrory proposed a written agreement and Debtor countered the proposal with a written contract of its own. Debtor began work on the project before an agreement was reduced to writing and there is conflicting testimony concerning the intent of the parties. Second, Debtor's first draw request was not supported with documentation justifying the entire $150,000.00 request. Some $50,000.00 was paid to Debtor and another $45,000.00 was paid to third parties for work or materials relating to the first draw. Finally because of other ongoing financial problems of Debtor, it is far from clear that Debtor could have performed under the contract with McCrory. These factors give rise to a real issue of Debtor's chance of success on the merits at trial.

Considering the collectability of a trial judgment, the Court determines that while there is every indication that McCrory is solvent and a judgment would be collectable

McCrory's claim against the Debtor may give rise to a setoff. Settlement of the litigation will result in the withdrawal of McCrory's claim and a $50,000.00 benefit to the Debtor's estate. While the Debtor seeks recovery from McCrory of approximately $500,000.00, a jury award in that amount is by no means guaranteed. Trustee testified that juries are rarely sympathetic to bankruptcy trustees. Nevertheless, any judgment against McCrory would likely be collectable.

The complexity of the case and the expense, inconvenience and delay of trial are not factors that weigh heavily on either side. All parties have indicated that they are prepared for trial. Trustee's counsel is pursuing this lawsuit on a contingency fee basis, so there is no attorney fee consideration here. While there are issues of fact that may be difficult to resolve, this lawsuit is merely a breach of construction contract action.

The final consideration is the interest of creditors. The Trustee has recovered other funds that will pay priority creditors a percentage of the allowed claims. With this settlement these claims, largely by the government for taxes, will be paid in full. The general unsecured creditor class will receive nothing unless the litigation goes forward and the Trustee wins a substantial award at trial. In essence Mrs. Lawrence, a general unsecured creditor, seeks to gamble the sure recovery of priority creditors in hopes of some recovery for her unsecured creditor class.

Balancing these factors, the benefit to the Debtor's estate in the proposed settlement does not fall below the lowest point in the range of reasonableness and the proposed settlement is in the best interest of Debtor's estate.

IT IS THEREFORE ORDERED that Trustee's Application for settlement is approved.

AND IT IS SO ORDERED.

Columbia, South Carolina
September 25, 2009