IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:
PANTHERA ENTERPRISES, LLC,
Debtor.

Case No. 19-00787
Chapter 11

PANTHERA ENTERPRISES, LLC,
Plaintiff,

v.

Adv. Pro. No. 2:19-51

PANTHERA TRAINING, LLC,
Defendant.

ORDER GRANTING MOTION TO COMPROMISE/SETTLE ADVERSARY PROCEEDING

On a day prior came Aaron C. Amore, Trustee for the Estate of Panthera Enterprises, LLC, by and through counsel, Aaron C. Amore of Amore Law, PLLC with a compromise and settlement of certain claims as between these parties pursuant to 11 U.S.C. §§ 105, 541, 704, and Fed. R. Bankr. P. 2002, and 9019. The Trustee sought to resolve the claims asserted in this adversary proceeding by way of mutual dismissal with the Defendant along with its counterclaims. The motion has been duly noticed and is now ripe for the Court's consideration.

A decision to compromise a claim is also reviewed under the business judgment test. E.g., *In re OptInRealBig.com, LLC*, 345 B.R. 277, 292 (Bankr. D.

Colo. 2006) ("Where an application under Rule 9019 is appropriate, the Court's job is to determine whether a given settlement is fair and equitable to the estate. In making its determination, the Court gives some deference to the business judgment of the debtor-in-possession."). A review of that business judgment generally turns on the outcome of four factors: (1) the probability of success in litigation; (2) the likely difficulties 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. *Fry's Metals, Inc. v. Gibbons* (*In re RFE Industries, Inc.*), 283 F.3d 159, 165 (3rd Cir. 2003). See also *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 424-25 (1968) (same); *Drexel v. Loomis,* 35 F.2d 800, 806 (8th Cir. 1929) (same). A compromise of claims under Rule 9019 serves the purpose of binding the bankruptcy estate and the creditor to the terms of the bargain struck by the parties. *OptInRealBig.com*, 345 B.R. at 291.

The Trustee investigated the alleged claims set out forth in the adversary proceeding. He has engaged an expert to conduct a financial review of the Defendant's books, records and accounts to determine if there was a breach of the lease agreement related to the additional rents provision that would entitle the Debtor to excess rent payments and/or determine a breach of the lease occurred. The Trustee, and the Trustee's expert, were unable to substantiate the claims which alleged that the Defendant failed to pay over excess rents pursuant to the lease. A summary report of this financial review was attached as Exhibit A to the Trustee's

motion. The Trustee was also unable to substantiate any of the other claims asserted in the adversary proceeding by the Debtor such that he might pursue claim(s) for damages and/or to establish that the lease was breached by the Defendant. The Court acknowledges the Trustee is accorded significant deference in the exercise of his business judgment.

The Motion to Compromise has been properly served upon the creditors and parties in interest with no objections being filed within the time period as noticed by the Clerk of this Court.

Accordingly, It is;

ORDERED and ADJUDGED that the Trustee's Motion to Compromise/Settle the adversary proceeding against Panther Training, LLC is hereby GRANTED. This matter is dismissed with prejudice.

Prepared by:

/s/ Aaron C. Amore
Aaron C. Amore, WVSB No. 6455
Counsel for Ch. 7 Trustee

Seen and Agreed:

/s/Julia A. Chincheck
Julia A. Chincheck (WV Bar No. 718)
Michael R. Proctor (WV Bar No. 9122)
Zachary J. Rosencrance (WV Bar No. 13040)
BOWLES RICE LLP

/s/Douglas E. Kahle
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BASNIGHT, KINSER, LEFTWICH & NUCKOLLS, P.C.