

District Court Case No: 8:17-cv-01697-DSF

United States District Court
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re: JANA W. OLSON

Debtor

PASSPORT MANAGEMENT, LLC,

Appellant,

v.

RICHARD A. MARSHACK, Chapter 7 Trustee,

Appellee.

Bankruptcy Court Case No.: 8:15-bk-12496-TA, Santa Ana Division

ANSWERING BRIEF BY APPELLEE AND
CHAPTER 7 TRUSTEE, RICHARD A. MARSHACK

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Appellee, Richard A. Marshack in his capacity as Chapter 7 Trustee (“Trustee”) of the Bankruptcy Estate of Jana W. Olson, submits this response to the Opening Brief (“Opening Brief”)¹ filed by Appellant Passport Management, LLC (“Passport”). This appeal is from the Bankruptcy Court’s September 18, 2017, order approving compromise between Trustee and the Olson Children’s Irrevocable Trust.

1. Summary of Argument

In 2009, Jana Olson (“Debtor”) self-settled an offshore trust in the Cook Islands and funded it with \$4.6 million. In 2011, Passport sued Debtor. Within weeks of being sued, Debtor fraudulently transferred her beneficial interest in her offshore trust to her two minor children. In 2015, Debtor filed bankruptcy. Although the Bankruptcy Court ordered Debtor to repatriate the funds, she failed and refused to do so. As a result, Debtor was adjudged in civil contempt and incarcerated. After more than one year of jail, Trustee entered a settlement agreement with Debtor’s children. The compromise provided (a) that the transfer of the beneficial interest was avoided in its entirety as fraudulent; (b) that the funds would be repatriated to the United States; (c) that approximately \$3.4 million (80% of the \$4.3 million remaining in the Trust) would be immediately turned over to Trustee; and (d) that approximately \$965,000 would be retained by the children pending approval of the settlement. The funds were returned, Debtor was released from incarceration, and Trustee’s proposed settlement was approved by the Bankruptcy Court over Passport’s objection. This appeal followed.

Passport is the largest creditor of Debtor’s bankruptcy estate. Through a previous agreement with Trustee, it also has a secured claim against all assets of the estate including recoveries from avoidance actions. Thus, the dispositive issue

¹ Dk. No. 8 (“Opening Brief”).

in this appeal is *what did the Trustee recover by way of the settlement with Debtor's children*: (a) the full \$4.3 million repatriated from the Cook Islands; or (b) the \$3.4 million retained by the estate under the settlement. If the former, then Passport is correct that its lien attached to the full \$4.3 million and Trustee cannot agree to give \$965,000 of Passport's collateral to the children by way of settlement. If the latter, then Passport's lien never attached to the \$965,000 and its argument fails.

The Bankruptcy Court declined Trustee's request that the settlement agreement with the children be interpreted to make a finding regarding what the Trustee recovered. Because contract interpretation is a question of law reviewed *de novo*, Trustee believes that this Court can and should interpret the settlement agreement and make this dispositive conclusion of law. If this Court determines that Trustee recovered \$4.3 million, then the Bankruptcy Court's order should be reversed because Passport has not consented to the disposition of \$965,000 of its collateral. On the other hand, if this Court determines that Trustee recovered only \$3.4 million, then the Bankruptcy Court's order should be affirmed.

2. Standard of Review

Contract interpretation and the meaning of contractual provisions are reviewed *de novo*. *DP Aviation v. Smiths Indus. Aerospace & Def. Sys. Ltd.*, 268 F.3d 829, 836 (9th Cir. 2001). Interpretation of settlement agreements, like interpretation of contracts, are also subject to *de novo* review. *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989).

3. Statement of Facts

A. The Bankruptcy Case

On May 14, 2015, Debtor filed a voluntary petition under Chapter 7 of Title 11 of the United States Code. Richard A. Marshack is the duly appointed and acting Chapter 7 Trustee of the Estate.

Prior to bankruptcy, Debtor self-settled the Miyim Cook Islands Trust dated 2009 (“Trust”). The Trust was initially funded with \$4.6 million. Upon formation, Debtor was the sole settlor and beneficiary. In 2011, Debtor transferred her beneficial interest in the Trust to her two minor children for no consideration. Immediately prior to bankruptcy, Debtor changed the name of the Trust to the Pink Panther Trust and falsely stated in her Schedules that the trust was “defunct and defunded.”

Trustee contended that Debtor’s creation and funding of this self-settled trust was avoidable pursuant to 11 U.S.C. § 548(e) [“the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if— (A) such transfer was made to a self-settled trust or similar device”]. In the alternative, Trustee contended that Debtor’s transfer of her beneficial interest to her children was avoidable as an actual or constructive fraudulent transfer because she made the transfer within weeks after being sued by Passport.

During the course of Debtor’s bankruptcy, she was ordered to repatriate the funds from the Cook Islands. After failing to bring the money back, Debtor was adjudged in civil contempt and was incarcerated for more than one year. In order to obtain turnover of the funds from the Cook Islands, Trustee determined that it was necessary to seek the cooperation of Debtor, her former spouse Erlend Olson, and a court-appointed guardian for her children (who were the beneficiaries of the Trust). After obtaining the signed written consent of these parties on documents which had been preapproved by the offshore trustee, \$4,342,149.82 was returned from the Cook Islands.

To avoid having to sue Debtor’s children alleging that they were recipients of fraudulent transfers (which the United States Supreme Court in *Husky Int’l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581 (2016) determined were debts that cannot be

discharged), to preclude the possibility that the funds would never be returned, and to heed the Bankruptcy Court's repeated admonitions about finding a solution that would result in Debtor purging her contempt, Trustee decided that the best solution was to enter the settlement with the children.

On July 5, 2017, \$4,342,149.82 was received by the Children's Trust from the Trust in the Cook Islands. Of that amount, \$3,377,324.13 was immediately transferred to Trustee for the benefit of the bankruptcy estate. The compromise provided that the remaining \$964,825.69 would be retained by the Children's Trust for the benefit of the children (but not either of their parents). On July 7, 2017, Debtor was released from the custody of the United States Marshal Service.

Passport filed opposition to the proposed settlement. In its opposition, Passport argued that it had a lien on the full \$4.3 million repatriated from the Trust because the settlement agreement with the children provided that Debtor's transfer of her beneficial interest in the Trust to her children was avoided in its entirety without any contingencies (such as Bankruptcy Court approval of the settlement). Instead, the condition regarding Bankruptcy Court approval applied only to the Trustee's proposed settlement that the Children's Trust retain the \$965,000.

On September 18, 2017, the Bankruptcy Court entered an order approving Trustee's settlement with the Children's Trust. In reply to Passport's opposition, Trustee filed a reply brief which outlined what Trustee believed was the dispositive issue. If the children's stipulation that the entire transfer was avoided as fraudulent was an agreement separate from the proposed compromise which allowed them to retain \$965,000 of the recovered funds, then Passport was correct that it had a lien on the Estate's recovery and the Trustee could not give away funds subject to its lien. On the other hand, if the stipulated avoidance was interpreted as being an integral part of a single agreement, then the \$965,000 would never have become property of the estate subject to Passport's lien.

In ruling on Passport's objection to the settlement, the Bankruptcy Court declined to address this issue of contract interpretation and approved the proposed settlement as being a reasonable exercise of Trustee's business judgment.

4. Argument

A. Passport's Secured Claim and Lien

Passport's argument rests largely on its status as a secured creditor. It is thus important to understand the basis and scope of its secured claim.

Passport filed an \$11,590,628.98 secured claim that would have prevented any other creditor from being paid. (REC_290-REC_285) Passport asserted that it had judgment liens that covered all of Debtor's property through (i) a Judgment Lien on Personal Property ("JLPP") filed with the California Secretary of State; (ii) recordation of Abstracts of judgment ("Abstracts"); (iii) service on Debtor of an order to appear for judgment debtor examination ("ORAP"); and (iv) claims of constructive trust over all of Debtor's property.

Trustee disputed that Passport was a secured creditor including on any funds recovered from the Cook Islands; however, the costs of litigating these issues would have been significant. Moreover, even if Passport's claim was unsecured, it would comprise over 99% of the unsecured creditor body. Accordingly, Passport and Trustee entered an agreement ("Passport Agreement") that allowed Passport's claim as a first-in-priority secured claim senior to all others. In exchange, Passport agreed to a carve-out sufficient to allow for payment of all administrative and unsecured claims filed by the bar date as though its claim was not secured ("Agreement"). (REC_400-REC_533) The Passport Agreement thus allowed Trustee to administer the Estate as though Passport's claim was unsecured.

Specifically, the Passport Agreement provides that its lien extends to:

“all *property recovered* under any theory of law or by consent from trust(s) settled by Debtor in the Cook Islands including the "Pink Panther Trust, the other Cook Islands trust described in an email from Wayne Philips to the Debtor dated August 28, 2015 and including other purported trusts in the Cook Islands and elsewhere and other funds that the debtor...”

REC_421, ¶4 (emphasis added).

If the settlement with the Children’s Trust resulted in the Estate recovering only the approximate \$3.4 million already transferred to the Trustee, then Passport would not have a lien on the approximate \$965,000 balance because such funds were never recovered by Trustee. However, if the Court interprets the settlement with the Children’s Trust to mean that the Estate recovered the full \$4.3 million, then then Passport’s argument would be meritorious because it has not consented to the proposed disposition of its collateral.

B. The Bankruptcy Court Correctly Determined that *Jevic* is Inapposite to the Facts of this Case

Passport devotes a considerable portion of its brief to discussing the Supreme Court’s case in *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017). Opening Brief p. 35:1-37:6; 40:19-41:2; 44:7-12; 44:22-27. Trustee, however, does not believe that *Jevic* controls the disposition of this matter. Either Trustee “recovered” 80% (\$3.4 million) or he recovered 100% (\$4.3 million) of the funds repatriated from the Cook Islands. If the Court determines that the recovery is 100%, then Trustee acknowledges that he cannot agree to provide the Children’s Trust with funds in derogation of Passport’s lien rights.

Trustee’s counsel noted at the hearing on the Motion that:

“I don't see the Court's determination today to rest in any part on *Jevic*. I don't see this as even necessarily the balancing of unpalatable alternatives. I really think the dispositive issue today is Passport has a lien on that which

the trustee recovers... the point is what did the trustee recover? Whatever the trustee recovers is subject to Passport's lien.”

REC_194:16-REC_195:2.

Similarly, the Bankruptcy Court acknowledged the “*Jevic* is a different case – first of all, this is not a dismissal, this is a compromise, right?” (REC_ 187:25 - REC _188:1). The Bankruptcy Court went on to say:

“...even the *Jevic* opinion, as I read it, goes at some length to say their ruling is somewhat narrow. It's in the context of a dismissal that violates the priority that would otherwise apply. But surely you're not saying that by reason of that now, the secured -- the senior creditor has an absolute veto, and there's nothing, by way of settlement or otherwise, that the Court could do about it...

REC _188:1-9.

There is no dispute that Passport’s lien only attaches to whatever the bankruptcy estate recovers. *Jevic* only requires disposition of estate property according to the priorities set forth in the Bankruptcy Code. As such, if this Court determines that Trustee did not recover the full \$4.3 million, then *Jevic* is a red herring and has no application. Instead, this appeal can and should be decided by interpreting Trustee’s settlement agreement with the Children’s Trust to determine what was recovered by the bankruptcy estate.

C. The Real Issue - Contract Interpretation Under California Law

Interpretation of a settlement agreement is a question of law subject to *de novo* review. On appeal, the court should defer to any findings made in interpreting a settlement agreement unless they are clearly erroneous. *ASARCO, LLC v. Celanese Chem. Co.*, 792 F.3d 1203, 1206 (9th Cir. 2015). To determine what a settlement agreement covers, a court of appeals interprets *de novo* the settlement agreement, where “[t]he construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1990) (emphasis added).

Under California law, Cal. Civ. Code, § 1638, provides that the language of a contract is to govern its interpretation. Cal. Civ. Code, § 1638; *Wolf v. Walt Disney Pictures & Television*, 162 Cal. App. 4th 1107, 1108 (2008). The interpretation of a contract is a judicial function, and “[W]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible...” Cal. Civ. Code § 1639. In engaging in this function, a trial court gives effect to the mutual intention of the parties as it existed at the time the contract was executed. *Id.* Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract's terms. Cal. Civ. Code § 1641 provides the whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. Furthermore, “[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.” Cal. Civ. Code § 1642. In sum, “a contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.” Cal. Civ. Code § 1643.

D. The Agreement with the Children’s Trust and its Consideration

An agreement to settle a legal dispute is a contract and its enforceability is governed by familiar principles of contract law. *Miller v. Fairchild Indus.*, 797 F.2d 727, 733 (9th Cir. 1986); *Village of Kaktovik v. Watt*, 223 U.S. App. D.C. 39, 689 F.2d 222, 230 and n. 62 (D.C.Cir. 1982). Each party agrees to "extinguish those legal rights it sought to enforce through litigation in exchange for those rights secured by the contract." *Village of Kaktovik*, 689 F.2d at 230; *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75, 77 (9th Cir. 1987) (if interpretation of a contract is based on analysis of language and application of principles of contract interpretation, review is *de novo*). *In re United States Fin. Sec. Litig.*, 729 F.2d

628, 631-32 (9th Cir. 1984) (interpretation of settlement agreement when restricted to language of the settlement, like contracts, is subject to *de novo* review). “Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.” Cal. Civ. Code § 1605.

Under the terms of the subject compromise, the children’s guardian *ad litem* settled a new trust in California for the benefit of the children entitled the Olson Children's Irrevocable Trust dated June 16, 2017 ("Children's Trust"), and cooperated in requesting that the offshore trustee transfer all remaining funds from the Trust to the Children’s Trust. Upon receipt of the funds which totaled \$4,342,149.82, the Children's Trust immediately transferred \$3,377,324.13 to Trustee for the benefit of the bankruptcy estate. In exchange, Trustee agreed to allow the Children's Trust to retain the remaining \$964,825.69 for the benefit of the children (and not either of their parents).

The Children’s Trust Agreement provides that:

Transfer of Assets to the Children's Trust. *Barret, in his capacity as guardian ad litem for the Children, agrees that all transfers of property by [Debtor] to the Children are avoided, recovered by, and preserved for the benefit of [Debtor’s] bankruptcy estate.*
 Immediately upon execution of this agreement, Barret shall request that all property transferred to the Children by [Debtor] be deposited into the Settlement Escrow Account related to the Children's Trust including instructing the Trustee of the PPT [Pink Panther Trust] to transfer all of the funds and assets owned by PPT (the "PPT Funds") for deposit into the Settlement Escrow Account maintained by Douglas, as trustee of the Children's Trust, at UBS. ***Barret and Douglas agree that all funds received by the Settlement Escrow Account or the Children's Trust that must be distributed to [Trustee] pursuant to this agreement is property of [Debtor’s] bankruptcy estate and will be held in trust for the benefit of [Trustee] until such funds are received by [Trustee].***

REC_556 ¶2 (emphasis added).

The agreement does not contain any contingencies regarding the avoidance of fraudulent transfer in its entirety. Instead, the contingency of bankruptcy court approval applied only to the right of the Children's Trust to retain \$965,000 of the repatriated funds. *Id.*

The Children's Trust Agreement further provides:

By [Trustee]: Upon receipt of all funds required to be distributed to [Trustee] as set forth in paragraph 3 and the Effective Date,
(i) [Trustee] waives and releases any and all right, title to, and interest in the PPT Funds retained by Douglas for the Children's Trust; and
(ii) releases any fraudulent transfer claims against the Children arising from transfers received from [Debtor]...

By the Children, through Douglas and Barre[t] in their capacities as guardian ad litem and as trustor and trustee of the Children's Trust: The Children, Douglas, and Barret waive and release any and all right, title to, and interest in funds received by the Children from [Debtor] that are due to [Trustee] under this agreement...

REC_556 ¶5a, 5b.

Trustee's counsel noted at the hearing on the compromise that:

"So when we look at the settlement agreement that's been proposed, the stipulation by the guardian for the children that the fraudulent transfers are avoided, recovered, and preserved is without contingency of Court approval. And I think Passport takes that and then moves to the next step which is therefore it's an asset of the estate. But I think to be intellectually honest we have to look at the agreement as a whole. And the agreement as a whole, and in the opening paragraph says; "in consideration of the foregoing recitals" and then it says, "and the mutual covenants, conditions, promises, and agreements contained herein the parties agree as follows." So what was the consideration on the guardian to enter into this agreement? It was the split of the money 80/20. I don't think we can parse out the avoidance and say that's an agreement that stands on its own without contingency."

REC_195:3-18.

Trustee's counsel and the Bankruptcy Court went into further discussion of the above as follows:

[COUNSEL FOR TRUSTEE]-As I understand that if you were to disapprove the agreement and there's some theory that the estate gets the rest of the money and that's the trustee's duty to look out for creditors, but we entered into an agreement and we are asking the Court to approve that agreement. And we're standing by that agreement. And to be intellectually honest, I think the estate recovered

80 percent, because when you take the consideration as a whole, what did the guardian give up? It was, you know, basically, the avoidance. And what did he get in return? It was the retention of 20 percent. So when you –

THE COURT: So it never passes the magical line to property of the estate?

[COUNSEL FOR TRUSTEE]: Exactly. And you can't break the agreement into two. And I know other counsel are here and they're going to make appearances, but, you know, Mr. Weiss, who represents Mr. Olson, made a comment to me prior to the hearing and I went and looked it up. And it's Civil Code Section 1642.

REC_196:6-23.

....

“Passport would have the Court divide the settlement agreement into two separate and independent contracts, really is part and parcel of a single agreement. And Civil Code Section 1642 is very short, and it's one sentence. ‘Several contracts relating to the same matters between the same parties and made as parts of substantially one transaction are to be taken together.’ And I think this is a contract interpretation. And you can't divide up the consideration in the agreements of the parties into two separate agreements and say the moment there's the agreement for avoidance, the lien attaches to 100 percent before the consideration to be received by the guardian is received in return, which then triggers Passport's rights as a secured creditor and its veto rights to the compromise, et cetera. So I really think the focus and the one issue that I think the Court should make a finding on is does the agreement provide for the trustee to receive 80 percent to be property of the estate or 100 percent...”

REC_197:1-16.

....

[COUNSEL FOR TRUSTEE]: The issue that I think the Court has to decide is what is the trustee recovering under this agreement. If it's 80 percent, then the whole secured creditor lien issue, I think, evaporates. And if it's 100 percent, and I think we put it in our reply, I think Passport is correct that their lien might give them a, you know, veto power over the agreement. But I think, in all honesty, that's the issue that the Court has to decide in ultimately determining if this settlement should be approved or not.”

REC_199:12-20.

At the conclusion of the hearing, the Bankruptcy Court did not interpret the Children's Trust Agreement to determine what the Trustee recovered. Instead the Bankruptcy Court opined, “There is an argument that

[Trustee's counsel] made that maybe not, maybe it's just the 80 percent. So it's disputable. But in the context of a 9019 motion, I am supposed to not litigate all of this thing." REC_206:4-7. Trustee's counsel inquired further of the Court regarding whether it would be making a finding that the Trustee recovered 80% (\$3.4 million) or 100% (\$4.3 million):

[Trustee's Counsel]: And then Your Honor did say at the conclusion of your ruling, and this may be close to a quote, "sorry Passport, you only get 80 percent." Do I interpret that as Your Honor has made a finding that the estate has only recovered the approximate 80 percent?

THE COURT: What I am making a finding of is that the law is sufficiently -- or shall I say the question of is this a property issue, is this a contract issue is sufficiently fuzzy. That to get to the bottom of it would take further litigation, and I don't believe that's what I'm required to do at this stage. I think I'm required to identify issues and then compare is the settlement a reasonable disposition of those issues. And so that's what I'm finding. I think that it could go either way. I think this is a reasonable disposition and therefore, I am going to approve it.

REC_211:19 - REC_212:9.

With the utmost of respect for the Bankruptcy Court, Trustee believes that the interpretation of the Children's Trust Agreement is an issue that has to be resolved and is separate from any issue that would have arisen in fraudulent transfer litigation absent the subject settlement. Because the standard of review in this appeal is *de novo*, Trustee believes that this Court can and should interpret the settlement agreement and make this dispositive ruling.

E. Reasonable Settlements Must Be Approved

If the Trustee only recovered 80% (\$3.4 million), then Passport's lien never attached to the remaining \$965,000. Passport, however, argues in the alternative that it was unreasonable to allow "pirates" to keep such a large amount of money. The Bankruptcy Court's conclusion that the proposed settlement was reasonable should nevertheless be affirmed.

A bankruptcy court's order approving a compromise agreement is reviewed for an abuse of discretion. *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380 (9th Cir.), cert. denied, 479 U.S. 854 (1986). The bankruptcy court may approve a compromise only if it is fair and equitable. *Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). In determining whether the compromise is proper, the court must consider: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Id.* at 1381. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed. *Id.* While a creditor's objection to a compromise must be afforded due deference, such objection is not controlling, and while the court must preserve the rights of the creditors, it must also weigh certain factors to determine whether the compromise is in the best interest of the bankrupt estate. *In re A & C Props.*, 784 F.2d 1377, 1378 (9th Cir. 1986).

At the point when the Children's Trust Agreement came to fruition, Debtor had been incarcerated for nearly one year for her refusal to repatriate the Cook Island Trust funds. Opening Brief, p. 21. Simply put, it was necessary to enter into a compromise to gain the cooperation of Debtor, her former spouse Erlend Olson, and a court-appointed guardian for the children (Debtor's father, Barret Weekes), in order to repatriate monies being held in the Cook Island Trust. *Id.*

In recognition that it was unlikely that the funds would ever be repatriated without assistance from someone in close contact with the offshore trustee, the Trustee negotiated a settlement with Mr. Matsen who was the attorney that

originally drafted the Trust where the funds were being held. Mr. Matsen communicated with the offshore trustee and learned the terms upon which the funds would be returned. The required conditions included agreements executed by the guardian *ad litem* for the Olson Children, Debtor, and her former spouse, Erlend Olson. As set forth in the Motion, one of those demands was also that the funds be transferred to a trust that similarly named the Olson Children as beneficiaries. Although Passport contends that “Debtor’s signature was all that ever was required to recover the money” (Opening Brief, p. 21, ll. 1-5), that was not what was represented to the Trustee by Mr. Matsen.

In Trustee’s business judgment, it was in the best interest of the Estate to enter into an agreement with the Weekes family and allow Debtor's children to retain the \$965,000 for the following reasons: (1) to avoid having to sue Debtor's children as the recipients of fraudulent transfers (which are non-dischargeable debts), despite Trustee's confidence in the strength of that claim; (2) to preclude the possibility that the funds would never be returned from the Cook Islands; and (3) to heed the Bankruptcy Court's encouragement to find a solution that resulted in Debtor purging her contempt. Opening Brief, p. 21.

In good faith, the guardian *ad litem*, Barret Weekes, retained counsel and had a trust drafted that complied with the offshore trustee’s demands. The trustee of the new trust, Debtor’s brother Doug Weekes, performed in good faith and requested the return of the funds to an account under his control. Pursuant to the proposed compromise, Doug Weekes immediately delivered the negotiated portion to the Trustee and continued to hold the approximate \$965,000 balance in trust pending entry of a final order approving the settlement.

The Bankruptcy Court thus relied in part on practical considerations, i.e., the difficulty in and cost involved in the lengthy effort to collect the funds in the Cook Island’s Trust, and the question of whether Debtor could as a practical matter have

remained in jail indefinitely until she purged her contempt, concluding that “[a]bsent a compromise approach it is very questionable whether there would even today be anything to discuss here” because there would be “no assets in the estate at all.” (REC 174- REC_176); Opening Brief, p. 25. The Bankruptcy Court noted that:

“I think somebody in Cook Islands probably decided that they weren't going to corner the world's market of coconuts. So what they would do instead is they would create what, as I've always understood it to be, a unique debtor's haven. Whereby, the laws are tilted so heavily in favor of debtors that no matter how righteous Passport's claim might be, and how seemingly powerful this building with its mahogany slabs and so forth and a gold eagle up there, how fearsome that might be they can simply go, ‘Come get it.’”

REC_ 190, ll. 7-15.

Passport asserts, that instead of entering into Children’s Trust Agreement, Trustee should have litigated against the Olson Children and jumps to the conclusion that once Trustee obtained a judgment against the Children's Trust, he would have been able to enforce it through the usual means provided by federal and state law. Opening Brief, p. 42. However, as noted above it was international law that was at play in a foreign jurisdiction where Debtor had instructed them not to cooperate with Trustee. The Bankruptcy Court recognized this and stated:

“if what you're trying to tell me is that, well, when dealing with frauds we can say, Ms. Olson, Mr. Weekes, Mr. Weekes, Jr., try to go through all these efforts and get a settlement and when it comes state-wise we'll do "King's X" -- screw the settlement, we'll take all the money because you're bad guys to have done this in the first place which is more or less as I read your pleading. I can't do that. I cannot do that because that means that that gold eagle is a vulture like all the rest.”

REC_191:20-REC_192:3.

Considering all the risks and uncertainties of ever recovering money from the Cook Islands, the record does not support a conclusion that the Bankruptcy Court abused its discretion in approving the settlement.

5. Conclusion

Based on the foregoing, Trustee believes the issues that the Court must determine are as follows: (1) whether the settlement with the Children’s Trust resulted in the Trustee recovering \$4.3 million or \$3.4 million; and (2) whether it is “fair and equitable” to approve the Children’s Trust Agreement to settle the fraudulent transfer claims by receipt of approximately 80% of the funds. While \$965,000 is a substantial amount of money, Trustee believes that he properly exercised his business judgment by agreeing to settle on these terms because all prior efforts to obtain repatriation of the funds had not been successful. Absent the settlement, further efforts would have resulted in substantially higher administrative claims and a very uncertain outcome regarding whether the funds could have ever been recovered.

DATED: January 3, 2018

MARSHACK HAYS LLP

By: /s/ D. Edward Hays
D. EDWARD HAYS
LAILA MASUD
Attorneys for Appellee and Chapter 7
Trustee, RICHARD A. MARSHACK

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Answering Brief by Chapter 7 Trustee, Richard A. Marshack, dated January 3, 2018, complies with the type-volume limitations of Federal Rule of Bankruptcy Procedure 8015(7)(B) because the text of the brief contains 5,253 words (excluding the parts exempted by the rules) according to the Microsoft Word, the word-processing program on which the brief was prepared.

DATED: January 3, 2018

MARSHACK HAYS LLP

By: /s/ D. Edward Hays

D. EDWARD HAYS

LAILA MASUD

Attorneys for Appellee and Chapter 7 Trustee,
RICHARD A. MARSHACK

**CERTIFICATE OF DISCLOSURE AND STATEMENT OF
INTERESTED PARTIES**

The undersigned certifies that the following parties have an interest in the outcome of this appeal and/or have at least a ten percent interest in an entity in a party to this appeal. Chapter 7 Trustee, Richard A. Marshack makes these representations to enable the judge on appeal to evaluate possible disqualification or recusal as follows:

1. Appellant, Passport Management, LLC;
2. Appellee, Richard A. Marshack in his capacity as Chapter 7 Trustee of the Jana Olson bankruptcy estate; and
3. Appellee, Olson Children's Irrevocable Trust dated June 16, 2017.

DATED: January 3, 2018

MARSHACK HAYS LLP

By: /s/ D. Edward Hays
D. EDWARD HAYS
LAILA MASUD
Attorneys for Appellee and Chapter 7
Trustee, RICHARD A. MARSHACK

CERTIFICATE OF RELATED APPEALS

The undersigned certifies that the following are known appeals that are related to this appeal:

N/A

DATED: January 3, 2018

MARSHACK HAYS LLP

By: */s/ D. Edward Hays*

D. EDWARD HAYS
LAILA MASUD
Attorneys for Appellee and Chapter 7
Trustee, RICHARD A. MARSHACK

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this District Court proceeding. My business address is: 870 Roosevelt, Irvine, CA 92620

A true and correct copy of the foregoing document entitled (*specify*): **ANSWERING BRIEF BY APPELLEE AND CHAPTER 7 TRUSTEE, RICHARD A. MARSHACK** will be served or was served (a) on the judge in chambers in the form and manner required by L.R. 5-4 in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and L.R 5-3.3, the foregoing document will be served by the court via NEF and hyperlink to the document. On **January 3, 2018**, I checked the CM/ECF docket for this case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **January 3, 2018**, I served the following persons and/or entities at the last known addresses in this case by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):

Pursuant to F.R.Civ.P. 5 (d)(3) and/or controlling L.R. 5-4, on **January 3, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Personal Delivery, Honorable Dale S. Fischer, Mandatory Chambers Copy Box (Fourth Floor Across from Clerk’s Office), United States District Court, Central District of California, 350 West 1st Street, Los Angeles, CA – Courtroom 7D

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 3, 2018 Layla Buchanan
Date Printed Name

/s/ Layla Buchanan
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Cont.

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