

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Fredrick E. Clement**

Bankruptcy Judge  
Sacramento, California

**August 27, 2019 at 9:00 a.m.**

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| 1. | <a href="#"><u>17-20731</u></a> -A-11<br><a href="#"><u>DB-46</u></a> | CS360 TOWERS, LLC<br>Jason Rios | <b>MOTION TO COMPROMISE<br/>CONTROVERSY/APPROVE<br/>SETTLEMENT AGREEMENT WITH<br/>MONMOHAN S. PASSI, SANJEET<br/>PASSI, PASSI REALTY, LLC,<br/>MONMOHAN PASSI, GEMACK<br/>ASSOCIATES, LP AND BRIANCHISICK<br/>8-6-19 <a href="#">[745]</a></b> |
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, and Office of the United States Trustee on August 6, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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## **The Motion for Approval of Compromise is granted.**

Matthew Sorenson, the post-confirmation trustee (“Movant”) filed this Motion seeking approval of a multi-party, multi-claim compromise.

The proposed settlement is between the Movant on behalf of the Estate; Monmohan S. Passi and Sanjeet Passi as Co-Trustees of The Passi Family Trust Dated December 11, 1995, and Passi Realty LLC and Monmohan Passi (“Passi Trust”); and Gemack Associates, LP, and its principal Brian Chisick (“Gemack”).

The debtor, CS360 Towers, LLC (“Debtor”), commenced this case on February 3, 2017.

The Passi Trust asserts a claim against the Debtor’s estate for \$3,459,993.92 as of the Petition Date based upon eight loans to the Debtor. Proof of Claim, No. 14. On February 19, 2019, the Passi Trust commenced Adversary Proceeding, No. 19-02026, asserting causes of action for a lien or equitable lien on cash collateral proceeds received by the Estate (“Passi AP”). 19-02026, Dckt. 1.

On June 24, 2019, Movant filed a motion to approve compromise, proposing to settle the Passi AP for the amount of \$450,000.00. Dckt. 700. Gemack, asserting a claim of \$9.1 million (Proof of Claim, No. 16), filed an opposition to that proposed settlement.

On August 6, 2019, this Motion was filed to settle the Passi AP and address the opposition of Gemack. The settlement terms (described fully in the Settlement Agreement, filed as Exhibit A(Dckt. 748)) are summarized as follows:

1. The Passi Trust will receive \$1,000,000.00 distribution on its claim.
2. Gemack will receive \$2,100,000.00 distribution on its claim.
3. Administrative and priority claims in this case will be paid in full.
4. Unsecured claims will receive a pro rata distribution on remaining funds, excepted to be a 100 percent distribution.
5. The Passi AP will be dismissed.
6. The Gemack Claim Objection will be dismissed.
7. Any residual funds shall be split between Pass Trust and Gemack.

### **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four

factors:

1. The probability of success in the litigation;
2. Any difficulties expected in 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 re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### **Probability of Success**

Movant argues this factor is not relevant to settlement because the parties have agreed to reduce the amount of their claims through this settlement.

The court agrees that this factor is not very relevant here because none of the litigation settled, if successful, would have resulted in the disallowance of the claims of Gemack or Pass Trust. Therefore, this factor is neutral.

### **Difficulties in Collection**

Movant argues this factor is not relevant because the Estate has funds on hand to pay the amount set forth in the Settlement Agreement.

Here, the difficulty of collection solicits the difficulty of collecting on a successful judgement at trial. None of the litigation involving the determination seeking disallowance of the claims of Gemack or Pass Trust, this factor is not relevant and is neutral.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues the Gemack claim objection (Dckt. 548) and the Passi AP are both complex litigation, and there is no purpose to continue either.

Here, the Settlement Agreement would eliminate all further litigation costs and associated delay with prosecuting an Adversary Proceeding (the Passi AP) and a claim objection. While the adversary proceeding and contested matters involved do not appear overly complex, the expense and delay are great in light of the Settlement proposed here. Therefore, this factor supports settlement.

### **Paramount Interest of Creditors**

Movant argues that Settlement is in the best interest of creditors here because all allowed claims will be paid in full.

Movant's argument is well-taken. The Settlement provides for the payment of all claims in full, and avoids further delay and expense. This factor weighs in favor of settlement.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Settlement provides for the payment of all claims in full, and avoids further delay and expense. The Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Matthew Sorenson, the post-confirmation trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant on behalf of the Estate; Monmohan S. Passi and Sanjeet Passi as Co-Trustees of The Passi Family Trust Dated December 11, 1995, and Passi Realty LLC and Monmohan Passi ("Passi Trust"); and Gemack Associates, LP, and its principal Brian Chisick ("Gemack") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 748).

2.	<a href="#"><u>17-20731</u></a> -A-11 <a href="#"><u>DB</u></a> -37	CS360 TOWERS, LLC Jason Rios	CONTINUED OBJECTION TO CLAIM OF GEMACK ASSOCIATES, LLP, CLAIM NUMBER 16-1 12-7-18 [ <a href="#"><u>548</u></a> ]
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

**The Motion for Approval of Compromise is xxxxx.**

Bradley D. Sharp, the Chapter 11 Trustee, filed this Objection to the claim of Gemack Associates, LLP (“Gemack”) seeking an order characterizing Gemack’s claim as equity, or that Gemack’s claim be equitably subordinated.

On August 6, 2019, a Motion For Approval of Compromise was filed seeking approval of a settlement agreement that would resolve this Objection. Dckt. 745.

At the hearing, XXXXXXXXXXXXXXXXXX.

3.                    [17-20731](#)-A-11    CS360 TOWERS, LLC                    CONTINUED MOTION TO  
                      [DB-45](#)                    Jason Rios                    COMPROMISE  
   CONTROVERSY/APPROVE  
   SETTLEMENT AGREEMENT WITH  
   MONMOHAN S. PASSI, SANJEET PASSI  
   AND PASSI REALTY  
   6-24-19 [[700](#)]

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
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**The Motion for Approval of Compromise is denied.**

On June 24, 2019, Movant, Matthew Sorenson, the post-confirmation trustee , filed this Motion to approve comprise, proposing to settle Adversary Proceeding, No. 19-02026, filed by Monmohan S. Passi and Sanjeet Passi as Co-Trustees of The Passi Family Trust Dated December 11, 1995, and Passi Realty LLC and Monmohan Passi (“Passi Trust”).

On August 6, 2019, a subsequent Motion For Approval of Compromise was filed seeking approval of a settlement agreement that supercedes this settlement agreement. Dckt. 745.

4.                    [17-20731](#)-A-11    CS360 TOWERS, LLC                    CONTINUED EVIDENTIARY HEARING  
                      [19-2026](#)           Jason Rios                    RE: COMPLAINT FOR DECLARATORY  
   PASSI ET AL V. SHARP  
   RELIEF AND/OR ESTABLISHMENT RE  
   LIEN, EQUITABLE LIEN, CASH  
   COLLATERAL; AND TO DETERMINE  
   EXTENT, VALIDITY AND PRIORITY  
   OF LIEN/SECURITY INTEREST  
   2-19-19 [\[1\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
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<b>The Continued Evidentiary Hearing is <span style="color: red;">xxxxxx</span>.</b>
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On February 19, 2019, the Monmohan S. Passi and Sanjeet Passi as Co-Trustees of The Passi Family Trust Dated December 11, 1995, and Passi Realty LLC and Monmohan Passi (“Passi Trust”); commenced this Adversary Proceeding, No. 19-02026, asserting causes of action for a lien or equitable lien on cash collateral proceeds received by the Estate (“Passi AP”). 19-02026, Dckt. 1.

On August 6, 2019, a t Motion For Approval of Compromise was filed seeking approval of a settlement agreement that would resolve this Adversary Proceeding. Dckt. 745.

At the hearing, xxxxxxxxxxxxxxxxxx.





