

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

LEGACY POOLS, LLC,

Debtors.

Case No.: 6:22-bk-03123-LVV

Chapter 7

**TRUSTEE'S MOTION TO (I) COMPROMISE CLAIMS WITH
ELEVATION CHURCH FLORIDA, INC. AND (II) ENJOIN CERTAIN CLAIMS**

Robert Altman, Chapter 7 Trustee (the "Trustee"), by and through his undersigned counsel, moves the Court pursuant to 11 U.S.C. §105 and Fed. R. Bankr. P. 9019 for an order approving the compromise of claims by and between the Trustee and Elevation Church Florida, Inc. ("Elevation") and enjoining certain claims against Elevation. In support thereof, the Trustee states as follows:

I Background

1. On August 30, 2022 (the "Petition Date"), the Debtor filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Middle District of Florida. On March 1, 2023, the Bankruptcy Case was converted to a Chapter 7 liquidation case and the Trustee was appointed to administer the Debtor's estate, initiating the case styled: *In re Legacy Pools, LLC*, Case No: Case No. 6:22-bk-03123-LVV (the "Bankruptcy Case").

2. Since his appointment, the Trustee has investigated the Debtor's assets and affairs. As a result of that investigation, the Trustee has concluded that the Debtor made certain transfers he alleges are subject to avoidance.

3. Within four years of the Petition Date, Elevation received \$221,400.00 in donations from the Debtor (the "Four Year Avoidable Transfers"). Of the total amount of the Four Year Avoidable Transfers, the amount of \$150,000.00 was transferred to Elevation within two years of the Petition Date (the "Two Year Avoidable Transfers"). The Trustee served a demand on Elevation for return of the Four Year Avoidable Transfers on the basis that the Transfers were actually and constructively fraudulent transfers pursuant to 11 U.S.C. § 548 and Fla. Stat. § 726.101, *et. seq.*

4. Section 726.109(7), Fla. Stat. provides that, "The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b)." Therefore, only the Two Year Avoidable Transfers are recoverable under 11 U.S.C. § 548.

II. Terms of Compromise

5. The Trustee and Elevation (collectively, the "Parties") have agreed to a compromise of claims related to the Two Year Avoidable Transfers (the "Compromise") the terms of which are set forth in the Settlement Agreement attached as Exhibit A. The primary terms of the Compromise are as follows:

- a. Elevation shall pay the sum of \$150,000.00 (the "Settlement Payment") to the Trustee as full and complete settlement of the Trustee's claims for recovery of the Two Year Avoidable Transfers;
- b. The Settlement Payment shall be paid within 14 days of the Court's entry of an order granting this Motion and approving the Compromise; and
- c. If Elevation fails to timely make the Settlement Payment then after 14 days written notice to Elevation counsel and Elevation's failure to cure within

that 14 day period, the Trustee, upon submission of an affidavit stating that Elevation failed to timely comply with the terms of the Compromise shall be entitled to entry of an order compelling payment of \$150,000.00 less any amount of the Settlement Payment that has been paid, plus interest and all of the attorneys' fees and costs that the Trustee incurs in recovering sums due to the estate from Elevation, upon which Elevation may not appeal.

6. By paying \$150,000, Elevation is paying 100% of the entirety of the Two-Year Avoidable Transfers, which the Trustee agrees is the maximum amount that may be recovered by the bankruptcy estate. Because other third-parties may seek to recover these same amounts in state court litigation against Elevation and/or its insiders, Elevation has required that the Compromise and any Order approving the Compromise make it clear that the bankruptcy estate is the sole owner of the right to recover these amounts under section 544 of the Bankruptcy Code. This is intended to prevent third-parties from obtaining a double recovery. As part of the Compromise, Elevation requires that an Order be entered in the form attached as Exhibit B. It provides that the right to recover the Two Year Avoidable transfers pursuant to 11 U.S.C. § 548 and Fla. Stat. § 726.101, *et. seq.* is solely owned by the bankruptcy estate and enjoins non-debtor parties from asserting a claim for damages due to the Two Year Avoidable transfers pursuant to 11 U.S.C. § 548 and Fla. Stat. § 726.101, *et. seq.* Upon the filing of this Motion, Elevation shall cause to be filed a copy of this Motion in pending litigation against Elevation and certain potentially related individuals and entities in order to provide notice to all such litigants.

7. In the event that this Court does not enter the Order including the above language, which may be determined to be a potential "bar order", then the Compromise shall be without force and effect.

8. The Settlement Payment and all sums due thereunder shall be property of the Debtor's bankruptcy estate, free and clear of all liens, claims, and encumbrances, and distributed by the Trustee in accordance with the provisions of 11 U.S.C. § 726.

Basis for Relief

9. 11 U.S.C. § 105(a) provides that, "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." This Court has the inherent power under the Bankruptcy Code, including section 105(a), to issue any order necessary or appropriate to carry out the provisions of Title 11, including a bar order. *Munford v. Munford, Inc. (In re Munford)*, 97 F.3d 449, 454 (11th Cir. 1996) (finding bankruptcy court had authority under section 105(a) to enter order barring claims against certain defendants); *Apps v. Morrison (Superior Homes & Invst. LLC)*, 521 Fed. Appx. 895, 897 (11th Cir. 2013) (affirming bar order involving suit against third parties where cash and assets paid "would be exhausted by the non-Debtor Defendants' defense of state court cases;" and noting that entry of the bar order by the bankruptcy court was "well within the bankruptcy court's power as a court sitting in equity").

10. A critical component of the proposed Compromise between the Trustee and Elevation is the entry of a bar order prohibiting anyone from asserting claims against Elevation to recover the Two Year Avoidable Transfers. Bankruptcy courts have authority to enter bar orders "where such orders are integral to settlement." *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996). The potential "bar order" in this case is integral to the Compromise.

11. The Eleventh Circuit addressed bar orders in the context of an S.E.C. receivership proceeding in *Securities and Exchange Comm'n v. Quiros*, 966 F.3d 1195, 1199 (11th Cir. 2020) and explained that the consideration of a bar order is "a two-part inquiry. The court must conclude

that the bar order is essential. And it must decide that the bar order is fair and equitable, with an eye toward its effect on the barred parties.” The question in *Quiros* was the definition of “essential.” The court held that, “A bar order issued to facilitate a settlement is essential only if it is essential to resolving the settling parties’ litigation. If the parties would have still resolved their dispute without entry of the bar order, the order is not essential and the court should not enter it.”

Id. The Eleventh Circuit found that the bar order entered in that case was not essential to resolve the litigation because the parties’ settlement agreement expressly stated that the settlement would go forward even if the bar order were not entered.

12. Here, the proposed Order meets the requirements of *Quiros* because the Compromise is predicated upon entry of the Order.

13. Bankruptcy Rule 9019(a) provides, in pertinent part, that “[o]n motion by the trustee after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The standard in this Circuit for approving a compromise or settlement is set forth in *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544 (11th Cir. 1990). The Eleventh Circuit explained that bankruptcy courts must consider the following factors in evaluating a proposed settlement:

- 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.

Id. at 1549.

14. The Trustee has considered each of the *Justice Oaks* factors and has concluded that the Compromise adequately balances the risks of litigation, eliminates the related expense and delay, and helps ensure that the Estate will realize \$150,000 from Elevation. The Trustee, in

exercising his business judgment, believes approval of the Compromise is in the best interest of the creditors and the bankruptcy estate.

WHEREFORE, the Trustee respectfully requests the Court enter an order in the form attached as Exhibit B approving this Compromise and granting the parties any other relief to which they may be entitled.

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Attorneys for Robert Altman, Chapter 7 Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2023, I filed a true and correct copy of the foregoing with the United States Bankruptcy Court for the Middle District of Florida using the Court's CM/ECF system, which will serve copies on all counsel of record and that a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid and properly addressed to:

Legacy Pools, LLC
c/o Charles and Kristen Black
12587 Fair Lakes Circle
Unit 234
Fairfax, VA 22034

Legacy Pools LLC
727 North Drive
Suite L
Melbourne, FL 32934

and to all creditors who hold claims for which a proof of claim has been filed, creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Fed. R. Bankr. P. 3001(c)(1) or (c)(2), and parties who have filed a request for notice (who will receive notice by CM/ECF) pursuant to section (f) of Local Rule 2002-1, as listed on the attached matrix.

/s/ Raye C. Elliott
Attorney