

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:)	Chapter 7
)	
CLARKESVILLE LIQUIDATION INC., <i>et al.</i> ,)	
f/d/b/a Scovill Fasteners Inc. <i>et al.</i> ,)	Case No. 11-21650-reb
)	
Debtors.)	Jointly Administered
_____)	

**CHAPTER 7 TRUSTEE’S MOTION TO APPROVE COMPROMISE AND
SETTLEMENT OF AVOIDANCE CLAIM**

COMES NOW, S. Gregory Hays, as Chapter 7 Trustee (the “Trustee”) for Debtors Clarkesville Liquidation Inc., *et al.* f/d/b/a Scovill Fasteners Inc., *et al.* (collectively, the “Debtors”), by and through his counsel, and files this Motion to Approve Compromise and Settlement of Avoidance Claim against Majestic Power, Ltd. (“Majestic”), a recipient of pre-petition payments from the Debtors within the preference period pursuant to section 547 of the Bankruptcy Code, and respectfully represents to the Court the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The statutory predicate for the relief sought herein is Bankruptcy Rule 9019. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. FACTUAL BACKGROUND

2. On April 19, 2011 (the “Petition Date”), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Trustee was appointed as interim chapter 7 trustee as of July 12, 2011.

3. Prior to the Petition Date, the Debtors made certain transfers which the Trustee asserts may be avoidable as preferences under section 547 of the Bankruptcy Code. The Trustee seeks to recover payments made by the Debtors to Majestic in the amount of \$159,337.94 in the ninety days prior to the Petition Date (the “Preference Claim”).

III. THE TERMS OF THE PROPOSED SETTLEMENT

10. After negotiations, a review of the defenses asserted by Majestic, and in the interest of avoiding the uncertainties associated with litigation and its attendant costs, including collection risks, the parties have agreed to a compromise and settlement of the Preference Claim on the terms set forth in the proposed Settlement Agreement, the form of which is attached hereto as Exhibit A. For convenience, a summary of those terms is set forth herein, but reference should be made to the form of the Settlement Agreement for the actual terms of the proposed settlement. If and to the extent there are discrepancies between the language in this motion and the terms contained in the Settlement Agreements, the terms of the Settlement Agreement shall govern.

11. A summary of the terms of the proposed settlement is as follows:

a) Majestic, transferee of funds from the Debtor in the gross amount of \$159,337.94 (the “Transfers”) in the ninety days prior to the Petition Date, will make payment in the amount of \$45,000.00 in proposed settlement of Preference Claim.

Provided that Majestic performs its obligations under the Settlement Agreement, Majestic will receive a release of claims under § 547 of the Bankruptcy Code relating to the Transfers.

b) Majestic will make a lump sum payment of the proposed settlement amount

c) Majestic does not waive any of its rights, including but not limited to its right of payment, with respect to Majestic's previously filed proof of claim, but is waiving its section 502(h) claim resulting from the payment of the settlement amount.

IV. RELIEF REQUESTED

14. The Trustee requests that this Court approve the settlement as outlined herein and in the Settlement Agreement. The settlement of the Preference Claim is the result of good faith, arm's length negotiations between the parties, and after a thorough review of the defenses asserted by the transferee.

15. The settlement of the Preference Claim on the terms set forth in the Settlement Agreement meets all applicable legal standards and is well within the range of reasonableness.

16. The approval of a compromise and settlement in a bankruptcy case is within the sound discretion of the court and will not be disturbed or modified on appeal unless approval or disapproval of the settlement is an abuse of discretion. *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602-03 (5th Cir. 1980). In order to exercise its discretion properly, the Court must consider whether the compromise suggested “falls below the lowest point in the range of reasonableness.” *Anaconda-Ericsson, Inc. v. Hessen (In re Teltronics Servs. Inc.)*, 762 F.2d 185, 189 (2d Cir. 1985) (internal citation omitted).

17. The Eleventh Circuit has held that the Bankruptcy Court must consider and

evaluate the following factors:

- (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, and
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Wallis v. Justice Oaks II Ltd. (In re Justice Oaks II. Ltd.), 898 F.2d 1544, 1549 (11th Cir. 1990).

In making its evaluation, a court must not rest its approval of the settlement on a resolution of the ultimate factual and legal issues underlying the compromised disputes. *Teltronics, supra*, 762 F.2d at 189. Rather, the court should consider the probable outcome of the litigation, including its advantages and disadvantages, and make a pragmatic decision based on all equitable factors. *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960).

18. Bankruptcy Rule 9019 provides that after conducting a hearing on notice to creditors, the Bankruptcy Court may approve a compromise or settlement. To assure that compromise is proper in a given case, the Bankruptcy Court must be apprised of the necessary facts for an intelligent, objective and educated evaluation and compare the “terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968).

19. The settlement proposed herein clearly meets the standard for approval under Bankruptcy Rule 9019 and is in the best interests of the bankruptcy estate and the Debtors’ creditors. This settlement was reached after thorough analysis of the merits of the Trustee’s claims and defenses and the defenses and claims of Majestic with respect to the Preference

Claim being compromised.

20. The settlement is, therefore, in the best interests of the Debtors' estates because it enables the Trustee to recover money for the benefit of the estates, reduce the amount of outstanding claims in these cases and avoid lengthy and costly litigation, the ultimate result of which is uncertain to the Trustee.

V. NOTICE

21. Notice of this Motion has been given to (a) Majestic through its counsel; and (b) all parties requesting notices in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trustee submits that no further notice need be given.

22. No prior application for the relief requested herein has been made to this Court or any other court.

VI. CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court approve the proposed settlement detailed herein and grant such other and further relief as this Court may deem just and proper.

Respectfully submitted on June 7, 2012.

GREENBERG TRAURIG, LLP

/s/ John D. Elrod

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Counsel for S. Gregory Hays, Chapter 7 Trustee

CERTIFICATE OF SERVICE

I certify that on this day I have served a copy of the foregoing document via notice of electronic filing, electronic mail, and/or U.S. Mail on all parties receiving electronic notices in this case, including the following:

Karen Veronica DeFio
Senior Counsel, Business Department
Bond Schoeneck & King
One Lincoln Center
Syracuse, NY 13202-1355
Attorneys for Majestic Power, Ltd.

as well as all parties on the Master Service List attached hereto.

Dated: June 7, 2012

/s/ John D. Elrod
John D. Elrod, Ga Bar No. 246604

Master Service List

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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of this ____ day of March, 2012, by and among S. Gregory Hays, as Chapter 7 Trustee for the bankruptcy estate of Clarkesville Liquidation Inc. f/k/a Scovill Fasteners Inc., *et al.*, (the "Trustee") and Majestic Power, Ltd. ("Majestic"), by its attorneys, Bond, Schoeneck & King, PLLC, Karen Veronica DeFio, Esq., of counsel..

RECITALS

WHEREAS, Scovill Fasteners Inc. n/k/a Clarkesville Liquidation Inc. and its debtor affiliates (collectively, the "Debtors") filed their chapter 11 bankruptcy cases in the U.S. Bankruptcy Court for the Northern District of Georgia, Gainesville Division (the "Court") on April 19, 2011.

WHEREAS, on July 12, 2011, the Trustee was appointed as interim chapter 7 trustee for the Debtors' bankruptcy estates.

WHEREAS, the business records of the Debtors reflect that the Debtors made transfers to Majestic in the total amount of \$159,337.94 (the "Transfers") in the ninety days prior to the Petition Date;

WHEREAS, the Trustee maintains that the Transfers are avoidable under sections 547 and 550 of the Bankruptcy Code;

WHEREAS, Majestic filed a proof of claim in the Debtors' bankruptcy case on May 11, 2011, in the amount of \$891,343.02 ("Majestic's Proof of Claim"); and

WHEREAS, after negotiations and an exchange of information, Majestic has agreed to pay \$45,000.00 (the "Settlement Amount") to the Trustee, in settlement of the Trustee's claims relating to the Transfers, but specifically excluding any disputes with respect to Majestic's Proof of Claim, and the Trustee has agreed to accept the Settlement Amount as payment in full of all said claims, on the terms and conditions as set forth hereafter.

NOW, THEREFORE, in consideration of the mutual covenants and agreements and the mutual releases contained herein, the parties hereto agree as follows:

1. Payment of Settlement Amount; Release of Claims.

The Settlement Amount shall be paid by Majestic to the Trustee within 30 days of Court approval of this Agreement. Payment shall be made in good funds by check payable to S. Gregory Hays, Chapter 7 Trustee and delivered to the following address: S. Gregory Hays, Hays Financial Consulting, LLC, 3343 Peachtree Road NE, Ste. 200,

Atlanta, GA 30326. If payment is not made within the aforementioned time period, the releases contained in this Agreement shall be null and void and of no force and effect.

2. Court Approval of Settlement

On or before full execution of this Agreement by the undersigned parties, the Trustee shall promptly prepare and file with the Court an appropriate motion or petition to obtain Court approval of the Settlement and may file this Agreement with the Court, and provide notice to all interested parties as may be determined to be entitled to receive such notice under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and/or applicable law. This Agreement is subject to the approval of the Court.

3. Releases

a. Provided that Majestic performs its obligations under this Agreement, the Trustee, on behalf of the Debtors' bankruptcy estates, shall and does hereby forever relieve, release and discharge Majestic from claims under § 547 of the Bankruptcy Code relating to the Transfers.

b. Provided that the Trustee performs his obligations under this Agreement, Majestic waives any claim against the Debtors or the Trustee resulting from the payment of the Settlement Amount.

c. Majestic does not waive any of its rights, including but not limited to its right of payment, with respect to Majestic's Proof of Claim.

4. General

a. Upon Court approval of this Agreement, it shall be fully binding and enforceable as against each of Majestic and the Trustee, as well as their respective successors and assigns.

b. This Agreement contains the entire agreement between the parties hereto and supersedes any and all prior agreements or understandings between them pertaining to the subject matter hereof. This Agreement may be signed in multiple counterparts, each of which shall be an original but all of which will constitute one and the same Agreement. Signatures to this Agreement sent by facsimile shall be deemed, for all purposes, to be the same as original signatures. This Agreement may only be modified or amended in writing, and any such modification must be signed by all of the parties hereto.

c. The terms and provisions of this Agreement are separate and severable. If any of the terms or provisions is determined to be unenforceable, the remaining terms and provisions shall remain fully effective and enforceable.

d. Each party shall bear its own costs and expenses in connection with this matter, including attorney's fees and legal expenses.

e. This Agreement shall be governed and construed in accordance with the laws of the State of Georgia, without reference to principles of conflicts of law.

f. The Bankruptcy Court for the Northern District of Georgia shall have jurisdiction over the interpretation and enforcement of this Agreement.

IN WITNESS WHEREOF, the undersigned parties, intending to be legally bound hereby, hereunto set their hands as of this _____ day of _____, 2012.

MAJESTIC POWER, LTD.

By: _____
Bond, Schoeneck & King, PLLC, Attorney for
Majestic Power, LTD

By: _____
S. Gregory Hays, as Chapter 7 Trustee for
Clarksville Liquidation Inc. f/k/a Scovill Fasteners
Inc., *et al.*,