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Connecticut Bankruptcy Court Approves Settlement In Two Related Cases with a Torturous Twelve Year History

*Posted by Elizabeth Austin
December 5, 2014*

The Chapter 7 case of *First Connecticut Consulting Group, Inc.* and *James J. Licata* (the “Cases”) began as Chapter 11 cases over twelve years ago. The cases were consolidated and remained in Chapter 11 for four years as litigation ensued between the Mocco parties and the debtors over a dispute regarding the ownership of certain property before being converted to Chapter 7s.

After spending another eight years in bankruptcy litigating over the same ownership dispute, the Chapter 7 Trustees sought approval of a settlement with the Mocco parties.[1] As noted in decisions rendered earlier in the case, the Cases were characterized as being “a complicated web,” with each strand of the web containing “loops and knots woven by [Licata’s and Mocco’s] conduct.”

The Trustees’ original Motion to Settle Pursuant to Bankruptcy Rule 9019 proposed to sell certain assets to Mocco for \$1.5 million, payable over an eighteen month period (the “9019 Motion.”) [2] Subsequently, the Trustees filed an amended 9019 Motion (the “Amended 9019 Motion,”) which amended the original proposal to require Mocco to assume all risks of any inconsistent ruling with regard to the ownership of the assets, and to require Mocco to immediately pay to the Trustees the balance of the \$1.5 million Settlement Amount, with all payments being non-refundable.

Mr. Licata interposed an objection to the approval of the Amended 9019 Motion, asserting that the assets were worth hundreds of millions of dollars, far in excess of the proposed Settlement. The only proof provided by Mr. Licata to substantiate that claim was an opinion letter of a real estate broker.

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The Trustees responded, asserting: (1) that in light of a previous bankruptcy court decision which found Mocco to be a more credible witness, and further found that at all times, Licata was merely Mocco's nominee, their chances of prevailing in the New Jersey ownership dispute was greatly diminished; (2) that the Trustee had attempted to sell the property at three previous auctions, with an unsuccessful result; and (3) that both estates are insolvent.

The Court found that despite the complicated history of the cases, the issue before the Court was straightforward, and that the Court need only determine whether the sale of the assets falls below the lowest point in the range of reasonableness.

Before determining whether the proposed settlement was fair and equitable, the Court first addressed Licata's standing to object finding that he would only have standing to do so if the evidence demonstrated that there would be a surplus after the payment of all unsecured claims. As the evidence demonstrated that the estates were insolvent, the Court found Licata had found no pecuniary interest in the cases, and therefore, no standing to object.

The Court then went on to find that the settlement was fair and equitable since the settlement will remove the bankruptcy court from complex and protracted litigation, no creditors objected, the proposed settlement was the result of arm's length negotiations between competent experienced counsel, and fell within the range of reasonableness and is fair and equitable. The Court also took into account its experience from having presided over the case for more than 12 years in evaluating the proposed settlement and entered an order approving the amended 9019 motion.

However, stay tuned, the saga continues because Mr. Licata has appealed.

[1] The Mocco Parties include Peter Mocco (Mocco), his wife and numerous affiliates.

[2] The assets, which included, a joint venture agreement between Licata and Mocco, membership interests in various limited liability companies and various other claims, were also the subject of contentious litigation pending in New Jersey.

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