

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO**

IN THE MATTER OF:

JORGE DROZ YAPUR

Debtor

NOREEN WISCOVITCH RENTAS

Plaintiff

Vs.

JORGE DROZ YAPUR; BRENDA BERMUDEZ
PLAZA; WILFREDO MATOS RIVERA; E.F.
ASSOCIATES REAL ESTATE PSC; BIAGGI &
BIAGGI, P.S.C.; ALEXANDRA M. SERRACANTE
CADILLA; THE TITLE SECURITY GROUP, LLC;
PR DEPARTMENT OF TREASURY;
ENCANTADA HOMEOWNER'S ASSOCIATION;
ORIENTAL BANK

Defendants

CASE NO: 19-02999 MCF

Chapter 7

Adv. Proc. No.: 20-00044 MCF

RE: AVOIDANCE OF POST
PETITION TRANSACTION 11
U.S.C. §549; REVOCATION OF
DISCHARGE INJUNCTION 11
U.S.C. §727(d)

SETTLEMENT AGREEMENT PURSUANT TO F.R.B.P. 9019(a)

**TO THE HONORABLE MILDRED CABAN FLORES
CHIEF JUDGE U.S. BANKRUPTCY COURT:**

COMES NOW, duly appointed Chapter 7 trustee of the bankruptcy estate of Jorge Droz Yapur (“Debtor” or “Defendant”), Brenda Bermudez Plaza (“Co-Defendant”) and Noreen Wiscovitch-Rentas, (collectively, the “Parties”) through their respective counsel of record, who hereby respectfully state and request as follows:

PRELIMINARY STATEMENT

The Parties in this case have entered into the present Stipulation and covenant for the orderly resolution of all controversies at bar and to avoid protracted litigation and unnecessary expenses and resources.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Stipulation under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the scope of 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and of the Stipulation is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

BACKGROUND

3. Debtor filed a Chapter 13 petition for relief on May 29, 2019, case was converted to a Chapter 7 on October 3, 2019 and on that same date the Plaintiff was appointed as the Chapter 7 Trustee for the administration of the bankruptcy estate of Debtor. Bankruptcy Case 19-02999 MCF dkt. nos. 1 and 26.

4. On October 15, 2019 the Debtor and Co-Defendant, signed deed of sale number four hundred and fifty-three (453) before notary public, Alexandra M. Serracante Cadilla, whereby real property of the bankruptcy estate was transferred in favor of Wilfredo Matos Rivera. No prior order or notice was entered by the Bankruptcy Court or the Chapter 7 Trustee authorizing the sale of the real property, described in the Spanish language at the Property Registry as follows (from here on referred to as the “Real Property”):

“RUSTICA: Parcela de terreno identificada como solar BH del Bloque veinticuatro (24) de la Urbanización Bosque del Lago, radicada en el Barrio Dos Bocas del término municipal de Trujillo Alto, Puerto Rico, con una cabida de 367.21 metros cuadrados y en lindes por el Norte en 21.97 metros con el solar número 25; por el Sur en 23.00 metros con el solar número 23; por el Este en 16.00 metros, con el solar número 19; y por el Oeste en

una distancia en arco de 2.75 metros y 13.53 metros con Court número 16. En dicho solar enclava una casa de concreto diseñada para una familia.

Finca número 24,828 inscrita al folio 111 del tomo 462 de Trujillo Alto, Registro de la Propiedad de Puerto Rico, Sección IV de San Juan.”

5. On March 11, 2020 Trustee filed the instant adversary proceeding pursuant to 11 U.S.C. §549 for the avoidance of the unauthorized post-petition transfer of estate assets and pursuant to 11 U.S.C. §727(a) objecting the entry of Debtor’s discharge. Dkt. 1

6. The parties, thru their counsel of record, have held good faith negotiations and have reached a Settlement Agreement for the entry of judgment as to Debtor, Jorge Droz Yapur and Co-Defendant, Brenda Bermudez Plaza, pursuant to the terms and conditions set forth herein.

APPLICABLE LAW AND DISCUSSION

7. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement, after notice of all parties pursuant to F.R.B.P. 2002.

8. A court should consider five factors in striking the balance between the value of the compromise and the value of the claim:

- (i) the probability of success in the litigation being compromised;
- (ii) the difficulties, if any, to be encountered in the matter of collection;
- (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and,
- (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise.

See In re C.P. del Caribe, Inc., 140 B.R. 320, 325, (Bankr. D.P.R. 1992); In re Robotic Vision Sys., Inc., No. 04-14151-JMD, 2006 WL 929322, at *4 (B.A.P. 1st Cir. Apr. 11, 2006) (citing Jeremiah v. Richardson, 148 F.3d 17, 23 (1st Cir.1998)).

9. “The court's consideration of these factors should demonstrate whether the compromise is fair and equitable, and whether the claim the debtor is giving up is outweighed by the advantage to the debtor's estate.” In re Robotic Vision Sys., Inc., 2006 WL 929322, at *4.

10. The standard for approving a settlement, whether it is in the best interest of the estate, entails an examination of the settlement's terms with the litigation's probable cost and benefits. When an agreement provides tangible benefits to the estate in return for sacrifice of uncertain claims against a creditor, the bankruptcy court does not err in approving the settlement. In re Bond, 16 F.3d 408, 30 C.B.C.2d 784 (4th Cir. 1994).

11. The entering into a settlement agreement under Rule 9019 must be accorded some deference by the courts. See In re Healthco Int'l, Inc., 136 F.3d 45, 54 at fn. 5 (1st Cir. 1998) (quoting In re Moorhead Corp., 208 B.R. 87, 89 (B.A.P. 1st Cir. 1997) ("the [bankruptcy] judge...is not to substitute her judgment for that of the trustee [debtor-in-possession], and the trustee's judgment is to be accorded some deference."). Furthermore, "[c]ompromises are favored in bankruptcy." 10 Lawrence P. King, Collier on Bankruptcy ¶ 9019.01, at 9019-2 (16th ed. 2015).

12. The Parties deem that settlement of this matter is fair and equitable and agree to forever settle all issues in relation to the contested matter herein to end all resolve all controversies as set forth in complaint. Trustee understands that the approval of this Stipulation is in the best interest of the estate given the value of the real property, liens encumbering real property and the costs of litigation of the captioned adversary proceeding.

13. The Parties therefore freely and voluntarily enter into the following Settlement Agreement for full payment and release of all matters in the captioned adversary proceeding, and agree to the entry of Judgment pursuant to the following:

TERMS AND CONDITIONS

a) Debtor and Co-Defendant recognize that as of the time of the signing of deed of sale number 453, as described in paragraph four (4) of this stipulation, Real Property was part of the bankruptcy estate subject to the administration of Trustee. Debtor and Co-

Defendant further recognize that no prior order was entered by the Court for the authorization of the sale of the Real Property and that Trustee was not notified of the transaction prior to the signing of the deed of sale.

b) Debtor and Co-Defendant will provide payment to Trustee in the amount of \$11,501.00 in full consideration for the settlement of the captioned case; payable in twelve (12) payments as follows (“the Settlement Sum”): At the time of the filing of this agreement Debtor and Co-Defendant will pay Trustee the sum of \$5,000.00; the Debtor and Co-Defendant will also make eleven (11) consecutive monthly payments to Trustee in the amount of \$591.00 each, payable on the 15th day of each month, commencing on April 15, 2020 and ending on February 15, 2021.

c) In the event that Debtor and Co-Defendant fail to satisfy full payment of the Settlement Sum on its entirety, the Debtor and Co-Defendant consent to the entry of judgment for the avoidance of the post-petition transaction object of the complaint, the entry of judgment denying and/or for the revocation of the discharge injunction in favor of Debtor and the entry of judgment in favor of Trustee granting all of the remedies requested in the complaint filed in adversary proceeding 20-00044 MCF. Debtor recognizes that any default in monthly payments will be cause for Trustee to move the Court for the entry of judgment as consented herein by the Debtor and Co-Defendant.

d) By this Settlement Agreement, each of the Parties submit to the jurisdiction of the United States Bankruptcy Court for the District of Puerto Rico for any action to enforce or interpret this Agreement and/or collect any amount agreed herein. This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico as to all matters.

e) This Stipulation constitutes the entire Settlement Agreement with respect to the subject matter addressed herein and supersedes any prior written and/or verbal agreements between the Parties. This Settlement Agreement may not be orally modified and may only be modified in writing signed by all the Parties.

14. The terms of this Settlement Agreement will be binding and the order approving the same will have *res judicata* effect upon any conversion of this proceeding, prior dismissal, and upon any future petition in Bankruptcy filed by the defendant.

15. The Parties hereby represent and warrant that they are authorized and empowered to appear and execute this Settlement Agreement, and that the same does not contravene any law, rule, regulation, order, writ, judgment, injunction, decree, determination or any contractual restriction binding on or affecting such party, or result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge, encumbrance or preferential arrangement of any nature upon or with respect to any of the properties now owned or hereafter acquired by such party.

16. This Settlement Agreement shall not be modified, altered, amended or vacated without the prior written consent of all Parties hereto. Any such modification, alteration, amendment or vacation, in whole or part, shall be subject to the approval of the Bankruptcy Court. No statement made, or action taken in the negotiation of this Settlement Agreement may be used by any party for any purpose whatsoever.

17. The Parties acknowledge that they have thoroughly reviewed this Settlement Agreement and that they execute the same voluntarily and with full understanding of its contents, and that the terms herein have been fully and unconditionally consented to by each of them, and that the Parties had the full benefit and advice of counsel of their own selection, or the opportunity

to obtain the benefit and advice of counsel of his own selection, in regards to understanding the terms, meaning and effect of this Agreement and that it has been entered into by each of the Parties freely, voluntarily, with full knowledge of its consequences, and without duress, and that in executing this Settlement Agreement, the Parties are relying on no other representations either written or oral, express or implied, made to the Parties, and that the mutual consideration received by the appearing Parties is found to be actual, adequate, fair and equitable.

18. The Trustee understands that this stipulation is in the best interest of the Estate as it will end the cost of associated litigation of adversary no. 20-00044.

19. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, it is respectfully requested from this Honorable Court that, should no objection to this agreement be filed within twenty-one (21) days from notice of the same, an Order approving all the terms and conditions as above stated be entered.

WHEREFORE, it is respectfully requested that the foregoing Settlement Agreement above be approved and that Judgment be entered as to Defendants, Jorge Droz Yapur and Brenda Bermudez Plaza pursuant to the terms and conditions set forth herein.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 13th day of April 2020.

NOTICE PURSUANT TO F.R.B.P. 2002(a)(3)

Within twenty-one (21) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the clerk's office of the United States Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be

granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

CERTIFICATE OF SERVICE

COUNSEL FOR TRUSTEE HEREBY CERTIFIES: That Notice of this Settlement Agreement has been electronically provided by the CM/ECF system to all parties-in-interest, including all creditors. I further certify that the foregoing document has been served to the US Trustee at ustregion21.hr.ecf@usdoj.gov, to their address of record and will deposit exact copies thereof in the US regular mail to all other interested parties as per the master address list.

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