IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:	)	
	)	
JERRY DEWAYNE GADDY,	)	Case No. 17-01568
	)	
Debtor.	)	

ORDER DENYING MOTION TO STAY PENDING APPEAL

This case is before the court on the motion (doc. 192) filed by creditor SE Property Holdings, LLC ("SEPH") pursuant to Federal Rule of Bankruptcy Procedure 8007(a) for a stay pending appeal of the court's order approving second motion to compromise and denying motion to approve pursuit of claims (doc. 176). The background underlying the court's approval of an $825,000 compromise is set out in the court's order (doc. 176) and incorporated by reference herein.

Following an eight-hour evidentiary hearing involving the testimony of three witnesses and the admission of nearly 100 exhibits, and after carefully considering the evidence and applicable law, the court in a 28-page opinion approved the settlement between the chapter 7 trustee Terrie Owens and the defendants ("defendants"), including the debtor Jerry DeWayne Gaddy, of all claims in case no. 1:16-cv-00332-JB-M currently pending in the United States District Court for the Southern District of Alabama. The court denied SEPH's motion to approve pursuit of claims on behalf of the estate as moot.

SEPH appealed the court's order approving the settlement to the district court and now asks this court to stay that order under Bankruptcy Rule 8007(a).[1] *See* Fed. R. Bankr. P.

[1] This a contested matter, not an adversary proceeding, so Bankruptcy Rule 7062 (incorporating most of Federal Rule of Civil Procedure 62) does not apply. *See* Fed. R. Bankr. P. 9014(c).

8007(a) (a party must ordinarily first move in the bankruptcy court for a stay of an order before it can so move in the district court). The court finds that SEPH has not met its burden of proof to obtain a stay and thus denies the motion.

Analysis

The granting of a Bankruptcy Rule 8007 "stay pending appeal is an 'extraordinary remedy' . . . ." *See In re Woide*, 730 F. App'x 731, 737 (11th Cir. 2018) (citation omitted); *In re Veros Energy, LLC*, No. 16-70021-JHH, 2018 WL 2676068, at *4 (Bankr. N.D. Ala. June 1, 2018). SEPH "must show: (1) a substantial likelihood that [it] will prevail on the merits of the appeal; (2) a substantial risk of irreparable injury to [it] unless the stay is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest." *See In re Woide*, 730 F. App'x at 737 (citation, quotation marks, and brackets omitted).

SEPH bears the burden of proof on all four factors. *See In re Breland*, No. 16-2272-JCO, 2017 WL 4857420, at *1 (Bankr. S.D. Ala. Oct. 25, 2017). Accepting for the sake of argument that SEPH will suffer irreparable injury unless the stay is granted, SEPH has not meet its burden on the other three factors. It has not established a substantial likelihood of success on appeal; even if it had, it has not shown "that the three remaining factors for stay relief . . . tend strongly in [its] favor. *See Robles Antonio v. Barrios Bello*, No. 04-12794-GG, 2004 WL 1895123, at *1 (11th Cir. Jun. 10, 2004); *In re F.G. Metals, Inc.*, 390 B.R. 467, 472 (M.D. Fla. 2008).

Factor one: likelihood of success

SEPH is unlikely to prevail on the merits of its appeal; its "expectation of success" on appeal "does not comport to actual likelihood of success." *See U.S. Commodity Futures Trading Comm'n v. Hunter Wise Commodities*, No. 9:12-CV-81311-DMM, 2013 WL 12335762,

at *2 (S.D. Fla. Aug. 9, 2013). "It is not enough that the likelihood is better than negligible or a mere possibility; it must be substantial." *In re Breland*, 2017 WL 4857420, at *2.

The "abuse of discretion" appellate standard of review of a bankruptcy court's approval of a settlement is a highly deferential one. *See In re Superior Homes & Invs., LLC*, 521 F. App'x 895, 897 (11th Cir. 2013) ("We review a bankruptcy court's approval of a settlement agreement for abuse of discretion."); *In re Palm Beach Fin. Partners, L.P.*, 527 B.R. 518, 526 (S.D. Fla. 2015) ("The Court reviews the Bankruptcy Court's approval of the Settlement for abuse of discretion. Abuse of discretion review is extremely limited and highly deferential. Thus, the Court will affirm unless it finds that the Bankruptcy Court made a clear error of judgment or applied the wrong legal standard.") (citations, quotation marks, and brackets omitted). "Settlements are favored in bankruptcy and appellate courts have held that a bankruptcy court's approval of a compromise must be affirmed unless the court's determination is either (1) completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data." *Matter of Marvelay, LLC*, No. 18-69019-LRC, 2019 WL 3334706, at *6 (Bankr. N.D. Ga. July 23, 2019) (citation, quotation marks, and brackets omitted). The appellate court "review[s] the bankruptcy court's legal conclusions de novo and its factual findings for clear error." *See In re Superior Homes*, 521 F. App'x at 897.

The court in a 28-page opinion extensively discussed and applied the relevant factors set forth in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990) for deciding whether to approve a settlement and ultimately found that those factors weighed in favor of approval. The court found that the trustee's analysis of the district court claims and the resulting settlement is reasonable under the circumstances and that the settlement exceeds the likely net recovery to the

estate if the trustee was successful at trial. The court also found that the settlement is fair and, at the very least, does not fall below the lowest point in a range of reasonableness. *See In re Pullum*, 598 B.R. 489, 492-93 (Bankr. N.D. Fla. 2019) (the court's role in evaluating a settlement is "not to decide the numerous questions of law and fact raised by [the litigation] but rather to canvass the issue[s] and see whether the settlement falls below the lowest point in the range of reasonableness.") (citation, quotation marks, and brackets omitted).

Both the trustee, an experienced bankruptcy lawyer who has represented chapter 7 trustees since 2008 and has served as a chapter 7 trustee in this district since 2012, and her lawyer, who has over 30 years of bankruptcy experience and frequently represents trustees in bankruptcy, recommended approval of the settlement after a thorough evaluation of the district court claims – which the court also examined in great detail in its opinion in accordance with the applicable law. SEPH contends this court erred by not required more extensive litigation of the district court case before evaluating settlement. However, courts are not required "to hold a full evidentiary hearing or even a 'mini-trial' before a compromise can be approved. Otherwise, there would be no point in compromising, the parties might as well go ahead and try the case." *See Brown v. Harris*, No. 3:11-CV-25 CDL, 2011 WL 3473312, at *2 n.5 (M.D. Ga. Aug. 9, 2011) (citations and quotation marks omitted). SEPH's contention that more formal discovery was needed before the court approved the settlement is not well-taken for the same reasons the court addressed in its order. (*See, e.g.*, order, doc. 176, pp. 6-8). Regardless, SEPH had the opportunity to present evidence and question witnesses (including the trustee) at an evidentiary hearing, an opportunity the court was not required to provide. *See, e.g., In re Able Body Temporary Servs., Inc.*, No. 8:13-BR-6864-CED, 2015 WL 791281, at *2 (M.D. Fla. Feb. 25, 2015).

SEPH does not contend that the court applied the wrong standard. SEPH also has not identified any specific misapplication of the *Justice Oaks* factors to the evidence, other than to raise arguments that the court considered and rejected in its order. For example, SEPH's suggestion that as the majority creditor it should have had an unequivocal veto of any settlement is unsupported in the law. *See, e.g.*, *In re Vazquez*, 325 B.R. 30, 37 (Bankr. S.D. Fla. 2005).

Nor did the court "reverse" its reasoning from the first compromise motion, which was for a smaller amount of $375,000. SEPH's offer to fund the litigation under some sort of joint prosecution or similar agreement and guarantee a recovery to the estate of $825,000 – at some date perhaps years in the future – was substantially different than its first offer of upfront money. Even so, the court discussed in its order many reasons that SEPH's offer to fund the litigation did not compel disapproval of the second compromise motion, including concerns that SEPH – a non-fiduciary – would not necessarily put the interests of the estate above its own interests. (*See, e.g.*, order, doc. 176, p.10). Further, the underlying district court case could take several years to complete and a protracted appeal could stall resolution of this bankruptcy case for even longer. While there was some discussion at the hearing that SEPH might be willing to pay the money now, such an offer still does not solve the problem of keeping this chapter 7 case open for several years while the trustee prosecutes the case at SEPH's behest and does not solve the other concerns outlined in the court's order.

SEPH's argument that it could obtain more if it controls the district court litigation does not establish that its appeal is likely to succeed. The question is not whether SEPH "would have made a different decision under the same circumstances – the question is whether the [t]rustee's decision was reasonable." *See In re Harbour E. Dev., Ltd.*, No. 10-20733-BKC-AJC, 2012 WL 1851015, at *2 (Bankr. S.D. Fla. May 21, 2012); *see also In re Soderstrom*, 477 B.R. 249, 254

(Bankr. M.D. Fla. 2012) ("As with most settlements, it may be possible to achieve a more favorable outcome for creditors through additional litigation. But, when the administration of an estate is burdened with costly litigation and drawn out to a pointless end, the trustee is encouraged to find alternative solutions.").

To this end, SEPH has still not provided any genuine alternative analysis to that conducted by the trustee or stated its own view of a reasonable settlement value, other than to claim ignorance of the "real" amount of the claims. SEPH does not address the statute of limitations or other issues, including pre-existing mortgages and factual issues of intent, as outlined by the court and considered by the trustee in evaluating the claims. (*See, e.g.*, order, doc. 176, at pp. 19-26); *In re Van Diepen, P.A.*, 236 F. App'x 498, 504 (11th Cir. 2007) (discussing challenges with proving fraud). These issues include all of the problems with the Gaddy Electric claims (the claims SEPH most wants to pursue). (*See* order, doc. 176, pp. 24-26).

Unable to establish the first element, SEPH is not entitled to a stay pending appeal. Nonetheless, other factors also establish that a stay is unwarranted.

Factor two: irreparable injury to SEPH

The court notes that "the majority of courts have held that the risk that an appeal may become moot does not by itself constitute irreparable harm." *See, e.g., In re Scrub Island Dev. Grp. Ltd.*, 523 B.R. 862, 878 (Bankr. M.D. Fla. 2015); *In re F.G. Metals*, 390 B.R. at 477. Assuming arguendo that this factor is met, though, the court finds that any potential harm to SEPH is outweighed by other harms with respect to factors three and four below.

Factor three: substantial harm to interested parties

SEPH and Union State Bank, which is still owed a substantial debt albeit a smaller one than SEPH's, are the only two creditors in this case. The bank strongly supports the settlement and, like the trustee, is opposed to SEPH – a non-fiduciary – controlling the district court litigation. The bank's attorney stated at the evidentiary hearing that the bank would not under any circumstances be willing to sell its claim to SEPH. Both the estate as a whole and the bank are harmed by a stay because there is a time value of money, *i.e.*, it is better for the $825,000 to be paid now rather than at some undetermined later date if guaranteed by SEPH.[2] The continuance of the district court case would likely delay the administration of this bankruptcy case for several years, as pointed out by the court in its order. *See, e.g., In re F.G. Metals,* 390 B.R. at 478 ("Significant delay in the administration of an estate . . . generally satisfies the criterion of harm to other parties."). Indeed, SEPH's appeal (discussed in its motion at pp. 2-3) of this court's January 2018 order in *SEPH v. Gaddy,* AP no. 17-54, is still pending before the Eleventh Circuit almost 2 ½ years later.

There is also harm to the debtor and to the other defendants in the district court case. The court has already found that the settlement amount of $825,000 is fair and reasonable, but it does not seem fair or reasonable to require the defendants to pay the settlement amount to the trustee or into court without getting the bargained-for end to litigation. And if the settlement is not consummated because of a stay, there is the possibility that the defendants could experience a

[2] And this "guarantee" comes with strings attached. Regardless, SEPH has not offered or suggested the form of any bond or other security for the court to consider under Bankruptcy Rule 8007(a).

change in circumstances and become unable to pay the settlement at a later date at a detriment to the estate.

Factor four: the public interest

"[P]ublic policy strongly favors pretrial settlement in all types of litigation because such cases, depending on their complexity, can occupy a court's dockets for years on end . . . ." *See Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996) (citation and quotation marks omitted). The court finds that "the timely and efficient administration of the estate – regardless of the pending appeal – will serve the public interest[,]" and that a stay will not serve that interest. *See In re Breland*, 2017 WL 4857420, at *2; *see also In re Shoemaker*, 155 B.R. 552, 556 (Bankr. N.D. Ala. 1992) ("One of the goals of the bankruptcy laws is to provide a prompt and efficient adjustment of the debtor-creditor relationship. This goal is not furthered by protracted litigation."). This chapter 7 case was filed in April 2017. Getting it wrapped up in the foreseeable future serves the public interest.

Conclusion

To the extent the court has not specifically addressed any of the parties' arguments, it has considered them and determined that they would not alter the result. A stay is an extraordinary remedy which is not appropriate here. The court thus denies SEPH's motion (doc. 192) to stay pending appeal.

Dated: May 7, 2020

Hon. A. Callaway

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE