



NOT FOR PUBLICATION

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

In re:

ALVIN YAP EDILLOR,

Debtor.

Case No. 2:18-bk-16237-RK

Chapter 7

**SEPARATE STATEMENT OF DECISION ON
MOTION OF CHAPTER 7 TRUSTEE FOR
ORDER APPROVING SETTLEMENT WITH
DEBTOR, JOCELYN EDILLOR AND
OPHELIA EDILLOR**

Date: May 13, 2020

Time: 1:30 PM

Place: Courtroom 1675

Roybal Federal Building

255 East Temple Street

Los Angeles, California 90012

This bankruptcy case came on for hearing before the undersigned United States Bankruptcy Judge on May 13, 2020 on the motion of Wesley H. Avery, Chapter 7 Trustee, for an order approving settlement with Debtor, Jocelyn Edillor and Ophelia Edillor under Federal Rule of Bankruptcy Procedure 9019. Robert A. Hessling and Matthew F. Kennedy, of the law firm of Robert A. Hessling, APC, appeared for the Chapter 7 Trustee. Ron Maroko, of the Office of the United States Trustee, appeared

1 for the United States Trustee. Philomena N. Nzegge, of Law Offices of Philomena N.
2 Nzegge, appeared for Debtor.

3 Having considered the moving, opposing and reply papers, and the declarations
4 of Debtor, and the arguments of the parties made at the hearing, and having issued an
5 updated and supplemental tentative ruling on the motion before the hearing which was
6 posted online on the court's website, the court rules upon and grants the motion by
7 separate order being entered concurrently herewith. In addition to the statements that
8 the court made on the record at the hearing, the court sets forth below its reasoning for
9 its ruling, which is largely taken from its tentative ruling that was posted on the court's
10 website.

11 The court agrees with the Chapter 7 trustee that debtor has no standing to object
12 to the settlement since the order of the court only potentially affects the size of the
13 estate and does not directly affect him (regardless of the side deal that he has with his
14 sisters, the nondebtor settling parties, to repay them). *In re Spirtos*, BAP Nos. CC-04-
15 1621 MoBK and CC-05-1118 MoBK, 2006 WL 6811021 (9th Cir. BAP 2002), slip op. at
16 *7-10, citing *Matter of Fondiller*, 707 F.2d 441, 442 (9th Cir. 1983). However, it is
17 unclear that debtor is filing the declaration is an objection to the settlement in his own
18 right which he lacks standing to do. Since the settlement is contingent on the court's
19 approval, it seems to the court that parties to the settlement could seek to withdraw from
20 the settlement if they no longer wanted to go through with it.

21 The court will overrule the objections of the Chapter 7 trustee to debtor's
22 declarations on grounds of Federal Rules of Evidence 401, 402 and 408 because the
23 statements in the declaration are relevant to whether the settlement was negotiated in
24 good faith, fair, equitable and reasonable within the meaning of *In re A & C Properties*,
25 784 F.2d 1377, 1380-1381 (9th Cir. 1986) and are not offered for an improper purpose
26 within the meaning of Federal Rule of Evidence 408 as most of the statements were not
27 made of settlement communications and those that were are not offered for the
28 improper purpose of proving or disproving a disputed claim.

1 The Chapter 7 trustee as the party proposing a settlement has the burden of
2 persuading the bankruptcy court that it is fair and equitable and should be approved.
3 *A & C Properties*, 784 F.2d at 1381 (citation omitted). Ultimately, though, the
4 bankruptcy court's role in approving any settlement under Federal Rule of Bankruptcy
5 Procedure 9019 is limited. "The law favors compromise and not litigation for its own
6 sake, and as long as the bankruptcy court amply considered the various factors that
7 determined the reasonableness of the compromise, the court's decision must be
8 affirmed." *Id.* (citations omitted). Rather than an exhaustive investigation or a mini-trial
9 on the merits, the bankruptcy court need only find that the settlement was negotiated in
10 good faith and is reasonable, fair and equitable. *Id.* "It has been held that the
11 [bankruptcy] court's proper role is 'to canvas the issues and see whether the settlement
12 falls below the lowest point in the range of reasonableness.'" *In re Pacific Gas &*
13 *Electric Co.*, 304 B.R. 395, 417 (Bankr.N.D.Cal.2004) (citations omitted).

14 First, considering whether the settlement was negotiated in good faith, it appears
15 that the Chapter 7 trustee has shown that the settlement was negotiated in good faith
16 because the parties negotiated were represented by counsel and the negotiations were
17 at arms length and the settlement resolves a potential litigation dispute based on a
18 claim of fraudulent transfer that the estate may have.

19 Regarding the relevant factors stated in *A & C Properties* whether a settlement is
20 fair, equitable and reasonable, are: (a) The probability of success in the litigation (in the
21 court's view, based on this record, the estate does not have good probability of success
22 because the statute of limitations for fraudulent transfer claims under California law is 4
23 years, which may be extended by a year from delayed discovery based on reasonable
24 inability to discover actual fraud up to an absolute of 7 years under California Civil
25 Code, Section 3439.09(a), (b) and (c), which is likely 4 years here and time-barred
26 because the alleged fraudulent transfer was publicly recorded, any statute of limitations
27 defense that the alleged fraudulent transferees have are waivable, while no payment
28 was made for the allegedly fraudulent transfer, there is some indication of consideration

1 because the transfer relieved debtor of the obligation to contribute to payment of the
2 existing loan indebtedness on the property, there does not appear that a creditor in
3 existence at the time of the alleged fraudulent transfer in 2011 since the creditors'
4 claims filed in this case do not appear to go back as far as 2011 to provide standing for
5 a constructive fraudulent transfer claim under California Civil Code Section 3439.05 and
6 there are few indicia of actual fraud under California Civil Code Section 3439.04(a) and
7 (b) on this record, so the settlement appears to be a very favorable one for the estate,
8 given these substantial hazards of litigation);

9 (b) the difficulties, if any, to be encountered in the matter of collection (no
10 difficulties in collection are presented here because the settling parties have tendered
11 the settlement payment to the Chapter 7 trustee);

12 (c) the complexity of the litigation involved, and the expense, inconvenience and
13 delay necessarily attending it (the litigation does not seem to be complex, but the
14 settlement would avoid the expense, inconvenience and delay of the estate having to
15 prove its fraudulent transfer claim);

16 (d) the paramount interest of the creditors and a proper deference to their
17 reasonable views in the premises (it appears to be in the interest of creditors, including
18 the Chapter 7 trustee and his professionals, holding the largest claims in this case, to
19 approve the settlement since it would pay 100 percent of allowed administrative
20 expense claims, and probably most of the general unsecured claims). *A & C*
21 *Properties*, 784 F.2d at 1381 (citations omitted).

22 The court will approve the settlement based on the *A & C Properties*, given its
23 limited role in reviewing a settlement under Federal Rule of Bankruptcy Procedure
24 9019.

25 The concerns raised by the United States Trustee go to whether the settlement is
26 in good faith and fair, equitable and reasonable and are legitimately raised, though the
27 court in its limited role in applying the *A & C Properties* factors determines that the
28 settlement should be approved and places much reliance on the public policy favoring

1 settlement of litigation, on the fact that the parties were represented by counsel and
2 negotiated the settlement at arms length and agreed to settle a potential litigation
3 dispute, that is, the parties perceive there is value to them to settle potential litigation
4 and avoid litigation costs despite the apparent weaknesses of the estate's potential
5 litigation claim.

6 A separate final order on the motion is being filed and entered concurrently
7 herewith.

8 IT IS SO ORDERED.

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25 Date: May 19, 2020



Robert Kwan
United States Bankruptcy Judge