

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

In re:
B & B WORM FARMS, INC.,
Debtor.

Case Number 03-14379-BH
(Chapter 7)

**MOTION FOR ORDER APPROVING A COMPROMISE OF CONTROVERSY,
COMBINED WITH BRIEF IN SUPPORT**

Janice D. Loyd, Trustee for the Estate of the B & B Worm Farms, Inc. (“Trustee”), and Anthony Bradley, Jill Bradley, Margie Hammonds, and Novan Enterprises, LLC (“Defendants”) by and through counsel of record, pursuant to Fed.R.Bankr.P. 9019(a), move for an order approving a compromise of controversy between them. Trustee alleges as follows in support of this motion:

MATERIAL FACTS

1. The above-styled bankruptcy case (the “Case”) was filed and an order for relief under Chapter 7 of Title 11, United States Code (the “Bankruptcy Code”), was entered on April 22, 2003 (the “Filing Date”).
2. Janice D. Loyd is a member of the panel of private trustees established under 28 U.S.C. § 586(a)(1). On April 22, 2003, Janice D. Loyd was appointed by the United States Trustee as the Chapter 7 trustee in the Case. As Trustee being duly qualified and has acted as trustee in the Case since her appointment and qualification.
3. Trustee filed adversary proceedings entitled *Janice D. Loyd, Trustee of the Estate of B & B Worm Farms, Inc., Plaintiff, v. Anthony Bradley, Defendant*, adversary number 04-1034; *Janice D. Loyd, Trustee of the Estate of B & B Worm Farms, Inc., Plaintiff, v. Margie Hammonds, Defendant*, adversary number 04-1048; *Janice D. Loyd, Trustee of the Estate of B & B Worm Farms, Inc., Plaintiff, v. Novan Enterprises, Defendant*, adversary number

- 2) The prospect of complex and protracted litigation if the settlement is not approved.
- 3) The proportion . . . who do not object or affirmatively support the proposed settlement.
- 4) The competency and experience of counsel who support the settlement.
- 5) The ratio between *total* benefits . . . provided by the settlement in comparison to the maximum dollar limits [that could be recovered without it].
- 6) The relative benefits to be received [from the settlement].
- 7) The capacity . . . to pay a judgment up to the maximum [amount that could be recoverable in the absence of a settlement] but more than the dollar value it would give by virtue of the settlement.

* * *

- 9) The nature and breadth of releases to be obtained . . . as a result of the settlement.
- 10) The extent to which the settlement is truly the product of "arms-length" bargaining, and not of fraud or collusion.

Id. at 475. (Internal citations omitted.) See also *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968), in which the Supreme Court stated:

[T]he judge should form an educated estimate of the complexity, expense, and likely direction 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. Basic to this process in every instance, of course, is the need to compare the terms of the compromise and likely rewards of litigation.

88 S.Ct. at 1168.

In considering whether to approve a compromise of controversy, the bankruptcy court is given great latitude. *In Re: Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). In applying the above criteria, the bankruptcy court's paramount concern is that the compromise in question is both fair and equitable. *Citibank N.A. v. Baer*, 561 F.2d 1341, 1345-46 (10th Cir. 1980). The bankruptcy court's inquiry is not intended to substitute its judgment for that of the Trustee or to attempt to decide the numerous questions of law and fact raised by any party who might object to the approval

of the proposed compromise. Rather, the court's objective is to canvass the issues and see whether the settlement "falls below the lowest point in the range of reasonableness." *In re W. T. Grant Co.*, 669 F.2d 599, 608 (2nd Cir. 1983).

The Tenth Circuit Court of Appeals has concluded that the bankruptcy court's obligation to canvass the issues in the context of a motion to approve a compromise of controversy is satisfied by the bankruptcy court's determination that parties to the proposed compromise and settlement have:

- (a) conducted a reasonable investigation to establish a sufficient factual foundation for the bankruptcy court to approve the compromise proposed;
- (b) developed facts upon which to base an objective evaluation of the claims in question;
- (c) conducted legal research regarding the relative merits of the claims in question;
- (d) made a good faith effort to properly separate the issues of law and fact; and,
- (e) evaluated the facts relating to the claims which are the subject of the proposed compromise and controversy.

Reiss v. Hagmann, 881 F.2d 890, 891-892 (10th Cir. 1989).

The movant submits that an application of the above criteria to the proposed compromise indicates that the proposed compromise between them is well above the lowest point in the range of reasonableness and is fair and equitable to all parties concerned. Further, the movant will be prepared to satisfy the requirements of *Reiss v. Hagmann*, supra, at any hearing on the Motion.

The movant believes that the compromise as set out herein is in the best interest of the estate and its creditors and is a fair and equitable disposition of the issues involved. The movant therefore, urges the bankruptcy court to enter an order approving the compromise as set forth herein.

Based upon the factors identified above, the movant believes the proposed compromise is in the best interest of the estate and parties in interest to this case.

- A. Success at trial vs. present benefit of settlement; the ratio between *total* benefits . . . provided by the settlement in comparison to the maximum dollar limits [the could be recovered without it]; the relative benefits to be received [from the settlement]; and the capacity . . . to pay a judgment up to the maximum [amount that could be recoverable in the absence of a settlement] but more than the dollar value it would give by virtue of the settlement.**

It appears that the proposed compromise would result in the estate receiving almost immediately the approximate value equivalent of what they would receive within a reasonable time if the Trustee prevailed on all issues.

- B. Prospect of protracted litigation if settlement not approved.**

Litigation in this matter has just begun and all the trial preparation, and the associated expense remains to be incurred. The proposed compromise will avoid extended litigation and the costs and risks inherent in litigation.

- C. The competency and experience of counsel who support the settlement.**

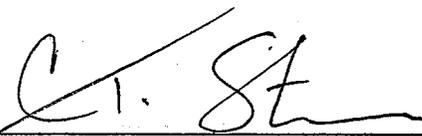
Counsel for the Trustee and Defendants is experienced in bankruptcy/adversary matters.

- D. The extent to which the settlement is truly the product of "arms-length" bargaining, and not of fraud or collusion.**

This settlement is the result of arm's length negotiations between the Trustee and Defendants. Consequently, the proposed settlement is not the result of fraud or collusion, but is truly a the product of arm's length bargaining.

WHEREFORE, Janice D. Loyd, Trustee for the Estate of B & B Worm Farms, Inc. and Anthony Bradley, Jill Bradley, Margie Hammonds and Novan Enterprises, LLC, request this Court enter an order approving the compromise of controversy between them as set forth above and such other and further relief as the Court deems just and proper.

Submitted this 7th day of January, 2005


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CERTIFICATE OF SERVICE

This is to certify that on the ____ day of January, 2005, a true and correct copy of the above and foregoing document was mailed by first class mail, postage prepaid, to the persons set forth on the mailing matrix attached to the original hereof and the following:

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