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 ADVANCED DRAINAGE SYSTEMS, 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 Advanced Drainage Systems, 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 made payments to Advanced Drainage Systems, Inc. ("Advanced") within 90 days of the Petition Date which were subject to avoidance as a preference pursuant to 11 U.S.C. §§ 547 and 550.

7.

On November 4, 2009, the Trustee filed an adversary complaint against Advanced seeking to avoid payments totaling $24,492.39 (the "Adversary Case"). The Trustee served Advanced with a copy of the adversary complaint and

summons via first class mail. Advanced failed to respond to the adversary complaint. The Trustee obtained a judgment by default as a result of Advanced's failure to answer the adversary complaint in the amount of $24,492.39 on March 22, 2010 (the "Judgment").

8.

After entry of the Judgment, Advanced realized its error in failing to respond to the adversary complaint. Advanced contends that its failure to answer was due to excusable neglect and that it has meritorious defenses to the Adversary Case.

PROPOSED SETTLEMENT

9.

The Trustee proposes to accept the sum of $12,246.19 from Advanced in full and complete satisfaction of the Judgment to be paid within ten days of the entry of the order approving the settlement. The Trustee will thereafter record a satisfaction of the Judgment with the Court.

LEGAL AUTHORITY

10.

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).

11.

The proposed compromise and settlement meets the above-stated standards for the Court's approval. Advanced is preparing to file a motion to set aside the Judgment on the grounds of excusable neglect. Assuming the Court sets aside the judgment, Advanced has certain defenses based on new value and the parties' ordinary course of business that would reduce the amount of any preference which

the Trustee could recover. The estate would incur expense litigating over whether Advanced should be permitted to set aside the Judgment and possible additional expense in prosecuting the preference claim. Settlement results in minimal expense to the estate and a significant payment to satisfy the Judgment. Even if the Court elected not to set aside the Judgment, the Trustee still has to collect on the Judgment which has other costs associated with it.

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

This 26th day of April, 2010.

/s/ John A. Christy
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UNITED STATES BANKRUPTCY COURT
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IN RE:	)	CHAPTER 7
	)	
PIKE NURSERY HOLDING LLC,	)	CASE NUMBER: 07-79129-mgd
	)	
Debtor.	)	
	)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that on April 26, 2010, Marcus A. Watson, Interim Chapter 7 Trustee, filed his Motion for Authority to Compromise and Settle Claim with Advanced Drainage Systems, Inc. ("Motion").

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 May 20, 2010.

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 26th day of April, 2010.

/s/ John A. Christy
John A. Christy, Esq.
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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 CLAIM WITH ADVANCED DRAINAGE SYSTEMS, INC." and "NOTICE OF HEARING" 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.

This 26th day of April, 2010.

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

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