



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 16, 2020

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 19-16396-MKN
)	Chapter 7
NINETY-FIVE/TWO FIFTEEN CENTER)	
PART II, LLC,)	
)	Date: May 27, 2020
Debtor.)	Time: 3:00 p.m.
)	

**ORDER ON MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH
ARTS DISTRICT REAL ESTATE #1, LLC¹**

On May 27, 2020, the court heard the Motion for Approval of Settlement Agreement With Arts District Real Estate #1, LLC (“Settlement Motion”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

DISCUSSION

On October 2, 2019, a voluntary Chapter 7 petition (“Petition”) was filed on behalf of Ninety-Five/Two Fifteen Center Part II, LLC (“Debtor”). (ECF No. 1). The Petition was signed by Daniel Barness (“Barness”) who attested that he is the “duly authorized representative” of the Debtor. The Petition describes the Debtor’s business as “single asset real estate” under Section 101(51B). The case is assigned for administration to panel Chapter 7 trustee Shelley D. Krohn

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. §101, *et seq.* All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “NRS” are to the Nevada Revised Statutes.

1 (“Trustee”). Attached to the Petition is a list of nine other Chapter 7 cases pending in this district
 2 filed by related entities, all of which apparently are assigned to the Trustee. The debtor in one of
 3 those other cases is identified as Ninety-Five/Two-Fifteen Center, LLC, denominated Case No.
 4 19-15837-mkn.² Also attached is a List of Equity Security Holders identifying eighteen
 5 individual and non-individual members of the limited liability company that is the Debtor in the
 6 instant case (“Equity Holders List”). According to that list, the largest percentage membership
 7 interest in the Debtor (24.19%) is DI Kunkle Second Family LTD. PTNSHP.³

8 On October 29, 2019, schedules of assets and liabilities (“Schedules”) and a statement of
 9 financial affairs (“SOFA”) was filed on behalf of the single asset real estate Debtor. (ECF No.
 10 14). Part 9 of property Schedule “A/B” attests that the Debtor has an interest in real property
 11 identified as APN 125-21-301-002, legally described as: PT NE4 SW4 SEC 21 19 60, Las
 12 Vegas, Clark County, State of Nevada (“Parcel 002”). Part 11 of the same Schedule attests that
 13 the Debtor owns a cause of action against third parties described as “Possible quiet title and
 14 claims for preferential judicial sale of Debtor’s interest in real property (APN 125-21-301-002)
 15 against LLC members Kunkle and/or Fidler, et al.” Part 2 of creditor Schedule “E/F” includes
 16 non-priority unsecured claims for all of the parties appearing Equity Holders List, based on
 17 “possible claims arising from wrongful acts in connection with investments in company.”

18 Part 3 of the SOFA attests that within one year before the Debtor filed the Petition, it was
 19 involved in two actions that had been commenced in the Eighth Judicial District Court, Clark
 20 County, Nevada (“State Court”): (1) Rakesh Patel and Reena Patel (“Patels”) v. Ninety Five Two
 21 Fifteen Center, LLC, Ninety Five Two Fifteen Center Part II, LLC, Star One Properties, David
 22 A. Rifkind, Helen R. Rifkind, Guy Shani, and Nitzan Shani, denominated Case No. A-18-
 23 785851-C, and (2) Marla Fidler, Jonathan Fidler, and Harriet Fidler (“Fidlers”) v. Michael Bash,
 24 Havard Oxford, LLC, Emerson Twain, LLC, Ninety-Five Fort Apache Complex, LLC, Ninety-

26 ² According to Part 9 of property Schedule “A/B” at ECF No. 9 in the latter proceeding,
 27 that entity has a joint tenancy interest in “3.14 acres of unimproved land located at 6705 US Hwy
 28 95, APN 125-21-301-003.”

³ It is not clear what source of information was used to prepare the Equity Holders List.

1 Five/Two Fifteen Center Part II, LLC, Palm Eight Land Development, LLC, and Berkley
2 Enterprises, Inc., denominated Case No. 18-771426-B (“Fidler Action”). The first action is
3 described as “pending” while the latter action is described as “concluded.” Part 6 of the SOFA
4 attests that on August 27, 2019, Arts District Real Estate #1 LLC received from the Debtor “3.79
5 acres of land located on the West Frontage Road/OSO Blanca Road adjacent to [the] Oran K.
6 Gragson Freeway/US Highway No. 95 in Las Vegas, NV 89149; APN 125-21-301-002;
7 purchased for \$10,000.00.”

8 On November 27, 2019, the Trustee filed a notice of assets that included a March 5,
9 2020, bar date for proofs of claim to be filed. (ECF No. 21).

10 On December 9, 2019, Spring Valley Development, LLC (“Spring Valley”), timely filed
11 a proof of claim in the amount of \$1,159,860, allegedly based on a development agreement that
12 limits its claim to a maximum of 39 percent of the value of Parcel 002 (“Spring Valley POC”).⁴

13 On December 10, 2019, Art District Real Estate #1 (“Arts District”), timely filed a proof
14 of claim in the amount of \$1,000,000, allegedly based on a recorded judgment and allegedly
15 entitled to priority under Section 507(a)(2) (“Arts District POC”).⁵ On the same date, Arts
16 District filed a separate proof of claim in the same amount alleging the same priority, to which is
17 attached a copy of a “Writ of Execution” entered by the State Court in the Fidler Action. The
18 writ indicates that it seeks to collect a judgment entered on April 12, 2019, in favor of the
19 plaintiffs, in the principal amount of \$160,000.⁶

20 On January 13, 2020, the Trustee filed an application to employ a real estate agent to sell
21 Parcel 002. (ECF No. 31).

22
23 ⁴ The Spring Valley POC is signed by Spring Valley’s counsel as its authorized agent.

24 ⁵ These proofs of claim identify the claimant as “Art District” rather than “Arts District.”
25 The claimant is not an individual and these proofs of claim are not executed by an authorized
26 agent on behalf of the claimant as required by FRBP 3001(b).

27 ⁶ On March 28, 2020, Arts District filed two separate proofs of claim in the amount of
28 \$160,000, representing that they are not amendments to a prior claim, but which also represent
that they are replacing a previous claim as “overstated.”

1 On January 31, 2020, an order was entered granting the Trustee’s application to employ a
2 real estate agent to sell Parcel 002 under an exclusive real estate listing agreement. (ECF No.
3 42). Under Section 2 of the listing agreement, the listing agreement expires six months after
4 entry of the order, i.e., approximately July 31, 2020.

5 On February 6, 2020, a motion to dismiss the Chapter 7 case (“Kunkle Dismissal
6 Motion”) was filed on behalf of DI Kunkle Second Family LTD Partnership (“Kunkle”). (ECF
7 No. 46). The motion asserts that the filing of the Chapter 7 petition was unauthorized.⁷

8 On February 26, 2020, the Trustee filed opposition to the Kunkle Dismissal Motion,
9 accompanied by the Declaration of Daniel I. Barness (“First Barness Declaration”). (ECF Nos.
10 59 and 60). On the same date, Barness filed a separate opposition (ECF No. 61) to which he
11 attaches an additional declaration (“Second Barness Declaration”), in addition to a separate
12 request for judicial notice. (ECF No. 62).

13 On March 4, 2020, Kunkle filed an omnibus reply in support of its dismissal motion, that
14 is accompanied by the Declaration of Rakesh Patel (“Patel Declaration”). (ECF Nos. 66 and 67).

15 On March 5, 2020, Guy Shani and Nitzan Shani as Trustees of Shani Investments, Inc.
16 Defined Benefit Pension Plan & Trust (“Shani Trust”), timely filed a proof of claim in the
17 amount of \$380,750, allegedly secured by a deed of trust against Parcel 002 (“Shani POC”).⁸

18 On March 6, 2020, Barness filed an objection to the Patel Declaration. (ECF No. 69).

19 On March 10, 2020, Shani Trust filed a motion for relief from stay (“Shani RAS
20 Motion”) and related documents, that was noticed to be heard on April 15, 2020. (ECF Nos. 74,
21 75, 76, and 77).⁹

23 ⁷ The Kunkle Dismissal Motion originally was noticed to be heard on March 11, 2020
24 (ECF No. 48) but has been continued to June 17, 2020.

25 ⁸ The Shani POC is electronically signed by its counsel as authorized agent.

26 ⁹ On March 11, 2020, and March 12, 2020, the Shani Trust filed declarations of appraiser
27 George Smith to which he attaches an appraisal report dated as of February 28, 2020 (“Smith
28 Report”). Addenda 4 to the Smith Report is a copy of an engagement letter dated February 15,
2020, which represented to the appraiser that “The property appraised is owned by Ninety-Five
Two Fifteen Ctr as to -003 and Ninety-Five Two Fifteen Ctr II as to -002 et al.” In the Smith

1 On March 30, 2020, Rick Patel (“Patel”), filed an untimely proof of claim in a
2 nonpriority unsecured amount of \$175,000, based on an alleged ownership interest in the Debtor
3 (“Patel POC”).¹⁰

4 On March 30, 2020, Kunkle filed an untimely proof of claim in the amount of \$750,000,
5 allegedly based on a deed recorded on November 14, 2018 with respect to unidentified real
6 property (“Kunkle POC”).¹¹

7 On April 3, 2020, the Trustee filed her opposition to the Shani RAS Motion and related
8 documents. (ECF Nos. 87, 88, and 89).

9 On April 9, 2020, the Shani Trust filed its reply in support of its relief from stay motion.
10 (ECF No. 93).

11 On April 14, 2020, the Trustee filed a supplement to her opposition to the Shani RAS
12 Motion. (ECF No. 98).

13 On April 30, 2020, the Trustee filed the instant Settlement Motion (ECF No. 102), to
14 which a “Settlement Agreement and Mutual Release” is attached as Exhibit “1” (Settlement
15 Agreement”). The Settlement Motion is supported by the Declaration of Shelley D. Krohn.
16 (ECF No. 103).

17 On May 4, 2020, an order was entered shortening time so that the Settlement Motion
18 could be heard on May 27, 2020. (ECF No. 111).

19 On May 6, 2020, a joinder to the Settlement Motion was filed by the Arts District Real
20 Estate #1, LLC. (ECF No. 113).

21 On May 14, 2020, an opposition to the Settlement Motion was filed by Spring Valley
22 (“Spring Valley Opposition”). (ECF No. 117).

23
24 _____
25 Report, however, the appraiser states that the current owner of Parcel 002 is “Kunkle D I Second
26 Family Partnership et al.”

26 ¹⁰ The Patel POC is electronically signed by the individual claimant. Patel’s name,
27 however, does not appear on the Equity Holders List attached to the Petition.

28 ¹¹ The Kunkle POC is not executed by an authorized agent on behalf of the claimant as
required by FRBP 3001(b).

1 On May 15, 2020, an opposition to the Settlement Motion was filed by Guy Shani and
 2 Nitzan Shani, as Trustees of Shani Investments, Inc. (“Shani Opposition”), along with a
 3 supplemental request for judicial notice (“Shani RJN”) and a declaration of Guy Shani (“Shani
 4 Declaration”). (ECF Nos. 118, 119, and 120).

5 On May 21, 2020, the Trustee filed a reply to the Spring Valley Opposition and the Shani
 6 Opposition (“Reply”). (ECF No. 122). On this same date, a joinder to the Reply was filed by
 7 Arts District Real Estate #1, LLC. (ECF No. 123).

8 On May 26, 2020, an interim order was entered on the Shani RAS Motion directing the
 9 Trustee and the Shani Trust to jointly submit a copy of a title report or equivalent documentary
 10 evidence establishing the Debtor’s legal title to Parcel 002 (“Interim RAS Order”). (ECF No.
 11 126).

12 **APPLICABLE LEGAL STANDARDS**

13 A bankruptcy trustee is required to administer property of a bankruptcy estate, including
 14 liquidating any legal rights or causes of action. See 11 U.S.C. §704(a)(1). FRBP 9019(a)
 15 authorizes a bankruptcy trustee to seek court approval of his or her decision to settle a claim or
 16 cause of action. The trustee bears the burden of proving that the proposed settlement is in the
 17 best interests of the estate. Such approval may be granted on a trustee’s motion after notice and
 18 a hearing. Appropriate weight is given to a trustee’s business judgment, but the requirement of
 19 notice and a hearing assures that decisions of a trustee are not simply rubber stamped. See, e.g.,
 20 In re Hyloft, Inc., 451 B.R. 104, 109 (Bankr. D.Nev. 2011). In exercising its discretion to
 21 approve a settlement proposed by a bankruptcy trustee, a bankruptcy court is directed to consider
 22 four factors:

- 23 (a)The probability of success in the litigation; (b) the difficulties, if any, to
 24 be encountered in the matter of collection; (c) the complexity of the
 25 litigation involved, and the expense, inconvenience and delay necessarily
 attending it; (d) the paramount interest of the creditors and a proper
 deference to their reasonable views in the premises.

26 Martin v. Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986), quoting In re Flight
 27 Transportation Corporation Securities Litigation, 730 F.2d 1128, 1135 (8th Cir. 1984), cert.
 28 denied, 469 U.S. 1207 (1985) (“A&C Factors”). See Tieni v. Mastan (In re Bondanelli), 2020

1 WL 1304140, at *2 (B.A.P. 9th Cir. Mar. 18, 2020).

2 DISCUSSION

3 There is no dispute that the Fidlers obtained a judgment against the Debtor in the Fidler
4 Action on April 12, 2019 (“Fidler Judgment”) and recorded it against Parcel 002 on April 18,
5 2019.

6 There is no dispute that the Debtor recorded separate quitclaim deeds in favor of the
7 Patels and Kunkle on July 22, 2019, transferring to them different percentage interests in Parcel
8 002.

9 There is no dispute that on August 22, 2019, the Fidlers assigned all of their rights under
10 the Fidler Judgment to Arts District. There is no dispute that on August 27, 2019, the Debtor’s
11 interest in Parcel 002 was acquired by Arts District at a sheriff’s sale through a credit bid of
12 \$10,000.¹² There is no dispute that under Nevada law, the Debtor has a one-year right of
13 redemption (“Redemption Rights”) commencing from the date of the sheriff’s sale, i.e., through
14 August 27, 2020.¹³ There is no dispute that the Redemption Rights constitute a legal interest
15 held by the Debtor when the Chapter 7 was commenced, and therefore constitutes property of the
16 estate under Section 541(a)(1). There is no dispute that the Trustee has exclusive authority to
17 exercise the Redemption Rights on behalf of the bankruptcy estate, but currently does not have
18 funds available to do so.

19 _____
20 ¹² As discussed at note 9, supra, the Smith Report as of February 28, 2020, indicates that
21 the Debtor is not on title to Parcel 002. This perhaps results from the recording of quitclaim
22 deeds and the sheriff’s sale that took place before the appraisal date. While the “Sales History”
23 portion of the Smith Report appears to refer to the two quitclaim deeds executed by the Debtor in
24 favor of the Patels and Kunkle, however, it makes no mention of the sheriff’s sale. The Interim
25 RAS Order directed the Trustee and the Shani Trust to provide evidence establishing the
26 Debtor’s current legal title, if any, to Parcel 002. If the Debtor simply has equitable title to
27 Parcel 002 through a possible avoidance claim, such a claim would be property of the estate
28 under Section 541(a)(3). The court does not see anything in the Smith Report suggesting that the
appraiser is aware of these impediments to marketing Parcel 002.

¹³ Under NRS 21.210, a judgment debtor generally may redeem property from a
purchaser any time within one year of sale by paying the purchaser the amount of the purchase
price with an additional one percent per month, plus any assessments, taxes or lien payments
made by the purchaser, as well as interest thereon.

1 There is no dispute that the Debtor commenced this Chapter 7 proceeding on October 2,
2 2019, within 90 days of the quitclaim deeds being recorded in favor of the Patels and Kunkle,
3 and within 90 days of the sheriff's sale in favor of Arts District.

4 The Settlement Agreement seeks to resolve several disputes and potential disputes
5 between the Trustee on behalf of the bankruptcy estate, and Arts District, Kunkle, and the Patels
6 (collectively "Settling Parties"). In settlement of these various matters, the Settling Parties offer
7 to pay the estate the total amount of \$210,000, and to withdraw all their proofs of claim.¹⁴ In
8 addition, the Kunkle Dismissal Motion will be withdrawn, and any related discovery will end. In
9 exchange, the Trustee will assign the Redemption Rights to Arts District and all "avoidance
10 actions" that the estate may have against the Settling Parties will be released. Moreover, the
11 parties will release all claims against each other, except as provided in the Settlement
12 Agreement.

13 The Trustee maintains that various interests in Parcel 002 that were acquired by the Arts
14 District, Kunkle, and the Patels may be subject to avoidance under Sections 544, 547, 548, and
15 550.¹⁵ Avoidance under those provisions must be sought within two years of the Chapter 7

16 ¹⁴ The \$210,000 is paid through an initial payment of \$85,000 to the Trustee. The
17 remaining \$125,000 is to be paid upon the earlier of the sale of Parcel 002 by Arts District, or,
18 December 31, 2021. Each of the Settling Parties is separately obligated to pay the remaining
19 \$125,000. Thus, in the event that the remaining \$125,000 is not paid by December 31, 2021, the
20 Trustee apparently would be able to pursue the balance separately from Arts District, Kunkle,
21 and Patel.

21 ¹⁵ Section 550 provides, in pertinent part, with respect to an avoided transfer, that the
22 trustee may recover the property transferred or the value property from the initial transferee or
23 the immediate or mediate transferee of the initial transferee. See 11 U.S.C. §550(a) (emphasis
24 added). Section 551 provides, in pertinent part, that "Any transfer avoided under section
25 ...544,..., 547, [and] 548...of this title, or any lien void under section 506(d) of this title, is
26 preserved for the benefit of the estate but only with respect to property of the estate." 11 U.S.C.
27 §551 (emphasis added). See, e.g., Retail Clerks Welfare Trust v. McCarty (In re Van De Kamp's
28 Dutch Bakeries), 908 F.2d 517, 519-520 (9th Cir. 1990); Lebbos v. Schuette (In re Lebbos), 600
Fed.Appx. 521, 523-524 (9th Cir. 2015); U.S. v. Hutchinson (In re Hutchinson), 2020 WL
2112275, at *3-4 (E.D.Cal. May 4, 2020). If the Trustee is able to avoid the transfer of the
interest in Parcel 002 to Arts District as a result of the sheriff's sale, the transfer may be
preserved for the benefit of the bankruptcy estate and expiration of the Redemption Rights may
have little significance.

1 petition date, see 11 U.S.C. §546(a)(1), and must be sought through an adversary proceeding.
2 See FED.R.BANKR.P. 7001(1).¹⁶ Because the Trustee was assigned to this case on October 2,
3 2019, it appears that the deadline to commence an avoidance action will not expire until
4 approximately October 2, 2021. Irrespective of the deadline, however, the Trustee is not
5 required to pursue an avoidance action if she exercises her business judgment not to do so.
6 Under the Settlement Agreement, the avoidance claims would be released.

7 The Arts District POC, Kunkle POC, and Patel POC are deemed allowed unless a party
8 in interest objects. See 11 U.S.C. §502(a). As previously discussed, the Arts District POC was
9 filed as a priority unsecured claim in the principal amount of \$160,000, based on the assignment
10 of the Fidler Judgment.¹⁷ The Kunkle POC was filed as a nonpriority unsecured claim in the
11 amount of \$750,000, allegedly based on a deed recorded in November 2018 as to an interest in
12 unidentified real property. The Patel POC was filed as a nonpriority unsecured claim in the
13 amount of \$175,000, based on an alleged ownership interest in the Debtor. If each of the proofs
14 of claim were properly filed,¹⁸ then they constitute prima facie evidence of the validity and
15

16 ¹⁶ Avoidance actions under Sections 544 and 548 are either based on non-bankruptcy law
17 or are based on theories available under non-bankruptcy law. Avoidance of preferential transfers
18 under Section 547 generally has no analogue under non-bankruptcy law except in those
19 jurisdictions that permit assignments for the benefit of creditors. Compare Sherwood Partners,
20 Inc. v. Lycos, Inc., 394 F.3d 1198 (9th Cir. 2005) (recovery of preferential transfer by general
21 assignee for the benefit of creditors under California Code of Civil Procedure section 1800 is
pre-empted by the Bankruptcy Code) with Spector v. Melee Entertainment LLC, 2008 WL
362125, at *8 (Del.Sup.Ct., New Castle Cty. Feb. 6, 2008) (recovery of preferential transfer by
general assignee under California law not pre-empted by bankruptcy law).

22 ¹⁷ As previously mentioned at 3, supra, the Arts District POC is filed as a priority
23 unsecured claim under Section 507(a)(2). Priority claims under Section 507(a)(2) mainly
24 encompass administrative expenses allowed after notice and a hearing under Section 503(b).
None of the nine categories of administrative expenses described in Section 503(b), however,
25 appear to be applicable to the Arts District.

26 ¹⁸ As mentioned in note 5, supra, the Arts District POC might not have been executed by
27 an authorized agent in compliance with FRBP 3001(b). The Kunkle POC also is not signed by
28 an individual acting as an agent for the claimant. Neither proof of claim may constitute prima
facie evidence at all under FRBP 3001(f). The Patel POC bears the electronic signature of the
individual claimant but on its face attests that the claimant has an ownership interest in the
Debtor rather than a right to payment. Parties having an ownership interest in a debtor typically

1 amount of each claim. See FED.R.BANKR.P. 3001(f). If a party in interest objects to a proof of
2 claim, the proceeding becomes a contested matter under FRBP 9014 for which discovery is
3 available under FRBP 9014(c). See U.S. v. Levoy (In re Levoy), 182 B.R. 827, 834 (B.A.P. 9th
4 Cir. 1995). Like the avoidance actions, the Trustee is not required to object to any of the claims
5 if she concludes in her business judgment that objections would not be sustained, or, that the
6 claims would not significantly impact the distribution, if any, to other claimants. Under the
7 Settlement Agreement, the proofs of claim would be withdrawn.

8 The Kunkle Dismissal Motion is a contested matter and remains unresolved. Kunkle
9 maintains that Barness did not have authorization to file the bankruptcy Petition on behalf of the
10 Debtor and that the Chapter 7 must be dismissed. In popular terms, this specific dispute might
11 be described as “existential,” i.e., if the Petition was filed improperly, the instant Chapter 7
12 proceeding should not even exist. Rather, the various disputes and claims between Arts District,
13 Kunkle, the Patels, the Shani Trust, Spring Valley, and any other parties having the misfortune of
14 being involved with the Debtor, would be resolved in State Court or some other non-bankruptcy
15 forum.¹⁹ Moreover, even if the Debtor’s case is dismissed, the effect of a dismissal of a
16 bankruptcy case is, *inter alia*, to “[revest] the property of the estate in the entity in which such
17 property was vested immediately before the commencement of the case under this title.” 11
18 U.S.C. §349(b)(3). Under the Settlement Agreement, the Kunkle Dismissal Motion would be
19 withdrawn.

20 Having asserted a secured claim in excess of the \$210,000 settlement amount, the Shani
21 Trust objects to the proposed settlement. Not surprisingly, Spring Valley also objects. In

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23 receive a Chapter 7 distribution only after all allowed unsecured claims are paid. See 11 U.S.C.
§726(a)(6). The bar date for filing proofs of claim expired on March 5, 2020.

24 ¹⁹ Under Section 303(b), an involuntary Chapter 7 petition apparently could be filed
25 against the Debtor if Barness did not have authority to file the voluntary bankruptcy Petition on
26 behalf of the Debtor. Commencement of a case under Section 303 would encompass all property
27 of the bankruptcy estate under Section 541(a). The automatic stay would arise under Section
28 362(a) and would bar, *inter alia*, acts to obtain possession of or exercise control over property of
the estate. If a trustee is appointed, the extension of time provided under Section 108(b) may
apply if the Redemption Rights still exist.

1 addition to objecting, however, there is no dispute that after the Settlement Motion was filed, the
2 Shani Trust made an offer to acquire the estate's interest in Parcel 002 on a lien-free basis under
3 Section 363(f), for an immediate cash amount of \$250,000 rather than the deferred cash offered
4 by the Settling Parties. See Shani Declaration at ¶3 and Exhibit "1." A portion of the cash
5 amount would be used to exercise the Redemption Rights to Parcel 002. Additionally, the Shani
6 Trust apparently is willing to increase the cash offer in a reasonable amount necessary to cover
7 the legal expenses of pursuing the avoidance actions²⁰ and litigating the Kunkle Dismissal
8 Motion. Thus, instead of compromising various disputes with the Settling Parties, the Shani
9 Trust offers to purchase the estate's interest in Parcel 002 for a higher amount in addition to an
10 amount sufficient for the Trustee to litigate the various disputes with the Settling Parties.²¹

11 Instead of withdrawing the Settlement Motion in favor of the Shani Trust proposal, the
12 Trustee maintains that the Settlement Agreement is still superior and should be approved. Not
13 surprisingly, the Arts District joins in the Trustee's request to approve the Settlement Agreement
14 to which it is a party.

15 The court having considered the written and oral argument of counsel, concludes that the
16 Settlement Agreement as proposed is not in the best interest of creditors based on the existing
17 record. Several reasons lead to this conclusion.

18 First, the recitals to the Settlement Agreement includes a representation that on July 22,
19 2019, the Debtor quitclaimed an 11.29% interest in Parcel 002 to the Patels, and separately
20

21 ²⁰ A chapter 7 trustee is permitted to sell the avoidance claims of a bankruptcy estate, see
22 Silverman v. Birdsell (In re Sky Financial Investments, LLC), 796 Fed.Appx. 935 (9th Cir. Jan.
23 15, 2020), but the Shani Trust is not offering to purchase such claims. If the Redemption Rights
24 are timely exercised, then pursuit of any avoidance claims against the Arts District as to the
25 sheriff's sale may be unnecessary in any event. Moreover, the quitclaim deeds in favor of the
26 Kunkles and the Patels were recorded on July 22, 2019, well within the period in which the
27 Debtor is legally presumed to have been insolvent under Section 547(f). The Shani Trust's
28 willingness to include the Trustee's legal costs of pursuing the avoidance claims may be
predicated on its assumption that the Trustee could prevail on a summary basis.

²¹ Because the Shani Trust and Spring Valley are parties in interest to this Chapter 7
proceeding, neither are precluded by Section 502(a) from separately objecting under Section
502(b) to the Arts District POC, Kunkle POC, and Patel POC.

1 quitclaimed a 24.19% interest in Parcel 002 to the Kunkles. See Settlement Agreement at docket
2 page 16 of 32. As mentioned in note 10, supra, the Patels are not included on the Equity Holders
3 List at all, but Kunkle is included as a 24.19% equity holder that for some reason matches the
4 percentage interest conveyed by the quitclaim deed. According to the Equity Holders List,
5 Kunkle has the largest percentage interest in the Debtor, but apparently the Patels do not, even
6 though the Patels received a quitclaim deed on the same date. Both the Patels and the Kunkles
7 are Settling Parties. The Kunkle Dismissal Motion challenges whether Burness had authority to
8 file the bankruptcy Petition. Under the Settlement Agreement, however, the Patels and the
9 Kunkles, become jointly and severally liable to pay the \$125,000 balance of the settlement to the
10 Trustee in the event Parcel 002 is not sold before December 31, 2021. At the very least, the
11 Patels and the Kunkles appear to be insiders.

12 Second, settlement of the Kunkle Dismissal Motion, brought by an insider that allegedly
13 has the largest percentage interest in the Debtor, is being offered as partial consideration for a
14 settlement in favor of two apparent insiders, i.e., the Kunkles and the Patels. Settlement
15 encompassing disputes and claims brought by insiders are subject to closer scrutiny than those
16 involving unrelated entities. This construct applies in proceedings brought under both Chapter
17 11 and Chapter 7. See In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 498 (Bankr.
18 S.D. N.Y. 1991) (Chapter 11 compromise involving former officers); In re Hyloft, 451 B.R. at
19 113-114 (Chapter 7 settlement involving common principals of the debtor and affiliated entities).

20 Third, the A&C Factors are neutral at best. Although the outcome of any litigation is
21 unpredictable, the record appears to favor the Trustee with respect to all the suggested disputes
22 with the Settling Parties. For the reasons previously discussed, all the avoidance claims against
23 the Settling Parties appear susceptible to resolution by summary judgment. Objections to the
24 proofs of claim filed by all the Settling Parties appear to be susceptible to swift resolution based
25 on the face of the claims themselves. The Kunkle Dismissal Motion is a red herring because any
26 actual outcome of the insider's dismissal request is legally irrelevant to the appropriate resolution
27
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1 of the remaining disputes.²² None of the disputes with the Settling Parties include the recovery
2 of monetary claims for which collection difficulties would be relevant. For reasons already
3 discussed, none of the litigation with the Settlement Parties appears to be complex, although
4 there would be inconvenience and delay. Finally, the views of the objecting creditors, i.e., the
5 Shani Trust and Spring Valley, are entitled to deference. The Settling Parties obviously favor the
6 Settlement Agreement, while no other creditors support it. Rather, other creditors that do have
7 claims directly involved in the disposition of Parcel 002 strongly favor an auction approach to
8 liquidating the estate's interest in its primary asset. Under these circumstances, the A&C Factors
9 as a whole do not militate in favor of the Settlement Agreement in view of the alternative
10 suggested by the objecting creditors.

11 Finally, the court is mindful of the difficult task faced by the Trustee in this proceeding.
12 All parties to this matter acknowledge that this Chapter 7 is only one of ten non-individual cases
13 encompassing lenders, vendors, general creditors, and investors that may have been ensnared in
14 multiple instances of real estate investment fraud. Unable to resolve competing claims outside of
15 bankruptcy, or unwilling to bear the legal expenses to do so, dissatisfied parties often resort to
16 bankruptcy as a single forum to resolve all claims.²³ However, when a Chapter 7 trustee is
17 assigned a case for which no funds are available to cover administrative expenses, including the
18 cost of hiring qualified legal counsel, the trustee faces the bankruptcy equivalent of an "unfunded
19 mandate": he or she is required to perform the duties set forth in Section 704(a) but has no
20 resources available carry them out. Unless interested parties are willing to provide such
21 resources, the trustee may well seek to abandon estate property that is too burdensome to be
22 administered. See 11 U.S.C. §554(a). The non-individual Chapter 7 debtor does not get a
23 discharge of its debts, see 11 U.S.C. §727(a)(1), and it will be unnecessary to resolve competing
24

25
26 ²² When an insider actively disputes the propriety of a bankruptcy proceeding and then
27 relies on the same proceeding to obtain an advantage over other parties, it has the effect of
holding other parties hostage, including the bankruptcy trustee.

28 ²³ Generally, Chapter 11 is a better alternative for investors because it offers the
possibility of reorganization rather than liquidation.

1 claims because there typically will be no assets available for distribution to creditors. The net
2 result of an ill-advised Chapter 7 filing will be that no one benefits at all.

3 Under the circumstances, the Settlement Motion will be denied without prejudice. If the
4 Trustee seeks to pursue a lien-free sale of the estate's interest in Parcel 002 to the Shani Trust, or
5 any other party, the Trustee may do so. If the Trustee requires an order shortening time so that a
6 proposed lien-free sale is considered well in advance of expiration of the Redemption Rights, the
7 court will entertain such a request.

8 **IT IS THEREFORE ORDERED** that the Motion for Approval of Settlement
9 Agreement With Arts District Real Estate #1, LLC, Docket No. 102, be, and the same hereby is,
10 **DENIED WITHOUT PREJUDICE.**

11
12 Copies sent via BNC to all parties and via CM/ECF ELECTRONIC FILING

13 Copies sent via BNC to:
14 NINETY-FIVE/TWO FIFTEEN CENTER PART II, LLC
15 C/O DANIEL BARNES
16 13636 VENTURA BLVD
17 SHERMAN OAKS, CA 91423

18 CAREN H BARNES
19 157 EAST 57TH STREET
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