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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8 SANTA ANA DIVISION
9

10 In re:

) District Court Case Number
8:17-cv-01697-DSF

11
12 JANA W. OLSON,
13
14 Debtor.

) Bankruptcy Court Case Number
8:15-bk-12496-TA

15
16 PASSPORT MANAGEMENT, LLC,

17 Appellant,

) OLSON CHILDREN'S
IRREVOCABLE TRUST'S BRIEF

18 v.

19 RICHARD A. MARSHACK

20 Chapter 7 Trustee,

21 Appellee.
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1 DOUGLAS WEEKES, in his capacity as Trustee of the Olson Children’s
2 Irrevocable Trust, and BARRET WEEKES, in his capacity as Guardian ad litem
3
4 of the Olson children, hereby submit this Brief in response to the Brief filed by
5 Passport Management, LLC (“Appellant”).

6 **I.**

7
8 **STATEMENT OF APPELLATE JURISDICTION**

9 The District Court has the jurisdiction to hear this appeal of a final order
10 of the Bankruptcy Court pursuant to 28 U.S. C. § 158(a) (1).
11

12 This is an appeal from an Order of the Bankruptcy Court entered
13 September 18, 2017, approving a compromise agreement between the Chapter 7
14 Trustee, Richard Marshack, (“Appellee”) and the Olson Children’s Irrevocable
15 Trust, (“Trust”).
16

17 **II.**

18 **ISSUES PRESENT ON APPEAL**

19
20 In the Statement of Issues on Appeal the Appellant identified one issue for
21 this Court’s review:

22
23 1. Whether the Bankruptcy Court erred in approving the compromise
24 agreement between the Appellee and the Olson Children’s Irrevocable Trust,
25 whereby the Trust repatriated \$4.3 million dollars from the Cook Islands and
26 turned over \$3,377,324.13 for the benefit of the bankruptcy estate. Pursuant to
27

1 the compromise agreement, the Trust retained \$964,825.69.

2 **III.**

3 **STANDARD OF REVIEW**

4
5 The standard of review of a bankruptcy court's order approving a
6 compromise is reviewed for an abuse of discretion. *In re Debbie Reynolds Hotel*
7 & *Casino, Inc.*, 255 F. 3d 1061, 1065 (9th Cir. 2001). As a question of law, an
8 appellate court reviews de novo a bankruptcy court's interpretation of the
9 Bankruptcy Code. *Id.*

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11 **IV.**

12 **STATEMENT OF THE CASE**

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14 In this case the Appellant challenges the Bankruptcy Court's Order of
15 September 18, 2017, approving a compromise between the Appellee, Chapter 7
16 Trustee, Richard Marshack and the Olson Children's Irrevocable Trust. The
17 compromise brought \$3,377,324.13 into the bankruptcy estate for the benefit of
18 creditors and the Trust retained \$964,825.69 for the benefit of the Olson
19 children. Appellant challenges the Order on the basis that the agreement is a
20 priority violating distribution and thereby should not have been approved.

21
22 **V.**

23 **STATEMENT OF FACTS**

24
25 On May 14, 2015, Debtor filed a voluntary petition for relief under

1 Chapter 7 of Title 11 of the United States Bankruptcy Code. (REC_215-REC-
2 221). (Petition). Richard A. Marshack is the duly appointed and acting Chapter
3
4 7 Trustee of the Estate. (REC_535, ln. 18-19).

5 During the course of Debtor's bankruptcy, the Chapter 7 Trustee learned
6 that Debtor had transferred her beneficial interest in the Miyim Cook Islands
7 Trust, later changed to the Pink Panther Trust to her two minor children in
8 2011. The funds held in the Pink Panther Trust totaled approximately 4.5
9 million dollars. After learning of this information, it appears that the Chapter 7
10 Trustee attempted to gain the cooperation of Debtor to obtain turnover of the
11 funds from the Cook Islands. The Chapter 7 Trustee, Passport Management,
12 LLC, this Court, and Barret Weekes, father of Debtor, were all unsuccessful in
13 convincing the Debtor to repatriate the funds held in the Cook Islands.
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17 The Chapter 7 Trustee contacted Barret Weekes ("Barret") in or around
18 February 2017, seeking his direct assistance in a new approach to this matter.
19 The Chapter 7 Trustee advised that if Barrett did not accept the guardian ad
20 litem position, he would be left with no other choice than to sue the Olson
21 children, ages 6 and 8. Barret agreed to accept the guardian ad litem position for
22 the sole purpose of shielding his grandchildren from suit. He did not accept this
23 position to help the Debtor or Erlend Olson, nor did he engage to help the
24 Bankruptcy Attorneys or Passport Management, LLC further their cases. The
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1 ONLY reason Barret and later Doug engaged was to protect two minors from
2 being sued for the conduct of their Mother.

3
4 It was not until Barret stepped in and was appointed guardian *ad litem*
5 over the Olson children that there was any movement towards repatriation of the
6 funds held in the Cook Islands. It bears noting that Barret was contacted by the
7 Chapter 7 Trustee in February 2017, approximately eight (8) months into
8 Debtor's second incarceration for contempt. Debtor has never freely cooperated
9 with Passport or the Chapter 7 Trustee. In fact, she has done just the opposite.
10 Debtor's conduct of sitting in jail for over a year and sending correspondence to
11 the offshore Trustee advising that she would sue him if he returned the funds to
12 the US, are clear indications of the lengths Debtor would go, to prevent the
13 return of the offshore funds.
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17 Pursuant to the subject compromise, Barret, settled a new trust in
18 California for the benefit of the children entitled the Olson Children's
19 Irrevocable Trust dated June 17, 2017. Douglas Weekes ("Doug") was
20 appointed Trustee of the Children's Trust. When initially asked to act as Trustee
21 of the Children's Trust, Doug declined asking that a Corporate Trustee be
22 named. Doug was very concerned with the liability both he and Barret would
23 face for assisting the Chapter 7 Trustee. Unfortunately, given the surrounding
24 litigation and international complexity, a Corporate Trustee would not accept
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1 this role. Left with no other viable option to protect the children, Doug accepted
2 the role of Trustee of the Children's Trust.

3
4 The trust was specifically worded to maintain the separate character of the
5 Trust's interest and dictated that Debtor and Erlend Olson, had no access to nor
6 could benefit directly from the trust assets. The trust goes on to provide that
7
8 neither Doug nor Barret receive any economic benefit for their roles. All
9 distributions on behalf of the children must be made directly to institutions
10 furthering health, welfare and education of the minor children. Barret spent
11 considerable sums to draft a Trust that precludes Debtor and Erlend Olson's
12 ability to access trust funds.
13

14
15 Doug continued corresponding with the Chapter 7 Trustee in a good faith
16 attempt to settle the estates potential claims against the minor children. The
17 compromise documents were conceived and created by the bankruptcy
18 attorneys, and at no time did either Doug or Barret propose any changes or
19 adjustments to the proposed settlement split of 77.78% and 22.22%. The
20 compromise agreement prepared by seasoned Chapter 7 Attorneys, who were in
21 regular contact with Passport Attorneys, appeared to be fair and equitable and
22 most importantly protected the children from suit.
23

24
25 On July 5, 2017, \$4,342,149.82 was returned from the Cook Islands.
26 (REC_536, ln. 21-22). Upon receipt and as required by the compromise
27

1 agreement, the Children's Trust immediately transferred 77.78% or
2 \$3,377,324.13 to the Chapter 7 Trustee for the benefit of creditors. (Id., ln. 22)
3
4 The terms of the compromise are fair and equitable for all parties. The Chapter
5 7 Trustee deemed the terms to be fair and reasonable in light of his view that the
6 probability of collection of offshore funds from an uncooperative Debtor merited
7
8 a solution that would bring substantial sums into the bankruptcy estate and
9 would end the multi-year log jam this case had become. On July 7, 2017, Jana
10 Olson was released from the custody of the United States Marshal Service.
11

12 The Weekes' voluntarily agreed to assist the Chapter 7 Trustee to protect
13 two small children from suit. They have invested significant time and monies
14 into this case and do not stand to receive any personal financial gain for their
15 assistance. Most importantly, the Weekes' have honored every request of the
16 Chapter 7 Trustee and the terms of the compromise agreement. Before creditor
17 priority is applicable, there must be funds available for disbursement. The
18 compromise achieves that objective, after several years of unsuccessful attempts
19 by both the Chapter 7 Trustee and Passport. Passport is now in position to
20 receive the lion's share of the funds repatriated from the Cook Islands, a feat that
21 could not be accomplished in well over six years.
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25 Now Passport seeks to keep all funds repatriated from the Cook Islands
26 without giving deference or consideration to the astronomical feat accomplished
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1 by the compromise agreement and the resulting repatriation of \$4.3 million
2 dollars from the Cook Islands.

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4 **VI.**

5 **LEGAL ARGUMENT**

6 **A. The Bankruptcy Court's Approval of the Compromise**
7 **Agreement between the Trustee and the Olson Children's**
8 **Irrevocable Trust was Not an Abuse of Discretion.**

9
10 The Court's approval the compromise between the Chapter 7 Trustee and
11 the Olson Children's Irrevocable Trust does not violate the Bankruptcy Code's
12 priority scheme.

13
14 Bankruptcy Rule 9019(a) provides that the court may approve a trustee's
15 proposed settlement of a claim. The law favors and encourages compromises.
16 *Ahern v. Central Pac. Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988); *United*
17 *States v McInnes*, 556 F.2d 436, 441 (9th Cir. 1977). It is well-established that
18 a compromise should be approved if it is in the best interest of the estate and
19 is fair and equitable for the creditors," *Schmitt v. Ulrich (In re Schmitt)*, 215
20 B.R. 417, 424 (B.A.P. 9th Cir. 1997); *ATKN Co. v. Guy F. Atkinson Co of Cal.*
21 *(In re Guy F. Atkinson Co.)*, 242 B.R. 497, 502 (B.A.P. 9th Cir. 1999).

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25 As detailed in Passport's Opening Brief, under the Bankruptcy Code,
26 secured creditors must be paid first before any other priorities come into play. 11
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1 U.S.C §§725, 726. The Code's priority scheme is designed to have application
2 at final distribution or termination of the case.

3
4 It is undisputed that Passport has a first- in-priority claim to the
5 bankruptcy estate. A claim that is perfected upon final distribution of the
6 bankruptcy estate and as against junior creditors/claimants. *Czyewski v. Jevic*
7 *Holding Corp.*, ___ U.S. ___, 137 S. Ct. 973 (2017). Here, the Children's Trust
8 is not a creditor or claimant and therefore not subject to the Code's priority
9 scheme. The Children's Trust turned over \$3,377,324.13 to the Chapter 7
10 Trustee in settlement of all potential claims the Trustee had against the minor
11 children. The Chapter 7 Trustee is empowered to make reasoned decisions
12 regarding estate claims and did so in the present case.

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16 The compromise agreement taken in light of the very unusual facts of this
17 case, is fair and reasonable, in the best interest of the estate and serves other
18 Code-related objectives. It successfully repatriated all funds held in the Cook
19 Islands, thereby eliminating the risk of never obtaining turnover of the funds.
20 Further, the compromise agreement resulted in the bankruptcy estate
21 maximizing limited resources for the benefit of creditors and most importantly
22 to the Weekes, it resolved all potential litigation risk against the minor children.

23
24
25 **B. Reversal of the Bankruptcy Courts September 18, 2017**
26 **Order will Render the Provisions of the Settlement Agreement**
27 **Void and Without Effect**

1 The Chapter 7 Trustee and Olson Children’s Irrevocable Trust entered
2 into the compromise agreement with the intention of working together for the
3 purpose of the Children’s Trust obtaining possession of all funds held in the
4 Cook Islands, including funds held in the Pink Panther Trust; and upon receipt
5 of funds by the Children’s Trust and disbursement to the Trustee, the agreement
6 resolved the competing claims of ownership to such funds. (REC_547)
7
8

9 The terms of the agreement provide as follows:

10 “1. Court Approval of this Settlement Agreement. The
11 effectiveness of the consideration provided by the Trustee pursuant
12 to this Agreement is contingent upon the Court entering an order
13 approving it. Failure of the Court to approve this Agreement shall
14 render such provisions void and without effect. The date that the
15 Court enters its order approving Agreement shall be referred to as
16 the ‘Effective Date.’” (REC_548).
17
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19

20 Should this Court reverse the Bankruptcy Courts order of September 18,
21 2017, the effectiveness of the Trustee’s consideration will fail and render the
22 provisions of the agreement **VOID** and **WITHOUT EFFECT**. As such, **ALL**
23 funds repatriated from the Cook Islands, the entire \$4.3 million dollars is the
24 property of the Children’s Trust, and all sums turned over to the Trustee
25 (\$3,377,324.13) must be returned to the Children’s Trust until such time as an
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1 avoidance action can be brought and decided pursuant to 11 U.S.C. §548(e).

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VII.


CONCLUSION

The Bankruptcy Court came to a reasoned, detailed and legally supported opinion approving the compromise agreement between the Appellee and the Olson Children’s Irrevocable Trust.

Therefore, the Trust respectfully submits, that for the reasons set forth above, the decision of the Bankruptcy Court should be affirmed.

Dated: 12/27/17

CICELY T. RAY & ASSOCIATES



CICELY T. RAY, Attorney for the Olson
Children’s Irrevocable Trust

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bank. P. 8015(a)(7)(C), the undersigned certifies that the preceding Brief of the Olson Children’s Irrevocable Trust, complies with the type volume limitation in Fed. R. Bank. P. 8015(a)(7)(B)(i), Local Rule 11-3.1.1, and the Standing Order for Cases Assigned to this Court, because it has been prepared in Times New Roman style, 14-point font and contains 2,199 words, excluding the items identified in Fed. R. Bank. O. 8015(a)(7)(B)(iii).

PROOF OF SERVICE

I, the undersigned, declare:

I, Teresa Wright am a citizen of the United States of America, am over the age of eighteen (18) years, and not a party to the within action. I am an employee of Cicely T. Ray & Associates and my business address is 4740 Green River Road, Suite 314, Corona, CA 92880. On 12/27/17, I caused to be served the following documents: OLSON CHILDREN'S IRREVOCABLE TRUST OPENING BRIEF TO APPELLANT PASSPORT MANAGEMENT, LLC to the parties involved addressed as follows:

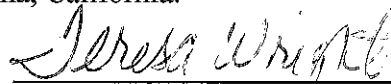
SEE ATTACHED SERVICE LIST

(XX) BY MAIL: I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at Corona, California on 12/27/17. I am readily familiar with the business practice for collection and processing of mail in this office; and that in the ordinary course of business said documents would be deposited with the U.S. Postal Service in Corona on that same day. I understand that service shall be presumed invalid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this declaration.

(XX) BY ECF SYSTEM: Electronically to the parties of record in this matter, through the Court's ECF System.

() BY FEDERAL EXPRESS OVERNIGHT DELIVERY: I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by Federal Express. I am readily familiar with my firm's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course, the document(s) described above will be deposited in a box or other facility regularly maintained by Federal Express or delivered to an authorized courier or driver authorized by Federal Express to receive documents on the same date that is placed at Cicely T. Ray & Associates for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 27, 2017, at Corona, California.



Teresa Wright

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