

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

In re:)	
)	
)	Chapter 7
MASTER LENDING GROUP, LLC,)	
)	Number <u>23-40569-EJC</u>
<i>Debtor.</i>)	
_____)	

ORDER ON MOTION TO COMPROMISE

Before the Court is the Motion for Authority to Compromise Claims of the Estate Pursuant to Bankruptcy Rule 9019 filed by Tiffany E. Caron, the Chapter 7 Trustee in this case. (Dckt. 269). The Debtor, Master Lending Group, LLC, filed its Chapter 7 petition on July 6, 2023. (Dckt. 1). According to the petition, the Debtor was an investment company and an investment adviser. (Dckt. 1, p. 2, ¶ 7). For her part, the Chapter 7 Trustee alleges that the Debtor’s business was a Ponzi scheme: “a fraudulent investment scheme in which money contributed by later investors generates artificially high dividends or returns for the original investors” and “[m]oney from the new investors is used directly to repay or pay interest to earlier investors, [usually] without any operation or revenue-producing activity[.]” *Ponzi scheme*, Black’s Law Dictionary (10th ed. 2009). At this time, the Court has made no finding that the Debtor engaged in a Ponzi scheme.

The Debtor's petition identified Gregory M. Hirsch as the Debtor's authorized representative and was signed on his behalf by his wife Judith Hirsch under power of attorney. (Dckt. 1, p. 5, ¶ 17). According to the Statement of Financial Affairs, Mr. Hirsch was the Debtor's 100% owner and sole member. (Dckt. 1, p. 41, ¶ 28). Although Mr. Hirsch was identified as having sole possession of the Debtor's books of account and records, those materials were indicated to be unavailable because Mr. Hirsch suffered from a terminal illness, later specified as amyotrophic lateral sclerosis, and was unable to communicate. (Dckt. 1, p. 41, ¶ 26c.1).

The Debtor provided information about its assets and liabilities in the papers filed contemporaneously with the petition. In its initial Schedule A/B, the Debtor disclosed assets of \$6,070,100.00. (Dckt. 1, p. 12, ¶ 92). One of those assets was an "unvested, equitable interest in [a] Prudential Life Insurance policy" in the amount of \$5,000,000.00 with Mrs. Hirsch as the named beneficiary. (Dckt. 1, p. 10, ¶ 73). In the weeks after the case was filed, the Debtor twice amended its Schedule A/B. (Dckt. 31, 71). Among other changes, the Debtor removed the \$5,000,000.00 life insurance policy as an asset of the bankruptcy estate. According to the most recent Schedule A/B, the Debtor has total assets of only \$92,418.00. (Dckt. 71, p. 4, ¶ 92).

As to liabilities, the Debtor listed no secured creditors in its Schedule D. (Dckt. 1, p. 13). In its initial Schedule E/F, the Debtor listed 130 unsecured creditors with claims totaling \$42,966,950.00. (Dckt. 1, p. 33, ¶ 5c). The Debtor later amended

its Schedule E/F four times. (Dckt. 13, 39, 77, 101). The most recent Schedule E/F lists 140 unsecured with total unsecured debt of \$43,977,950.00. (Dckt. 101, p. 22, ¶ 5c). The deadline for filing proofs of claims expired on October 10, 2023. (Dckt. 11). The claims register reflects 98 claims totaling \$42,883,714.89.¹

On August 4, 2023, Mr. Hirsch passed away. (Dckt. 103, p. 2, ¶ 4). A month later, on September 5, 2023, the Chapter 7 Trustee filed an adversary proceeding, No. 23-04013-EJC, against Mrs. Hirsch seeking the proceeds of the \$5,000,000.00 life insurance policy. According to the Trustee's complaint, Mr. Hirsch purchased the policy from Pruco Life Insurance Company ("Pruco") on July 15, 2020, with Mrs. Hirsch as the named beneficiary. On November 8, 2022, Mr. Hirsch "executed a power of attorney . . . naming Mrs. Hirsch as his agent[.]" (Adv. Dckt. 1, p. 3, ¶ 14). "At some point" before the bankruptcy filing, the Trustee alleges, Mr. Hirsch "informed Mrs. Hirsch that he wanted the Policy proceeds to go for the benefit of the Bankruptcy Estate, rather than to Mrs. Hirsch individually." (Adv. Dckt. 1, pp. 3-4). Based on these allegations, the Trustee argued that Mrs. Hirsch held "only bare legal title to the Policy proceeds, without any equitable interest." (Adv. Dckt. 1, p. 7).

¹ Although 101 claims were filed, two were entered in error and one was withdrawn. (Claims No. 13, 14, 69).

In her complaint, the Trustee asserted against Mrs. Hirsch claims for (1) determination of the validity, priority, and extent of the parties' interests in the life insurance proceeds; (2) turnover; (3) breach of confidential relationship and the duty of good faith; (4) constructive fraud; (5) unjust enrichment; (6) conversion; and (7) constructive trust. (Adv. Dckt. 1, pp. 7-14). Mrs. Hirsch moved to dismiss the Trustee's complaint for failure to state a claim, arguing that under Georgia law, "life insurance policy proceeds belong exclusively to the beneficiary named in the policy and are exempt from the claims of creditors of the insured." (Adv. Dckt. 7; adv. dckt. 8, p. 8). After a November 30, 2023 hearing on the motion to dismiss, on January 25, 2024, the Trustee voluntarily dismissed her complaint against Mrs. Hirsch. (Adv. Dckt. 26).

While the Trustee's adversary proceeding against Mrs. Hirsch was pending, Pruco filed a separate adversary proceeding, No. 23-04021-EJC, naming Mrs. Hirsch and the Trustee as defendants and seeking to interplead the life insurance policy proceeds into the Court's registry. (Adv. Dckt. 1). In response, Mrs. Hirsch filed an answer, a "Claim for Funds" seeking the proceeds, and a counterclaim against Pruco for interest. (Adv. Dckt. 12). For her part, the Trustee filed an answer to Pruco's complaint and a cross-claim against Mrs. Hirsch, asserting essentially the same

theories of recovery advanced in the previous adversary proceeding.² (Adv. Dckt. 18). As in the previous adversary proceeding, Mrs. Hirsch moved to dismiss the Trustee's cross-claim. (Adv. Dckt. 28, 29). Pruco moved on February 29, 2024, to interplead the proceeds, and the Court granted that motion on March 7, 2024. (Adv. Dckt. 27, 33). The Court received the interpleader deposit in the amount of \$5,162,557.60, representing life insurance proceeds of \$4,853,628.97 plus interest in the amount of \$308,928.63. (Dckt. 35).

At the parties' request, the Court referred the dispute between the Trustee and Mrs. Hirsch, in both the adversary proceeding and the underlying bankruptcy case, to mediation before Judge Mary Grace Diehl of the United States Bankruptcy Court for the Northern District of Georgia. (Adv. Dckt. 30, 39). On July 1, 2024, the Trustee filed in the underlying case the Motion for Authority to Compromise Claims of the Estate Pursuant to Bankruptcy Rule 9019 that is now before the Court. (Dckt. 269). In the motion, the Trustee represents that she hired forensic accountants and financial consultants to review financial records, that she examined Mrs. Hirsch for a full day under Rule 2004 of the Federal Rules of Bankruptcy Procedure (the

² The Trustee's cross-claim includes the additional allegation that "the [life insurance] Policy was purchased with funds directly from or traceable to Debtor's bank account(s), from which some or all of the Policy premiums were paid and [into] which millions of dollars of investors' funds were deposited." (Adv. Dckt. 18, p. 8, ¶ 26).

“Bankruptcy Rules”), and that the parties engaged in two full days of mediation before reaching a settlement. (Dckt. 269, p. 3).

Under the terms of the settlement, Mrs. Hirsch agreed to pay \$7,000,000.00 to the bankruptcy estate in exchange for a release of all the bankruptcy estate’s possible claims against her and her children. (Dckt. 269, pp. 5, 14). The settlement “is contingent upon Mrs. Hirsch receiving releases of all possible claims against her and her children from every Required Creditor of Master Lending Group[.]” (Dckt. 269, p. 11, ¶ 11). The term “Required Creditors” means “all Filing Creditors along with Non-Filing Creditors with a Claim Amount scheduled at \$50,000 or more or scheduled as ‘unknown’ but with a value of \$50,000 or more” but excepting the Estate of Mr. Hirsch.³ (Dckt. 269, p. 11, ¶ 8). Upon receiving the Court’s approval of the settlement, Mrs. Hirsch will begin soliciting creditor releases and “will endeavor to obtain all Required Creditor Releases on or by the later of (i) November 26, 2024, and (ii) 90 days after the entry of a final settlement Order . . . subject to extension upon the agreement of Mrs. Hirsch and the Trustee.” (Dckt. 269, p. 12, ¶ 13).

Transfers made in furtherance of a Ponzi scheme are presumptively fraudulent and thus may be recovered by the trustee. *In re Vaughan Co. Realtors*, 500 B.R. 778,

³ Mr. Hirsch’s Estate filed a claim in the amount of “\$1,056,000 subject to further amendments” based on “cash contributions and/or loans.” (Claim No. 99-1, p. 2).

788-89 (Bankr. D.N.M. 2013). To avoid having to pursue actions against all the investors in this case, the Trustee's consideration in this settlement includes "a release of any avoidance claims (including preference claims) against any creditor, whether Required or Non-Required, who elects to sign a Creditor Release[.]" (Dckt. 269, p. 5). The settlement agreement sets forth a non-exclusive list of the claims to be released:

Clawback Release. Effective upon consummation of the Settlement Agreement, the Trustee shall and does hereby release any and all claims, rights, costs, liabilities, loss of income, actual, punitive and exemplary damages, attorney fees, costs and expenses [o]f litigation and consummation, liquidated or nonliquidated, from the beginning of time through the Effective Date of this Settlement Agreement, including but not limited to, claims for fraudulent transfers and obligations under 11 U.S.C. § 544, 548 and 550, claims for voidable transactions under the Uniform Voidable Transactions Act (O.C.G.A. § 18-2-7 *et seq.*), [and] avoidance claims (including preference claims under 11 U.S.C. § 547) against creditors who elect to sign a Creditor Release. In the event that Mrs. Hirsch elects to consummate the Settlement Agreement without receiving Creditor Releases from all creditors and the Settlement Agreement becomes effective, then the Creditors who do not execute a Creditor Release will not be released from the Trustee's avoidance claims and the Trustee shall retain all rights to file and prosecute avoidance actions against the Creditors who do not execute a Release.

(Dckt. 269, p. 14, ¶ 27). A blank copy of the Creditor Release form is attached to the settlement agreement as "Addendum A." (Dckt. 269, pp. 17-20). The Motion for

Authority to Compromise Claims of the Estate Pursuant to Bankruptcy Rule 9019 was set for hearing on July 30, 2024. (Dckt. 270).

A single creditor, James E. Jones, objected to the Trustee's proposed settlement with Mrs. Hirsch. (Dckt. 274). In his objection, filed on the eve of the hearing, Mr. Jones asserted that he and the other creditors lacked sufficient information to make an informed decision on the settlement. (Dckt. 274, pp. 1-2, ¶ 1). To remedy this purported lack of information, he requested that the Court "postpone any adjudication of the question of Settlement approval for a period of no less than sixty (60) days and [] require that the Trustee make certain disclosures" to permit the creditors to make informed decisions. (Dckt. 274, p. 2, ¶ 1).

At the July 30, 2024 hearing, the Court heard oral argument from counsel for the Chapter 7 Trustee in support of the settlement and from counsel for Mr. Jones in opposition. Counsel for the Trustee asserted that for Mrs. Hirsch, the \$7,000,000.00 settlement "represents [her] absolute worst-case scenario[.]" (July 30, 2024 Hearing, 11:11 a.m.). He also explained in detail the mechanics of pursuing avoidance actions against individual investors and argued that the settlement's Clawback Release provision provides a more efficient and economical alternative. (July 30, 2024 Hearing, 11:17-11:23 a.m.). After hearing from the parties, the Court announced its findings of fact and conclusions of law in support of its decision to approve the settlement and to overrule Mr. Jones's objection.

Bankruptcy Rule 9019(a) states that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). In the Eleventh Circuit, bankruptcy courts must consider four factors in evaluating whether a settlement is fair, reasonable, and in the best interests of the estate: “(1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.” *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990) (quoting *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986)). A settlement must not “fall below the lowest point in the range of reasonableness.” *Martin v. Pahiakos (In re Martin)*, 490 F.3d 1272, 1275-76 (11th Cir. 2007).

Here, the Court finds that the *Justice Oaks II* factors weigh in favor of approving the settlement. In particular, the Trustee’s theories of recovery against Mrs. Hirsch in the adversary proceeding are complex and have an uncertain probability of success. The Trustee alleges that Mr. Hirsch directed Mrs. Hirsch in her capacity as power of attorney to surrender the \$5,000,000.00 life insurance policy proceeds into the bankruptcy estate for the benefit of creditors. Mrs. Hirsch has contested the Trustee’s theories, citing extensive Georgia case law in support of

her position. The settlement resolves the adversary proceeding and guarantees \$7,000,000.00 to the bankruptcy estate. Far from falling below the lowest point in the range of reasonableness, counsel for the Trustee argued persuasively that \$7,000,000.00 falls at or near the maximum for which Mrs. Hirsch potentially would be liable to the estate.

Additionally, the settlement's Clawback Release provision ensures that the Trustee will not be required to commence expensive and protracted litigation against all the individual investors, who themselves have lost much of their initial investments in the Debtor's business. That litigation would involve extensive discovery and substantial professional fees and expenses for attorneys and forensic accountants. And it is unclear to what extent the Trustee would be able to collect any funds subject to clawback from the investors. As to Mr. Jones's objection—that the creditors have not received sufficient information—the settlement is contingent upon Mrs. Hirsch's obtaining releases from all Required Creditors, including Mr. Jones.⁴ The settlement gives the creditors time to engage counsel and to communicate with the Trustee, thus satisfying Mr. Jones's concerns. For all of these reasons, the Court finds that the settlement is in the creditors' best interests.

⁴ Mr. Jones filed a claim in the amount of \$3,600,000.00 and is therefore a Required Creditor. (Claim No. 67-1, p. 2).

Proper notice having been given, the Court hereby **GRANTS** the Trustee's Motion for Authority to Compromise Claims of the Estate Pursuant to Bankruptcy Rule 9019. (Dckt. 269). The Trustee and the Bankruptcy Estate of Master Lending Group, LLC are hereby authorized to compromise and settle with Judith Hirsch (hereinafter "Mrs. Hirsch") (altogether, the "Parties") to resolve, by agreement, and settle all claims, disputes, and differences that may exist between them arising out of or in relation to Master Lending Group (altogether, the "Claims"), as set forth in the Motion, on the following terms:

In exchange for a full release by the Trustee and the Bankruptcy Estate of all of the Claims, Mrs. Hirsch shall pay the gross amount of \$7,000,000 (the "Settlement Payment") to the Bankruptcy Estate contingent on satisfaction of the terms set forth in the settlement agreement attached as "Exhibit A" to the Motion for Authority to Compromise Claims of the Estate Pursuant to Bankruptcy Rule 9019 (the "Settlement Agreement"). (Dckt. 269, pp. 9-16). The Trustee's consideration to Mrs. Hirsch includes a release of all possible claims of the Bankruptcy Estate against Mrs. Hirsch or her children.

Additionally, the Trustee's consideration includes a release of any avoidance claims (including preference claims) against any creditor, whether required or non-required, who elects to sign a creditor release ("Clawback Release").

The settlement contemplated by the Settlement Agreement is contingent upon Mrs. Hirsch receiving releases of all possible claims against her and her children from Required Creditors of Master Lending Group (the “Required Creditor Releases”) as the term is defined in the Settlement Agreement. The Creditor Release form is attached as “Addendum A” to the Settlement Agreement (the “Creditor Release”). This settlement does not resolve claim objections, and the right to object to any and all proofs of claim filed in the case is reserved and preserved for the Trustee.

Dated at Savannah, Georgia, this 12th day of August, 2024.



Edward J. Coleman, III, Chief Judge
United States Bankruptcy Court
Southern District of Georgia