

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

**IN RE:**

**AIR SAFETY INTERNATIONAL, L.C.  
and CAMBER FLIGHT SIMULATION, L.C.**

**Case No.: 99-36290-BKC-SHF  
Case No.: 00-30087-BKC-SHF  
Chapter 7 proceeding  
[Substantively consolidated]**

**Debtors.**

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**MEMORANDUM OPINION GRANTING AMENDED MOTION TO APPROVE  
STIPULATION TO COMPROMISE CONTROVERSY BETWEEN TRUSTEE  
AND EQUITY HOLDER; AND TO MAKE DISTRIBUTION OF EQUITY  
HOLDERS AND DENYING GMGRSST, LTD.'S MOTION TO COMPEL  
TRUSTEE TO DISTRIBUTE SURPLUS ASSETS TO THE DEBTOR PURSUANT  
TO 11 U.S.C. §726(A)(6)**

THIS CAUSE came before the Court for hearing on March 30, 2005 upon the Amended Motion to Approve Stipulation to Compromise Controversy Between Trustee and Equity Holder; and to Make Distribution of Equity Holders and GMGRSST, LTD.'s Motion to Compel Trustee to Distribute Surplus Assets to the Debtor Pursuant to 11 U.S.C. §726(A)(6). The Court having considered the evidence presented, the candor, credibility and demeanor of the witnesses, the argument of counsel, and the record herein and being otherwise fully advised in the premises, issues this Memorandum Opinion incorporating its findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 9014 and 7052:

**JURISDICTION**

This Court has jurisdiction over this subject matter pursuant to 28 U.S.C. §§157 and 1334(b) and Bankruptcy Rule 9019. Bankruptcy Rule 9019 provides that after conducting a hearing properly noticed to all creditors, the Court may approve a compromise or settlement.

## **PROCEDURAL BACKGROUND**

This case was commenced with the filing of a Chapter 11 petition on December 23, 1999 by the Debtor, Air Safety International, L.C. (“Air Safety”). Subsequently, on January 11, 2000, a Chapter 11 petition was filed by the Debtor, Camber Flight Simulation, L.C. On February 25, 2000 the Court entered an order consolidating both matters for joint administration (hereinafter both Debtors shall be collectively be referred to as “Debtor”). Both cases were converted to Chapter 7 proceedings on March 21, 2000, and Deborah Menotte was appointed the chapter 7 trustee. Thereafter, on November 30, 2001 the Court entered an order substantively consolidating both estates (C.P. #155).

In July 2002, a Stipulation for Settlement (“Stipulation”) was entered into between the Trustee, Alan and Becky Madsen (the “Madsens”), MSR, Inc. (“MSR”), GMGRST, LTD. (“GMGRSST”), Madsen Automotive Group (“MAG”), Joe G. Coykendall (“Coykendall”), Camber Corporation (“Camber”), and Robert King (“King”)(collectively referred to as the “Parties”). Pursuant to the Stipulation, the Parties settled all administrative claims, secured claims and unsecured claims. Further, the Stipulation established the disbursement of any remaining funds after payment of all other allowed claims against the estate.

The first \$2,280,000.00 of the remaining funds shall to be distributed by the Trustee to the following parties based upon the following percentages: 1) The Madsens shall receive 53.48%; 2) Camber shall receive 13.13%; 3) King shall receive 26.75%; and 4) Cykendall shall receive 6.57%. All sums greater than the first \$2,280,000.00 shall be distributed by the Trustee to the following Parties based upon the following percentages: the Madsens shall receive 79.4155%; Camber shall receive 14.0145%; King shall receive 0%; and Coykendall shall receive 6.57%. It is also agreed that the Madsens shall be entitled to an assignment from the Trustee, at the close of the case, of the remaining assets of the Debtors, including the right to use the names of the Debtors, exclusive of Camber Flight, the goodwill, and any remaining

unadministered Intellectual property. Such assignment shall be only of the Trustee's right, title and interest, without warranties or representations of any type, "as is, where is".

Stipulation for Settlement, Pl.'s Ex. 2 at Page 3, Paragraph 10.

The Trustee and all of the Parties filed their Joint Motion to Approve Compromise and Settlement of Certain Unsecured Claims; Joint Motion to Commence Immediate Interim Distribution on May 27, 2004 (C.P. No. 552), seeking approval of the Settlement Agreement. However, the Parties requested that the approval of the distribution pertaining to the equity holders, Stipulation for Settlement Page 3, Paragraph 10, be held in abeyance until the resolve of a dispute involving Patrick McSweeney. The Court did enter an Order approving the portion of the Stipulation for Settlement, excluding Page 3 Paragraph 10, on August 2, 2004 (C.P. No. 617). After the Court approved the requested portion of the Stipulation for Settlement on August 2, 2004, the Trustee made disbursements in accordance with the approval. At no time has there been a motion for reconsideration or appeal filed by any of the Parties. The Patrick McSweeney claim has subsequently been settled, therefore it is the Trustee's position that the Stipulation for Settlement, in its entirety, is now ripe for court approval.

#### **POSITION OF GMGRSST**

The argument in opposition to the approval of the Stipulation for Settlement, as presented at the March 30, 2005 hearing by GMGRSST, is two-fold. The first position taken by GMGRSST, through Alan Madsen in his capacity as co-trustee of fourteen trusts that own and control GMGRSST, is that 11 U.S.C. § 726(a)(6) of the Bankruptcy Code controls who is to receive the distribution of surplus assets, not the Stipulation for Settlement as previously agreed to by the Parties. GMGRSST does not dispute that a Stipulation for Settlement was reached in July 2002. Furthermore, GMGRST does not dispute that they were a party to that agreement. In addition, there has been no argument made that the settlement was unreasonable or somehow unenforceable. Therefore, it is the second argument

of GMGRSST that, because they have been made to wait five years for distributions detailed in the Stipulation for Settlement, the delay has been unreasonable. Therefore, according to GMGRSST, the contract should be null and void because the Trustee did not seek court approval and disburse on a timely basis. In essence, GMGRSST is asking the Court to deem the Stipulation for Settlement Page 3, Paragraph 10 as a breached contract and distribute the surplus assets to the debtor according to 11 U.S.C § 726(a)(6).

GMGRSST cites to *In re The Georgian Villa, Inc.*, 55 F.3d 1561, 1563 (11th Cir. 1995) as the authority dictating that the distribution of surplus assets is to go to the debtor. *In re The Georgian Villa, Inc.* involved a non-for-profit business that, although dormant, had remained in good standing as a corporation with the Georgia Secretary of State. Given the facts of *In re The Georgian Villa, Inc.*, the court concluded that the corporate debtor remained in existence throughout the pendency of the bankruptcy and therefore, the plain language of the Bankruptcy Code compelled distribution of the surplus to the debtor. *Id.* The court did acknowledge that where the corporate debtor is no longer in existence, bankruptcy courts could utilize their equitable power to distribute the unclaimed funds to the shareholders. *Id.*

#### **STATUS OF AIR SAFETY**

In the case before the Court, there remains no issue as to whether Air Safety continues to exist in good standing, it does not. This bankruptcy case began as a Chapter 11 proceeding. According to court documents, the case was converted to a Chapter 7 and the Trustee was subsequently appointed on March 24, 2000. There has been no evidence put forth by Mr. Madsen to establish that Air Safety continued to remain in good standing throughout the pendency of the bankruptcy. To the contrary, Mr. Madsen acknowledges that Air Safety is currently not active as a corporation but asserts that the Trustee let the charter lapse. In opposition to Mr. Madsen's claim, the Trustee testified that the corporate charter of Air Safety lapsed before she was appointed and that the corporation has not since been reinstated. Therefore, it is the Trustee's contention that the corporate charter of Air Safety

lapsed while in the control of the Madsens. Considering the testimony of both Mr. Madsen and the Trustee, the Court is of the opinion that the plain language of 11 U.S.C § 726(a)(6) does not apply since the corporate debtor is no longer in existence.

### **POSITION OF THE TRUSTEE**

The Trustee is seeking court approval of the Stipulation for Settlement in its entirety. On March 30, 2005, the Trustee testified before this Court as to the history surrounding the Stipulation for Settlement. In July 2002, shortly before the signing the Stipulation for Settlement, it appears that GMGRSST as well as the Madsens sought reassurance from the Trustee that interim distributions would be made on a timely basis after signing the agreement. In response to that inquiry, the Trustee, through her attorney, sent a letter to counsel for GMGRSST and the Madsens indicating that it was the intention of the Trustee to make distributions on a timely basis. (Letter to Ira Hatch, Pl.'s Ex. 16, ¶ 1). However, the Trustee explained that there remained claim objections and various claims pending that affected the Trustee's ability to make immediate distributions. (Letter to Ira Hatch, Pl.'s Ex. 16, ¶ 3). Thereafter, on July 17, 2002, the Madsens signed the Stipulation for Settlement in both their individual capacity and on behalf of GMGRSST. (Stipulation for Settlement, Pl.'s Ex. 2, Page 8).

At the March 30, 2005 hearing, the Trustee testified to the fact that the delay in seeking court approval of the entire Stipulation for Settlement rested upon the language contained in the Stipulation for Settlement that made approval contingent upon the settlement of the Patrick Mc Sweeney claim.

The Parties to this Stipulation agree that upon approval of this Stipulation by the Court this shall resolve their objections to the aforementioned claims as explained above, and, that they shall cooperate with the Trustee and assist the Trustee with the claims objection process and, further will assist her with the closing of these cases. If the Court does not approve the Stipulation, these Parties reserve their respective claims and objections in their entirety. In the

event that this Stipulation is not approved by the Court, it shall be deemed null and void. The Parties understand and agree that this agreement is contingent upon the Trustee's objection to the equity claim of Patrick McSweeney being sustained whereby the Court would find that Patrick McSweeney does not hold any equity interest with the Debtors.

Stipulation for Settlement, Pl.'s Ex. 2, Page 4, Paragraph 11.

The Court ruled on the claim of Patrick McSweeney in March 2004. After various motions, a final resolution of the Patrick McSweeney claim was reached in August 2004. Once a final resolution was reached, the Trustee then sought court approval of the remainder of the Stipulation for Settlement, which is now before the Court.

### **SETTLEMENT AGREEMENT**

In determining whether to approve the Stipulation for Settlement, the Court must first determine whether a valid settlement agreement was reached. A settlement agreement is a contract and, as such, its construction and enforcement are governed by principles of Florida's general contract law. *Schwartz v. Florida Board of Regents*, 807 F. 2d 901, 905 (11th Cir. 1987). In order to establish the basis of a contract, there must be common intent, or a "meeting of the minds" as to the subject matter of the settlement. *Kuharske v. Lake County Citrus Sales*, 44 So.2d 641 (Fla. 1949). As long as an intent to settle the essential elements of the cause can be established, it does not matter that the agreement is not fully executed, as even oral settlements have been fully recognized and approved by the courts of Florida. *Dania Jai-Alai Palace, Inc. v. Sykes*, 495 So.2d 859 (Fla. 4th D.C.A. 1986). Furthermore, it is well-settled public policy that settlement agreements are "highly favored and will be enforced whenever possible." *Robbie v. City of Miami*, 469 So.2d 1384, 1385 (Fla. 1985).

*Sub judice*, there has been no evidence to contradict that a settlement agreement was reached and signed by all of the Parties, including GMGRSST. The testimony of Mr. Madsen as well as the Trustee establishes that the Parties intended to settle the matters under

the terms as set forth in the Stipulation for Settlement, subject only to the approval of the bankruptcy court. The Court is not persuaded by the argument made by GMGRSST that the Stipulation for Settlement should be null and void. While GMGRSST argues that the Trustee's delay in seeking court approval is a breach of contract, the Court finds that the Trustee acted appropriately based on the circumstances surrounding the pending claims. Furthermore, the Court finds no language in the Stipulation for Settlement to indicate a time frame in which the Trustee was required to make distributions. To the contrary, the Stipulation for Settlement clearly states that pending claims exist that must be settled before the agreement can be approved by the court. (Stipulation for Settlement, Pl.'s Ex. 2, Page 4, Paragraph 11). In addition, the language of the Stipulation for Settlement contains language that clearly states that there are no other agreements or modifications except as set forth in the Stipulation for Settlement.(Stipulation for Settlement, Pl.'s Ex. 2, Page 4, Paragraph 12).

“It has long been the law that approval of a settlement in a bankruptcy proceeding is within the sound discretion of the court, and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion.” *In re Arrow Air*, 85 B.R. 886, 890-891 (Bankr.S.D.Fla. 1988). The Court must consider four factors in deciding whether to approve a proposed settlement: (a) the probability of success in the litigation; (b) the difficulties to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay surrounding it; and (d) the interests of the creditors. *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II Ltd.)*, 898 F.2d 1549 (11th Cir. 1990). In evaluating a proposed settlement, the Court must make an informed, independent judgment that the compromise is fair and equitable. The judgment requires consideration of all relevant facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated. *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 88 S.Ct. 1157, 1163, 20 L.Ed.2d 1 (1968).

The Court is quite familiar with the lengthy history of this case and, considering the four factors as discussed *In re Justice Oaks II Ltd.*, is confident that the Stipulation for Settlement should be approved. With the exception of GMGRSST, a signatory to the Stipulation for Settlement, no objections have been filed by creditors or equity holders. Accordingly, the Court does hereby approve and ratify the Stipulation for Settlement in its entirety as a binding and enforceable agreement and **grants** the Trustee's Amended Motion to Approve Stipulation to Compromise Controversy between the Trustee and Equity Holders; and to Make Distribution to Equity Holders, and, **denies** Motion by Alan Madsen to Compel Trustee to Distribute Surplus Assets to the Debtor.

ORDERED in the Southern District of Florida on June 2, 2005.

Steven H. Friedman  
U.S. Bankruptcy Judge

Michael R. Bakst, Esq.,  
Richard D. Sneed, Jr., Esq.  
Deborah C. Menotte, Trustee,  
Donald M. Wright, Esq.  
Ira C. Hatch, Esq.,  
U.S. Trustee,  
Roger Hurd, Esq.,