

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

IN RE: )  
 )  
CHARLES O. WALL, II and ) Case No. 19-14210  
CATHY L. WALL, )  
 )  
Debtors. )

ORDER SUSTAINING OBJECTION IN PART AND  
ESTIMATING CLAIM AS UNSECURED FOR \$90,000

This case is before the court for estimation of the claim of creditor Frank Moultrie (“Moultrie”), claim no. 15, pursuant to Bankruptcy Code § 502(c). Having carefully considered the parties’ briefs and exhibits, the court’s own exhibits (court’s exhibits 1 and 2) admitted by agreement of the parties, and the oral argument of counsel at the hearing held on August 21, 2020, the court estimates Moultrie’s claim at \$90,000 for the reasons set forth below. The court thus sustains the objection (doc. 29) filed by debtors Charles Wall (“Wall”) and Cathy Wall (collectively, “the debtors”) in part and allows the claim as unsecured in the amount of \$90,000 as discussed in more detail herein.

Background

The debtors’ objection to Moultrie’s claim is the latest chapter in a business dispute which has been going on between Wall and Moultrie since 2011. The dispute has involved a suit in state court, *Wall v. Moultrie*, Civil Action No. CV-2011-900263, Circuit Court of Autauga County, Alabama (*see* doc. 60-3 and court’s ex. 1); three appeals<sup>1</sup> to the Alabama Supreme

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<sup>1</sup> *Ex parte Moultrie*, 170 So. 3d 721 (Ala. 2013); *Moultrie v. Wall*, 143 So. 3d 128 (Ala. 2013); *Moultrie v. Wall*, 172 So. 3d 828 (Ala. 2015).

Court; a federal court suit<sup>2</sup> which has been pending since 2016, and the bankruptcies<sup>3</sup> of both men.

The debtors filed this joint chapter 13 case in December 2019 and listed Moultrie as a creditor. Moultrie then filed proof of claim number 15 in the amount of \$2,046,477 based on his unliquidated business tort claims currently pending in an adversary proceeding against Wall in the bankruptcy court presiding over Moultrie's bankruptcy case. Moultrie demanded a jury trial in the adversary proceeding and the U.S. District Court for the Northern District of Alabama will try the case, although the adversary proceeding is currently stayed due to the automatic stay in this bankruptcy. However, the district court had not yet set the case for trial when Wall filed this bankruptcy; even if this court lifts the stay, given the current coronavirus pandemic, it is unlikely that the district court will try the case in the near future.

After Wall objected to Moultrie's claim in this bankruptcy, this court continued the matter for several months to allow the parties to discuss settlement, which has not occurred. In the meantime, this chapter 13 case cannot move forward toward confirmation until Moultrie's claim is liquidated. The amount of Moultrie's claim also affects whether the debtors exceed the \$419,275 unsecured debt limit of chapter 13 set by Bankruptcy Code § 109(e). This court thus finds that the claims estimation process of Bankruptcy Code § 502(c) is appropriate here.

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<sup>2</sup> *Moultrie v. Wall*, Adversary Proceeding No. 16-00078-TOM in the U.S. Bankruptcy Court for the Northern District of Alabama; *Moultrie v. Wall*, Civil Action No. 2:18-cv-01521-LSC in the U.S. District Court for the Northern District of Alabama.

<sup>3</sup> *In re Moultrie*, Case No. 16-00574, U.S. Bankruptcy Court for the Northern District of Alabama, and this case.

### Legal Standard

Section 502(c) provides that the court shall estimate “any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case . . . .” The court’s claim estimation does not “have any preclusive effect on the merits of [the] claim” if the parties choose to proceed with that claim in the adversary proceeding. *See, e.g., In re A & B Assocs., L.P.*, No. 17-40185-EJC, 2019 WL 1470892, at \*36 (Bankr. S.D. Ga. Mar. 29, 2019).

“Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure provides any procedures or guidelines for estimation.” *Id.* at \*37 (citation, quotation marks, and brackets omitted). “Consequently, bankruptcy courts have wide discretion in estimating claims.” *Id.* “Generally, the [c]ourt may estimate claims by whatever method is best suited to the particular contingencies at issue, so long as the underlying purposes of the Code are not contravened.” *See Id.* (citation and quotation marks omitted). An evidentiary hearing may be held, but is not required. *See id.*

Bankruptcy courts have utilized various methods to estimate claims. *See id.* “Some courts have proceeded on an ‘all or nothing’ basis, awarding the full value of the claim if the claimant proves its case by preponderance, and awarding a zero value if the claimant fails to prove its claim.” *Id.* (citation and quotation marks omitted). “Other courts, however, adopt a method that estimate the probability a claim will succeed and apply the probability to the damages, reasoning that they should take into account the likelihood that each party’s version might or might not be accepted by a trier of fact.” *Id.* (citation and quotation marks omitted). The court finds this latter ‘probalistic’ method appropriate here.

## Analysis

The underlying facts are set out in great detail in the Alabama Supreme Court opinion in *Moultrie v. Wall*, 172 So. 3d 828 (Ala. 2015), and also in the bankruptcy court's order on Wall's summary judgment motion and the district court's order affirming that ruling (*see* docs. 70-1, 70-2) and the court will not repeat them in detail.<sup>4</sup>

In summary, Wall and a third party named Jesse Mariner formed Autauga Automotive, LLC for the purpose of purchasing and operating the Gilmore Ford automobile dealership in Prattville, Alabama. Ford Motor Company would not accept Mariner as an owner, so Moultrie was brought in in his place as supposed 51% owner of the LLC with Wall at 49%. However, the three men had a written "side agreement" (*see* doc. 68-7) dated August 2009 that Moultrie's interest was in fact 10% with the other 90% in Mariner and Wall. At least for a couple of years, the dealership's profits were allocated on a 90/10 basis. Around 2011, though, Moultrie began asserting that he was in fact the 51% owner and entitled to 51% of the profits. Not surprisingly, litigation ensued.

After many twists and turns and two interlocutory appeals to the Alabama Supreme Court, the Circuit Court of Autauga County found that Wall possessed a 90% interest in the LLC but that Moultrie had lost his 10% interest because of his failure to respond to membership cash calls in September and October 2012, thus raising Wall to 100% ownership. (*See* doc. 68-1). On appeal, the Alabama Supreme Court affirmed the circuit court in large part but held that Moultrie was still entitled to 10% interest in profit and losses because Wall had not held membership meetings as required by the LLC's operating agreement. *See Moultrie v. Wall*, 172 So. 3d at

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<sup>4</sup> The facts set out below regarding the underlying business transactions are based on the court's review of the three other opinions, not its own independent findings, and are not preclusive in any way.

847. On remand, the circuit court entered an order setting aside that portion of its earlier judgment. (*See* court's ex. 1).

After Moultrie filed for bankruptcy, he filed the adversary proceeding against Wall and others that now serves as the basis for his claim in this case. The only claims still pending in that adversary proceeding are three counts against Wall for conversion of Moultrie's interest in the LLC, profits and losses, and alleged share of the proceeds from the sale of Gilmore Ford's assets.

While the state court case was on appeal to the Alabama Supreme Court, Wall sold the dealership's assets to Long-Lewis of the River Region, Inc. The sale price was based on formulas rather than a specific cash price. (*See* doc. 60-8). At the hearing, both parties agreed that Wall did not receive any cash from the transaction. Wall contends that all the sale proceeds went to pay out the LLC's considerable debt, which Moultrie and Wall had guaranteed. Wall apparently did go to work for the successor dealership and received a loan of \$300,000 from Long-Lewis to purchase a 30% interest, but according to counsel that deal went south before the debt was paid and Wall lost his financial interest in the dealership.

In December 2015, after the Alabama Supreme Court reversal, Wall conducted another LLC members meeting and again made a cash call which Moultrie did not meet. Wall contends that this meeting effectively eliminated Moultrie's interest in the LLC even if the others had not; Moultrie contends that the meeting was not properly noticed and called. On the one hand, Wall strongly contends that Moultrie never made any capital contributions as he was required to do under the LLC operating agreement; on the other hand, Moultrie strongly disputes this contention and says that he contributed capital in the form of both a \$450,000 personal loan and used vehicle inventory.

The court reiterates that it is not the ultimate trier of fact; rather, it is only estimator of Moultrie's claims using the "probalistic" method discussed above. *See In re Thomson McKinnon Securities, Inc.*, 191 B.R. 976, 989 (Bankr. S.D.N.Y. 1996) ("The court need not don the garb of the clairvoyant; rather, all that is required is a 'rough estimate.'") (citation omitted). The court has attempted to assess the likely range of damages that a jury would award and then apply to that amount Moultrie's percentage of success on his claims, a procedure frequently used by trial lawyers in trying to evaluate unliquidated claims for settlement purposes.

Frankly, this court is not sure that either of the parties will be especially appealing to a jury. Both of them have somewhat dirty hands in that they worked together to present false information to Ford Motor Credit regarding the true ownership of Autauga Automotive. Additionally, Wall may be able to convince a jury that Moultrie is just sticking out his hand looking for money even though (according to Wall) he never made capital contributions and was ultimately released from all of his guaranties of the LLC debt.

Based on the information it has, this court believes that it is highly unlikely that Moultrie would convince a jury that he was entitled to a 51% ownership and 51% profit and losses. The court recognizes that the decisions of Alabama Supreme Court and the Autauga County Circuit Court refer to Moultrie's interest in profits and losses rather than membership interest and that LLC profits and losses can be allocated differently than membership interests. However, given the written "side agreement" that specifically referred to ownership interests (*see* doc. 68-7), the court thinks a jury is highly unlikely to find that Moultrie had agreed to only a 10% interest in profits while still retaining a genuine 51% ownership interest. A jury is much more likely to find that the 51% was a fiction which Moultrie, Wall, and Mariner perpetrated on Ford Motor

Company in order to get the dealership franchise and that the true agreement between the parties was that Moultrie originally had a 10% interest.

Since the Alabama Supreme Court and the Circuit Court of Autauga County determined in 2015 that Moultrie was still entitled at that point to a 10% interest in profits and losses, the court thinks it likely that a jury would find that Moultrie had a 10% membership interest at that time and also when Wall sold the dealership in 2014. Wall sold the dealership based on an unstayed circuit court judgment holding that he owned 100% interest in the company, but he did so at his own risk since the judgment was not final and was subject to reversal (which in fact occurred). A jury of course may be swayed by Wall's evidence that Moultrie never made any capital contributions and thus find that he essentially gave up his interest in the LLC prior to that time. The court thus assesses Moultrie's chances of prevailing on the liability issue at 75%.

Nevertheless, Moultrie has significant problems on the damages end. Moultrie retained an expert who valued his interest in Autauga Automotive based on a 51% interest using three alternatives ranging from \$1.1 to \$2.0 million. (*See* doc. 60-9). The alternatives were based on net asset approach, income approach, and market approach. As noted above, the court thinks that there is little chance that a jury will find Moultrie's entitled to a 51% interest; the court thus does not give any weight to those numbers. Using the same three approaches, the expert also assessed Moultrie's damages based on a 10% interest at \$401,270, \$206,748, and \$322,711, which figures include interest at 6% from the sale date of August 5, 2014 through the report date of December 22, 2017.

Wall's response is that the dealership was in serious debt and that all the sale proceeds went to pay debt of the LLC. There is no dispute that Wall did not receive any cash from the sale. Moultrie contends that the dealership was sold for less than market value and that Wall

received a compensation in the form of a job with the new dealership and the option to buy into the new dealership as described above. Moultrie’s counsel did not explain why Wall would be motivated to sell a dealership in which he thought he owned a 100% interest for less than market value, which does not make sense to the court. The court thinks that it is unlikely that a jury would award substantial damages relating to the dealership in which Moultrie had a 10% interest; instead the court thinks it is much more likely that a jury would award no or low damages.

The fact that the damages are problematic, to put it mildly, makes the case more difficult to evaluate. However, the court thinks that there is a good chance that a jury would award low damages in the neighborhood of \$50,000, some likelihood that a jury would award what this court would consider “medium” damages of around \$200,000, and a low likelihood of “high” damages of about \$500,000 (with additional interest) as opined by Moultrie’s expert. Applying this formula to more specific numbers, the court comes up with this:

<u>Percentage x potential verdict</u>	=	<u>Settlement value</u>
25% Defense verdict		0
50% \$50,000 (low range verdict)		\$25,000
20% \$200,000 (medium range verdict)		\$40,000
5% \$500,000 (high range verdict)		<u>\$25,000</u>
		\$90,000 total settlement value



Conclusion

Using the analysis above, the court estimates Moultrie's claim under § 502(c) at \$90,000 and thus orders as follows:

1. The court sustains the debtors' objection to claim no. 15 of Frank Moultrie in part: the court allows the claim for the time being as \$90,000 unsecured and authorizes the chapter 13 trustee to pay claim no. 15 as an unsecured claim in the amount of \$90,000 pending a final liquidation of the claim.

2. If either the debtors or Moultrie file a motion for relief from stay within 14 days of this order, the court will lift the automatic stay to allow the parties to litigate to completion and liquidate Moultrie's tort claims in his adversary proceeding associated with his bankruptcy. If that happens, the court will enter an order that the trustee hold any funds payable on Moultrie's estimated claim pending final liquidation of the claim. Absent such a request, the automatic stay remains in effect and Wall will be entitled to a chapter 13 discharge of Moultrie's claim in the normal course if he otherwise meets the requirements for a discharge.

3. This claim estimation is not binding in any way outside this bankruptcy case.

Dated: August 28, 2020

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE