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 WITH BASKIN NURSERY INC.

COMES NOW Marcus A. Watson, Sr., the Chapter 7 Trustee (the "Trustee") for the Estate of Pike Nursery Holding, LLC (the "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 with Baskin Nursery Inc. (the "Motion"). In support of the 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.

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

4.

On March 19, 2008, the Court approved the United States Trustee's application to appoint Marcus A. Watson, Sr. as the Chapter 11 Trustee for the Debtor.

5.

On March 24, 2008, the Court converted the case to Chapter 7. Marcus A. Watson, Sr. is the Chapter 7 Trustee.

6.

Prior to filing its bankruptcy petition, the Debtor operated a lawn and garden nursery business. The Debtor purchased and received goods from Baskin Nursery Inc. ("Baskin") within 20 day prior to the Petition Date.

7.

On December 12,2007, Baskin filed a proof of claim asserting a general unsecured claim in the amount of $215.464.15 (Claim No. 119).

8.

On January 18, 2008, Baskin filed a Motion for Allowance and Immediate Payment of Administrative Expense Claim seeking the allowance and payment as a Chapter 11 administrative claim the amount of $24,457.14 (the "Motion").

9.

On May 30, 2008, Baskin filed a Chapter 11 administrative proof of claim asserting a claim in the amount of $191,007.01 (Claim No. 537).

10.

The Trustee disputes that the Baskin is entitled to a Chapter 11 administrative claim for the amounts included in the Motion and Claim No. 527.

PROPOSED SETTLEMENT

11.

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

1) Baskin's Motion is denied;

2) Baskin's Chapter 11 administrative claim no. 527 is reduced to the amount of $23,387.69;

3) Baskin shall have no other or further Chapter 11 or Chapter 7 administrative claims in the bankruptcy case and any other such claims are disallowed and

4) The Trustee reserves the right to object to Claim No. 119 which asserts a general unsecured claim.

LEGAL AUTHORITY

12.

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).

13.

The proposed compromise and settlement meets the above-stated standards for the Court's approval. Any litigation concerning the Chapter 11 administrative claims would be highly fact intensive. The Trustee may not be able to locate all the documents and witnesses necessary to defending against the Chapter 11 administrative claims. Settlement results in minimal expense to the estate and a significant reduction in Chapter 11 the administrative claims.

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

This 23rd day of February, 2010.

/s/ John A. Christy
JOHN A. CHRISTY
Georgia Bar No. 125518
J. CAROLE THOMPSON HORD
Georgia Bar No. 291473

Attorneys for Marcus A. Watson, Sr.
Chapter 7 Trustee

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
(404) 681-3450

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 CLAIM WITH BASKIN NURSERY INC." 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 the following parties:

James C. Joedecke, Jr.
Andersen Tate & Carr, P.C.
1505 Lakes Parkway
Suite 100
Lawrenceville, GA 30043
Attorney for Baskin Nursery Inc.

This 23rd day of February, 2010.

/s/J. Carole Thompson Hord
J. CAROLE THOMPSON HORD

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
Telephone: (404) 681-3450
Facsimile: (404) 681-1046

CHAPTER 7 MASTER SERVICE LIST

U.S. Trustee
362 Richard Russell Bldg.
75 Spring Street, SW
Atlanta, GA 30303

Marcus A. Watson
Finley, Colmer and Company
3091 Governors Lake Drive
Suite 450
Norcross, GA 30071

John A. Christy, Esq. – via ECF
Carole Thompson Hord, Esq. – via ECF
Schreeder, Wheeler & Flint, LLP
1100 Peachtree Street, Suite 800
Atlanta, Georgia 30309
Email: *jchristy@swfllp.com*
Email: *chord@swfllp.com*

J. Robert Williamson – via ECF
Scroggins & Williamson
1500 Candler Building
127 Peachtree Street, NE
Atlanta, GA 30303
Email: *rwilliamson@swlawfirm.com*

William A. DuPre IV – via ECF
Paul M. Alexander – via ECF
Miller & Martin PLLC
1170 Peachtree St., N.E. Suite 800
Atlanta, GA 30309-7649
Email: *bdupre@millermartin.com*
Email: *palexander@millermartin.com*

Christopher T. Buchanan
James R. Langdon – via ECF
Moore & Van Allen
100 North Tryon Street
Suite 4700
Charlotte, NC 28202-4003
Email: *jimlangdon@mvalaw.com*

Jonathan S. Shenson
Klee, Tuchin, Bogdanoff & Stern, LLP
1999 Avenue of the Stars
39th Floor
Los Angeles, CA 90067-5061

Karen Fagin White – via ECF
Cohen Pollock Merlin & Small
3350 Riverwood Parkway
Atlanta, GA 30339
Email: *kfwhite@cpmas.com*

Scott B. Riddle, Esq. – via ECF
Suite 3250 One Atlantic Center
1201 W. Peachtree Street NW
Atlanta, GA 30309
Email: *sbriddle@mindspring.com*

Ron C. Bingham, II, Esq. – via ECF
Thompson, O'Brien, Kemp & Nasuti, P.C.
40 Technology Parkway South
Suite 300
Norcross, GA 30092
Email: *rbingham@tokn.com*

John C. Pennington – via ECF
P. O. Box 275
Helen, GA 30545
Email: *jcppc@alltel.net*

Priscilla H. Douglas, Esq.
Corporate Counsel
California First Leasing Corporation
18201 Van Karman Avenue
Suite 800
Irvine, CA 92612

Robert M. D. Mercer – via ECF
Gwendolyn J. Godfrey – via ECF
Bryan Cave Powell Goldstein, L.L.P.
Fourteenth Floor
One Atlantic Center
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488
Email: *rmercer@pogolaw.com*
Email: *ggodfrey@pogolaw.com*

Jeffrey N. Pomerantz – via ECF
Jeffrey W. Dulberg – via ECF
Pachulski Stang Ziehl & Jones LLP
Eleventh Floor
10100 Santa Monica Blvd.
Los Angeles, CA 90067-4100
Email: *jpomerantz@pszjlaw.com*
Email: *jdulberg@pszjlaw.com*

EXHIBIT "A"

Bruce Z. Walker, Esq. – via ECF
Cohen Pollock Merlin & Small
3350 Riverwood Parkway
Suite 1600
Atlanta, GA 30339
Email: *bwalker@cpmas.com*
Email: *mnewsome@cpmas.com*

Sarah R. Borders – via ECF
Robert K. Ozols
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Email: *sborders@kslaw.com*

Micheal W. Bishop, Esq. – via ECF
Looper Reed & McGraw, P.C.
4600 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201
Email: *mbishop@lrmlaw.com*

Samuel D. Hicks
Hicks, Casey & Foster, P.C.
136 N. Fairground Street
Suite 100
Marietta, GA 30060

American Express Bank FSB – via ECF
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701
Email: *notices@becket-lee.com*

American Express Travel & Related Svcs Co – via ECF
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701
Email: *notices@becket-lee.com*

Recovery Management Systems Corp.
Attn: Ramesh Singh
25 SE 2nd Avenue, Suite 1120
Miami, FL 33131-1605

Jody Charles Campbell – via ECF
Webb, Tanner, Powell, Mertz & Wilson LLP
P. O. Box 1390
Lawrenceville, GA 30046-1390
Email: *jcampbell@wtpllp.com*

Michael E. Hastings
Brandy M. Rapp
LcClairRyan
1800 Wachovia Tower
Drawer 1200
Roanoke, VA 24006

J. Hayden Kepner, Jr., Esq. – via ECF
Arnall Golden Gregory LLP
171 17th Street, SW, Suite 2100
Atlanta, GA 30363
Email: *hkepner@agg.com*

Paul M. Rosenblatt, Esq. – via ECF
Kilpatrick Stockton LLP
1100 Peachtree Street, NE
Suite 2800
Atlanta, GA 30309-4530
Email: *prosenblatt@kilpatrickstockton.com*

William H. Short Jr., Esq.
Haynsworth Sinkler Boyd, P.A.
P. O. Box 11889
Columbia, SC 29211-1889

Samuel R. Arden, Esq. – via ECF
Hartman, Simons, Spielman & Wood LLP
6400 Powers Ferry Road, NW
Suite 400
Atlanta, GA 30339
Email: *sarden@hssw.com*

Michael D. Payne, Esq. – via ECF
Lisa Ritchey Craig, Esq. – via ECF
McCullough, Payne & Haan, LLC
171 17th Street NW
Atlanta, GA 30363
Email: *mpayne@mphlawfirm.com*
Email: *lcraig@mphlawfirm.com*

David H. Conaway, Esq.
Shumaker, Loop & Kendrick, LLP
128 S. Tryon Street, Suite 1800
Charlotte, NC 28202

Mark A. Baker – via ECF
Morris Schneider Prior Johnson & Freedman
1587 Northeast Expressway
Atlanta, GA 30329
Email: *M_Baker@Prommis.com*

James C. Joedecke, Jr., Esq. – via ECF
Ryan D. Worsley, Esq.
Andersen, Tate & Carr, P.C.
One Sugarloaf Centre
1960 Satellite Boulevard, Suite 4000
Duluth, GA 30097
Email: *gconroy@atclawfirm.com*

J. Dewayne Bunch, Esq.
McCoin, McCoin and Bunch
443 Worth Street, NW
Cleveland, TN 37311

Charles M. Gisler, Esq.
165 N. Main Street
Jonesboro, GA 30236-3568

Thomas R. Walker, Esq. – via ECF
McGuireWoods LLP
The Proscenium
1170 Peachtree Street, NE
Atlanta, GA 30309
Email: *trwalker@mcguirewoods.com*

David W. Cranshaw – via ECF
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Email: *dhp@mmmlaw.com*

Michael F. Holbein, Esq. – via ECF
Arnall Golden Gregory LLP
171 17th Street, NW
Suite 2100
Atlanta, GA 30363-1031
Email: *michael.holbein@agg.com*

S. Elizabeth Hall, Esq. – via ECF
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308
Email: *ehall@mckennalong.com*

Alisa H. Aczel, Esq. – via ECF
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street NE
Atlanta, GA 30308-2216
Email: *alias.aczel@troutmansanders.com*

J. Scott Jacobson, Esq.
Melissa J. Perignat, Esq. – via ECF
Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway, Suite 600
Atlanta, GA 30339
Email: *mperignat@hnzw.com*

William Rountree, Esq. – via ECF
Macey, Wilensky & Kessler, LLP
600 Marquis Two Tower
285 Peachtree Center Avenue, NE
Atlanta, GA 30303
Email: *wrountree@MaceyWilensky.com*

Monrovia Nursery Company
Attn: Tyler Page
18331 E. Foothill Blvd.
Azusa, CA 91702

Internal Revenue Service
Centralized Insolvency Operation
P. O. Box 21126
Philadelphia, PA 19114

Internal Revenue Service
Insolvency
Attn: District Director
Room 400 - Stop 334D
401 West Peachtree Street NW
Atlanta, GA 30308

Commissioner
Georgia Department of Labor
Sussex Place - Room 600
148 International Blvd., N.E.
Atlanta, GA 30303

United States Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530

US Attorney
Civil Process Clerk
1800 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303

Secretary of Labor
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

Federal Trade Commission
Southeast Region
Attn: Bradley Elbein, Director
Suite 1500
225 Peachtree Street, NE
Atlanta, GA 30303

Ronald S. Gellert, Esq.
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19102

Mark A. Gilbert, Esq.
Coleman Talley LLP
P.O. Box 5437
Valdosta, GA 31603-5437

K:\7031\1\NEW MASTER SERVICE LIST.doc