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1 may approve a compromise or settlement." The Ninth Circuit Court
2 of Appeals has outlined the factors a bankruptcy court should
3 consider in deciding whether to approve a settlement. In re
4 Woodson, 839 F.2d 610 (1988); In re A & C Properties, 784 F.2d
5 1377 (1986). Although the A & C Properties case was decided
6 under the Bankruptcy Act of 1898, its reasoning is still
7 applicable to the Bankruptcy Code that governs these cases.

8 Although a bankruptcy court has great latitude in approving
9 compromises, its discretion is not unlimited. The court may
10 approve a compromise only when that compromise is "fair and
11 equitable." In re Woodson at 620; In re A & C Properties at
12 1380-81. The moving party has the burden of persuading the
13 bankruptcy court that the compromise is fair and equitable and
14 that the court should approve it. In re A & C Properties at
15 1381.

16 The two decisions agree that in determining whether a
17 compromise is fair and equitable, a bankruptcy court must
18 consider four factors. These factors are:

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

27 While the bankruptcy court should give "due deference" to
28 objections by creditors, such objections are not controlling. In
re A & C Properties at 1832.

In deciding whether to approve a proposed compromise, a

1 bankruptcy court should not substitute its judgment for that of
2 the trustee as the settling party. In re 110 Beaver Street
3 Partnership, 244 B.R. 185, 187 (Bankr. D. Mass. 2000). That
4 Massachusetts bankruptcy court phrased the court's job as
5 follows:

6 "In sum, the Court will defer to the trustee's judgment and
7 approve the compromise, provided the trustee demonstrates
8 that the proposed compromise falls within the 'range of
reasonableness' and thus is not an abuse of his or her
discretion."

9 Id.

10 The compromise and the background facts.

11 DDJ, LLC was formerly known as Fruit Marketing Investment
12 Company, LLC. In approximately 1998, the owners of Fruit
13 Marketing Investment Company, LLC and Fruit Marketing, Inc.²
14 decided to sell the businesses. T&T agreed to buy Fruit
15 Marketing, Inc. and Fruit Marketing Investment Company, LLC. As
16 part of that transaction, T&T wanted to use the name Fruit
17 Marketing of California, and so the sellers agreed to change
18 their names to DDJ, Inc. and DDJ, LLC. T&T paid an initial cash
19 down payment of \$500,000 and the remaining balance was paid
20 through secured promissory notes.

21 After the sale closed, disputes arose. T&T initiated
22 contractual arbitration proceedings against DDJ, Inc. and DDJ,
23 LLC, seeking damages for fraud and negligent misrepresentation
24 concerning the purchased assets. An arbitration panel issued a
25 tentative award against DDJ, Inc. and DDJ, LLC. T&T was awarded

27 ²Fruit Marketing, Inc. is now known as DDJ, Inc. DDJ, Inc.
28 is a debtor in a separate chapter 7 case.

1 damages for its out of pocket losses of \$713,000 against DDJ,
2 LLC. In the arbitration, DDJ, LLC had made counterclaims against
3 T&T. However, the tentative award denied the counterclaims
4 without prejudice.³ In any event, even if the Arbitrators' Award
5 had allowed the claims of DDJ, LLC, the two together were less
6 than the \$713,000 awarded to T&T.

7 But this was not the only litigation. DDJ, Inc. and DDJ,
8 LLC filed a complaint against Norman S. Traner and Steven Taft on
9 their guarantees of the obligations of T&T in the purchase
10 agreement (the "Guaranty Action"). Additionally, Fruit Marketing
11 of California, Inc., Norman Traner, and Steven Taft, filed a
12 complaint against Dennis Hagobian, Dennis Vartan, and Russell
13 Davidson for fraud in connection with the purchase transaction
14 (the "Fresno Action"). This complaint alleges that defendants
15 Habogian and Vartan and Davidson defrauded T&T and its owners in
16 connection with the sale agreement.

17 In 2003, the parties entered into a Settlement Agreement and
18 Mutual Release of Claims (the "Settlement Agreement"). The
19 Settlement Agreement is between Dennis Hagobian, Dennis Vartan,
20 Russell Davidson, DDJ, Inc., and DDJ, LLC on the one hand and
21

22 ³A copy of the "Arbitrators' Second Interlocutory Opinion
23 and Tentative Award" (the "Arbitrators' Award") is attached to
24 the motion. There is some ambiguity about the counterclaims of
25 DDJ, LLC. Page 3 of the Arbitrator's Award reflects that there
26 was a claim in the amount of \$178,329.40 on account of the note
27 and security agreement attached as Exhibit 7 to Exhibit 111. It
28 also reflects that DDJ, LLC sought the amount of \$243,148.53 on
account of the note secured by deed of trust attached as Exhibit
8 to Exhibit 111. In the "Tentative Award" at page 7, the
Arbitrators state that the counterclaims of DDJ, LLC are denied
without prejudice as to claims for breach of the Exhibit 111-3
and 111-8 notes. No reference is made to the Exhibit 111-7 note.

1 Norman Traner, Steven Taft, Taft & Traner, Inc., Fruit Marketing
2 of California, Inc., and others, on the other hand. The
3 Settlement Agreement reflects that it is in settlement of the
4 Fresno Action and the arbitration claim. It is a complete
5 settlement of all claims among the parties. In the Settlement
6 Agreement, it is agreed that all promissory notes and security
7 agreements signed by any of the Taft and Traner parties are
8 cancelled and reconveyed.

9 However, in connection with the sale and its obligations to
10 DDJ, LLC under the sale, T&T had executed a note in favor of DDJ,
11 LLC secured by real property of T&T. It was the understanding of
12 the parties that pursuant to the Settlement Agreement and the
13 Arbitration Award, the deed of trust would be reconveyed.
14 However, before the deed of trust was reconveyed, the chapter 7
15 case was filed. Thereafter, T&T attempted to refinance the real
16 property and learned that the deed of trust had not been
17 reconveyed.

18 After T&T contacted the Trustee, the Trustee investigated
19 the matter. The Trustee concluded, following an investigation,
20 that the deed of trust should be reconveyed. The Trustee's
21 declaration in support of the motion states:

22 "Over the last several months, I have investigated the
23 above, by reviewing the original arbitration award and the
24 subsequent settlement agreement. In addition, I had several
25 meetings, conference calls and telephone calls with counsel
26 for T&T as well as with debtor's counsel from the original
27 lawsuit. I have concluded that with respect to the issues
28 with T&T, this estate does not hold any viable claims
against T&T and that there is no reason why the debtor
should not execute the reconveyance as provided for in the
settlement agreement.

T&T arguably could have a claim against the estate for
failure of the Debtor to execute the reconveyance. While

1 the estate will not receive anything of value from
2 reconveyance, it appears that none of the former officers of
3 the debtor are willing to execute the reconveyance. Thus, I
have agreed to execute the reconveyance provided the court
authorizes me to do so."

4 In his opposition, Joe Flores asserts that in the Settlement
5 Agreement, assets were fraudulently transferred by individual
6 owners of DDJ, LLC and DDJ, Inc. According to Flores,

7 "The tentative award approved the American Arbitration
8 Association (hereinafter "A.A.A.") to DDJ Entities, in an
amount of \$1,741,158.45 that in actuality became part of the
9 Bankruptcy Estates of DDJ Entities, was fraudulently
transferred as an assurance that Norman S. Traner and Steven
10 K. Taft would guarantee that the individual owners of the
DDJ Entities will not be prosecuted for the fraud
11 perpetrated by the individuals as the alter egos of DDJ
Entities . . .

12 The transfer of \$1,741,158.45 by DDJ Entities owner's, [sic]
13 was indeed fraudulent and was done solely to protect the
individuals [sic] assets due to the complaint filed by
14 Transfer & Taft. Moreover, the fraudulent transfer of the
above mentioned sum of \$1,741,158.45 clearly reflects and is
15 indicative of a non bona fide purchase by Traner & Taft,
giving more assurance to this Court that the \$1,741,158.45
16 is clearly property of the DDJ Entities Estates, and should
have been harnessed and transferred into cash, . . ."

17 Thus, Flores is apparently asserting that the arbitrators'
18 opinion, which was that T&T had sustained a total out of pocket
19 loss in the purchase and sale in the amount of \$2,300,000, of
20 which 31% or \$713,000 was attributable to DDJ, LLC, was
21 incorrect. He also argues that in giving up that amount of
22 property to T&T and releasing the principals on their guarantees,
23 the award and the Settlement Agreement resulted in a fraudulent
24 transfer. In Joe Flores' view, this is a transfer that the
25 trustee should be pursuing and seeking to avoid.

26 Analysis and conclusion.

27 The chapter 7 trustee has reviewed the documents in question
28 and traced the transactions. Her testimony is that she has

1 investigated the transactions. She has reviewed the original
2 Arbitrators' Award and the Settlement Agreement. She has had
3 meetings, conference calls, and telephone calls with the relevant
4 counsel and has concluded that the estate does not hold viable
5 claims against T&T. She specifically concluded that the estate
6 has no fraudulent conveyance claims against T&T.

7 In deciding this motion, it is not for the court to
8 substitute its judgment for that of the chapter 7 trustee. It is
9 rather for the court to determine whether the standards for
10 approval of a compromise have been met. In this case, the court
11 concludes that they have.

12 First, the court concludes that there is little probability
13 of success if the chapter 7 trustee pursued a claim against T&T.
14 The Arbitrators' Award is comprehensive. The arbitrators
15 concluded that T&T's loss allocated to DDJ, LLC was \$713,000.
16 The Arbitrators' Award reflects that DDJ, LLC sought from the
17 principals of T&T the sum of \$421,477.93, which comprises the
18 amount owed on two promissory notes. Thus, even if the
19 arbitrators had awarded that amount to DDJ, LLC, which they did
20 not, it was less than the amounts the arbitrators concluded were
21 the out of pocket damages of T&T. While the Arbitrators' Award
22 was a tentative award, and the parties later entered into a
23 Settlement Agreement, it is certainly enough for the court to
24 conclude that the chapter 7 trustee would have a low probability
25 of succeeding in litigation against T&T.

26 The difficulty of collection is a factor that in this
27 instance is not relevant. There is no evidence before the court
28 about the solvency or otherwise of T&T. However, the chapter 7

1 estate does presently hold a deed of trust. This factor does not
2 weigh one way or the other.

3 Based on the evidence before it, the court concludes that
4 the litigation would be complex and lengthy and expensive were
5 the chapter 7 trustee to undertake it. Prior to the bankruptcy
6 being filed, there were two state court actions and an
7 arbitration proceeding. Absent this agreement, it is likely that
8 T&T would file an adversary proceeding seeking reconveyance of
9 the deed of trust.

10 Joe Flores is the largest creditor in this bankruptcy case.
11 Thus, it is appropriate for the chapter 7 trustee to give
12 deference to his views. However, pursuing a claim that would be
13 unlikely to succeed and would be complex, expensive, and time
14 consuming to undertake cannot be in the best interest of
15 creditors.

16 For all the above reasons, the compromise will be approved.
17 Counsel for T&T may submit a proposed form of order.

18
19 DATED: October 11, 2006

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21 /S/_____
22 WHITNEY RIMEL, Judge
23 United States Bankruptcy Court
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