

FILED

APR 14 2005

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 11
) Case No. 0-04-bk-00683-EWH
) 0-04-bk-00684-EWH
G.S. SMITH,)
PLAINS MANUFACTURING, LTD.,)
) **MEMORANDUM DECISION**
)
Debtor.)

INTRODUCTION

While the Debtors may be bound by a settlement stipulation with one of their creditors, the Chapter 11 Trustee, appointed after the stipulation was signed, but before it was approved by the Court, is not bound. Accordingly, there is no Settlement Agreement between the creditor and the Bankruptcy Estates for the Court to approve.

FACTS AND PROCEDURAL HISTORY

In December 2004, the Debtors entered into a stipulation ("Stipulation") with Jay Morgan ("Morgan") regarding Morgan's Rule 60 motion seeking to set aside an August 2, 2004 order ("Assumption Order") permitting the Debtors to assume an executory contract ("Contract") with Morgan. Under the Contract, Morgan purportedly granted the Debtors an interest in certain property, including eighteen auto part stores located in West Virginia, in return for a 25% interest in Debtors' Arizona gold

1 mining operation. After executing the Stipulation, the Debtors refused to proceed with the settlement on
2 the grounds that the Stipulation also had to be approved by one of the Debtors' major creditors, the
3 Schoenfelder Interests ("Schoenfelder").
4

5 On February 15, 2005, Morgan filed a "Motion for (1) an Order Declaring that a Settlement
6 Agreement exists between the Debtors, the Debtors' Chapter 11 Bankruptcy Estates, and Morgan, which
7 is subject to the approval of the Bankruptcy Court, and (2) an Order Approving the Settlement."
8 ("Settlement Motion"). On February 16, 2005, Morgan filed a Motion for Sanctions/Compensatory
9 Sanctions Against Sloan Smith and Robert M. Cook ("Sanctions Motion") for failing to comply with the
10 Stipulation.
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12 At the March 3, 2005 hearing on both motions, after discussions with the parties and with the
13 consent of Morgan, Schoenfelder and the Debtors, an order was entered directing the United States
14 Trustee to appoint a Chapter 11 Trustee. The Sanctions Motion was denied without prejudice and a
15 decision on the Settlement Motion was deferred until after a Trustee was appointed. A status hearing on
16 all pending matters was set for March 18, 2005.
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18 On March 9, 2005, Maureen Gaughan was appointed Chapter 11 Trustee. At the March 18,
19 2005 status hearing, the Trustee informed the court that due to the complexity of the Debtors' business
20 arrangements and apparently limited Estate assets, the Trustee did not think it would be cost effective for
21 the Trustee to undertake an investigation of whether the Debtors and Morgan had entered into a binding
22 settlement. Morgan's counsel argued that there was a settlement and that the next evidentiary hearing
23 should be on whether the settlement should be approved. Schoenfelder's counsel asserted that the
24 Stipulation was not binding on the Debtors' Estates and that the next evidentiary hearing should be on
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1 Morgan's Rule 60 Motion. I took the matter under advisement and promised to issue a ruling by mid-
2 April.

3 4 5 DISCUSSION

6 Morgan relies on Local Bankruptcy Rule of Procedure 9071-1(b) and case law for the proposition
7 that once a settlement is reached, it is binding on the parties until it is overruled by the court. However, the
8 Chapter 11 Trustee, who is now the Estates' representative, did not participate in any way in the
9 negotiation of the Stipulation and does not, therefore, fall within the language of Rule 9071-1(b) stating that
10 stipulations "shall be binding on the participating parties."
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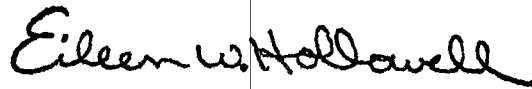
12 Furthermore, case law does not support Morgan's claim that the Estates are bound by the
13 Stipulation. Courts are split on whether a settlement agreement is binding on parties prior to court approval.
14 Contrast In re Cotton, 127 B.R. 287, 290 (Bankr. M.D. Ga.1991) ("an agreement by a debtor in
15 possession to compromise litigation is binding upon all parties to the agreement, pending a court
16 determination about whether or not to approve the agreement.") with In re Rothwell, 159 B.R. 374, 379
17 (Bankr. D. Mass. 1993) ("[a] settlement agreement is unenforceable without notice of the settlement to
18 creditors or a court order approving it."). While there are cases where courts have enforced settlements
19 made by a Debtor in Possession against subsequently appointed trustees, those cases dealt with court
20 approved settlement agreements. See In re Buzzworm, Inc., 178 B.R. 503, 507-508 (Bankr. D. Col.
21 1997).
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23 In In re Schaak Electronics, Inc., 85 B.R. 521 (Bankr. D. Minn. 1986), the court refused to
24 enforce a settlement agreement against the Chapter 7 trustee because the settlement had not been approved
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1 by the court before the conversion of the case. I believe the Schaak holding is analogous to the situation
2 in this case. Accordingly, Morgan's Motion for an order declaring that a Settlement Agreement exists is
3 denied as to the Debtors' Chapter 11 Bankruptcy Estates. There is, therefore, no basis to proceed with
4 a hearing on approval of the Settlement Agreement.¹

6 At the April 28th status hearing, the parties should be prepared to discuss how and when they wish
7 to proceed with the litigation of Morgan's Rule 60 Motion.

8 DATED this 14 day of April, 2005.

10 

11 EILEEN W. HOLLOWELL
12 United States Bankruptcy Judge

13
14 Copy mailed this 14 day of April, 2005, to:

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1 Of course, if the Trustee decided to join in the Stipulation, Morgan could then re-urge his
Motion for Order Approving the Settlement.

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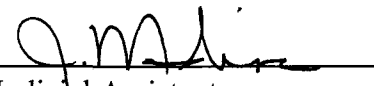
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