UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

Case No. HG 01-13070

JOHN AUGUST ENGMAN,

Debtor.
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NOT FOR PUBLICATION

MEMORANDUM OPINION RE: TRUSTEE'S DECEMBER 12, 2006 MOTION

On December 12, 2006, Trustee filed a motion entitled "Motion of James W. Boyd, Chapter 7 Trustee, for Entry of Order Approving Settlement for Distribution of Sale Proceeds Pursuant to Fed. R. Bankr. P. 9019(a)." Debtor objected to the motion.

The motion was heard on January 18, 2007. I denied the motion without prejudice at the conclusion of the hearing. This memorandum of law supplements the reasons I gave at that time for my decision.

Trustee's proposed settlement, if it is a settlement at all, involves the distribution of proceeds realized by Trustee from the sale of lots associated with a real estate development known as Sun-Da-Go. Sun-Da-Go, which was originally owned by Debtor and his former wife, had been placed in a receivership as part of their divorce. Both Trustee and Debtor relied upon the judgment of divorce entered by the state circuit court for purposes of characterizing the bankruptcy estate's interest in the development. The pertinent portion of that judgment states that:

> [t]he Sun-Da-Go real estate development shall be maintained as a joint venture as between the parties. The Court Order naming Robert

> Schellenberg as trustee shall remain in full force and effect. His fees shall be paid from the FMB escrow account. The parties shall divide equally the net proceeds of the development properties after payment of all debts, reasonable cost of sale, expenses, taxes, and the FMB payments. The Court retains jurisdiction to modify and/or enforce this provision to effectuate the Court's intent.

Debtor's ex-spouse is now deceased and her daughters, Stephanie Scruggs and Sari Jousma, claim her interest in the joint venture as her successors-in-interest.

What Trustee submitted as a settlement for court approval pursuant to FED.R.BANKR.P. 9019(a) was his proposal to distribute one-half of the $272,948.22 of net sale proceeds (*i.e.*, $136,474.13) to Mmes. Scruggs and Jousma. However, they were not to receive the entire distribution. Rather, Trustee's proposed distribution was as follows:

	AMOUNT
Eardly Law Offices	$ 45,979.50
Robert Schellenberg	$ 7,171.22
McShane & Bowie	$ 13,730.02
Santiago [sic]	$ 50,521.40
Scruggs/Jousma	$ 19,071.99
	$136,474.13

Eardly and McShane & Bowie both provided legal services in connection with the divorce proceeding and Schellenberg was the court appointed receiver in that proceeding. Sun-Da-Go is the condominium association related to the real estate development.

The distribution proposed certainly addresses the demands of several parties who have been waiting for years for a resolution of an ongoing dispute regarding the bankruptcy estate's interest in the real estate development. However, it is important to recognize that what is at issue from the bankruptcy estate's perspective is the proceeds that the bankruptcy estate itself will ultimately receive from the development's liquidation. In other words, the bankruptcy estate's goal is to

maximize the amount it can realize from what both Trustee and Debtor agree is the bankruptcy estate's one-half interest as a joint venturer in the Sun-Da-Go development.[1]

Consequently, Trustee's purported settlement is better characterized as a component of a much greater dispute that involves at least the bankruptcy estate, Debtor's daughters, some, if not all, of the four other proposed distributees (*i.e.*, Eardly, Schellenberg, McShane & Bowie, and the condominium association), and perhaps even others.

It is tempting to, as Trustee proposes, treat Mmes. Scruggs and Jousma as being entitled to one-half of whatever proceeds have or will be realized from the sale of the development lots on the theory that they have an undivided one-half interest in each of those lots. However, their interest in those lots, like the bankruptcy estate's interest, is that of a joint venturer and, as the divorce judgment directs, debts incurred in furtherance of the joint venture must be paid ahead of both venturers' interests.

Unfortunately, Trustee's motion offers little information regarding what are the unpaid debts of the joint venture and, more important, the effect of these remaining unpaid debts upon the bankruptcy estate's interest in the joint venture if Trustee proceeds with the distribution he is proposing. For example, the condominium association's claim is clearly against both joint venturers and remains disputed. The distribution contemplated will cover the daughters' share of that claim if it is ultimately determined that the condominium association was owed only $101,042.80 in total. However, the distribution proposed could potentially be unfair to the bankruptcy estate if it were

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[1]Debtor did contend in his written objection that, contrary to the Trustee's representation, the bankruptcy estate's interest in the joint venture was 87%. However, the divorce judgment itself indicates that the two joint ventures (*i.e.*, Debtor and his now deceased ex-wife) were to share the proceeds from the joint venture's liquidation equally and, for purposes of this decision, I will defer to that judgment.

ultimately to be determined that the condominium association's claim against the joint venture was $120,000.00.

In summary, Trustee's resolution of what is undeniably a difficult situation cannot be assessed for purposes of Rule 9019(a) approval unless that settlement is presented in the context of what the bankruptcy estate will realize from the liquidation of its joint venture interest in the real estate development. Trustee's pending motion lacks sufficient information to determine the effect upon the bankruptcy estate of whatever resolution Trustee has reached with respect to the competing interests the bankruptcy estate and Debtor's daughters have in the joint venture and its asset.

It remains within Trustee's prerogative to reach any number of solutions. For example, Trustee may, with some effort and luck, reach an arrangement with all of the creditors with claims against the joint venture (*e.g.*, the condominium association) and the daughters whereby the Trustee will know with reasonable certainty what will be the bankruptcy estate's "take" based upon its own joint venture interest. If so, Trustee would be then in a position to establish that the settlement reached was within his duty to exercise due care notwithstanding the many other ways that these issues might have also been reasonably resolved.

Therefore, for the reasons stated on the record at the January 18, 2007 hearing and herein, Trustee's motion is DENIED without prejudice. A separate order will enter.

/s/
Honorable Jeffrey R. Hughes
United States Bankruptcy Judge

Signed this 29th day of January, 2007
at Grand Rapids, Michigan.