

1994 Bankr. LEXIS 407
 IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE
 SOUTHERN DISTRICT OF GEORGIA
 Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>88-10713</u>
POTEET CONSTRUCTION COMPANY, INC.))	
Debtor)	
_____)	
)	
LOUIS SAUL AND LOUIS SAUL, P.C.))	
Plaintiff)	
)	
vs.)	Adversary Proceeding
)	Number <u>93-01024A</u>
POTEET CONSTRUCTION COMPANY,)	
INC.; INTERNAL REVENUE SERVICE;)	
GAIL DUFFIE STEBBINS; HULL,)	
TOWILL, NORMAN & BARRETT;)	
TRUST COMPANY BANK OF AUGUSTA,)	
N.A.; RICHARD E. POTEET,)	
MYRTLE POTEET AND)	
A. STEPHENSON WALLACE,)	
CHAPTER 7 TRUSTEE)	
)	
Defendants)	

MEMORANDUM

Pursuant to notice issued October 28, 1993 to all parties in interest in the Chapter 7 bankruptcy case of Poteet Construction Company, Inc. the terms of a proposed consent order settling this

adversary proceeding was disclosed which notice required the filing of any objections not later than November 15, 1993 and providing for hearing on any objections on December 2, 1993. Named defendant, Richard E. Poteet, pro se, wrote to me which correspondence could reasonably be construed as an objection to the settlement. No other party in interest timely objected. Hearing was held pursuant to the notice. At hearing Mr. Poteet, the sole officer and shareholder of the debtor, Poteet Construction Company, Inc. proceeding pro se, did not object to the entire settlement but only to that portion of the compromise providing for the payment of legal fees to Mr. Saul and his professional corporation and to Ms. Gail Stebbins and her former employer Hull, Towill, Norman & Barrett. Mr. F. Michael Taylor, attorney for Ms. Stebbins and Hull, Towill, Norman & Barrett best characterizes Mr. Poteet's position on this settlement.

"[w]ell, he wants it both ways He wants -- he wants the deal we cut with the IRS, which is a sweetheart deal for him and the corporation because it wipes out, you know, a lot of debt, but he doesn't want Gail [Stebbins] and Lou [Saul] to obtain the fees. . . ."

(Transcript on hearing on consent agreement objection December 2, 1993 p. 9).

Mr. Poteet's final statement to me at the December 2, 1993 hearing establishes his reluctant acceptance of the settlement.

"Mr. Poteet: I am telling you now I've got to

go along with it to get rid of the IRS. If ya'll take everything, that's fine with me. As president and owner of the corporation and everything, I've got to get rid of the IRS, and that's -- the only way I am going to do it 'cause of the power of the IRS. If it weren't for the IRS, I wouldn't go along with it."

(Transcript on hearing on consent agreement objection December 2, 1993 p. 11).

A compromise or settlement is an agreement or arrangement by which, in consideration of mutual concessions, a controversy is terminated. (Black's Law Dictionary Fifth Ed. p. 260). From Mr. Poteet's last statement he agrees with the compromise.¹

In the bankruptcy context,

[c]ompromises are a normal part of the process of reorganization. . . . The fact that courts do not ordinarily scrutinize the merits of compromises involved in suits between individual litigants cannot affect the duty of a bankruptcy court to determine that a proposed compromise forming part of a reorganization plan is fair and equitable. There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of

¹Subsequent to the hearing, on December 29, 1993 I received correspondence from Mr. Michael J. Brown attorney for Mrs. Myrtle Poteet a creditor in the underlying Chapter 7 case. Mr. Brown represented Mrs. Poteet during this adversary proceeding. Mr. Brown informs me that Mrs. Poteet supports the position taken by her son, Richard Poteet. Having found that Mr. Poteet has not withdrawn his consent and approval of the compromise, I do not regard Mr. Brown's letter as an attempt by Mr. Brown, to at this late date, raise an objection to the settlement.

ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation. . . . Litigation and delay are always the alternative to settlement, and whether that alternative is worth pursuing necessarily depends upon a reasoned judgment as to the probable outcome of litigation. . . .

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25, 434, 88 S.Ct. 1157, 1163-64, 1168, (1968).

In determining whether to approve a proposed settlement a bankruptcy court must consider

- (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 to it;
- (d) the paramount interest to 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.), cert. denied, 489 U.S. 959, 111 S.Ct. 387 (1990).

This proposed compromise and settlement ends the Chapter

7 case and is supported by the Chapter 7 trustee A. Stephenson Wallace. The only asset of this case is the funds held in the registry of this court, Eighty-Eighty Thousand Two Hundred Fifty Six and 61/100 (\$88,256.61) Dollars plus accrued interest, and this settlement resolved a dispute as to priority of payments from this fund. Regardless of the outcome there would be no distribution available to general unsecured creditors. Further litigation will not improve the interest of the bankruptcy estate nor creditors not parties to this settlement. Approval of this compromise is in the best interest of all parties to the compromise and whether the compromise is approved will not impact the other creditors of the debtor. It is in the best interest of all parties to approve the settlement and the appropriate order will issue approving the settlement.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this _____ day of March, 1994.