

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

2:13-24853 National Fire Systems And Services, Inc.

Chapter 7

#1.00 HearingRE: [47] Motion to Approve Compromise Under Rule 9019 Motion For Approval Of Settlement With David J. Pasternak, As Receiver For Advanced Development & Investment, Inc., And Pacific Housing Diversified, Inc. with proof of service (Schulman, George)

Docket No: 47

Tentative Ruling:

11/15/2016: For the reasons set forth below, GRANT Motion.

Pleadings Filed and Reviewed

- Trustee's Motion to Approve Compromise: Motion for Approval of Settlement ("Motion") [Doc. No. 47]

I. Facts and Summary of Pleadings

On June 5, 2013, the estate of National Fire Systems and Services Inc. (the "Debtor") filed a voluntary petition for relief under Chapter 7 ("Petition"). Doc. No. 47. Richard K. Diamond (the "Trustee") for the bankruptcy estate filed the instant Motion, requesting the Court for an order to approve a settlement ("Settlement Agreement") between the Trustee, acting on behalf of the Debtor, and David Pasternak ("Receiver"), acting on behalf of Advanced Development and Investment, Inc., and Pacific Housing Diversified, Inc. (collectively, "ADI").

Before filing, the Debtor installed fire systems in residential and commercial buildings. Motion at 4. One of the entities for which the Debtor provided services for was ADI. *Id.* In March 2010, Salim Karimi ("Salim"), the cofounder of ADI, and his wife, Jannki Mithaiwala ("Jannki"), began divorce proceedings and, as a result, the Receiver was appointed. *Id.* Additionally, around the same time, the IRS began investigating ADI, Salim, Ajit Mithaiwala ("Ajit"), and Jannki for massive tax fraud at the same time and ultimately alleged that ADI submitted falsified invoices. *Id.* Upon discovering the potential tax fraud and related issues, the Receiver received

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... National Fire Systems And Services, Inc.

Chapter 7

authority from the Superior Court to expand his role. *Id.* The Receiver believed that ADI could not go forward with ADI's projects, including two projects named Orangewood and Manchester, because the IRS investigation would lead to the withdrawal of ADI's tax credits, rendering the projects unviable. *Id.* at 4-5. On August 31, 2010, the Receiver terminated all affiliations Ajit had with ADI pursuant to a Court order ("Receivership Order"). *Id.* at 4. Ajit and Salim have since absconded to India. *Id.*

Shortly before the Receivership Order, Ajit and his wife, Tina Mithaiwala ("Tina"), formed Mahel Development, Inc. ("Mahel") and requested the Debtor to loan Mahel \$1.8 million by purchasing the development rights for Orangewood and Manchester from ADI. *Id.* at 5. The Debtor made the loan with apparently little or no due diligence, and on July 23, 2010, Mahel gave the Debtor a promissory note for the sum of \$1.8 million, at 9% interest per annum. *Id.* Mahel used \$1,780,251.12 of the loan to purchase the development rights for the Orangewood and Manchester projects from ADI. *Id.* At the time, the Receiver approved the sale to Mahel because the sale price was equivalent to the value invested in the projects, shown by ADI's books. *Id.* On September 30, 2010, Mahel received a notice of default for the project stating that the rights were invalid and void because the approval was based on "false, misleading, and incomplete information." *Id.* The tax credits for Orangewood were subsequently rescinded on October 13, 2010, rendering the project unviable. *Id.* The United States indicted Salim and Ajit for defrauding the cities of Los Angeles and Anaheim in January 2016. *Id.* at 6.

In October 2010 and March 2011, prior to bankruptcy, the Debtor filed separate complaints against ADI, Mahel, Ajit, Salim, Jannki, and Tina. *Id.* The first complaint alleged claims for fraud, conspiracy, and avoidance and recovery of fraudulent transfers, amounting to damages of \$1.8 million, against all parties. *Id.* The second complaint alleged breach of contract and quantum meruit against ADI, however, the Trustee represents that no documentation or evidence support a quantum meruit theory. *Id.* As such, the claim against ADI is the only viable claim held by the Debtor's estate. *Id.*

Settlement Agreement

The parties engaged in extensive settlement negotiations. *Id.* The Trustee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... **National Fire Systems And Services, Inc.**

Chapter 7

argues that given the Trustee's reliance on Tina's deposition, wherein she states that Manchester and Orangewood were Mahel's only assets, as well as a lack of Mahel's business records, to show insolvency at the time of the transfer, coupled with the possibility that the transfer was for reasonably equivalent value, renders the claim difficult to prove. Therefore, the Trustee represents that the Settlement Agreement is fair, reasonable, and in the best interests of the estate. *Id.* at 8. The terms of the settlement are as follows:

- (1) The settlement is contingent upon entry of an order by the Bankruptcy Court:
 - a. Approving the Settlement Agreement;
 - b. Confirming that the Trustee has the authority to enter into the Settlement Agreement on behalf of the Debtor and the Debtor's estate;
 - c. Confirming that the parties are authorized to undertake all acts as may be necessary to consummate the Settlement Agreement in accordance with its terms; and
 - d. Providing that the Superior Court shall have jurisdiction over any disputes related to the settlement and the Bankruptcy Court's order approving the Settlement Agreement.
- (2) The settlement is also contingent upon entry of an order by the Superior Court approving the Settlement Agreement.
- (3) The Trustee will dismiss both lawsuits as to all parties.
- (4) The Trustee will receive an allowed claim for \$100,000.00 in the ADI receivership.
- (5) Separately, the Trustee will dismiss the other defendants, against whom his case is not only weaker, but some have not been served (and cannot be served), and who are facing claims by the Receiver and others. Counsel for the individuals has agreed or will be asked to agree to waive costs and not file any claim in bankruptcy. No claim was previously filed, and the bar date has passed.

Id.

II. Findings of Fact and Conclusions of Law

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... **National Fire Systems And Services, Inc.**

Chapter 7

A court may approve a compromise or settlement disposing of an adversary proceeding or claim upon a motion and a notice hearing. Fed. R. Bankr. 9019.

"Approval should only be given if the settlement is 'fair and equitable and in the best interest of the estate.'" *Matter of Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997). See *In re Schmitt*, 215 B.R. 417, 420 (B.A.P. 9th Cir. 1997) (citing *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986)). A court should consider several factors when determining whether a compromise is reasonable, fair, and equitable, including:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A&C Properties, 784 F.2d at 1381. "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). A reviewing court need only find that the settlement does not fall below the lowest point in the range of reasonableness—not that the settlement or compromise offers a debtor the best possible resolution of the action or claim. See *Cosoff v. Robman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), cert. denied 464 U.S. 822 (1983). The party proposing the compromise has the burden of persuading the court that the compromise is fair and equitable. *In re A&C Properties*, 784 F.2d at 1381.

Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is fair and reasonable. As set forth below, all of the factors weigh in favor of approving the Settlement Agreement.

A. Probability of Success in the Litigation

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT...

National Fire Systems And Services, Inc.

Chapter 7

Given the uncertain nature of the action, the lack of Mahel's business records to show insolvency, and the limited resources of the Receivership, the litigation risk to the estate is evident. Moreover, the Trustee must rely on testimony of Tina, an individual allegedly involved in ADI's fraudulent transfer, further casting doubt on the probability of success in the Trustee's claim against ADI. Therefore, the Court finds that this factor weighs in favor of approving the Settlement Agreement.

B. Difficulty of Collection

While collection of the monetized value of damages may require more litigation, there does not seem to be substantial difficulties in collecting other than the prospect of further litigation. As such, this factor weighs slightly in favor of granting the Motion in order to avoid difficulties that may be encountered during collection.

C. Complexity, Expenses, Inconvenience, and Delays of Litigation

Given the Trustee's need to rely on third parties for critical evidentiary support, the lack of records which could prove insolvency, and the possibility that the transaction was for reasonably equivalent value, the Court finds that compromising and settling the matter is preferable. Furthermore, to succeed, the Trustee would need to take several more depositions and prepare for trial, likely costing over \$100,000. The best outcome being a judgment for \$1.7 million and the worst outcome being the Trustee receives nothing. Therefore, this factor weighs in favor of granting the Settlement Agreement.

D. Interests of Creditors

Approval of the Settlement Agreement is in the interest of the Debtor's creditors because it would allow a guaranteed claim against the ADI receivership. Alternatively, partaking in litigation would divert a substantial amount of cost on the premise that the Trustee might not receive anything. As such, the Settlement Agreement is the best interest of the estate and creditors, weighing in favor of granting the Motion.

Based upon the foregoing, the Court APPROVES the Motion and Settlement Agreement. The Trustee shall have the authority to enter into the Settlement

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... National Fire Systems And Services, Inc.

Chapter 7

Agreement on behalf of the Debtor and the Debtor's estate.

The Trustee shall lodge an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

National Fire Systems And Services, Inc	Represented By
	Shahin Motallebi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... National Fire Systems And Services, Inc.

Chapter 7

Trustee(s):

Richard K Diamond (TR)

Represented By
Kevin Meek
George E Schulman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

2:15-21624 Harry Roussos

Chapter 7

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#2.00 Hearing re [592] To Determine Whether The Settlement Agreement Was Entered Into In Good Faith Pursuant To California Code Of Civil Procedure 877.6;

FR. 11-2-16

Docket No: 0

Tentative Ruling:

11/15/2016: For the reasons set forth below, the Settling Defendants' motion for a finding that the Settlement Agreement with Lula Michaelides was entered into in good faith, within the meaning of California Code of Civil Procedure §877.6, is GRANTED.

Pleadings Filed and Reviewed:

- 1) Settling Defendants Brief Re Settlement Agreement and Good Faith Pursuant to California Code of Civil Procedure §877 [Doc. No. 623]
- 2) Opposition Brief of Theodosios Roussos Re: Co-Defendants' Request for Good Faith Findings Pursuant to CCP §877.6 ("Opposition") [Doc. Nos. 624–26]
- 3) Reply to Opposition of Theodosios Roussos to Settling Defendants Brief Re Settlement Agreement and Good Faith Pursuant to California Code of Civil Procedure §877 ("Reply") [Doc. No. 642] [**Note 1**]

I. Facts and Summary of Pleadings

The Chapter 7 Trustee ("Trustee") commenced these actions to recover two real properties on August 4, 2015. [**Note 2**] On October 6, 2016, the Court entered an order approving a settlement agreement between the Chapter 7 Trustee ("Trustee") and Defendants O.F. Enterprises, LP, Liro, Inc., S.M.B. Investors Associates, LP, SMB Management, Inc., Lula Michaelides, Harry Roussos, and Christine Roussos (collectively, the "Settling Defendants"). *See* Order Approving Settlement Agreement

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT...

Harry Roussos

Chapter 7

("Settlement Approval Order") [Doc. No. 591]. On October 7, 2016, pursuant to the Settlement Agreement, the Court entered judgments in favor of the Trustee (the "Property Judgments"). The Property Judgments provide, *inter alia*, that:

- 1) The 1994 Sale Order is void *ab initio* and of no force and effect and is vacated;
- 2) Title to each of the Properties reverts back to the way it was immediately prior to entry of the Sale Order without the need for a further grant deed;
- 3) The Properties are properties of the Roussos Brothers' estates;
- 4) The grant deeds conveying title from the Roussos Brothers to the respective buyers and any other instruments recorded in connection with the aforesaid instruments are deemed canceled;
- 5) None of the defendants (whether they were parties to the Settlement Agreement or not) are prevailing parties for purposes of Bankruptcy Rule 7054 or otherwise;
- 6) Each party shall bear its own attorneys' fees and costs; and
- 7) The order entered by the Court on December 21, 2015, enjoining private arbitration between Harry and Theodosios "to the extent it affects, directly or indirectly, title to, or ownership of" the Properties (the "Preliminary Injunction Order") is vacated.

The material terms of the Settlement Agreement are as follows:

- 1) In full satisfaction of the Trustee's claims against O.F. Enterprises, Liro, Inc., S.M.B. Investors Associates, LP, and S.M.B. Management (the "Four Entities") and Harry and Christine Roussos, the Trustee will accept a payment of \$11 million (the "Settlement Amount"). The Settlement Amount shall be paid from the proceeds of the Trustee's sale of the San Vicente Property and, if necessary, the Abbot Kinney Property.
- 2) Sale proceeds of the San Vicente Property shall be distributed first to pay the costs of sale, to satisfy liens against the San Vicente Property, to satisfy tax liabilities, and to pay the Settlement Amount. Remaining proceeds shall be distributed to Harry and Theodosios, [**Note 3**] *pari passu*, as follows:
 - a) \$1.5 million to Harry out of the Harry Estate pursuant to Bankruptcy Code §726(a)(6); and
 - b) \$1.5 million to Theodosios out of the Theodosios Estate pursuant to Bankruptcy Code §726(a)(6).
- 3) Lula Michaelides ("Michaelides") holds a Non-Dischargeable Judgment

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT...

Harry Roussos

Chapter 7

against Harry and Theodosios. If Harry and Christine support approval of the Settlement Agreement, waive any right to object to Michaelides' claims, and take no action to remove Sarah Daly as director of the Four Entities, Michaelides will limit collection of the Non-Dischargeable Judgment to any monies distributed to her in the Roussos Cases on account of any claims that she may file, except Michaelides will not levy on the \$1.5 million distribution to Harry referred to in ¶2a. If Ted and Paula support approval of the Settlement Agreement, waive any right to object to Michaelides' claims, and take no action to remove Sarah Daly as director of the Four Entities, Michaelides will limit collection of the Non-Dischargeable Judgment to any monies distributed to her in the Roussos Cases on account of any claims that she may file, except Michaelides will not levy on the \$1.5 million distribution to Ted referred to in ¶2b.

- 4) Upon entry of the Property Judgments, Michaelides releases the Settling Defendants and Theodosios and Paula of all claims and causes of action, except that Michaelides may (a) file a proof of claim in the Theodosios Case or Harry Case, and receive a distribution on any allowed claim; and (b) enforce the Non-Dischargeable Judgment against any distributions made to Harry and/or Ted pursuant to §726 (other than the distributions referred to in ¶2, provided that Harry and Christine and/or Theodosios and Paula support the Settlement Agreement as described in ¶3). However, the release shall not apply to any defendants who oppose approval of the Settlement Agreement, object to any claim Michaelides may file, attempt to remove Sarah Daley as director of the Four Entities, or appeal the Property Judgments.
- 5) The release described in ¶4 releases the Four Entities from any liability to Michaelides under the Non-Dischargeable Judgment under a theory that the Four Entities are alter-egos of Harry and Theodosios.

Summary of Settling Defendants' Motion for a Good-Faith Finding Pursuant to California Code of Civil Procedure §877.6, Theodosios' Opposition, and the Settling Defendants' Reply

The Settling Defendants seek a determination that they have entered into the Settlement Agreement in good faith within the meaning of California Code of Civil Procedure ("Cal. CCP") §877.6.

Cal. CCP §877 provides in relevant part:

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT...

Harry Roussos

Chapter 7

Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect:

- (a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it, whichever is the greater.
- (b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties.

CCP §877.6 sets forth the procedure under which the good-faith determination is to be made:

- (a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors ...
- (b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.
- (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.
- (d) The party asserting the lack of good faith shall have the burden of proof on that issue.
- (e) When a determination of the good faith or lack of good faith of a

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT...

Harry Roussos

Chapter 7

settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within any additional time not exceeding 20 days as the trial court may allow.

Settling Defendants submit the declaration of Jonathan S. Shenson, counsel for Harry and Christine Roussos, in support of their contention that the Settlement Agreement was entered into in good faith:

I have been counsel to Harry and Christine Roussos in the Adversary Proceedings and related settlement discussions. For most of this year, I have been engaged in time-consuming settlement discussions with Ira Katz and Bob Weinberg (litigation counsel for the Trustee) on structuring and implementing a global settlement which have culminated in the Settlement Agreement. Throughout these negotiations, Messrs. Katz and Weinberg would follow up with Michaelides' counsel on issues affecting her. On or about August 15, 2016, Matthew Lesnick was brought in to represent the Entity Defendants in the on-going settlement discussions. I was the person who introduced Mr. Lesnick to Sarah Daly, the Managing Director of the Entity Defendants. As an active participant throughout the negotiations, I am comfortable saying the settlement was the product of arms-length negotiations, conducted in good faith and free from any collusion. The settlement discussions with the Trustee were adversarial and, at times, rather contentious. Indeed, the settlement discussions fell apart on multiple occasions and appeared to be over.

Shenson Decl. at ¶2 (Ex. A to Reply) [Doc. No. 642].

Theodosios opposes a finding of good faith for the following reasons:

- 1) There are no contractual or indemnity rights or comparative fault defenses concerning any torts at issue in the adversary proceedings, to which a finding under Cal. CCP §877.6 could apply. The only substantive claim at issue is the Rule 60(d) claim for fraud on the court. Cal. CCP §877.6 applies only to an "action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt." The Trustee's claim for fraud on the court does not fall within the scope of §877.6. Fraud on the court is not a tort or a claim sounding

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT...

Harry Roussos

Chapter 7

in contract. It is a limited equitable power of the Court to provide a remedy to an order the Court previously made.

- 2) Theodosios could not assert any claims against the Settling Defendants for equitable comparative contribution or partial or comparative indemnity. In determining whether to grant relief based on a fraud on the court theory, the Court would not assess the comparative fault of Theodosios or Harry. Nothing in the Pretrial Stipulation executed by the Trustee and the Settling Defendants suggests that either Harry or Theodosios bore a disproportionate share of the responsibility for allegedly defrauding the court in connection with the 1994 Sale Order.
- 3) Because Theodosios has appealed the Settlement Approval Order and the Property Judgments, the Court has been divested of jurisdiction to make findings as to whether the Settlement Agreement was entered into in good faith. “[O]nce an appeal is pending, it is imperative that a lower court not exercise jurisdiction over those issues which, although not themselves expressly on appeal, nevertheless so impact the appeal so as to interfere with or effectively circumvent the appeal process.” *In re Whispering Pines Estates, Inc.*, 369 B.R. 752, 759 (B.A.P. 1st Cir. 2007). The request for §877 findings affects the matters that have been appealed. In deciding to approve the Settlement Agreement, the Court overruled Theodosios’ objection that the settlement was the product of collusion and was not entered into in good faith.
- 4) The Settlement Agreement imposes upon Theodosios more than his fair share of liability for fraud on the court. In light of the fact that creditors are owed at most \$5.5 million, the \$11 million Settlement Amount is unreasonable. The Trustee and the Settling Defendants orchestrated a collusive agreement to bring more money into the estate to pay attorneys’ fees. There is no evidence that the Settling Defendants should be liable in the amount of \$11 million.
- 5) Public policy prohibits indemnifying any part for damages resulting from an intentional or willful wrongful act. Fraud on the court is an intentional claim that cannot be indemnified. Therefore, public policy prohibits a finding that the settlement of this intentional claim is made in good faith.
- 6) The Settlement Agreement provides that the good-faith finding is not a condition to settlement. Therefore, the good-faith finding has no impact on the estate. The relief requested is moot, and the Court should not issue advisory rulings that are not essential to the administration of the estate.
- 7) The Court should not make a §877 finding with respect to Settling Defendants S.M.B. Management and Liro, Inc., which have been suspended and are not

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... **Harry Roussos**

Chapter 7

eligible to participate in this litigation.

The Settling Defendants make the following arguments in Reply to Theodosios' Opposition:

- 1) Theodosios' Opposition is premised on the misapprehension that the Settlement Agreement resolves only the Trustee's claims against the Defendants, and presumes that the request for good faith findings relates to the settlement with the Trustee. However, in addition to resolving the claims asserted by the Trustee, the settlement also resolves Michaelides' claims, including alter ego claims. Under California law, the Settling Defendants are entitled to a determination of whether the settlement with Michaelides is in good faith.
- 2) Theodosios' appeal does not divest the Court of jurisdiction to make the requested findings because the Court retains jurisdiction to implement its own order. The Settlement Approval Order expressly provided that the Court would schedule, by separate order, a hearing on the applicability of Cal. CCP §877. In making the requested §877 findings, the Court is merely implementing the Settlement Approval Order, which is permissible even though that order has been appealed.
- 3) Theodosios has failed to meet his burden of proof on the absence of good faith. Theodosios alleges that the settlement was the product of collusion between the Trustee and Lesnick, counsel for the Four Entities. As evidence for this claim, Theodosios cites inadmissible hearsay—an alleged statement by Sarah Daly to that she was introduced to Lesnick by the Trustee. Jonathan Shenson's declaration establishes that it was he who introduced Lesnick to the Four Entities.
- 4) The \$11 million Settlement Amount is reasonable. The Trustee will use a portion of the settlement proceeds to compensate Michaelides for her equitable interests in the Properties. The precise value of Michaelides' interest is not yet known, but it is easily worth millions of dollars. Under the Settlement Agreement, Michaelides has agreed to release the Settling Defendants from any further liability on her Non-Dischargeable Judgment, which exceeds \$3.2 million. All defendants had the opportunity to settle under the same terms, so Theodosios cannot contend that there was collusion aimed at making him pay more than his fair share.

II. Findings of Fact and Conclusions of Law

The purpose of §877.6 is to ensure that "the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries." *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT...

Harry Roussos

Chapter 7

3d 488, 499, 698 P.2d 159, 166 (1985). In making a determination under §877.6(a)(1), the Court must take into account “a rough approximation of plaintiffs’ total recovery and the settlor’s proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.” *Id.* Finally, a “defendant’s settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant’s liability to be.” *Id.*

Theodosios argues that §877 is unavailable because the fraud on the court claim is not a tort. Theodosios’ argument disregards the fact that the Settling Defendants seek the §877 determination with respect to the settlement with Michaelides. The Settlement Agreement resolves all of Michaelides’ claims against the Settling Defendants, including Michaelides’ claim that the Four Entities are alter egos of Harry and Theodosios and are therefore liable upon Michaelides’ Non-Dischargeable Judgment. Michaelides’ alter ego claim is a tort claim with respect to which the Court may make findings under §877. **[Note 4]**

Having reviewed the Settlement Agreement against the backdrop of the Settling Defendants’ potential liability in these actions, and based upon the Shenson Declaration, the Court finds that the Settling Defendants entered into the Settlement Agreement with Michaelides in good faith with the meaning of §877.6. The settlement discussions were conducted at arms-length and were free of collusion. *See* Shenson Decl. at ¶2. **[Note 5]** The absence of collusion is further demonstrated by the fact that Theodosios and Paula had the opportunity to enter into the Settlement Agreement on the same terms as Harry and Christine.

The Settlement Agreement does not allocate a disproportionate share of liability on non-settling defendants Theodosios and Paula Roussos. The cost of the Settlement Agreement is born by the Four Entities, in which both Theodosios and Harry hold ownership interests. The only advantage that Harry and Christine obtain by entering the Settlement Agreement that is not available to non-settling defendants Theodosios and Paula is a limitation on the collection of Michaelides’ Non-Dischargeable Judgment (a judgment which Michaelides already holds against both Harry and Theodosios), and three to six months of rent-free living in the San Vicente Property. In view of the \$11 million Settlement Amount, these advantages are relatively inconsequential.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... **Harry Roussos**

Chapter 7

Recognizing that the burden of the Settlement Agreement falls equally upon Harry, Theodosios argues that the settlement is collusive because the Settlement Amount is too high. Theodosios argues that the real purpose of the Settlement Agreement is to provide the attorneys a windfall of fees. Theodosios' argument strains credulity. Harry and Christine were represented by competent counsel and freely entered into the Settlement Agreement. They would not have done so had they not believed that the Settlement Agreement was in their best interests. The concern that typically arises in the context of an §877 determination is that by settling for too little, the settling defendants have acted in collusion and prejudiced the non-settling parties. There is no support for Theodosios' novel theory that collusion may be shown if the defendants allegedly settle for too much.

Theodosios' real issue is that he strongly believes that a better result for the Defendants could have been obtained had the matter proceeded to trial. But Theodosios' adamant opposition to the Settlement Agreement does not show that the agreement was collusive, not in good faith, or in any way motivated by a desire to harm him.

There is no merit to Theodosios' argument that his appeal of the Settlement Approval Order and Property Judgments have divested the Court of jurisdiction to determine whether the Settling Defendants are entitled to a finding of good faith pursuant to Cal. CCP §877.6. In the Settlement Approval Order, the Court reserved jurisdiction to determine whether a CCP §877.6 finding was appropriate:

The Court does not at this time make any finding with respect to the request that California Code of Civil Procedure §877.6 be applied to the Settlement Agreement. By separate order the Court will schedule a hearing on the applicability of §877.6. The Court's approval of the Settlement Agreement is effective immediately.

Settlement Approval Order at ¶2.

Further, in determining the Cal. CCP §877.6 issue, the Court is merely enforcing and implementing the Settlement Approval Order, not expanding upon it. *See Neary v. Padilla (In re Padilla)*, 222 F.3d 1184, 1190 (9th Cir. 2000) (holding that with respect to a judgment or order that has been appealed, "the trial court also retains jurisdiction to implement or enforce the judgment or order but may not alter or expand upon the judgment). In addition, an appeal divests the Court of jurisdiction only with respect to "those aspects of the case involved in the appeal." *Id.* The §877 issue is not involved in the appeal, as the Settlement Approval Order clearly provides that the "Court does not at this time make any findings with respect to the request that California Code of

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... **Harry Roussos**

Chapter 7

Civil Procedure §877.6 be applied to the Settlement Agreement."

Theodosios next argues that the Court should not issue a §877 finding because the Settlement Agreement provides that such a finding is not a pre-requisite to the settlement. According to Theodosios, a §877 finding has no impact on the estate and therefore constitutes an impermissible advisory ruling. Theodosios is mistaken. Michaelides and the Settling Defendants have submitted to this Court's supplemental jurisdiction with respect to the settlement of Michaelides' state law alter ego claims. Therefore, the Court has jurisdiction to make a §877 finding.

Theodosios asserts that the Court may not make any §877 finding with respect to Settling Defendants S.M.B. Management and Liro, Inc., based on the fact that those entities have been suspended by the California Secretary of State and are therefore not eligible to participate in this litigation. The Court has previously found that by failing to timely raise the issue, Theodosios—as well as all other parties—have waived right to contest the ability of S.M.B. Management and Liro to participate in this litigation. *See* Memorandum of Decision Granting Emergency Motion to Approve Settlement Agreement [Doc. No. 590] at 7–10.

Based upon the foregoing, the Court finds that the Settling Defendants entered into the Settlement Agreement with Michaelides in good faith, within the meaning of §877.6. The Settling Defendants shall lodge a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Because the Settlement Approval Order was entered on the main bankruptcy case

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... Harry Roussos

Chapter 7

docket, the papers in connection with this motion have also been filed on the main bankruptcy case docket, not the adversary proceeding dockets.

Note 2

The properties are located at 2727–2741 Abbot Kinney Boulevard, Venice, CA (the “Abbot Kinney Property”) and 153 San Vicente Boulevard, Santa Monica, CA (the “San Vicente Property”) (collectively, the “Properties”).

Note 3

Given names are used to distinguish Theodosios Roussos from Harry Roussos. No disrespect is intended.

Note 4

Because the request for good faith findings is directed to the settlement with Michaelides, Theodosios’ argument that §877 findings cannot apply to a claim involving intentional wrongdoing such as fraud on the court is also misdirected.

Note 5

Theodosios alleges that Sarah Daly informed him that the Trustee introduced Lesnick to the Four Entities. Daly’s alleged statement is inadmissible hearsay which the Court does not consider.

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

2:15-21624 Harry Roussos

Chapter 7

Adv#: 2:15-01406 EHRENBURG v. Roussos et al

▪

#3.00 Hearing re [401] To Determine Whether The Settlement Agreement Was Entered Into In Good Faith Pursuant To California Code Of Civil Procedure 877.6

Docket No: 0

Tentative Ruling:

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Defendant(s):

Paula Roussos

Pro Se

Christine Roussos

Represented By

Jonathan Shenson

S.M.B. Management, Inc., a California

Pro Se

Does 1 Through 50

Pro Se

Theodosios Roussos

Pro Se

Paula Roussos

Pro Se

CIT Bank, N.A. f/k/a OneWest Bank N

Represented By

Gregory K Jones

O.F. Enterprises, L.P., a California limi

Pro Se

Theodosios Roussos

Pro Se

Harry Roussos

Represented By

Jonathan Shenson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... **Harry Roussos**

Chapter 7

Chase Bank N.A.	Pro Se
S.M.B. Investors Associates, L.P., a Ca	Pro Se
LIRO, INC., a California corporation	Pro Se
One West Bank N.A., formerly known	Pro Se

Plaintiff(s):

HOWARD M EHRENBERG

Represented By
Ira Benjamin Katz
Robert A Weinberg
Daniel A Lev
Steven Werth

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

2:15-21626 Theodosios Roussos

Chapter 7

Adv#: 2:15-01404 Ehrenberg v. Roussos et al

▪

#4.00 Hearing re [425] Determine Whether The Settlement Agreement Was Entered Into In Good Faith Pursuant To California Code Of Civil Procedure 877.6

Docket No: 0

Tentative Ruling:

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Theodosios Roussos Pro Se

Defendant(s):

ONEWEST BANK N.A. Pro Se

Chase Bank N.A. Pro Se

Paula Roussos Represented By
Robert A Weinberg

Does 1 Through 50 Pro Se

Paula Roussos Pro Se

Theodosios Roussos Pro Se

CIT Bank, N.A. f/k/a OneWest Bank N Represented By
Gregory K Jones

O.F. Enterprises, L.P., a California limi Pro Se

Harry Roussos Represented By
Jonathan Shenson

Theodosios Roussos Pro Se

LIRO, INC., a California corporation Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

CONT... Theodosios Roussos

Chapter 7

Christine Roussos

Represented By
Jonathan Shenson

S.M.B. Management, Inc., a California

Pro Se

S.M.B. Investors Associates, L.P., a Ca

Pro Se

Plaintiff(s):

Howard M. Ehrenberg

Represented By
Ira Benjamin Katz
Robert A Weinberg
Daniel A Lev
Steven Werth

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

2:16-10943 Ariel Taymor

Chapter 7

#5.00 Hearing
RE: [18] Motion for an Order to Show Cause Why Michael Price and G. Jill Basinger, Esq. Should Not Be Held In Contempt of Court for Violation of the Debtors Discharge Injunctions; Memorandum of Points and Authorities; Declaration of Ariel Taymor; Declaration of Leon D. Bayer, and Declaration of Marcus G. Tiggs, In Support Thereof (with proof of service)

Docket No: 18

*** VACATED *** REASON: CONTINUED 12-6-16 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ariel Taymor

Represented By
Leon D Bayer
Marcus G Tiggs

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

10:00 AM

2:16-10946 Ashleigh Jane Parsons

Chapter 7

#6.00 Hearing
RE: [20] Motion for an Order to Show Cause Why Michael Price and G. Jill Basinger, Esq. Should Not Be Held In Contempt of Court for Violation of the Debtors Discharge Injunctions; Memorandum of Points and Authorities; Declaration of Ashleigh Jane Parsons; Declaration of Leon D. Bayer, and Declaration of Marcus G. Tiggs, In Support Thereof (with proof of service)

Docket No: 20

*** VACATED *** REASON: CONTINUED TO 12-6-16 SAT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ashleigh Jane Parsons

Represented By
Leon D Bayer
Marcus G Tiggs

Trustee(s):

David A Gill (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, November 16, 2016

Hearing Room 1568

11:00 AM

2:11-58222 Peli Popovich Hunt

Chapter 7

#100.00 Hearing
RE: [515] Application for Compensation of Interim Fees and/or Expenses for
LEA Accountancy, LLP, as Accountant, Accountant, Period: 7/17/2012 to
10/25/2016, Fee: \$11,895.50, Expenses: \$582.76.

Docket No: 515

*** VACATED *** REASON: PER ORDER ENTERED 11-14-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peli Popovich Hunt

Represented By
Steven E Wohn

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Elissa Miller (TR)
Jason Balitzer
David J Richardson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

11:00 AM

2:11-58222 Peli Popovich Hunt

Chapter 7

#101.00

Hearing

RE: [518] Application for Compensation Nathan Sommers Jacobs, Texas Real Estate Counsel's Application for Payment of Final Fees and/or Expenses for Daniel A Lev, Realtor, Period: 10/5/2015 to 9/30/2016, Fee: \$3,270.50, Expenses: \$281.62.

Docket No: 518

*** VACATED *** REASON: PER ORDER ENTERED 11-14-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peli Popovich Hunt

Represented By
Steven E Wohn

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Elissa Miller (TR)
Jason Balitzer
David J Richardson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 16, 2016

Hearing Room 1568

11:00 AM

2:11-58222 Peli Popovich Hunt

Chapter 7

#102.00 Hearing
RE: [517] Application for Compensation Second Interim Application for Compensation of Attorneys Fees and Reimbursement of Expenses by SulmeyerKupetz, A Profession Corporation, General Bankruptcy Counsel for Chapter 7 Trustee; Declarations of Daniel A. Lev and Elissa D. Miller in Support Thereof for Daniel A Lev, Trustee's Attorney, Period: 11/16/2012 to 9/30/2016, Fee: \$679,308.50, Expenses: \$16,857.48.

Docket No: 517

*** VACATED *** REASON: PER ORDER ENTERED 11-14-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peli Popovich Hunt

Represented By
Steven E Wohn

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Elissa Miller (TR)
Jason Balitzer
David J Richardson