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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:)	Case No. 2:09-bk-28606-PC
JAYAMPATH P. DHARMASURIYA,)	Chapter 7
)	MEMORANDUM DECISION
)	Date: May 21, 2013
)	Time: 9:30 a.m.
)	Place: United States Bankruptcy Court
Debtor.)	Courtroom # 1468
)	255 East Temple Street
)	Los Angeles, CA 90012

Jeffrey I Golden, Chapter 7 Trustee (“Golden”) seeks approval of a settlement agreement between Golden and Donald H. Eller (“Eller”) dated February 13, 2013, pursuant to FRBP 9019.¹ Nalan Samarawickrema, Sarath and Hemanthi Gunatilake, and Andrew Holdings, Inc. (collectively, the “Creditors”) and Peter Edirisinghe (“Edirisinghe”) object to approval of the

¹ Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 after its amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). “Rule” references are to the Federal Rules of Bankruptcy Procedure (“FRBP”), which make applicable certain Federal Rules of Civil Procedure (“F.R.Civ.P.”). “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”).

1 agreement. The court, having considered the pleadings, evidentiary record, and arguments of
2 counsel, makes the following findings of fact and conclusions of law pursuant to F.R.Civ.P.
3 52(a)(1), as incorporated into FRBP 7052 and applied to contested matters in bankruptcy cases.

4 I. STATEMENT OF FACTS

5 On July 20, 2009, Jayampath P. Dharmasuriya (“Debtor”) filed his voluntary petition
6 under chapter 11 of the Code in the above referenced case. For two years, the Debtor engaged in
7 protracted litigation, including litigation with the Creditors and Eller, while attempting to
8 administer the case as a debtor in possession. No plan was ever confirmed. On August 24, 2011,
9 the court ordered the appointment of a trustee pursuant to 11 U.S.C. § 1104 to determine whether
10 the case should remain in chapter 11 or be dismissed or converted to a case under chapter 7 of
11 the Code. On September 9, 2011, the court approved the appointment of Golden as chapter 11
12 trustee. On November 2, 2011, the case was converted to a case under chapter 7 and Golden was
13 appointed as chapter 7 trustee.

14 While the case was pending in chapter 11, Debtor filed a complaint against Eller,
15 Saddlepeak West, LLC (“Saddlepeak”) and Grandpoint, LLC (“Grandpoint”) in Adversary No.
16 2:10-ap-02613-PC, styled Dharmasuriya v. Eller, et al., seeking, among other relief, the
17 following:

- 18 1. Avoidance of certain deeds of trust executed by the Debtor and recorded June 25,
19 2009, against the following described properties ostensibly to secure payment of a
20 promissory note in the original principal sum of \$749,197.18 dated August 17, 2005
21 (“2005 Unsecured Note”): (a) 1616 N. Wilmington Ave., Compton, CA 90222
22 (“Wilmington Avenue Property”); (b) 29315 Stadia Hill Lane, Rancho Palos Verdes,
23 CA 90275 (“Stadia Hill Property”); and (c) 8317-25 S. Western Ave., Los Angeles,
24 CA 90047 (“Western Avenue Property”);
- 25 2. Avoidance of certain deeds of trust executed by the Debtor and recorded June 25,
26 2009, against the following described properties ostensibly to secure payment of a
27 promissory note in the original principal sum of \$850,000 dated April 28, 2006
28 (“2006 Unsecured Note”): (a) 3409 W. 111th Street, Inglewood, CA 90303 (“111th
Street Property”); (b) 4358 Berryman Ave., # 12, Los Angeles, CA 90066
 (“Berryman Avenue Property”); (c) 5265 Fountain Ave., Hollywood, CA 90029
 (“Fountain Avenue Property”); and (d) 5317 Florence Ave., Bell, CA 90201
 (“Florence Avenue Property”);

- 1 3. Avoidance of a deed of trust executed by Debtor and recorded on June 25, 2009,
2 against 824 Grevillea Ave., Inglewood, CA 90301 (“Grevillea Avenue Property”),
3 ostensibly to secure payment of \$280,000 due under a promissory note in the original
4 principal sum of \$1,500,000 executed by Grandpoint dated November 7, 2007;
- 5 4. Declaratory judgment quieting title to the real property at 6476 West 81st Street, Los
6 Angeles, CA 90045 (“81st Street Property”); and
- 7 5. Declaratory judgment as to the respective interests of Debtor and Eller in three vacant
8 lots located in the Santa Monica Mountains (“Saddlepeak Property”), the real
9 property at 12A Granville Place, SW7, London, England (“London Flat”), and certain
10 accounts at Bank of Scotland, Lloyds Bank and HSBC in London, England (“London
11 Bank Accounts”).

12 Grandpoint and Saddlepeak were dismissed from the adversary proceeding on January 31, 2011
13 and April 15, 2011, respectively.

14 After conversion of the case to chapter 7, Golden succeeded the Debtor as the real party
15 in interest in the adversary proceeding and sought to resolve all disputed claims with Eller. On
16 March 5, 2012, Eller filed a proof of claim, Claim # 32 (“Eller Proof of Claim”) asserting: (a) a
17 secured claim in the amount of \$2,327,543.99, and (b) an unsecured non-priority claim in the
18 amount of \$2,913,311.18. On April 30, 2012, Eller filed a further proof of claim, Claim # 37
19 (“Eller Administrative Claim”) asserting an administrative claim against the estate in the amount
20 of \$153,625.23 for expenses paid by Eller to preserve the London Flat and the 81st Street
21 Property during the pendency of the chapter 11 case. Eller’s disputed claims include: (1) a
22 second lien asserted against a four-unit apartment building owned by the Debtor located at 3877
23 Denker Avenue, Los Angeles, CA 90018 (“Denker Avenue Property”); (2) a lien on the real
24 property located at 1342 251st Street, Los Angeles, CA 90710 (“251st Street Property”) owned
25 by the Debtor’s wife and transferred from her revocable living trust to 1342 West 251st Street
26 LLC on September 2, 2011; and (3) a lien on a 2001 Porsche Carrera and a lien on a 2004 Jaguar
27 (the “Vehicles”) owned by the Debtor and disclosed in the schedules.

28 As the result of an extensive mediation on May 22, 2012, Golden and Eller reached an
agreement in principle to settle their conflicting claims. The final agreement was reduced to
writing and executed by Golden and Eller on February 13, 2013.

1 On April 26, 2013, Golden filed a Motion to Approve the Settlement Agreement Between
2 the Chapter 7 Trustee and Donald H. Eller Pursuant to Federal Rule of Bankruptcy Procedure
3 9019 (the "Motion"). As summarized in the Motion, the Settlement Agreement between Golden
4 and Eller dated February 13, 2013, which is attached to the Motion as Exhibit 1, provides in
5 pertinent part that:

- 6 A. The Settlement Agreement shall become effective and binding the first business day
7 after entry by the Bankruptcy Court of a Final Order approving the Settlement
8 Agreement and authorizing the Trustee to enter into the Settlement Agreement. . . .
- 9 B. The Settlement Agreement is subject to Bankruptcy Court approval.
- 10 C. Upon the Effective Date, Eller shall have an unsecured claim against the Estate in the
11 amount of \$2,357,045 based on the 2005 Unsecured Note and the 2006 Unsecured
12 Note. The Eller Proof of Claim shall be deemed amended and allowed in this
13 amount, which shall be designated an unsecured claim in its entirety.
- 14 D. Upon the Effective Date, Eller's liens on the following properties shall be deemed
15 avoided and preserved for the benefit of the Estate pursuant to 11 U.S.C. §§ 547, 550,
16 and 551: (a) Wilmington Avenue Property; (b) Stadia Hill Property; (c) Western
17 Avenue Property; (d) 111th Street Property; (e) Berryman Avenue Property; (f)
18 Fountain Avenue Property; (g) Grevillea Avenue Property; and (h) 251st Street
19 Property, if the Trustee is successful in recovering the 251st Street Property. Upon
20 the Effective Date, Eller revokes, terminates, waives and releases any and all claims,
21 liens, encumbrances, or interests of any kind in the subject properties or any monies
22 or sale proceeds held by the Trustee on account of the properties.
- 23 E. Upon the Effective Date, Eller waives, releases, and relinquishes any and all claims,
24 monetary or otherwise, against the Denker Avenue Property, including, without
25 limitation, those based upon (i) the unrecorded deed of trust in favor of Eller executed
26 by Manuel Villanueva on January 10, 2003, in the principal amount of \$163,200, or
27 (ii) any payment that Eller may have made for the benefit of Value Home Loan.
28 Upon the Effective Date, Eller's lien(s) on the Denker Avenue Property shall be
deemed avoided and preserved for the benefit of the Estate pursuant to 11 U.S.C. §§
547, 550, and 551.
- F. As part of the motion to approve the Settlement Agreement, the Trustee shall seek
authority to sell the Florence Avenue Property to Eller for the purchase price of
\$2,124,245.22 (the "Purchase Price"), not subject to overbids. The Purchase Price
consists of (i) a payment of \$175,000 (the "Florence Payment") to be made to the
Trustee within three (3) business days after the Effective Date and (ii) a credit bid of
\$1,949,245.22, in full and complete satisfaction of any and all claims of Eller against

1 the Estate arising out of or related to the Florence Avenue Property. Within three (3)
2 business days of (i) the Effective Date or (ii) the Trustee's receipt and clearance of
3 the Florence Payment, whichever is later, the Trustee shall execute and deliver to
4 Eller a grant deed transferring title to the Florence Avenue Property to Eller (the
5 "Transfer Date"). The Trustee is entitled to retain all rents that have been collected
6 from the tenants of the Florence Avenue Property through the Transfer Date, except
7 that if the Transfer Date occurs after the first of the month, the rents that were
8 collected for that particular month shall be prorated between the Trustee and Eller.

6 G. Upon (i) the Effective Date and (ii) the Trustee's receipt and clearance of the
7 Florence Payment, the Trustee shall release any and all claims of the Estate to the
8 London Flat. The Trustee shall reasonably cooperate with Eller to execute documents
9 necessary to transfer title on the London Flat to Eller.

10 H. As of the Effective Date, Eller waives, releases, and relinquishes any and all claims to
11 the London Bank Accounts. Eller shall exercise his best efforts to gain cooperation
12 from the Debtor and shall execute those documents necessary for the voluntary
13 transfer of the funds in the London Bank Accounts to the Trustee. As of the Effective
14 Date, Eller represents and warrants to the Trustee that he has received no payments,
15 distributions, withdrawals or monetary consideration of any kind whatsoever from the
16 London Bank Accounts either before or after the Petition Date, except that payments
17 for expenses related to the London Flat were made on his behalf. It shall be a default
18 of the Settlement Agreement if this representation and warranty is false, materially
19 incomplete or materially misleading.

17 I. Upon (i) the Effective Date and (ii) the Trustee's receipt and clearance of the
18 Florence Payment, the Trustee shall be deemed to have waived and released any and
19 all ownership claims of the Estate to the 81st Street Property.

20 J. The Saddlepeak Property shall be marketed for a period of 4 months after the
21 Effective Date. The Trustee, Eller, and Nalan Samarawickrema shall mutually agree
22 on the broker that will list and market the Saddlepeak Property as well as the listing
23 price, with any dispute to be resolved by the Bankruptcy Court. The sale of the
24 Saddlepeak Property shall be at the Trustee's discretion except that the Trustee agrees
25 that the Saddlepeak Property will not be sold for less than the full amount of Eller's
26 claim, secured by a lien against the property, which totals \$2,342,470.32. If at the
27 end of the four month period the Saddlepeak Property is not in a bona-fide escrow,
28 then the Trustee shall waive any and all ownership claims of the Estate to the
Saddlepeak Property. If the Saddlepeak Property can be sold for an amount in excess
of Eller's claim, the sale proceeds remaining after payment of Eller's claim and
ordinary closing costs will be distributed to the Trustee to be held for the benefit of
Grandpoint pending further order of the Bankruptcy Court. Nothing in Section 2.8 of
the Settlement Agreement shall limit Mr. Eller's entitlement to receive a pro rata
distribution of any funds distributed to unsecured creditors as part of the Bankruptcy
Case.

1 K. Upon the Effective Date, Eller waives, releases, and relinquishes, any claims against
2 or to the Vehicles. Also upon the Effective Date, Eller's liens against the Vehicles
3 shall be deemed avoided and preserved for the benefit of the Estate pursuant to 11
4 U.S.C. §§ 547, 550 and 551.

5 L. On the Effective Date, Eller's Administrative Claim shall be deemed withdrawn.

6 M. Upon the completion of the acts described above, the Parties shall cause the
7 Adversary Proceeding to be dismissed, with all Parties bearing their own costs.²

8 The Settlement Agreement further requires Golden and Eller to provide each other with a mutual
9 release of any and all claims.³

10 On May 7, 2013, the Creditors filed a response to Golden's Motion opposing the
11 settlement and requesting a continuance to conduct discovery, asserting that (a) Eller is an
12 "insider" within the meaning of 11 U.S.C. § 101(31) due to his close relationship with the
13 Debtor;⁴ (b) Eller was, in fact, "a co-collaborator with the Debtor's attempts to deceive
14 creditors;"⁵ (c) serious questions exist concerning the veracity of documents provided by Eller in
15 conjunction with the compromise; and (d) "given the history of pre-bankruptcy planning to
16 defraud creditors, miraculously appearing documents and the history of Eller as an insider, the
17 compromise should not be approved" ⁶ Edirisinghe opposes the Motion by separate
18 opposition filed on April 30, 2013, and supplemented on May 10, 2013. On May 14, 2013, Eller
19 filed a response in support of the compromise and Golden replied to the opposition.

20 At a hearing on May 21, 2013, the court heard argument from Golden, the Creditors,
21 Eller and Edirisinghe and took the matter under submission.

22
23 ² Motion 4:26 to 8:11.

24 ³ Id. 8:12-13.

25 ⁴ Opposition to the Motion to Approve Compromise of Controversy Between Chapter 7
26 Trustee and Donald Eller ("Creditors' Opposition") 5:17-19.

27 ⁵ Id. 6:17.

28 ⁶ Id. 14:6-8.

1 II. DISCUSSION

2 This court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157(b) and
3 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (N) and (O).
4 Venue is appropriate in this court. 28 U.S.C. § 1409(a).

5 A. Creditors' Request for a Continuance to Conduct Discovery

6 In determining whether to grant a motion for continuance, the court considers four
7 factors: (a) diligence of the party requesting the continuance; (b) usefulness of the continuance;
8 (c) inconvenience to the court and opposing party, and (d) prejudice from the denial. See, e.g.,
9 United States v. Flynt, 756 F.2d 1352, 1359 (9th Cir. 1985), amended on other grounds, 764 F.2d
10 675 (9th Cir. 1985); In re La Sierra Fin. Servs., Inc., 290 B.R. 718, 734 (9th Cir. BAP 2002).
11 “The weight given to any one [factor] may vary from case to case.” Armant v. Marquez, 772
12 F.2d 552, 556-57 (9th Cir. 1985), cert. denied, 475 U.S. 1099 (1986).

13 The Creditors seek a continuance of the hearing on Golden's Motion pending a
14 deposition of Eller. According to the Creditors, Golden's “filing the Motion without [a] period
15 of warning and opportunity to take Eller's deposition, which had been delayed due to the [global]
16 settlement negotiations, is an attempt to cut off both a discussion of the Trustee's attorney fees
17 and an attempt to preclude creditors from obtaining discovery as to the role of Eller, and the facts
18 and terms asserted in the various transactions. There would have been no prejudice, and there
19 would be no prejudice to the Trustee or the Estate, to have been given, or to give now, an
20 opportunity for discovery on this cause.”⁷ In support of the request, the Creditors' attorney,
21 Jayne T. Kaplan (“Kaplan”) testified by declaration that:

22 7. After receipt of the 9019 Motion, I informed Mr. Golden that it was prudent to
23 have a meeting on the issue of a global settlement and if that was not
24 successful to allow me to take Eller's deposition. In this regard, I requested
that the 9019 Motion be continued.

25 8. Golden has refused to continue the hearing on the 9019 Motion, and has stated
26 that he is only available to meet with me and Mr. Altgen after the Opposition
is due.⁸

27 ⁷ Id. 3:7-13.

28 ⁸ Id. 18:5-11.

1
2 Kaplan's assertion is largely belied by the email communications attached to the
3 Reply as Exhibits 1-10. Golden's attorney, Beth Gaschen ("Gaschen") reached out to
4 Kaplan regarding the status of the global settlement discussions as early as January 2,
5 2013.⁹ Gaschen then inquired by emails dated February 4, 2013 and February 11, 2013,
6 whether global settlement discussions were still ongoing.¹⁰ On February 28, 2013,
7 Gashen sent Kaplan an email acknowledging Kaplan's request for a meeting with Golden
8 to discuss a global settlement, advising Kaplan that Golden had a fully executed
9 settlement agreement with Eller which Golden intended to pursue, and inquiring whether
10 (a) Kaplan planned to have Eller and his attorney participate in the global settlement
11 negotiations; (b) whether there was a term sheet for the global settlement discussions; and
12 (c) whether Kaplan had considered the services of a mediator in any future global
13 settlement meeting.¹¹

14 Golden and Eller executed the Settlement Agreement on February 13, 2013.
15 Based on the email communications attached as exhibits to both the Creditors'
16 Opposition and the Reply, Kaplan was on notice as early as February 28, 2013, that
17 Golden intended to pursue court approval of the compromise reached with Eller. No
18 effort was undertaken by the Creditors to examine Eller pursuant to FRBP 2004.
19 Notwithstanding the fact that he never received a response to the questions contained in

20 ⁹ Reply to the Oppositions Filed by (1) Peter Edirisinghe and (2) Nalan Samarawickrema,
21 Sarath and Hemanthi Gunatilake, and Andrew Holdings, Inc. to the Motion to Approve the
22 Settlement Between the Chapter 7 Trustee and Donald H. Eller Pursuant to Federal Rule of
23 Bankruptcy Procedure 9019 ("Reply") Exhibit 1.

24 ¹⁰ Id. Exhibits 2 & 3.

25 ¹¹ Id. Exhibit 4. Gashen may have had reason to believe that a mediator might be helpful
26 given the issues that arose in conjunction with a prior compromise involving Sarath and
27 Hemanthi Gunatilake. On April 6, 2012, Golden filed a motion seeking approval of a
28 compromise with Sarath and Hemanthi Gunatilake pursuant to FRBP 9019(a). The motion was
opposed. Although the court granted several continuances to permit the parties to reach a global
settlement, Golden's motion was ultimately denied without prejudice by order entered on
November 27, 2012.

1 the February 28th email, Golden remained open to further discussions regarding a global
2 settlement agreement.¹² The real issue stalling the Creditors' attempt at a global
3 settlement is not necessarily Eller, but the administrative expenses of the estate, including
4 the accrued fees of Golden and his professionals.¹³

5 The Creditors had the right to conduct discovery in this contested matter pursuant
6 to FRBP 9014(c), including the right to take the oral deposition of Eller. However, there
7 is no evidence that the Creditors noticed an oral deposition of Eller after the filing of
8 Golden's Motion nor is there credible evidence that the deposition of Eller was necessary
9 to a proper response by the Creditors to Golden's Motion. Golden delayed the filing of
10 the Motion for nearly three months awaiting information from Kaplan on a proposed
11 global settlement agreement which was not forthcoming. Kaplan was not diligent in
12 requesting the continuance and a continuance at this juncture would not be useful.

13 Because the estate would be unduly prejudiced if further delay resulted in a loss of the
14 Settlement Agreement between Golden and Eller, the Creditors' request for a continuance
15 is denied.

16 B. Golden's Burden of Proof Under FRBP 9019

17 On a motion by the trustee after notice and a hearing, the court may approve a
18 compromise or settlement under FRBP 9019(a) upon a finding that it is "fair and
19 equitable" to creditors. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d
20 610, 620 (9th Cir. 1988); Martin v. Kane (In re A&C Props.), 784 F.2d 1377, 1381 (9th
21 Cir. 1986), cert. denied sub. nom. Martin v. Robinson, 479 U.S. 854 (1986). The trustee
22 has the burden of persuading the court that the compromise is fair and equitable and is in
23 the best interests of the estate. A&C Props., 784 F.2d at 1381; CAM/RPC Elecs. v.
24 Robertson (In re MGS Mkg.), 111 B.R. 264, 266-67 (9th Cir. BAP 1990). The
25 bankruptcy court need not conduct an exhaustive investigation nor a mini-trial on the
26 validity or merits of the claims sought to be compromised. See, e.g., U.S. v. Alaska Nat'l

27 ¹² Id. Exhibits 5, 6, 7, 9 & 10.

28 ¹³ Creditors' Opposition Exhibit A.

1 Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982); In re Schmitt, 215
2 B.R. 417, 423 (9th Cir. BAP 1997). The court's proper role is "to canvas the issues and
3 see whether the settlement falls below the lowest point in the range of reasonableness."
4 In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496-97 (Bankr. S.D.N.Y.
5 1991).

6 In determining the fairness, reasonableness and adequacy of a proposed
7 settlement, the court must consider: "(a) The probability of success in the litigation; (b)
8 the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of
9 the litigation involved, and the expense, inconvenience and delay necessarily attending it;
10 and (d) the paramount interest of the creditors and a proper deference to their reasonable
11 views in the premises." Woodson, 839 F.2d at 620, quoting A&C Props., 784 F.2d at
12 1381. However, "while creditors' objections to a compromise must be afforded due
13 deference, such objections are not controlling" A&C Props., 784 F.2d at 1382. The
14 court may give weight to the opinions of the trustee, the parties, and their attorneys. Port
15 O'Call Inv. Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9th Cir. 1976). A court
16 generally gives deference to a trustee's exercise of business judgment. In re Mickey
17 Thompson Entm't Group, Inc., 292 B.R. 415, 420 (9th Cir. BAP 2003); see, e.g., Morris
18 v. Nat'l Union Fire Ins. Co. (In re Eastwind Group, Inc.), 303 B.R. 743, 750 (Bankr. E.D.
19 Pa. 2004) ("[W]hen considering the relevant factors the court should avoid second-
20 guessing the Trustee in the exercise of his business judgment but rather should endeavor
21 to ascertain whether the terms of the Trustee's proposed settlement fall below the lowest
22 range of reasonableness."); In re Churchfield, 277 B.R. 769, 773 (Bankr. E.D. Cal. 2002)
23 ("[T]he opinion of the trustee is entitled to great weight [but] the bankruptcy court has a
24 duty to make an informed, independent judgment as to the reasonableness of the
25 proposed compromise."). Consideration must also be given to the principle that the law
26 favors compromise and not litigation for its own sake. Blair, 538 F.2d at 851.

1 C. Eller's Close Relationship With the Debtor

2 If the debtor is an individual, the term "insider," as defined in § 101(31)(A) of the Code,
3 includes (1) a relative of the debtor or of a general partner of the debtor; (2) partnership in which
4 the debtor is a general partner; (3) general partner of the debtor; or (4) corporation of which the
5 debtor is a director, officer, or person in control. 11 U.S.C. § 101(31)(A). While the statutory
6 definition of an "insider" is non-exclusive, "more than mere closeness is necessary for a court to
7 hold that a creditor was a non-statutory insider of a debtor." Anstine v. Carl Zeiss Meditec AG
8 (In re U.S. Medical, Inc.), 531 F.3d 1272, 1278 (10th Cir. 2008). The inquiry "is whether there
9 is a close relationship and whether there is anything other than closeness to suggest that any
10 transactions were not conducted at arm's length," such as "the presence or absence of control by
11 the debtor of the creditor and whether the creditor has access to inside information." Id. at 1277.

12 Golden does not dispute the Creditors' assertion that the Debtor and Eller had a close
13 relationship prior to bankruptcy.¹⁴ But Eller does not fall squarely within the statutory definition
14 of an "insider" under § 101(31)(A), and the only evidence offered by the Creditors to establish
15 that Eller's close relationship with the Debtor rose to the level of insider status is the declaration
16 of Nalan Samarawickrema, who testified that "Eller served as a private lender for
17 Dharmasuriya's clients,"¹⁵ "Eller also bought and sold many properties (1) from, and to,
18 Dharmasuriya, and (2) with Dharmasuriya,"¹⁶ and "Eller also bought and sold properties,
19 utilizing Optima Escrow, pursuant to Dharmasuriya's recommendations."¹⁷ There is no evidence
20 to establish that Eller was, or continues to be, in a position to exercise control over the Debtor or
21 the business of the Debtor.

22 Even if Eller was determined to be an "insider" within the meaning of § 101(31)(A),
23 Eller's status as an insider would not be fatal to approval of the Settlement Agreement under

24 ¹⁴ Reply 6:6-7.

25 ¹⁵ Creditors' Opposition (Samarawickrema Dec.) ¶ 9.

26 ¹⁶ Id. ¶ 10.

27 ¹⁷ Id. ¶ 11.

1 FRBP 9019. See, e.g., In re HyLoft, Inc., 451 B.R. 104, 113 -14 (Bankr. D.Nev. 2011) (“While
2 insider status alone is not fatal to dealings between a debtor and an insider, the court must
3 scrutinize these dealings more carefully.”); Drexel Burnham Lambert, 134 B.R. at 498 (“We
4 subjected the agreement to closer scrutiny because it was negotiated with an insider, and hold
5 that closer scrutiny of insider agreements should be added to the cook book list of factors that
6 Courts use to determine whether a settlement is fair and reasonable.”). Golden scrutinized the
7 elements of the Settlement Agreement as if Eller were an insider, according to the reply:

8 The Settlement Agreement was the outcome of [Golden’s] due diligence
9 including reviewing the pleadings filed in the case, documents produced in
10 connection with multiple FRBP 2004 document requests, the documents
11 voluntarily produced by Eller, and legal research conducted regarding [Golden’s]
12 probability of success in any litigation with Eller. [Golden] engaged in
13 negotiations with Eller and when the parties were ultimately unable to reach a
14 settlement on their own, requested that the matter be ordered to mediation. The
15 Settlement Agreement is the outcome of that mediation.¹⁸

16 Based on the evidentiary record, the court concludes that Eller is not an insider and that his close
17 relationship with the Debtor does not, of and by itself, materially affect the court’s “fair and
18 equitable” analysis under FRBP 9019(a).¹⁹

19 D. Florence Avenue Property

20 When confronted with a motion to approve a settlement under FRBP 9019(a), a
21 bankruptcy court is obligated to consider, as part of the fair and equitable analysis, whether any
22 property of the estate that would be disposed of in connection with the settlement might draw a
23 higher price through a competitive process and be the proper subject of a section 363 sale. In re

24 ¹⁸ Reply 6:8-15. “Eller’s relationship with the Debtor caused [Golden] to look more
25 carefully at the various transactions between the Debtor and Eller.” Id. 6:18-19.

26 ¹⁹ Eller is not the only creditor who had a close relationship with the Debtor. It appears
27 that the objecting creditors also had close relationships with the Debtor. According to Golden,
28 “Sarath Gunatilake is a childhood friend of the Debtor’s,” and Nalan Samarwickrema, who
serves as president of Andrew Holdings, Inc., is “from the same Sri Lankan community as the
Debtor and engaged in extensive business transactions pre-petition.” Reply 6: n.2. Edirisinghe
is the uncle of Nalan Samarawickrema, who according to court documents had “a longstanding
personal and business relationship with” the Debtor, referring to him as “Uncle Jay.”
Edirisinghe Opposition (Exhibit B) 2-3.

1 Mickey Thompson, 292 B.R. at 422; see Fitzgerald v. Ninn Worx Sr, Inc. (In re Fitzgerald), 428
2 B.R. 872, 884 (9th Cir. BAP 2010) (“[Because] [t]he sale at issue here was both a sale under
3 section 363 and a compromise under Rule 9019[,] [t]he bankruptcy court erred when it issued the
4 Sale Order without performing the analysis required by the case law regarding compromises
5 under Rule 9019.”). “Whether to impose formal sale procedures is ultimately a matter of
6 discretion that depends upon the dynamics of the particular situation.” Mickey Thompson, 292
7 B.R. at 422.

8 In this case, the Settlement Agreement contemplates a sale of the Florence Avenue
9 Property to Eller for the sum of \$2,124,245.22 consisting of a credit bid of \$1,949,245.22 and a
10 cash payment of \$175,000.00. By the terms of the Settlement Agreement, however, the sale of
11 the Florence Avenue Property is not subject to overbids. As part of the “fair and equitable”
12 analysis, the court must consider whether the Florence Avenue Property might draw a higher
13 price through a competitive process under § 363. In his declaration, Golden testified that the
14 estimated fair market value of the Florence Avenue Property is \$825,000 based upon
15 “information” provided by his broker.²⁰ Golden does not provide an appraisal or broker
16 declaration to corroborate his estimated fair market value, but there is also no contrary evidence
17 of value. Neither Edirisinghe nor the Creditors objected to Golden’s valuation of the Florence
18 Avenue Property nor the fact that the sale of the Florence Avenue Property to Eller as part of the
19 compromise was not subject to overbid. Indeed, the Creditors concede that Golden’s “valuation
20 on the trailer park may be accurate.”²¹ Under the compromise, Golden will satisfy Eller’s
21 disputed lien against the Florence Avenue Property, realize \$175,000 in equity from the sale of
22 the property, and retain approximately \$65,000 in rents collected from tenants of the Florence
23 Avenue Property through the Transfer Date. Based on the foregoing, the court concludes that
24 Golden is receiving fair market value for the Florence Avenue Property through the sale of the
25 property to Eller under the Settlement Agreement and that the Florence Avenue Property would
26 not draw a higher price through a competitive process under § 363.

27 ²⁰ Motion (Golden Dec.) ¶ 40.

28 ²¹ Creditors’ Opposition 13:1.

1 The Creditors' objection with respect to the Florence Avenue Property is directed at the
2 income from the property rather than Golden's valuation of the property. The Creditors argue
3 that Golden did not take into account the Debtor's payments to Eller of \$5,000 per month while
4 the Debtor was operating the Florence Avenue Property in chapter 11, and that the total of those
5 payments may exceed \$100,000.²² This fact does not alter the court's conclusion. According to
6 the reply, Golden investigated the nature and amount of these payments which totaled \$71,500
7 and were reported by the Debtor in his monthly operating reports as debtor in possession.
8 Golden concluded that Eller, as a creditor secured by a lien on the Florence Avenue Property,
9 was entitled to adequate protection for the Debtor's continued use of the Florence Avenue
10 Property and the cash collateral generated from that property during the chapter 11 case.

11 E. The Settlement Agreement is Fair and Equitable and in the Best Interests of the Estate

12 Finally, the Creditors assert that Settlement Agreement should not be approved because
13 Golden, as part of the compromise with Eller, has shirked his responsibilities as trustee by
14 electing not to litigate the validity of Eller's disputed title to the 81st Street Property and by
15 agreeing to waive and release the estate's interest in the property. The Creditors further assert
16 that continued litigation with Eller is necessary because questions remain concerning the 2005
17 Unsecured Note, the 2006 Unsecured Note, the London Flat, and the London Bank Accounts.

18 Section 704(a)(1) of the Code imposes on Golden a statutory responsibility to "collect
19 and reduce to money the property of the estate . . . and to close the estate as expeditiously as is
20 compatible with the best interests of creditors." 11 U.S.C. § 704(a)(1). Debtor's bankruptcy
21 case has been pending before this court for nearly four years. Golden inherited from the Debtor
22 the litigation against Eller, which has been pending for the past three years. Golden's decision to
23 stop litigating with Eller over these issues, including title to the 81st Street Property and the
24 London Flat, cannot be viewed in isolation. Golden has exercised his business judgment as
25 trustee to relinquish the estate's claim to the 81st Street Property and the London Flat as part of
26 an overall compromise of disputed claims between Eller and the estate.

27
28 ²² Id. 13:1-5.

1 The Settlement Agreement between Golden and Eller, which ends the litigation and
2 stops the mounting professional fees and other administrative expenses associated therewith, was
3 hammered out between the parties with the assistance of an independent mediator and provides
4 the estate with the following:

- 5 1. Avoidance of Eller's liens on nine properties: Wilmington Avenue Property, Stadia
6 Hill Property, Western Avenue Property, 111th Street Property, Berryman Avenue
7 Property, Fountain Avenue Property, Grevillea Avenue Property, 251th Street
8 Property, and the Denker Property.
- 9 2. \$175,000 for the sale of the Florence Avenue Property to Eller, together with
10 approximately \$65,000 in rents collected from tenants of the Florence Avenue
11 Property through the Transfer Date.
- 12 3. All monies in the London Bank Accounts.
- 13 4. Eller's waiver of any claims that Eller has to the Vehicles.
- 14 5. A withdrawal and waiver of the Eller Administrative Claim, and a stipulated
15 reduction of the Eller Proof of Claim to an unsecured non-priority claim in the
16 amount of \$2,357,045.
- 17 6. The right to market and sell the Saddlepeak Property for a period of four months, with
18 any sale proceeds above the amount of Eller's claim to be distributed to the Trustee.
- 19 7. Dismissal of Adversary No. 2:10-ap-02613-PC with prejudice.

20 Eller, on the other hand, receives the 81st Street Property and the London Flat, together with an
21 unsecured non-priority claim in a reduced amount. The bankruptcy court is not required to
22 "conduct an exhaustive investigation into the validity of [an] asserted claim" nor "conduct a
23 mini-trial on the merits of claims sought to be compromised." Walsh Constr., Inc., 669 F.2d at
24 1328.

25 There is no guarantee that Golden will be successful either on the merits of the claims
26 against Eller made the basis of Adversary No. 2:10-ap-02613-PC or in reducing or eliminating
27 the Eller Proof of Claim and Eller Administrative Claim through the claims objection process.
28 No discovery deadline has been set in the adversary proceeding, and continued litigation with

1 Eller would necessarily require the preparation and filing of an amended complaint, a motion for
2 leave to file the complaint, extensive discovery, pre-trial motions, and a trial on the merits of the
3 disputed claims between the parties. Golden has yet to file a formal objection to either the Eller
4 Proof of Claim or the Eller Administrative Claim – both of which are likely to be contested.

5 Gaschen testified by declaration that:

6 Eller has asserted that he will vigorously defend himself against any preference
7 action. The Settlement Agreement eliminates any of the risks associated with
8 litigating the preference claims. It also means that funds totaling approximately
9 \$935,656.53 (consisting of net sale proceeds, anticipated recoverable equity, and
Trustee.²³

10 Gashen further testified that:

11 Litigating over the validity of the two recorded deeds of trust would be costly and
12 time consuming. And, if the Trustee was unsuccessful, he would have spent
13 thousands of dollars only to abandon the property. The Trustee could easily incur
14 more than \$75,000 in administrative fees litigating over the validity of the [2005
Unsecured Note] thereby eliminating any equity that could be realized for
creditors.²⁴

15 Given the nature and extent of the litigation, a final administration of the estate might be delayed
16 for years.

17 The fact that the litigation is complex requiring prolonged and costly discovery is a factor
18 to be considered in finding that a settlement is in the paramount interest of creditors. Approval
19 of the compromise spares all parties the expense of further litigation, and ends erosion to the
20 value of the estate diminished by mounting administrative expenses being incurred litigating the
21 complex disputed issues between the parties. Creditors may be paid sooner rather than later if
22 the compromise is approved. The court is satisfied that the defenses asserted by Eller may result
23 in the estate recovering nothing. The potential costs in bringing this proceeding to trial may be
24 high and the potential recovery may be low. The Settlement Agreement provides a substantial
25 benefit to the estate and does not fall below “the lowest point in the range of reasonableness.”
26

27 ²³ Motion 48:20-25.

28 ²⁴ Id. 50:5-9.

1 See Drexel Burnham Lambert, 134 B.R. at 497. Based on the foregoing, the court finds that the
2 Settlement Agreement is fair and equitable and in the best interests of the estate.

3 The content of the notice of compromise meets the due process requirement that it be
4 “reasonably calculated, under all of the circumstances, to apprise interested parties of the
5 pendency of the action and to afford them the opportunity to present their objections.” Mullane
6 v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

7 III. CONCLUSION

8 For the reasons stated, the objections of the Creditors and Edirisinghe to Golden’s motion
9 for approval of the Settlement Agreement will be overruled and an order will be entered
10 approving the Settlement Agreement between Golden and Eller pursuant to FRBP 9019.

11 Golden is directed to lodge an order consistent with this memorandum decision.

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24 Date: June 6, 2013



25 Peter H. Carroll
26 United States Bankruptcy Judge
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