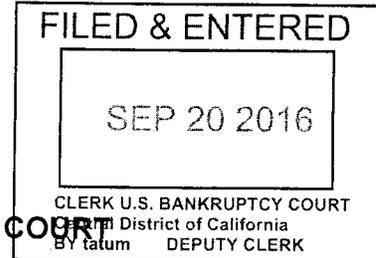


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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**LOS ANGELES DIVISION**

CHANGES MADE BY COURT

In re:

BEVERLY DORIS PAULSON,

Debtor(s).

Case No.: 2:15-bk-20499-RK

Chapter 7

BEVERLY DORIS PAULSON,

Movant,

vs.

THE 704 GROUP, LLC,

Creditor.

**ORDER ON MOTION FOR ORDER  
APPROVING SETTLEMENT AGREEMENT  
COMPROMISE OF CONTROVERSY  
BETWEEN DEBTOR AND THE 704  
GROUP, LLC PURSUANT TO FEDERAL  
RULE OF BANKRUPTCY PROCEDURE  
9019**

**[No Hearing Required]**

Pending before the court is the "Motion for Order Approving Settlement Agreement Compromise of Controversy Between Debtor and the 704 Group, LLC Pursuant to Federal Rule of Bankruptcy Procedure 9019" ("Motion"), ECF 61, filed by Debtor Beverly Doris Paulson ("Debtor"), through her counsel of record, Barry E. Borowitz of Law Offices of Borowitz & Clark, LLP. No opposition was filed to the Motion.

The Motion seeks the court's approval of the compromise reached between Debtor and creditor 704 Group, LLC ("Creditor") regarding Debtor's motion to avoid Creditor's judgment lien

against her real property located at 846 East San Bernardino Road, Covina, California 91723 ("Property") under 11 U.S.C. § 522(f) pursuant to Federal Rule of Bankruptcy Procedure 9019(a). Specifically, the compromise provides that Debtor will withdraw her motion to avoid Creditor's judgment lien upon approval of the compromise and "Debtor will have 120 days from the date that the Chapter 7 Trustee releases the Property to either refinance, sell or take out a reserve mortgage on the Property and tender the total sum of \$21,000.00 (the 'Settlement Sum') made payable to The 704 Group, LLC . . . in exchange for a full release of Creditor's lien in full satisfaction of the claim."

The Motion appears to be a routine Rule 9019 motion since it uses standard boilerplate language regarding the standard for granting a motion to approve settlement. Motion at 3, *citing inter alia*, *In re Woodson*, 839 F.2d 610 (9<sup>th</sup> Cir. 1988) and *In re A & C Properties*, 784 F.3d 1377 (9<sup>th</sup> Cir. 1986). The Motion, however, raises an issue of first impression, which is not raised in the Motion and for which the court has not found any case law on, that is, whether a Chapter 7 bankruptcy debtor has standing to file a motion to approve compromise under Rule 9019 on behalf of the bankruptcy estate regarding property of the estate. Rule 9019 provides in pertinent part the following:

(a) *Compromise*. On motion *by the trustee* and after notice and a hearing, the court may approve a compromise or settlement . . .

(b) *Authority To Compromise or Settle Controversies Within Classes*. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize *the trustee* to compromise or settle controversies within such class or classes without further hearing or notice.

(Emphasis added). Subject to certain limitations not relevant here, a Chapter 11 debtor-in-possession "shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter." 11 U.S.C. § 1107(a). "Thus, the rule, read in combination with [11 U.S.C.] § 1107, allows either the *trustee* or the [Chapter 11] *debtor in possession* to propose settlements to the court for approval or, with prior court authorization, to settle and compromise classes of claims." *In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 501 (9<sup>th</sup> Cir. B.A.P. 1999) (emphasis added).

In *In re Guy F. Atkinson Co. of California*, the Bankruptcy Appellate Panel of the Ninth Circuit did recognize a limited exception to the rule which permits an entity other than the trustee or debtor in possession to negotiate and propose settlements:

Two prerequisites must be met before an entity other than the trustee is empowered to settle claims on behalf of the estate. First, . . . the Ninth Circuit has allowed *individual creditors* to act in lieu of the trustee “when sufficient reason exists[.]” *Palomar Truck Corp.*, 951 F.2d [229,] [ ] 231 [(9th Cir. 1991)]. Sufficient reason has been found to exist when the creditor is pursuing interests common to all creditors, *P.R.T.C., Inc.*, 177 F.3d [774, ] [ ] 781 [(9th Cir. 1999)]; *Professional Inv. Properties of Am.*, 955 F.2d [623,] [ ] 626 [(9th Cir. 1992)]; where the third party is appointed for the purpose of enforcement of the plan, *Professional Inv. Properties of Am.*, 955 F.2d at 626; where the trustee has no economic incentive to pursue a claim, *Palomar Truck Corp.*, 951 F.2d at 232; or where the trustee or debtor in possession has failed to fulfill the duty to prosecute actions on behalf of the estate. *Curry and Sorensen, Inc.*, 57 B.R. [824,] [ ] 828 [(9th Cir. B.A.P. 1986)].

Second, when an entity is pursuing a claim other than a § 506(c) claim, the entity's interests and incentives in settling the claims must be consistent with maximizing the estate for all creditors. At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir.1986); *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D.Pa.1986). The trustee and debtor in possession, as fiduciaries on behalf of the creditors of the estate, *see In re Martin*, 91 F.3d 389, 394 (3d Cir.1996), have the obligation and are in the best position to negotiate settlements that will best serve the interests of all the creditors. *See* [11 U.S.C.] § 704 (duties of trustee). An entity that is authorized to act in the trustee's stead in negotiating and proposing settlements should have similar loyalties and duties.

*Id.* at 503 (emphasis added). The Bankruptcy Appellate Panel reversed the motion of the creditors as “trustee substitutes” to approve a settlement under Rule 9019 without applying these standards. 242 B.R. at 500-503 (citations omitted)

By this Motion, Debtor seeks the court's approval under Rule 9019 to enter the compromise with Creditor which involves property of the estate. However, Debtor is not authorized to act on behalf of the estate, *see* 11 U.S.C. § 323(a) (“The trustee . . . is the representative of the estate.”); and the Property has not been formally abandoned by the Chapter 7 Trustee under 11 U.S.C. § 554. Furthermore, Debtor does not meet the first prerequisite under *In re Guy F. Atkinson Co. of California* which would permit an entity other than the trustee to compromise under Rule 9019, because Debtor is not an *individual creditor* of the estate. Moreover, it does not appear that the second prerequisite under *In re Guy F. Atkinson Co. of California* either because Debtor is not acting on behalf of the estate and all

creditors by the compromise with Creditor, but solely on her own behalf and Creditor's behalf. Thus, it appears that under *In re Guy F. Atkinson Co. of California*, Debtor does not have standing to bring this Motion under Rule 9019, the court may not approve the compromise between Debtor and Creditor as proposed. However, this does not seem to be the right result since a Chapter 7 bankruptcy debtor has standing to bring a motion to avoid a judicial lien under 11 U.S.C. § 522(f), and it would seem that she would have the standing to compromise a controversy arising under that provision, regardless of *In re Guy F. Atkinson Co. of California, supra*. See also, 11 U.S.C. § 103(a), cited in, 4 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 21:1498 (2015). Before the court rules on the Motion in light of this issue of first impression and the paucity of case law applying Rule 9019 to this situation, except perhaps *In re Guy F. Atkinson Co. of California, supra*, the court believes that it should invite the Debtor, as the movant, to brief the issue of her standing to bring the motion under Rule 9019.

Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that Debtor file supplemental brief to address her standing to bring the Motion to approve the compromise between Debtor and Creditor under Rule 9019 within 14 days of entry of this order.

**IT IS SO ORDERED.**

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Date: September 20, 2016



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Robert Kwan  
United States Bankruptcy Judge