

OCT 31 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: _____ || CASE NO. 05-80226

Gene Allen Jenkins and Gina Marie Jenkins,
CHAPTER 7

Debtors. JUDGE MASSEY

EDS Acquisitions, LLC and Teresa A Gonzalez,

Plaintiffs,

v. ADVERSARY NO. 06-6054

Gina Marie Jenkins,

Defendant.

ORDER DENYING MOTION TO APPROVE COMPROMISE

In this adversary proceeding Plaintiffs seek a judgment determining pursuant to 11 U.S.C. § 523(a)(2) the dischargeability of a debt allegedly owed by Defendant and Debtor Gina Marie Jenkins arising out of the sale of a business. Defendant holds a one-half interest in a note given by Plaintiffs as part of the purchase price of that business. Defendant listed the note as one of her assets and exempted it on Schedule C. In the main case, the Trustee filed an interim report in April 2006 in which he referenced the note, but no one has yet objected to the claim of exemptions.

On October 5, 2006 Plaintiffs and Defendant filed a joint motion to approve a compromise pursuant to which the parties, along with the non-debtor owner of a one-half interest in the note, would exchange mutual releases and this adversary proceeding would be dismissed. The parties

presented a proposed order pursuant to which notice of the compromise and an opportunity to object would be given to creditors. Plaintiffs and Defendant misconceive the law relating to compromises in a bankruptcy case.

A motion to compromise an adversary proceeding should be filed in the main bankruptcy case, if it is necessary at all. Typically, such motions deal with the bankruptcy estate giving up something, i.e., taking less than the full amount of the claim held by the estate against the defendant or defendant in counterclaim. More rare is the compromise of an objection to discharge, but that too could have an impact on the value of the estate.

When a trustee or debtor in possession in a Chapter 11 case seeks an order approving a compromise of a claim against a third party, what is really happening is that the estate wishes to dispose of an asset outside the ordinary course of business. To do that, notice and a hearing is required by section 363 of the Bankruptcy Code. Bankruptcy Rules 2002 and 9019 deal with notice and hearings on proposed compromises, but there is nothing in the Bankruptcy Code itself about compromises of claims, such as the one here, precisely because a compromise involving estate assets implicates section 363.

The complaint in this adversary proceeding stated no claim for the denial of Ms. Jenkins discharge generally. The property that Defendant proposes to transfer to Plaintiffs is her one-half interest in the note Plaintiffs gave to buy the business in question. The issue that the motion indirectly raises is whether the note is or is not property of the estate.

The docket in the main bankruptcy case of Defendant shows that the meeting of creditors was held on November 22, 2005. Because there is no indication that the meeting was continued, the Court presumes it was concluded. If that is true, the note is no longer property of Ms.

Jenkins' bankruptcy estate because no one objected to her claim of exemption of that property within 30 days after the meeting of creditors was concluded. See 11 U.S.C. § 522(l), Bankruptcy Rule 4003(b) and *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S.Ct. 1644 (1992). If the note is no longer property of Ms. Jenkins' bankruptcy estate, how she disposes of her interest is of no concern to the Court, the Trustee or creditors. The Court lacks subject matter jurisdiction to approve a compromise that has no effect on the estate and that is not otherwise authorized by the Bankruptcy Code. If the note is not property of the estate, the parties are free to compromise their claims against each other for any reason and on any basis they may desire.

On the other hand, if the note is still property of the estate because the meeting of creditors has not been concluded, the parties to this adversary proceeding lack standing to move to dispose of the note. Only the Chapter 7 Trustee has standing to bring a motion under section 363.

Accordingly, it is

ORDERED that the joint motion to approve compromise is DENIED either because the Court lacks subject matter jurisdiction or because the parties lack standing to propose to transfer property of the estate.

Dated: October 30, 2006.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE