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6 *Counsel for Shelley D. Krohn, Chapter 7 Trustee*

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:
11 ROBERT C. GRAHAM, LTD. fdba ROB
12 GRAHAM & ASSOCIATES fdba
13 LAWYERSWEST,
14
15 Debtor.

Case No. BK-S-16-16655-BTB
Chapter 7

**MOTION TO APPROVE COMPROMISE
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019**

Date of Hearing: April 24, 2018
Time of Hearing: 1:30 p.m.
Place: Courtroom No. 4, Second Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Bruce T. Beesley¹

19 Shelley D. Krohn, the duly appointed Chapter 7 Trustee in the above-captioned
20 bankruptcy case (the “Trustee”), by and through her counsel Jacob L. Houmand, Esq. and Kyle J.
21 Ortiz, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Motion to Approve Compromise*
22 *Pursuant to Federal Rule of Bankruptcy Procedure 9019* (the “Motion”).

23 The Motion is based on the following Memorandum of Points and Authorities, the
24 *Declaration of Shelley D. Krohn In Support of the Motion to Approve Compromise Pursuant to*
25 _____

26 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of
Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United
States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

1 *Federal Rule of Bankruptcy Procedure 9019* (the “Krohn Declaration”), which is filed separately
2 and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Motion is also based on
3 the pleadings and papers on file herein, and any argument that may be entertained at the hearing
4 on the Motion.²

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 On December 31, 2016, Linda Marie Graham (“Ms. Graham”) filed a voluntary petition
8 under Chapter 7 of the Title 11 of the United States Code in the United States Bankruptcy Court
9 for the District of Colorado (Case Number 16-22532) and Daniel A. Hepner (“Trustee Hepner”)
10 was appointed as the Chapter 7 Trustee. Ms. Graham is the former spouse of Robert C. Graham
11 (“Mr. Graham”), the principal of Robert C. Graham, Ltd. (the “Debtor”). One of the principal
12 assets of Ms. Graham’s bankruptcy case is the real property located at 5803 Old Legacy Drive,
13 Fort Collins, Colorado 80525 (the “Property”). Trustee Hepner filed a motion to sell the Property
14 (the “Sale Motion”) with the United States Bankruptcy Court for the District of Colorado (the
15 “Colorado Bankruptcy Court”). On September 7, 2017, the Colorado Bankruptcy Court entered
16 an order approving the Sale Motion.

17 The Trustee alleges that the Debtor’s bankruptcy estate has an interest in the Property as
18 Mr. Graham used monies being held in the trust account of the Debtor, which did not belong to
19 Mr. Graham, to make the initial payment under the lease with the option to purchase and to close
20 on the purchase of the Property. Ms. Graham contends that she used \$8,000 of her own funds to
21 close on the purchase of the Property and is without knowledge as to the source of the funds used
22 by Mr. Graham. Considering the minimal amount of estimated net proceeds and to avoid the cost
23 and delay of litigation Victoria L. Nelson (the “Former Trustee”), Trustee Hepner, and Ms.
24 Graham entered into a stipulation (the “Homestead Stipulation”) allowing Ms. Graham a
25 homestead exemption in the amount of \$8,000.00. The Trustee and Trustee Hepner also entered

26
27 ² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
28 referenced bankruptcy case, including adversary proceedings, pursuant to Federal Rule of
Evidence 201, incorporated by reference by FRBP 9017.

1 into a settlement agreement (the “Settlement Agreement”) allowing for the net proceeds from the
2 sale of the Property to be divided with the Trustee receiving fifty percent of the net proceeds and
3 Trustee Hepner receiving fifty percent of the net proceeds.

4 **II. JURISDICTION AND VENUE**

5 The Court has jurisdiction over the bankruptcy case and the subject matter of this Motion
6 pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. §
7 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
8 parties the Court cannot enter final orders or judgment regarding the Motion consistent with
9 Article III of the United States Constitution, the Trustee consents to entry of final orders and
10 judgment by this Court. Venue before this Court is appropriate under 28 U.S.C. §§ 1408 and
11 1409. The statutory predicate for the relief requested in the Motion is FRBP 9019.

12 **III. STATEMENT OF FACTS**

13 1. On December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]³ (the
14 “Involuntary Petition”) was filed against the Debtor pursuant to 11 U.S.C. § 303. The Involuntary
15 Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagani Trust, and the
16 Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”). *See* Krohn
17 Declaration.

18 2. On December 16, 2016, the Petitioning Creditors filed a *Motion to Appoint Interim*
19 *Trustee in Involuntary Case* [ECF No. 3] (the “Interim Trustee Motion”), which sought authority
20 to appoint an interim trustee to take possession of property and to manage the business operations
21 and assets of the Debtor. *See* Krohn Declaration.

22 3. On December 21, 2016, the Bankruptcy Court entered an *Order on Trustee Motion*
23 *and Order for Relief Under Chapter 7* [ECF No. 21] (the “Order for Relief”). The Order for
24 Relief provided that the Debtor had consented to the filing of a bankruptcy petition and that the
25 filing of the bankruptcy case was effective as of December 15, 2016 (the “Petition Date”). The
26 Order for Relief further required that the Office of the United States Trustee (the “U.S. Trustee”)

27 _____
28 ³ All references to “ECF No.” are to the numbers assigned to the documents filed in the above-
referenced case as they appear on the docket maintained by the clerk of the court.

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1 appoint an Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701. *See* Krohn Declaration.

2 4. On December 22, 2016, the Former Trustee was appointed as the Chapter 7
3 Trustee in the Debtor’s bankruptcy case [ECF No. 22]. *See* Krohn Declaration.

4 5. The Principal of the Debtor is Mr. Graham. *See* Krohn Declaration.

5 6. On December 31, 2016, Ms. Graham, the former spouse of Mr. Graham, filed a
6 voluntary Chapter 7 bankruptcy petition with the United States Bankruptcy Court, District of
7 Colorado, under Case No. 16-22532-CDP. *See* Krohn Declaration.

8 7. On December 31, 2016, Trustee Hepner was appointed as the Chapter 7 Trustee in
9 Ms. Graham’s bankruptcy case. *See* Krohn Declaration.

10 8. On her Schedule A, Ms. Graham, listed real property located at 5803 Old Legacy
11 Drive, Fort Collins, Colorado. *See* Krohn Declaration.

12 9. On her Schedule C, Ms. Graham claimed a homestead exemption in the Property
13 in the amount of \$75,000. *See* Krohn Declaration.

14 10. The Trustee alleges that Mr. Graham used monies being held in the trust account
15 of the Debtor, which did not belong to Mr. Graham, to make the initial payment under the lease
16 with the option to purchase and to close on the purchase of the Property. *See* Krohn Declaration.

17 11. Ms. Graham asserts that she used \$8,000 of her own funds to close on the purchase
18 of the Property and that she is without knowledge as to the source of the funds used by Mr.
19 Graham to fund the lease with the option to purchase or to close on the sale of the Property. *See*
20 Krohn Declaration.

21 12. On August 22, 2017, Trustee Hepner filed the Sale Motion with the Colorado
22 Bankruptcy Court. A true and correct copy of the Sale Motion is attached to the Krohn
23 Declaration as **Exhibit “1”**.

24 13. The Sale Motion sought to sell the Property to Gregory Thomas Fieldson and Sara
25 Jane Fieldson for the purchase price of \$890,000.00. *See* Krohn Declaration.

26 14. On September 7, 2017, the Colorado Bankruptcy Court entered an order approving
27 the Sale Motion (the “Order”). A true and correct copy of the Order is attached to the Krohn
28 Declaration as **Exhibit “2”**.

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1 15. The Order authorized Trustee Hepner to pay the following amount from the
2 proceeds of the sale:

- 3 a. The amount owed on the first deed of trust to FirstBank;
- 4 b. The federal tax lien in the amount of \$69,095.23;
- 5 c. The agreed amount of Ms. Graham’s homestead exemption of \$8,000.00 upon
6 entry of orders approving the Homestead Stipulation by both the Colorado
7 Bankruptcy Court and the Nevada Bankruptcy Court;
- 8 d. Customary costs of sale, including the 4.5% commission on the purchase price,
9 to Shawna Lowell and Dynamic Real Estate;
- 10 e. Unpaid homeowner’s association fees in the estimated amount of \$2,800.00;
- 11 f. Prorated real estate taxes in the estimated amount of \$4,800.00; and
- 12 g. Reimbursement to Ms. Graham for expenses incurred to preserve the Property,
13 including trash service and utility payments, up to the maximum amount of
14 \$1,800.00.

15 *See* Krohn Declaration.

16 16. On January 19, 2018, after the death of the Former Trustee, the Trustee was
17 appointed as the successor Trustee in the Debtor’s bankruptcy case. *See* Krohn Declaration.

18 17. In order to avoid the costs and delay associated with litigation, the Former Trustee,
19 Trustee Hepner, and Ms. Graham agreed to enter into the Homestead Stipulation resolving a
20 dispute concerning Ms. Graham’s homestead exemption. A true and correct copy of the
21 Homestead Stipulation is attached to the Krohn Declaration as **Exhibit “3”**.

22 18. In order to avoid the costs and delay associated with litigation, Trustee Hepner and
23 the Trustee have entered into a Settlement Agreement resolving the dispute concerning the sale of
24 the Property. A true and correct copy of the Settlement Agreement is attached to the Krohn
25 Declaration as **Exhibit “4”**.

26 19. The principal terms of the Homestead Stipulation and Settlement Agreement are
27 outlined below⁴:

28 _____
⁴ The description of the Homestead Stipulation and Settlement Agreement set forth herein and in the Krohn Declaration is a summary only and does not modify or otherwise affect the terms of the Homestead Stipulation and Settlement Agreement. To the extent of any conflict between the description of the Homestead Stipulation and Settlement Agreement as set forth herein, the Homestead Stipulation and Settlement Agreement shall control. Capitalized terms used but not

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1 a. In consideration of a resolution of the dispute concerning the sale of the
2 Property and Ms. Graham’s claimed homestead exemption, Ms. Graham shall be entitled to the
3 sum of \$8,000 from the proceeds received from the sale of the Property (the “Allowed Homestead
4 Exemption”).

5 b. The Allowed Homestead Exemption shall be paid to Ms. Graham following
6 the entry of orders approving the Homestead Stipulation in both Ms. Graham’s bankruptcy case
7 and the Debtor’s bankruptcy case.

8 c. In the event the orders approving the Homestead Stipulation have not been
9 entered by the date of the closing of the Property, Trustee Hepner shall hold such funds in a
10 bankruptcy estate account pending entry of the appropriate orders.

11 d. The “net proceeds” from the sale of the Property shall be divided between
12 the Trustee and Trustee Hepner as follows: (a) Trustee shall receive fifty percent (50%) of the net
13 proceeds from the sale of the Property; and (b) Trustee Hepner shall receive fifty percent (50%)
14 of the net proceeds from the sale of the Property.

15 e. The term “net proceeds” will be defined as the amount actually realized
16 from the sale of the Property after deducting all costs associated with the sale including, but not
17 limited to, the pay-off of properly perfected secured liens, the Allowed Homestead Exemption in
18 the amount of \$8,000.00, broker and escrow fees, the expenses incurred by Ms. Graham to
19 preserve the Property during the pendency of the bankruptcy case up to a maximum amount of
20 \$1,800.00, and attorney fees incurred by Trustee Hepner in obtaining an order authorizing the sale
21 of the Property.

22 f. The net proceeds total \$7,942.97, thereby entitling the Trustee and Trustee
23 Hepner to the payment of \$3,971.48 each.

24 g. The Trustee and Trustee Hepner will provide mutual releases from any and
25 all claims concerning the Property.

26 . . .

27 _____
28 defined herein shall have the meaning set forth in the Homestead Stipulation and Settlement
Agreement.

1 20. The Trustee and Trustee Hepner have negotiated and reached the Settlement
2 Agreement in good faith. *See* Krohn Declaration.

3 21. The Trustee now files this Motion to obtain court approval of the Settlement
4 Agreement pursuant to FRBP 9019. *See* Krohn Declaration.

5 **IV. LEGAL ARGUMENT**

6 The Bankruptcy Court may approve a compromise or settlement between a debtor and
7 another party pursuant to Fed. R. Bankr. P. 9019(a), which provides the following:

8 Compromise. On motion by the trustee and after notice and a
9 hearing, the court may approve a compromise or settlement. Notice
10 shall be given to creditors, the United States trustee, the debtor, and
indenture trustees as provided in Rule 2002 and to any other entity
as the court may direct.

11 FED. R. BANKR. P. 9019(a).

12 Compromise and settlement agreements have long been an inherent component of the
13 bankruptcy process. The Ninth Circuit recognized that “[t]he bankruptcy court has great latitude
14 in approving compromise agreements.” *See Woodson v. Fireman’s Fund Ins. Co. (In re*
15 *Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). Accordingly, in approving a settlement, the Court
16 need not conduct an exhaustive investigation of the claims sought to be compromised. *See United*
17 *States v. Alaska National Bank (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982).
18 Rather, it is sufficient that the Court find that the settlement was negotiated in good faith and is
19 reasonable, fair, and equitable. *See Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381
20 (9th Cir. 1986), *cert. denied*, 479 U.S. 854 (1986). The proponent of the settlement must also
21 persuade the court that the settlement is in the best interests of the estate. *See Goodwin v. Mickey*
22 *Thompson Entertainment Group. (In re Mickey Thompson Entertainment Group, Inc.)*, 292 B.R.
23 415, 420–21 (B.A.P. 9th Cir. 2003). It is within the sound discretion of the bankruptcy court
24 whether to accept or reject a compromise. *See In re Carson*, 82 B.R. 847 (Bankr. S.D. Ohio
25 1987).

26 The Ninth Circuit has identified the following factors for consideration in determining
27 whether a settlement is reasonable, fair, and equitable:
28

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(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; (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. The moving party is not required to satisfy each of these factors as long as the factors as a whole favor approving the settlement. *See In re Pacific Gas & Electric Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004). In considering the factors, “a precise determination of the likely outcome is not required, since an exact judicial determination of the values at issue would defeat the purpose of compromising the claim.” *In re Telesphere Comm’s, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994) (internal quotations omitted). Thus, rather than determining various issues of fact and law, the Court should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *In re Lion Capital Group*, 49 B.R. 163, 175 (Bankr. S.D.N.Y. 1985) (internal quotations omitted).

B. The Settlement Agreement Is Fair and Equitable

1. The Probability of Success in the Litigation

The Trustee believes that that there is a high probability that she would be successful in proving that Ms. Graham is not entitled to a homestead exemption and that Mr. Graham used monies being held in the trust account of the Debtor, which did not belong to Mr. Graham, to make the initial payment under the lease with the option to purchase and to close on the purchase of the Property. That being said, litigation is always uncertain and due to the minimal amount of net proceeds arising from the sale of the Property, the Trustee believes that the Homestead Stipulation and Settlement Agreement represents a reasonable compromise.

2. The Difficulties in Matter of Collection

As the dispute at issue involves the net proceeds arising from the sale of the Property, there should be no difficulty in matter of collection in the event the Trustee is successful in proving that Ms. Graham is not entitled to a homestead exemption and that the Debtor’s bankruptcy estate is entitled to the net proceeds due to Mr. Graham’s use of monies being held in the trust account of the Debtor to purchase the Property. For these reasons, this factor is neutral.

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3. The Complexity of the Litigation Involved and the Expense, Inconvenience and Delay

The dispute requires the Trustee to prove that Ms. Graham is not entitled to a homestead exemption and that the Debtor’s bankruptcy estate is entitled to the net proceeds due to Mr. Graham’s use of funds held in the Debtor’s trust account to purchase the Property. This would require considerable expense, including work that would have to be performed by the Trustee’s forensic accountants to trace the funds used to purchase the Property, and would cause a significant delay. The expense associated with litigation will almost certainly exceed the amount of funds that would be available for distribution to the Debtor’s creditors from the sale of the Property. For these reasons, this factor militates in favor of approving the Homestead Stipulation and Settlement Agreement.

4. The Paramount Interest of the Creditors

The Trustee represents the interests of the Debtor’s unsecured creditors. The Trustee believes that the Homestead Stipulation and Settlement Agreement is fair, reasonable, and in the best interests of the Debtor’s estate. The Homestead Stipulation and Settlement Agreement will result in a distribution for the estate, while avoiding the costs associated with litigation that would likely exceed the proceeds from the sale of the Property in the event the Trustee is successful. Furthermore, denying Ms. Graham her asserted homestead exemption would only bring an additional \$8,000 into the bankruptcy estate and the costs of pursuing such an action would almost certainly outweigh the additional recovery to the estate. As a result, this factor weighs in favor of approval of the Homestead Stipulation and Settlement Agreement.

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V. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enter an order (i) approving the Homestead Stipulation and Settlement Agreement attached as **Exhibits “3” and “4”** to the Krohn Declaration pursuant to FRBP 9019 and (ii) for such other and further relief as is just and proper.

Dated this 9th day of March, 2018.

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