IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 7 |
| | ) | |
| PIKE NURSERY HOLDING, LLC, | ) | CASE NO. 07-79129-MGD |
| | ) | |
| Debtor. | ) | |
| | ) | |

**MOTION FOR AUTHORITY TO COMPROMISE AND SETTLE CLAIM AGAINST ATLANTIS POOLS AND SPAS, LLC**

COMES NOW Marcus A. Watson, Sr., the Chapter 7 Trustee ("Trustee") for the Estate of Pike Nursery Holding, LLC ("Debtor"), by and through undersigned counsel, and pursuant to Federal Rules of Bankruptcy Procedure 9019 and 2016, files this Motion for Authority to Compromise and Settle Claim Against Atlantis Pools and Spas, LLC. In support of his Motion, the Trustee shows the Court the following:

JURISDICTION

1.

This Court has Jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334.

2.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## BACKGROUND

3.

Debtor filed its Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on November 14, 2007 ("Petition Date").

4.

On March 24, 2008, the Court converted the case to Chapter 7. Marcus A. Watson, Sr. was appointed the interim Chapter 7 trustee (the "Trustee") and subsequently became the Chapter 7 Trustee for the Debtor's estate.

5.

Prior to filing its bankruptcy petition, Debtor operated a lawn and garden nursery business.

6.

Between February 14, 2008 and March 7, 2008, Atlantis Pools and Spas, LLC ("Atlantis") ordered goods and merchandise from Debtor on account for which it has not paid.

7.

By virtue of the foregoing, Atlantis is indebted to the Debtor's estate in the principal sum of $3,813.16.

8.

On March 23, 2009, Trustee filed an action against Atlantis to recover the principal sum of $3,813.16 in the State Court of Cherokee County, Georgia (the

"Cherokee County Action"). Atlantis answered the Complaint and asserted certain defenses to Trustee's claims.

9.

Each side having examined the other's claims and defenses, Trustee and Atlantis seek to settle Debtor's claim against Atlantis in order to avoid the expenses and uncertainty associated with litigating such claim.

PROPOSED SETTLEMENT

10.

The terms of the proposed compromise and settlement between Trustee and Atlantis, which will be implemented upon the entry of a Final Order approving the agreement of the parties, are as follows:

a) Atlantis will present Trustee with certified funds totaling $1,860.00; and

b) Trustee will dismiss the Cherokee County Action with prejudice.

LEGAL AUTHORITY

11.

Federal Rule of Bankruptcy Procedure 9019 provides that the Court may approve a compromise and settlement after notice and hearing. The approval or rejection of a compromise and settlement is left to the sound discretion of the

Bankruptcy Court and is governed by the particular circumstances of each case. In re Blue Coal Corp., 47 B.R. 758 (Bankr. M.D. Pa. 1985); In re Tidewater Group, Inc., 13 B.R. 764, 765 (Bankr. N.D. Ga. 1981). In exercising its discretion, a Bankruptcy Court should give due regard to what is right and equitable under particular circumstances of the case and under applicable law. Courts have relied on a number of factors in determining whether to approve a compromise and settlement under Federal Rule of Bankruptcy Procedure 9019. These factors include the following: (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 interests of the creditors and the proper deference to their reasonable views. In re Justice Oaks, II, Ltd., 898 F.2d 1544 (11th Cir. 1990). In evaluating any settlement, the court must consider that the "law favors compromise." Port O'Call Investment Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9th Cir. 1976).

12.

The proposed compromise and settlement meets the above-stated standards for the Court's approval, as outlined as follows:

a) The probability of success in the litigation: Trustee is unsure about the probability of success in the Cherokee County Action due to

the lack of available witnesses to testify about the purchase and delivery of the relevant goods. Atlantis has also raised certain defenses to the amount of the debt that the court concluded constitute genuine issues of material fact requiring a trial. Additionally, the amount of costs that will incurred in pursuing a relatively minor claim support Trustee's decision to settle the Cherokee County Action.

b) The difficulties, if any, to be encountered in collection: Atlantis is a small business and Trustee is not optimistic about the possibility of collecting on any judgment against Atlantis. The possibility of being unable to recover a judgment, the additional expenses of collecting the judgment and the potential delay in collection lead to a conclusion that settlement is favorable.

c) The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it: The litigation of the Cherokee County Action will be expensive due to the relatively small size of Debtor's claim against Atlantis. Atlantis owes debtor less than $4,000, and the cost of trying the Cherokee County Action will likely exceed the potential recovery amount. Additionally, one of Trustee's employees would be forced to travel

to Cherokee County to testify at trial, incurring expenses to do so. The excessive costs lead to a conclusion that settlement is favorable.

d) The paramount interest of the creditors and a proper deference to their reasonable views: The settlement of this claim will provide Debtor's estate with funds now, while simultaneously avoiding unnecessary administrative expenses of Trustee. Accordingly, this factor favors settlement.

WHEREFORE, Trustee respectfully request that this Court grant this Motion and approve the proposed compromise and settlement as set forth above and for such other and further relief as is just and proper.

This 23rd day of December, 2011.

/s/ John A. Christy
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
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NOTICE OF HEARING

**PLEASE TAKE NOTICE** that Marcus A. Watson, Interim Chapter 7 Trustee, has filed a Motion for Authority to Compromise and Settle Claim Against Atlantis Pools and Spas, LLC ("Motion") seeking authority to settle the state court claim against Atlantis Pools and Spas, LLC for $1,860.

**PLEASE TAKE FURTHER NOTICE** that the Court will hold a hearing on the Motion in Courtroom 1201, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, at 10:30 a.m. on January 17, 2012.

Your rights may be affected by the Court's ruling on the Motion. You should read the Motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the Motion with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and

on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below and if possible also e-mail a copy to the undersigned at the e-mail address noted below.

This 23rd day of December, 2011.

/s/ John A. Christy
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## CERTIFICATE OF SERVICE

This is to certify that on the date specified below the undersigned caused to be served a true and correct copy of the foregoing "MOTION FOR AUTHORITY TO COMPROMISE AND SETTLE PREFERENCE CLAIMS AGAINST ATLANTIS POOLS AND SPAS LLC" through the electronic case filing system (ECF) or by placing a copy of the same in the United States Mail, with sufficient postage thereon to ensure delivery upon the parties listed on the Master Service List attached hereto and upon counsel for Atlantis Pools and Spas, whose address follows:

Sarah L. Shearouse, Esq
Law Offices of Barry W. Bishop, P.C.
P.O. Box 1351
Canton, Georgia 30169

This 23rd day of December, 2011.

/s/J. Carole Thompson Hord
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