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**OCT 26 2006**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	:	
	:	Case No. 03-93833-JB
EDITH S. BROWN,	:	
	:	Chapter 7
Debtor	:	
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MARTHA A. MILLER, as Chapter 7 Trustee	:	
for the Estate of EDITH S. BROWN,	:	ADVERSARY PROCEEDING
	:	NO. 04-6575
Plaintiff,	:	
	:	
v.	:	
	:	
EDITH S. BROWN, personally, in per capacity	:	
as Trustee of the 125 Clifton Road Trust and in	:	
her capacity as Trustee of the 1453 Lively Ridge	:	
Road Trust, THE 1225 CLIFTON ROAD TRUST,	:	
DERICK BROWN, KEITH BROWN, MEDHI	:	
SCALLY, and WACHOVIA BANK,	:	
	:	
Defendants.	:	

**O R D E R**

This case came before the Court on September 27, 2006 on the Trustee's Motion for Approval of Compromise and Settlement of Claims (Docket No. 75) asserted in Adversary Proceeding No. 04-6575. Upon consideration of the Trustee's Motion, the record in this case, and the representations by counsel for the Trustee and the sole objector Bonnie Holliday, the Court finds that the proposed settlement and compromise is in the best interest of the Debtor, the estate, the creditors and other parties in interest. The Court's findings of fact and conclusions of law are as follows:

A. This is a core proceeding under 28 U.S.C. §157(b)(2)(A), (F) and (H).

B. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

C. Adequate and sufficient notice of the motion and hearing was provided in accordance with 11 U.S.C. §102 and Bankruptcy Rules 2002 and 2004.

D. In Adversary Proceeding No. 04-06575-JB, the Trustee in the above-captioned case sued the Debtor, personally and in her capacity as Trustee of the 1225 Clifton Road Trust and 1453 Lively Ridge Road Trust, the 1225 Clifton Road Trust, Derick Brown, Keith Brown, Medhi Scally and Wachovia Bank seeking preference and/or fraudulent conveyance recoveries and to avoid a purported lien of Wachovia Bank on real property located at 1225 Clifton Road, Atlanta, Georgia. According to the Trustee, Debtor has had sole ownership and control of residential real property located at 1225 Clifton Road, Atlanta, Georgia (the "Clifton Road Property"). Debtor transferred title to the Clifton Road Property between herself and a Trust for which she served as trustee off and on between 1998 and 2000.

E. The Trustee represents that on March 12, 2003, less than a month pre-petition, the Debtor transferred title to the Clifton Road Property to the 1225 Clifton Road Trust. The purpose of the March 12, 2003 transfer was for Debtor to liquidate the remaining equity of \$100,000.00 in the 1225 Clifton Road Property. This sum was gifted to Debtor's son Derick Brown and his business partner Medhi Scally to open a restaurant. Since the filing of this adversary proceeding, there has been extensive discovery and litigation. The discovery has focused on the Debtor's activities over an extended period of time during which she sold various pieces of real property that she had acquired through a divorce proceeding. With Court

authorization, the Trustee employed a realtor, Kathi Sanders, of Keller Williams Realty. Ms. Sanders specializes in real property in the Druid Hills neighborhood of Atlanta, Georgia where the Clifton Road Property is located. The Trustee represents that she and Ms. Sanders inspected the Clifton Road Property thoroughly, that it was built in the early 20<sup>th</sup> Century, and that the Debtor has divided this large three story home into small single occupancy rental space for Emory University students, one of her sons and others. According to Ms. Sanders' research, the Clifton Road Property has significant zoning and code violations. The Trustee represents that the Clifton Road Property is in very poor condition and its electrical and plumbing systems have not been upgraded for at least fifty years, that it is on a very busy corner and faces a bank across the street, and that on one side of the property is a building utilized by a religious group affiliated with Emory University. Pursuant to approval by this Court, the Clifton Road Property was put on the market by Ms. Sanders for \$500,000.00. The Trustee represents that according to Ms. Sanders, given the condition of the property and its location, \$500,000.00 was a high price at which to list the property. The Clifton Road Property was marketed and Ms. Sanders received several inquiries from investors. During an inspection, only one investor submitted a verbal offer of \$250,000.00 which was never followed up by any written offer. The Trustee represents that it would take several hundreds of thousands of dollars to renovate the property to the level of surrounding private residences, if the zoning problems could be resolved.

F. In the adversary proceeding, the Trustee had challenged Wachovia Bank's claim to a second lien on the Clifton Road Property. Although the facts are in dispute, the Trustee

contended that the property was not titled in the proper party's name at the time of the Wachovia Bank loan closing such that Wachovia Bank did not have a perfected lien.

G. In the meantime, the parties in this adversary proceeding, except for Medhi Scally who could not be found, initiated negotiations to resolve the matter. During the course of the over three (3) year investigation and litigation, the Trustee has determined that the Brown family members do not have the financial resources to pay a settlement or judgment in this case. It is further the Trustee's opinion that the individual Defendants in this case have no non-exempt assets that could be liquidated to pay the claim. Wachovia Bank's title insurer, Old Republic Title Company ("Old Republic"), participated in the negotiations to resolve this adversary proceeding. After extensive negotiations and subject to the approval of this Court, the parties agreed that Old Republic would pay the Estate \$70,000.00 to resolve these disputes. If approved, the Trustee and the Debtor will execute all documents necessary to provide Wachovia Bank a second lien on the property for \$100,000.00 and to provide a third lien held by Old Republic Title for \$70,000.00. The total of all liens will be approximately \$570,000.00. Based upon the Trustee's investigation and experience in having the Clifton Road Property on the market, the property is worth far less than the aggregate liens.

H. The appropriate legal standard for approving or disapproving a settlement and compromise are the factors set forth in *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11<sup>th</sup> Cir. 1990), *cert. denied*, 498 U.S. 959 (1990). Pursuant to the court's ruling in *Justice Oaks*, the court must consider the following factors: (1) the probability of success in litigation; (2) difficulties expected to be encountered in collection; (3) the

complexity of the litigation involved and the expense, inconvenience and delay; and, (4) deference to the reasonable views of creditors. First, with respect to the probability of success in the litigation, the Plaintiff has conducted significant investigation, discovery, negotiations and development of the legal issues in the case. In the fourth year of the pendency of the case in chief and over three years since the filing of the adversary proceeding, no funds have been recovered by the Estate. The litigation has been expensive and contentious. The issues are somewhat complex regarding ownership of the Clifton Road Property. The Trustee believes that establishing fraud against various parties may be difficult.

The second prong of *Justice Oaks* regards difficulty of collection. The Trustee has taken into consideration the financial position of the named Defendants. Recovery against the Debtor and her sons would be very uncertain and unlikely. The Debtor's sole income is Social Security and rent. One son is a bank teller and the other a waiter. On the other hand, liquidation costs would make collection difficult and dilute dividends to unsecured creditors. The third factor, the complexity of litigation, the expense, inconvenience and delay, weighs in favor of approving this settlement. The Trustee has aggressively and consistently pursued claims on behalf of the Estate against these Defendants for more than three years.

The fourth *Justice Oaks* factor is deference to the reasonable views of creditors. Bonnie Holliday, a creditor in this action who filed proofs of claims arising from a business dispute with the Debtor, has objected to the settlement and compromise. Ms. Holliday's claims are now property of the estate in her own Chapter 7 proceeding, case no. 03-90612-MGD. By Order entered August 31, 2006, the Honorable Mary Grace Diehl, has ruled that Ms. Holliday's claims

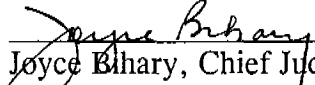
in the Edith Brown bankruptcy case are property of the bankruptcy estate in Ms. Holliday's case and that her Chapter 7 Trustee is the proper party to receive payment on those claims. The Trustee in Ms. Holliday's Chapter 7 case, Robert Silliman, is in agreement with the terms of the settlement proposed by the Trustee in this case. The Trustee in this case has aggressively pursued all claims to collect funds for the Estate.

I. Ms. Holliday contends that the Clifton Road Property is worth about \$1 million. No evidence was presented to support this contention, and the Trustee demonstrated that given the condition and location of the property, its value is less than the amount of the liens. Ms. Holliday contends that the proposed Settlement Agreement "excuses" the alleged fraudulent conduct of the named defendants, the Debtor, Keith Brown and Derick Brown. The Settlement Agreement contains no reference regarding the alleged fraud. Ms. Holliday filed a complaint objecting to debtor's discharge under 11 U.S.C. §727, but the complaint was dismissed because it was filed after the deadline set by Fed R. Bankr. P. 4004(a). See *Bonnie Holliday v. Edith Brown*, Adversary Proceeding No. 03-9251. Finally, the United States Trustee's office has monitored this case and has not raised any objection to the proposed settlement.

Upon this Order becoming a Final Order, Martha A. Miller, as the duly appointed acting Chapter 7 Trustee for the Estate of Edith S. Brown (the "Trustee") has power and authority to settle with all Defendants in Adversary Proceeding No. 04-06575, except Defendant Medhi Scally. The Trustee has the power to assign, convey and transfer the Estate's interest in title to the Clifton Road Property.

In accordance with the above reasoning, the Motion to Approve the Compromise and Settlement is **GRANTED**. Old Republic Title Company is directed to tender the \$70,000.00 settlement by cashiers or certified check made payable to Martha A. Miller, as Trustee in Bankruptcy for Edith S. Brown. The Trustee is authorized to execute and deliver all additional instruments and documents that may be reasonably necessary or desirable to implement the terms of the Settlement Agreement.

SO ORDERED this 24<sup>th</sup> day of October, 2006.

  
Joyce Bihary, Chief Judge  
United States Bankruptcy Court

Draft Prepared and Presented by:

/s/ Martha A. Miller  
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**PARTIES TO BE SERVED**

Pursuant to BR 9013(c)(2) of the Bankruptcy Court, the Clerk is requested to serve copies of the attached order, as entered, upon the following persons or entities at the following addresses:

1. Office of the United States Trustee  
362 Richard Russell Building  
75 Spring Street, SW  
Atlanta, Georgia 30303
2. Martha A. Miller, Esq.  
2415 International Tower  
229 Peachtree Street, NE  
Atlanta, Georgia 30303
3. George M. Geeslin, Esq.  
Eight Piedmont Center, Ste. 550  
3525 Piedmont Road, NE  
Atlanta, Georgia 30305-1565
4. Robert B. Silliman, Esq.  
Awtrey & Parker, PC  
250 Lawrence Street  
Marietta, Georgia 30060
5. Scott H. Michalove, Esq.  
Raymond S. Martin, P.C.  
Suite 800, One Lakeside Commons  
900 Hammond Drive  
Atlanta, Georgia 30328
6. Ms. Edith S. Brown  
1225 Clifton Road, NE  
Atlanta, Georgia 30307
7. Ms. Bonnie S. Holliday  
1673 Old River Road  
Cornelia, Georgia 30531