

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:)	Chapter 11
)	
EASTERN LIVESTOCK CO., LLC, et al., ¹)	Case No. 10-93904-BHL-11
)	
Debtors.)	JOINTLY ADMINISTERED

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH PEOPLES BANK AND TRUST COMPANY OF PICKETT COUNTY**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC ("Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee (as one party to the dispute) and the Peoples Bank and Trust Company of Pickett County ("Peoples") (as the other party to the dispute). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Peoples filed the *Motion for Relief From Automatic Stay and Abandonment of Property* [Docket No. 300] (as modified by Dock. No. 317, the "Stay Relief Motion") on February 28, 2011 seeking entry of an order under 11 U.S.C. § 362 terminating the automatic stay and abandoning from Debtor's bankruptcy estate certain real estate owned by Debtor in Harrison County, Indiana (as more particularly described in the Stay Relief Motion, the "Property"). Peoples alleges that Debtor granted Peoples Bank a mortgage against the Real Estate (the "Mortgage") on September 30, 2008 as security for a \$1,500,000 loan that Peoples made to Thomas and Patsy Gibson (the "Gibsons").

¹ The Debtor entities are Eastern Livestock Co., LLC and Okie Farms, L.L.C.

2. The Trustee filed objections to the Stay Relief Motion [Docket Nos. 334, 454 and 867] wherein the Trustee asserted that the Mortgage on the Property is avoidable pursuant to 11 U.S.C. § 544(b)(1) and the applicable provisions of the Indiana Code.

3. On November 30, 2011, the Trustee filed his Amended Complaint to avoid Mortgage pursuant to 11 U.S.C. §544 (b)(1) and I.C. §32-18-2-14, 15 and 17 (the "Adversary Proceeding").

4. Peoples duly filed its Answer in the Adversary Proceeding on December 21, 2011, wherein Peoples alleged that Debtor did, in fact, give "reasonably equivalent value" for the Mortgage of the Property, and further that Debtor was not insolvent on the day of the transfer

5. The Parties, in an effort to avoid the significant cost and expense of further litigating the disputes and claims set forth above, desire to settle their disputes upon the terms and conditions set forth in the Settlement Agreement attached hereto as Exhibit A ("Settlement Agreement").

The Settlement

6. Trustee requests that the Court approve the Settlement Agreement. Under the Settlement Agreement, the Trustee shall file a motion seeking Court authority to sell the Property free and clear of all liens, claims, interests and encumbrances pursuant to 11 U.S.C. §363 at a public auction to be conducted on Saturday, March 3, 2012 or as soon thereafter as practicable. Subject to the authority and orders of the Court, the parties agree that the Property may be sold as a single parcel or in separate tracts as necessary and in the sole discretion of Peoples to maximize the sale proceeds.

7. The Trustee shall file a motion seeking Court authorization to employ Lee J. Amonett and Ken Byrd, Realty & Auction, Inc. (collectively the "Auctioneer") as professionals for the purpose of conducting the public auction provided for in paragraph six (6).

8. As compensation for his services, the Auctioneer will receive a five percent (5%) commission from the public auction of the Property which shall be paid from the gross sale proceeds. Furthermore, the Auctioneer will receive a five percent (5%) buyer's premium to be collected from the buyer of the Property following the sale. The Auctioneer will pay all advertising expenses, cooperating commissions, internet commissions, etc... out of his commission and buyer's premium with none of these expenses to be incurred by Debtor's estate.

9. The gross sale proceeds realized from the sale of the Property will be disbursed as follows: (a) first to satisfy the five percent (5%) commission of the Auctioneer; then (b) to pay all real estate taxes and assessments outstanding and unpaid at the date of sale. The remaining sale proceeds ("Net Sale Proceeds") shall be divided between the Trustee and Peoples as follows: (a) the Trustee shall receive twenty percent (20%) of the Net Sale Proceeds for the benefit of Debtor's estate and (b) Peoples shall receive eighty percent (80%) of the Net Sale Proceeds.

10. Pursuant to 11 U.S.C. §363(k), Peoples shall be entitled to "credit bid" at the auction up to the amount of its claim in the case of *In re Thomas P. Gibson and Patsy M. Gibson*, U.S.B.C. S.D.IN. Case No. 10-93687-BHL-7 up to the amount of \$1,508,297.89 and subject to credit for proceeds realized by Peoples from the sale of any other properties or collateral securing the Gibsons' obligations to Peoples, provided that should Peoples be the successful bidder, then it shall pay the direct expenses of the sale and would further pay the Trustee twenty percent (20%) of the Net Sale Proceeds.

11. Each of the Parties shall bear his or its own attorneys' fees, and other costs incurred (including, without limitation, statutory trustee fees of the Trustee) in connection with the sale of the Property (excluding Auctioneer fees and real estate taxes which shall be paid in

accordance with paragraph nine (9) above). The Trustee shall not assess, charge, or collect a commission, statutory fee, or other administrative expense from the eighty percent (80%) of the Net Sale Proceeds to be received by Peoples as provided for in paragraph nine (9).

12. The parties shall release any and all claims against one another that have accrued as of the effective date of the Settlement Agreement (the "Released Claims"). The Released Claims specifically include any and all claims asserted or assertable by Peoples against Debtor's bankruptcy estate.

Basis for Relief

13. Pursuant to Federal Rule of Bankruptcy Procedure 9019, this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

14. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

15. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The Settlement Agreement is the result of arms-length negotiations after several months of research and litigation. The alternative to the settlement is continued litigation of the claims between the Trustee and Peoples Bank, and the possibility of an outcome that would result in a smaller recovery to the estate.

16. The Trustee therefore believes that the proposed settlement is fair and equitable and in the sound exercise of his business judgment.

17. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

Respectfully submitted,

FAEGRE BAKER DANIELS, LLP

By: /s/ Dustin R. DeNeal

Counsel for James A. Knauer, Chapter 11 Trustee

James M. Carr (#3128-49)
Kevin Toner (#11343-49)
Terry E. Hall (#22041-49)
Harmony Mappes (# 27237-49)
Dustin R. DeNeal (#27535-49)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204-1782
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
jim.carr@faegrebd.com
kevin.toner@faegrebd.com
terry.hall@faegrebd.com
harmony.mappes@faegrebd.com
dustin.deneal@faegrebd.com

Wendy W. Ponader (#14633-49)
600 East 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: (317) 569-9600
Facsimile: (317) 569-4800
wendy.ponader@faegrebd.com

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt
davidabt@mwt.net

C. R. Bowles, Jr
cbowles@bgdlegal.com

John Hunt Lovell
john@lovell-law.net

Mark A. Robinson
mrobinson@vhlaw.com

Jeffrey R. Erler
jeffe@bellnunnally.com

Edward M King
tking@fbtlaw.com

Randall D. LaTour
rdlatour@vorys.com

John R. Carr, III
jrciii@acs-law.com

Bret S. Clement
bclement@acs-law.com

Daniel J. Donnellon
ddonnellon@ficlaw.com

Stephen A. Weigand
sweigand@ficlaw.com

John Frederick Massouh
john.massouh@sprouselaw.com

John W. Ames
james@bgdlegal.com

Robert Hughes Foree
robertforee@bellsouth.net

Kim Martin Lewis
kim.lewis@dinslaw.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com

Ivana B. Shallcross
ishallcross@bgdlegal.com

Deborah Caruso
dcaruso@daleeke.com

Meredith R. Thomas
mthomas@daleeke.com

William Robert Meyer, II
rmeyer@stites.com

Allen Morris
amorris@stites.com

Charles R. Wharton
Charles.R.Wharton@usdoj.gov

James Bryan Johnston
bjtexas59@hotmail.com

James T. Young
james@rubin-levin.net

David L. LeBas
dlebas@namanhowell.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com

John M. Thompson
john.thompson@crowedunlevy.com

Jessica E. Yates
jyates@swlaw.com

John Huffaker
john.huffaker@sprouselaw.com

Matthew J. Ochs
matt.ochs@moyewwhite.com

Laura Day Delcotto
ldelcotto@dlgfir.com

Kelly Greene McConnell
lisahughes@givenspursley.com

T. Kent Barber
kbarber@dlgfir.com

Ross A. Plourde
ross.plourde@mcafeetaft.com

Walter Scott Newbern
wsnewbern@msn.com

Kirk Crutcher
kcrutcher@mcs-law.com

Todd J. Johnston
tjohnston@mcjllp.com

Timothy T. Pridmore
tpridmore@mcjllp.com

Theodore A Konstantinopoulos
ndohbky@jbandr.com

Karen L. Lobring
lobring@msn.com

Sandra D. Freeburger
sfreeburger@dsf-atty.com

Lisa Koch Bryant
courtmail@fbhlaw.net

Elliott D. Levin
edl@rubin-levin.net

John M. Rogers
johnr@rubin-levin.net

John David Hoover
jdhoover@hooverhull.com

Sean T. White
swhite@hooverhull.com

Robert H. Foree
robertforee@bellsouth.net

Sarah Stites Fanzini
sfanzini@hopperblackwell.com

Michael W. McClain
mike@kentuckytrial.com

William E Smith
wsmith@k-glaw.com

Susan K. Roberts
skr@stuartlaw.com

James Edwin McGhee
mcghee@derbycitylaw.com

Thomas C Scherer
tscherer@binghamchale.com

David A. Laird
david.laird@moyewwhite.com

Jerald I. Ancel
jancel@taftlaw.com

Jeffrey J. Graham
jgraham@taftlaw.com

Trevor L. Earl
tearl@rsvlaw.com

David Alan Domina
dad@dominalaw.com

Kent A Britt
kabritt@vorys.com

Joshua N. Stine
jnstine@vorys.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

Michael Wayne Oyler
moyler@rwsvlaw.com

James E. Rossow
jim@rubin-levin.net

Steven A. Brehm
sbrehm@bgdlegal.com

James M. Carr
james.carr@faegrebd.com

Shawna M. Eikenberry
shawna.eikenberry@faegrebd.com

James A. Knauer
jak@kgrlaw.com

Christie A. Moore
cmoore@bgdlegal.com

Jeffrey E. Ramsey
jramsey@hopperblackwell.com

Joseph H. Rogers
jrogers@millerdollarhide.com

Andrew D. Stosberg
astosberg@lloydmc.com

Andrea L. Wasson
andreawassonatty@gmail.com

Jeffrey L. Hunter
jeff.hunter@usdoj.gov

Jason W. Cottrell
jwc@stuartlaw.com

James B. Lind
jblind@vorys.com

Anthony G. Raluy
traluy@fbhlaw.net

Jack S. Dawson
jdawson@millerdollarhide.com

Terry E. Hall
terry.hall@faegrebd.com

Erick P. Knoblock
eknoblock@daleeke.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com

Eric C. Redman
ksmith@redmanludwig.com

James E. Smith
jsmith@smithakins.com

Kevin M. Toner
kevin.toner@faegrebd.com

Christopher M. Trapp
ctrapp@rubin-levin.net

Amelia Martin Adams
aadams@dlgfir.com

Robert A. Bell
rabell@vorys.com

Melissa S. Giberson
msgiberson@vorys.com

Christopher E. Baker
cbaker@hklawfirm.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com

Jay Jaffe
jay.jaffe@faegrebd.com

Harmony A. Mappes
harmony.mappes@faegrebd.com

Wendy W. Ponader
wendy.ponader@faegrebd.com

Joe T. Roberts
jratty@windstream.net

Robert K. Stanley
robert.stanley@faegrebd.com

U.S. Trustee
ustpregion10.in.ecf@usdoj.gov

I further certify that on January 30, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Ashley S. Rusher
asr@blancolaw.com

Darla J. Gabbitas
darla.gabbitas@moyewwhite.com

/s/ Dustin R. DeNeal