

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
Lexington Division**

IN RE:	:	Chapter 7
	:	Case No. 09-52507
DON GRAHAM HUNDLEY and	:	Judge Joseph M. Scott
BETTY JO HUNDLEY,	:	
	:	
Debtors	:	
	:	

**ORDER GRANTING TRUSTEE’S MOTION FOR ENTRY OF AN ORDER
APPROVING SETTLEMENT PURSUANT TO FED. R. BANKR. P. 9019(a)**

This matter is before the Court on the Trustee’s Motion for Entry of an Order Approving Settlement Pursuant to Fed. R. Bankr. P. 9019(a) (Doc. 66) (“Motion”). In the Motion, James D. Lyon, the Chapter 7 Trustee (“Trustee”), proposes to sell approximately 259 acres of real estate (the “Real Estate”) which is property of the bankruptcy estate, to the Debtors for the sum of \$100,000. Horn Brothers & Tyler, LLC (“Horn Brothers”) and Guaranty State Bank & Trust Company (“Guaranty”), both unsecured creditors in the Debtors’ bankruptcy case, presented objections to the Trustee’s Motion. (Docs. 67 and 69). The basis of both Objections is that the Trustee failed to provide specific facts and information upon which Horn Brothers and Guaranty (collectively, the “Creditors”) could make a knowledgeable decisions on whether the offer of compromise is in their best interests. A hearing was held on May 19, 2011, at which all of the parties were present and represented by counsel.

At the hearing, the Debtors, the Trustee, Horn Brothers and Guaranty all agreed that the value of the Real Estate was between \$2,000 and \$2,500 per acre. However, it was unclear at that time to the Court and the Creditors, what liens and other encumbrances existed against the Real Estate. On May 19, 2011, the Court entered an Order (Doc. 76) directing the Trustee and the Debtors to supplement the record with additional details regarding the value and encumbrances affecting the Real Estate and information regarding comparable sales of real estate in the area. (Doc. 76). The Court gave the Debtors and Trustee fourteen days to supplement the record after which time, the matter was deemed submitted on the record (Doc.

76). On June 2, 2011, the Trustee filed his supplemental document ("Trustee's Supp.") (Doc. 77), and the Debtors filed their supplemental document ("Debtors' Supp.") (Doc. 78) on that same date.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). The following constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

FACTS

1. Debtors filed their voluntary chapter 7 petition on August 4, 2009.
2. On December 17, 2009, the Court entered an Agreed Order Avoiding Transfer of Real Estate by the Debtors ("Agreed Order") (Doc. 46). Pursuant to the Agreed Order, the Trustee recovered the Real Estate for the benefit of the bankruptcy estate.
3. The Real Estate consists of three parcels of real estate containing 36.432 acres, 137.357 acres and 85.088 acres for a total of 258.877 acres or approximately 259 acres. (See Title Opinions, Exs. 1, 2 & 3 to Trustee's Supp. ("Title Opinions")).
4. Per the agreement of the parties at the May 19, 2011, hearing, the Real Estate is valued at \$2,000 to \$2,500 per acre for a total value of between \$518,000 and \$647,500. (See *also* Affidavit of Paul Playforth, E x. 7 to Trustee's Supp.).¹
5. The Real Estate is encumbered by two properly recorded mortgages held by Central Kentucky Agricultural Credit Association ("Ag Credit"). (See Title Opinions and Mortgages, Exs. 4 & 5 to Trustee's Supp.).
6. As of May 17, 2011, the payoff of the debt owed to Ag Credit and secured by the Real Estate was \$530,941.32. (See Payoff Inquiry, Ex. 6 to Trustee's Supp.).

¹ Debtors provided information regarding three comparable sales of real estate, two of which occurred in 2009 and one which occurred in 2004. The parcels contained 240.95 acres, 186.51 acres and 67.5 acres and the price per acre ranged from \$1,207.41 to \$1,340.41. (Debtors' Supp., Exs. A, B & C). Given the age of these sales and the lack of any indication that the comparables were prepared by a certified appraiser, we are hesitant to place great weight on the information provided in Debtors' Supp.

Law and Discussion

Federal Rule of Bankruptcy Procedure 9019(a) provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.”

The Sixth Circuit Court of Appeals has held that “the bankruptcy court is charged with an affirmative obligation to apprise itself of the underlying facts and to make an independent judgment as to whether the compromise is *fair and equitable*.” *Reynolds v. Comm’r*, 861 F.2d 469, 473 (6th Cir. 1988) (emphasis added). The court must weigh the conflicting interests of all relevant parties, “considering such factors as the probability of success on the merits, the complexity and expense of litigation, and the reasonable views of creditors.” *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988) (citation omitted). “A bankruptcy judge need not conduct a mini-trial or write an extensive opinion every time he approves or disapproves a settlement. The judge need only be apprised of the relevant facts and law so that he can make an informed and intelligent decision and set out the reasons for that decision.” *Fishell v. Soltow (In re Fishell)*, 47 F.3d 1168, 1995 WL 66622, at *3 (6th Cir. Feb. 16, 1995) (unpublished table decision) (quoting *LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159, 163 (7th Cir. 1987)); see also *TMT Trailer Ferry*, 390 U.S. at 437, 88 S. Ct. 1157 (holding that bankruptcy court must have the facts in order to make an informed and independent decision).

Although published Sixth Circuit case law on Rule 9019 settlements is relatively sparse, in unpublished decisions the Court of Appeals and Bankruptcy Appellate Panel have consistently reaffirmed their adherence to the “fair and equitable” standard. [Listing citations].

Stark v. Moran (In re Moran), 385 B.R. 799, 2008 WL 1766874, at *4 (B.A.P. 6th Cir. Apr. 18, 2008) (unpublished table decision).

In this case, the Creditors objected to the Trustee’s proposed settlement on the basis of lack of sufficient knowledge upon which to make an informed decision. The Trustee has provided supplemental facts and information as related above. Based on that information and as shown by the analysis below, we have sufficient knowledge to make a decision that the proposed settlement is fair and equitable.

Assuming the best-case-scenario that the Trustee receives \$2,500 per acre for the Real Estate at auction or by private sale, the gross amount the bankruptcy estate would receive after payoff of the Ag Credit debt is \$116,558.68 (\$647,500 - \$530,941.32). The Trustee estimates that the administrative expenses payable by the bankruptcy estate if the Real Estate is sold at

auction will be \$88,000, leaving approximately \$28,558.68 for distribution to the unsecured creditors of the bankruptcy estate. (Trustee's Supp. at 4).

On the other hand, the Trustee has negotiated a settlement with the Debtors to receive a \$100,000 gross recovery for the bankruptcy estate in exchange for the Real Estate. (Trustee's Supp. at 4). The bankruptcy estate will not incur additional administrative expenses under this scenario. The estimated administrative expenses at the time of the filing of the Trustee's Supplement on June 2, 2011, were \$33,000, leaving approximately \$67,000 for distribution to the unsecured creditors of the bankruptcy estate. (Trustee's Supp. at 4).

Based on the foregoing, we find that the Trustee's proposed settlement is fair and equitable and in the best interests of the creditors and the bankruptcy estate.

IT IS, THEREFORE, ORDERED that the Trustee's Motion for Entry of an Order Approving Settlement Pursuant to Fed. R. Bankr. P. 9019(a) is **SUSTAINED**.

COPIES TO:

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Thursday, June 23, 2011**  
**(jms)**