IT IS ORDERED as set forth below:

Date: March 10, 2014

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re	)	Case No. 10-96519-MGD
	)	
CHARLES TERRANCE MATTHEWS	)	
and ROBERTA LYNN MATTHEWS.	)	Chapter 7
	)	
Debtors.	)	Judge Diehl
	)	

ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT

A hearing on several motions was held on February 25, 2014.[1] This Order addresses the Trustee's Motion for Approval of Compromise and Settlement of Multiple Parties and Debtors' objections thereto (Docket Nos. 131, 135, 152 & 166). Sean Kulka appeared for the Chapter 7 Trustee, S. Gregory Hays. Gregory Ellis and James Cifelli appeared for the Debtors. John Sanders appeared for Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), and Herbert

[1] An Order was entered on February 25, 2014 regarding Trustee's Motion to Disqualify Respondents, Trustee's Motion to Strike Debtors' Supplemental Objection and Amendment Thereto, or, Alternatively, to Seal Such Pleadings, and Debtors' Oral Motion for Leave to File a Supplemental Pleading to Trustee's Motion for Approval of Compromise and Settlement (Docket No. 165).

Broadfoot appeared for John Domjancic.

The settlement proposed by the Trustee resolves various disputes regarding ownership of a Patent (U.S. Patent No. 6,865,268) initially developed by Debtor Charles Terrance Matthews and Mr. Domjancic. Mr. Matthews and Mr. Domjancic dispute their respective percentages of ownership in the Patent. Mr. Matthews asserts that he holds an 80% interest and Mr. Domjancic asserts that he owns a 50% interest.

There are two other main open disputes regarding the Patent. First, the corporate entity that held or may hold the Patent is at issue. Mr. Matthews formed a corporation, vTrax GA, in 2000. The Patent was issued in 2005. On January 1, 2010, Mr. Matthews formed vTrax FL. One month later vTrax GA filed its articles of dissolution and was dissolved by the Secretary of State of Georgia soon thereafter. There are disputes as to Mr. Matthews' and Domjancic's respective shares of ownership in the vTrax corporations.

The second dispute involves Patent Litigation initiated by Robbins Geller on behalf of vTrax FL in 2010 (prepetition) and 2011(postpetition) in the Florida District Court, which is now dismissed.[2] Robbins Geller has filed a proof of claim in this case, asserting that it has an attorney lien on the Patent. Robbins Geller asserts a position that vTrax GA transferred all right, title and interest in the Patent to vTrax FL prior to vTRax GA's dissolution. The Trustee contests this position and believes the documents purportedly transferring the Patent did not effectuate any transfer, and, thus, the interest in the Patent reverted to Mr. Matthews and Domjancic upon dissolution of vTRax GA.

[2] The Patent Litigation in the Florida District Court was dismissed after Robbins Geller withdrew as counsel for the Plaintitff, vTRax FL.

Based upon these competing interests and positions relating to ownership of the Patent, the Trustee has filed an adversary proceeding against Mr. Matthews, Mr. Domjancic, vTRax GA and vTRax FL seeking declaratory judgment regarding ownership of the Patent, among other claims. (Adv. Proc. No. 11-5473-MGD). In the pending adversary proceeding, Mr. Matthews asserts a crossclaim against Mr. Domjancic. Robbins Geller intervened and filed a counterclaim seeking judgment that the Patent is not property of the bankruptcy estate because vTrax FL owns the Patent. This Court authorized mediation in January of 2013, and the proposed settlement is a result of the mediation. The proposed settlement resolves the pending adversary proceeding to determine ownership of the Patent and fixes Robbins Geller's claim.

The proposed settlement includes the following material terms: Mr. Matthews owns 80% of the Patent and Mr. Domjancic owns 20%. Therefore, the Estate owns 80% of the Patent. Robbins Geller will not contest this stipulation, and, in exchange, Robbins Geller's proof of claim will be allowed in the approximate amount of $1.3million and secured by a subordinate attorney lien. 85% of the allowed Robbins Geller claim will be subordinate to all tax lien claims, administrative expense claims, and priority tax claims. The remaining 15% of the allowed Robbins Geller claim will be further subordinated to all general unsecured claims. Additionally, Robbins Geller has an allowed administrative expense priority claim, described as the expense portion of their attorneys' fees claim in the approximate amount of $170,000, that will share *pro rata* with the Estate's administrative expense claims. There are mutual releases by the parties. The settlement agreement contemplates continued litigation pursuing Patent infringement claims or sale of the Patent.

Robbins Geller joins the Trustee to approve the settlement, while reserving its right to

contest ownership of the Patent in the event the settlement is not approved. Trustee, Robbins Geller, Mr. Domjancic, and vTrax FL are parties to the settlement. Debtors are the only party contesting the settlement, and their objection is limited to the proposed treatment of the Robbins Geller claim. Trustee objects to Debtors' standing to prosecute the objection.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334(b) and 157(a), and this is a core matter under 28 U.S.C. § 157(b)(2). Venue is proper. For the reasons set forth below, Trustee's motion for approval of compromise and settlement is granted.

This Motion is governed by Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, which provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR. P. 9019(a). "A chapter 7 trustee is required to reach an informed judgment, after diligent investigation, as to whether it would be prudent to eliminate the inherent risks, delays and expense of prolonged litigation in an uncertain cause." *LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.)*, 212 F.3d 632, 635 (1st Cir. 2000) (quoting *Kowal v. Malkemus (In re Thompson)*, 965 F.2d 1136, 1145 (1st Cir. 1992)).

In the Eleventh Circuit, the Court evaluates a proposed settlement by considering the following factors:

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1549 (11th Cir. 1990). "Courts consider these factors to determine 'the fairness, reasonableness and adequacy of a proposed settlement agreement.'" *Chira v. Saal (In re Chira)*, 567 F.3d 1307, 1312-1313 (11th Cir. 2009) (quoting *Martin v. Kane (In re A & C Prop.)*, 784 F.2d 1377, 1381 (9th Cir. 1986)).

The Supreme Court has explained the court's role in considering a trustee's proposed

settlement or compromise as follows:

> There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968). The court must be informed of all the relevant facts and information in order to make an independent judgment as to whether the settlement is fair and reasonable under the circumstances. *In re Vazquez*, 325 B.R. 30, 36 (Bankr. S.D. Fla. 2005). "The court is neither to 'rubber stamp' the trustee's proposals nor to substitute its judgment for the trustee's, but rather to "canvass the issues" and determine whether the settlement falls "below the lowest point in the range of reasonableness." *Id.* (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)).

A. Debtors' Standing to Object to the Proposed Settlement

As a preliminary matter, generally, a Chapter 7 debtor lacks standing to contest a settlement on behalf of the estate because the debtor will not receive any distribution from the estate. Thus, the debtor cannot assert a pecuniary interest in the settlement. *E.g., In re Keiffer–Mickes, Inc*., 226 B.R. 204, 208 (B.A.P. 8th Cir. 1998). Courts generally agree that a debtor has no standing to object to the manner in which the trustee administers the bankruptcy estate, except in the case where a surplus is in prospect. *E.g.*, *In re Adams*, 424 B.R. 434, 436-37 (Bankr. N.D. Ill. 2010). The debtor carries the burden of proof of establishing that a "surplus is a reasonable possibility" to allow the court to identify a pecuniary interest. *Cult Awareness Network, Inc. v. Martino (In re Cult Awareness Network, Inc.)*, 1997 WL 327123 (N.D. Ill. May 27, 1997).

Here, Trustee argues that Debtors lack standing to oppose the proposed settlement. Debtors assert they have a pecuniary interest in this proposed settlement because the settlement impacts the payment of nondischargeable tax claims. Courts disagree to what amounts to a direct

pecuniary interest such that a debtor has standing. Trustee points to *In re Adams* in support of his position. In *Adams*, the court confronted whether "when a chapter 7 trustee in a non-surplus case proposes to sell estate assets, does the potential distribution of the proceeds to creditors holding nondischargeable claims, a distribution that would reduce the debtor's post-bankruptcy liability to those creditors, give the debtor standing to object to the sale?" *In re Adams*, 424 B.R. at 434. The *Adams* court determined that the debtors lacked standing to object to the trustee's sale motion because they had no pecuniary interest in the bankruptcy case that the sale will directly and adversely affect. *Id*. at 435. Other courts confer standing to debtors based upon a similar theory to Debtors' position – that a debtor has a pecuniary interest in a proceeding when the amount of his or her nondischargeable debt may be implicated. *E.g., In re Moss*, 320 B.R. 143, 149 (Bankr. E.D. Mich. 2005)(holding a debtor had a direct pecuniary interest and, therefore, standing to object to a trustee's fee application because every dollar awarded to the trustee increased the debtor's nondischargable tax liability); *McGuirl v. White*, 86 F.3d 1232, 1235 (D.C. Cir. 1996). However, the facts and circumstances in this action do not require a ruling as to Debtors' standing. For the reasons set forth below, the settlement is approved despite Debtors' opposition, and, therefore, no ruling on Debtors' standing to object is necessary.

B. Trustee's Proposed Settlement is Reasonable

Trustee has satisfied his burden that he has conducted a diligent investigation and assessment of the facts and legal issues involved in this dispute and that the proposed settlement is fair and reasonable. Debtors' opposition to the settlement is limited to the allowance and amount of Robbins Geller's claim for attorneys' fees. As set forth in more detail below, the Court is satisfied that Trustee's business judgment in accepting the terms of the proposed settlement are sufficiently reasonable to warrant Court approval.

1. Probability of Success on the Merits

A Chapter 7 Trustee's role is to marshal an estate's assets and liabilities. *See* 11 U.S.C. § 323. Based on information and assessment of the facts and circumstances in the case, the trustee is charged with settling claims or accounts, using his informed discretion, to maximize return for the creditors. *E.g.*, *In re Mailman Steam Carpet Cleaning Corp.*, 212 F.3d 632, 635

(1st Cir. 2000). "[With] potentially costly litigation, with no guarantee as to the outcome, the trustee must tread cautiously -- and an inquiring court must accord him wide latitude should he conclude that the game is not worth the candle." *Id*. (quoting *Hicks, Muse & Co. v. Brandt (In re Healthco Int'l, Inc.)*, 136 F.3d 45, 50 n.5 (1st Cir. 1998) (quoting 9 COLLIER ON BANKRUPTCY P 9019.01, at 9019-2 (15th ed. 1995)).

The Court is not required to decide the merits of the competing claims to the Patent when assessing whether to approve the proposed settlement. The Court's assessment is limited to the probability of succeeding on those claims. *In re Justice Oaks II, Ltd.*, 898 F.2d at 1549. Here, the relevant claim is the ownership of the Patent. There are three competing claims for ownership. Trustee has sufficiently demonstrated that while there are strong claims for Messers. Matthews' and Domjancic's ownership of the Patent, there are good and bad facts under each Patent ownership theory. Moreover, there is a viable threat, under a successful Robbins Geller's ownership theory, that the estate could hold a mere shareholder interest in vTrax FL.

In this context, success in determining ownership of the Patent is weighed against the unknown value of the Patent. Success is measured by determining that the Estate's cost of winning the litigation would result in Patent realizing value in excess of the litigation costs, Mr. Donjancic's ownership interest, and accruing taxes or other carrying costs. Yet, the parties (including the Debtors) agree that the value of the Patent is uncertain, especially given the Patent Litigation and this bankruptcy. Even under Debtors' best theory of ownership, the Estate would only realize 80% ownership of the Patent. Trustee's evaluation of the claims and the proposed settlement reasonably relates to the to Trustee's probability of achieving a judgment that Debtor owns and has a controlling interest in 80% of the Patent.

The proposed settlement reasonably reflects the value in resolving the Patent ownership issue and securing an asset for the Estate without the time and cost of further litigation. The duration of this case without much resolution prior to the mediation also underscores the caution with which Trustee approaches further litigation as to the ownership issue. The proposed settlement also reasonably reflects that the competing ownership claims are preserved, so that the Estate, Mr. Domjancic, and Robbins Geller have aligned interests in maximizing the value of the

Patent for future sale or in pursuit of future Patent infringement litigation.

Debtors contest the reasonableness of allowing Robbins Geller's $1.3 million claim. Debtors contest any relationship between Debtor, in his personal capacity, and Robbins Geller. Mr. Domjancic, a party to the settlement, also shares this position but does not oppose the settlement. Debtors also assert that the allowed Robbins Geller claim does not represent a compromise, it represents more than what the firm would be entitled to under the contract. The proposed settlement, however, is a global settlement that resolves much more than just Robbins Geller's disputed claim.

The proposed compromise allows the $1.3 million claim in exchange for eliminating any further litigation with Robbins Geller regarding ownership of the Patent by vTrax FL and secures an asset for the Estate. The proposed subordination terms of the Robbins Geller claim also represent a compromise because a purported first priority secured claim (up to the value of the Patent) is subordinated in part to administrative and priority claims with a smaller portion further subordinated to general unsecured claims.

Trustee's final evaluation of Robbins Geller's claim is that it is not a baseless claim, despite the disputes highlighted by Debtors. Again, the Court is not charged with determining the merits of the Robbins Geller claim when assessing this motion to settle and compromise. This term of the settlement is evaluated within the context of Trustee's business judgment regarding the merits of the claim, while considering that the proposed settlement determines ownership of the Patent in a favorable position for the Estate. The proposed settlement reasonably resolves all the uncertainties and reasonably reflects the Estate's probability of success on recovering or securing shared ownership in the Patent.

2. Collection Difficulties

Difficulty in collection is not relevant in this context since the settlement does not include a judgment against any party.

3. Complexity, Expense, Inconvenience, and Delay

The expense and delay of ongoing litigation weigh heavily in favor of approving the settlement. It is Trustee's business judgment that this proposed settlement secures an asset for

the Estate without further, likely protracted, litigation to resolve the corporate and contractual claims at issue in this ownership dispute. The complexity of this action lies within the layered and competing claims, not necessarily in the individual legal issues raised. The disarray of the corporate records are a further concern for Trustee in pursuing further litigation as to Debtors' ownership of the Patent. Trustee's assessment of these factors and the resulting proposed settlement is reasonable.

4. Interests of Creditors

The proposed settlement secures an asset for the Estate, which is in the best interest of all creditors. The proposed settlement also benefits creditors by curtailing additional administrative costs to continue litigation regarding ownership of the Patent without any certainty as to the Estate's interest in the Patent. Further, there is no creditor opposition to Trustee's motion.

Accordingly, it is

ORDERED that Trustee's Motion for Approval of Compromise and Settlement is **GRANTED**.

It is **FURTHER ORDERED** that, based upon approval of the Trustee's compromise and settlement, Debtors' motion to compel abandonment and motion to compel discovery are **DENIED** as **MOOT**. (Docket Nos. 136 & 149).

The Clerk is directed to mail a copy of this Order to the parties listed below.

END OF DOCUMENT

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