In the United States Bankruptcy Court

for the Northern District of Iowa

DAVID WEST
Debtor(s).

Bankruptcy No. 97-02206-W
Chapter 7

HABBO G. FOKKENA
Plaintiff(s)

vs.

ELAINE ANN NICOLA et al
Defendant(s)

Adversary No. 97-9194-W

ORDER RE MOTION TO COMPEL SETTLEMENT CONSUMMATION

On March 24, 1998, the above-captioned matter came on for hearing pursuant to assignment. Plaintiff Chapter 7 Trustee Habbo Fokkena was represented by Attorney Eric Lam. Defendant Elaine Ann Nicola was represented by Attorney Thomas Fiegen. Evidence was presented after which the Court took the matter under advisement.

STATEMENT OF THE CASE

Debtor David West filed a Chapter 7 petition on July 21, 1997. Chapter 7 Trustee Habbo Fokkena filed an adversary proceeding on September 22, 1997 asserting in multiple counts an objection to discharge under §727, fraudulent conveyances under §548 and fraudulent conveyances under §544 incorporating Iowa Code Chapter 684. Debtor was named as a Defendant as was his ex-spouse Dr. Elaine Nicola and the parties' two sons. Plaintiff and Defendant Dr. Nicola met for the purposes of taking Dr. Nicola's deposition on January 13, 1998. Prior to commencing the deposition, settlement discussions were held. A settlement agreement was reached on that date. Dr. Nicola repudiated the agreement the following morning after contacting her attorney. Trustee filed this Motion to Compel Settlement Consummation on February 13, 1998 asserting that the parties had achieved an enforceable settlement agreement and asked the Court to enforce this agreement. Defendant Nicola resists this Motion and asserts a misunderstanding in the creation of the original agreement.

FINDINGS OF FACT

Debtor David West and Dr. Elaine Nicola reside in Decorah, Iowa. They were married in 1978 and were granted a dissolution in Iowa District Court on July 1, 1997. The dissolution was unusual only in that it was granted without full distribution of the parties' property. Custody and associated issues were completely resolved. However, the parties entered into only a partial stipulation concerning division of the parties' property.

The property which would later form the basis of the present adversary complaint involved an acreage located in Winneshiek County, Iowa consisting of approximately 10 acres with a value agreed upon in the dissolution of $42,000. This property was held in joint tenancy. Additionally, the parties were joint owners of a 1995 Mercedes C-220 automobile with an agreed value in the dissolution proceeding of $25,000. The partial stipulation provided that the respondent David West would sell his one-half interest in these assets to the petitioner for one-half of the agreed upon values. This consisted of $21,000 for the real estate, $12,500 for the Mercedes.

Under the section entitled "Property" in the partial stipulation, paragraph 5 provides that:

> 5. The Respondent shall receive a partial property settlement from the Petitioner in the sum of $33,500.00 as computed in paragraphs 2 and 3 above and Respondent shall apply said sum on the mortgage indebtedness contemporaneous with receipt of said amount from the Petitioner consistent with paragraph 1 above herein. The parties shall comply with these terms no later than June 30, 1997.

Paragraph 1 of the stipulation provided that the parties' homestead located in Winneshiek County, Iowa with an agreed upon value of $104,000 could be awarded by the Court to the petitioner, Dr. Elaine Ann Nicola. The parties further agreed that Mr. West's equity percentage in the homestead as determined by the Court at the time of the trial would be increased by the sum of $33,500 representing the proceeds to be paid to the respondent by the petitioner and applied by the respondent to the mortgage indebtedness on the homestead property.

The net effect of this transaction was to transfer David West's one-half interest in the acreage and Mercedes to Elaine Nicola for $33,500. She then applied this sum toward the mortgage on the homestead instead of paying Debtor directly. The parties had agreed among themselves in the partial stipulation at the time of the dissolution that the Judge hearing the dissolution could award her the homestead and set aside to David West the sum of $33,500 above and beyond that which would ordinarily be one-half of his net equity in this homestead.

This procedure was discussed by counsel for Debtor in Debtor's resistance to motion to consolidate the exemption objection with the adversary complaint on October 9, 1997. At page 3 of the resistance, counsel states that:

> The Debtor would submit that he transferred monies realized from the sale of his one-half interest in various assets to his spouse, all as are more particularly described in the attached Partial Stipulation and Agreement for Dissolution of Marriage, for the purpose of increasing the Debtor's equity in the homestead so that he might have the same available to him when the Debtor acquired a replacement homestead following completion of the dissolution proceedings.

The parties received a dissolution of marriage on July 1, 1997 which incorporated the partial stipulation previously discussed. David West filed his Chapter 7 petition three weeks later on July 21, 1997. The Chapter 7 Trustee Habbo Fokkena challenged the foregoing transfers and filed his adversary complaint in September 22, 1997 seeking to set aside these transfers on the grounds previously discussed including fraudulent conveyance.

Settlement negotiations were held involving Debtor David West and the parties' two children, Peter West and Julian West, and a motion to approve compromise involving these defendants was filed December 22, 1997. This compromise was noticed to all parties and, without objection, the Order Approving Motion to Approve Compromise was signed by the Court on February 6, 1998. As a result of the compromise, Debtor will pay the sum of $7,500 to settle all claims involving himself and the two children. It leaves Dr. Elaine Nicola as the sole defendant concerning the alleged fraudulent conveyance of the acreage and the Mercedes.

This matter proceeded through the discovery process and a deposition was scheduled for January 13, 1998 at the law office of Dr. Nicola's attorney, Joseph Peiffer. The deposition was to be taken by Eric Lam, attorney for the Chapter 7 Trustee Habbo Fokkena. The record establishes that Dr. Nicola had retained an attorney for her dissolution proceeding. However, during the course of the dissolution proceedings in July of 1997, Dr. Nicola testified that the Judge said there were unresolved bankruptcy issues and as these needed to get resolved, she contacted Attorney Peiffer approximately one month later. She testified that she had consulted with Mr. Peiffer one time in person and approximately six times on the telephone to discuss these issues.

Dr. Nicola testified that she went to Mr. Peiffer's law office on January 13, 1998. Before the deposition began, she and Mr. Peiffer discussed the possibility of settlement outside the presence of Mr. Lam. She testified that she and Mr. Peiffer agreed on some terms. Dr. Nicola was asked at the hearing to state what her instructions to Mr. Peiffer were after they discussed the terms of any agreement. She testified that she couldn't say that there were any particular instructions. She stated that they had both discussed the settlement and as a result of the discussion, she understood that the Mercedes would be sold and one-half of the money would go to the Trustee.

Dr. Nicola further stated that Mr. Peiffer then went to another room and after awhile he returned. At that point, they all agreed that they had a deal and she understood that the Mercedes would be sold and one-half of the proceeds would go to the Trustee. When Mr. Peiffer returned after discussing these issues with Mr. Lam, Dr. Nicola testified that she and Mr. Peiffer didn't talk a great deal because they had discussed it beforehand. She and Mr. Peiffer shook hands, Mr. Lam left and Dr. Nicola and Mr. Peiffer discussed other matters but did not discuss any particulars of the agreement. Later that evening, she concluded that she did not wish to go forward with the agreement. She called Mr. Peiffer at 7:00 the next morning and told him that she did not wish to proceed because she had misunderstood the agreement. She testified that Mr. Peiffer informed her that that was all right and he would contact Attorney Lam. However, as evidenced by the Motion to Compel, Mr. Lam did not agree to set aside the agreement and instead filed the Motion to Compel Settlement on February 13, 1998.

Dr. Nicola did not wish to proceed with the settlement because she asserts that she misunderstood the agreement reached on January 13, 1998. She testified that she misunderstood in two respects. First, she states that she thought the financial part of the agreement was going to come from her ex-husband. She testified that when she got home she realized that the money that they were talking about which was to paid under the settlement to the Trustee was to come out of her finances. At that time, she realized that she had misunderstood when she thought that it was to come out of Debtor's funds. She testified that there was no guarantee that she would ever be repaid. When she realized that the agreement required her to pay the settlement, she called Mr. Peiffer early the next morning and stated that she didn't wish to proceed because she really had not understood that she was to be the party responsible for paying. She said that she didn't want to pay anything because she had not done anything.

Secondly, she testified that she really did change her mind in terms of her not liking the idea of having her ex-husband having to pay toward this car. She testified that even if her understanding had been correct as she understood it at the time of making the agreement, she simply didn't like the idea of forcing her ex-husband to do anything. She testified that she understood that the second reason really did constitute a simple change of heart and that this would not be allowed. However, she stated that she also was under a misapprehension as to the terms of the agreement and she had never truly understood the deal.

The evidentiary record consists of the files in this case as well as the pleadings. Additionally, it consists of five exhibits received into evidence without filed objection by Dr. Nicola. The evidentiary record also includes the testimony of Dr. Nicola. Neither Attorney Lam nor Attorney Peiffer testified at the hearing. Exhibit 1 consists of a memorandum to the file made by Attorney Lam on the date the agreement was reached. The memorandum states that the parties had reached an agreement and that the transfer by Mr. West to Dr. Nicola would be set aside. The Mercedes would be back in the ownership status it was prior to the transfer in that each of the two parties would own one-half of the automobile. In setting aside the transfer, the estate would own one-half of the automobile and Dr. Nicola would own the other half. The Trustee would be allowed to sell the Mercedes under 11 U.S.C. §363 with Dr. Nicola's consent.

The negotiation and distribution of the proceeds was based on the parties' agreed dissolution value of $25,000 for this vehicle. Half of this value or $12,500 would go to the estate. Additionally, the parties agreed that Dr. Nicola would absorb the first $500 of estate expenses related to the sale of this vehicle. Therefore, the first $13,000 of the net sales price would go to the Trustee. The remainder would go to Dr. Nicola. The agreement also provided that if the net price was less than $12,500, Dr. Nicola would absorb the deficiency. There was a provision that Dr. Nicola could object to the sale price and attempt to sell it for a higher price if she felt the sale price was unreasonably low. This agreement was tied to Court approval of the settlement involving David West which has now already been Court approved. Finally, in return for agreement on the automobile, any transfer involving the acreage and the grand piano would not be pursued by the Trustee.

This agreement was memorialized by Attorney Lam upon return to his office in a memorandum which was offered and received as Exhibit 1. Attorney Peiffer sent a letter to Attorney Lam on January 15, 1998 setting out his understanding of the settlement terms. This letter was received into evidence as Exhibit 3. The terms of the settlement are identical to those memorialized by Mr. Lam except possibly concerning the method of proceeding if it was determined by Dr. Nicola that the sale price was too low. Mr. Lam had stated in his memorandum that:

> Dr. Nicola will also reserve the right to object to the sale of the Mercedes, so that if she thinks that the

Mercedes is being sold for too low of a price, then she can try and sell the Mercedes herself.

Mr. Peiffer stated in his memorandum of understanding that:

Dr. Nicola will agree that the Trustee can sell the vehicle for a sum in excess of $20,000 without further notice to her. If the Trustee desires to sell the vehicle for less than $20,000, Dr. Nicola must approve such sale.

CONCLUSIONS OF LAW

The following conclusions of law and authorities address all issues presented here:

1. Settlement agreements are in high judicial favor. See, e.g., Williams v. First National Bank, 216 U.S. 582, 595, 30 S.Ct. 441, 445, 54 L.Ed. 625 (1910); Autera v. Robinson, 419 F.2d 1197, 1199 (D.C. Cir. 1969). They enable the parties to avoid the expense and delay involved in full litigation of the issues and spare the court the burden of trial. The District of Columbia partakes of the general view that such an agreement voluntarily entered into cannot be repudiated by either party and will be enforced summarily by the court. See, e.g., Autera v. Robinson, 419 F.2d at 1200; see also Kelly v. Greer, 365 F.2d 669, 671 (3d Cir. 1966), cert. denied, 385 U.S. 1035, 87 S.Ct. 772, 17 L.Ed.2d 682 (1967); Cummins Diesel Michigan, Inc. v. The Falcon, 305 F.2d 721, 723 (7th Cir. 1962).

Schneider v. Dumbarton Developers., Inc., 767 F.2d 1007, 1015 (D.C. Cir. 1985).

2. The law favors settlement of controversies. A settlement agreement is essentially contractual in nature. Wong v. Bailey, 752 F.2d 619, 621 (11th Cir. 1985); Linn County v. Kindred, 373 N.W.2d 147, 149-50 (Iowa App. 1985); Jallen v. Agre, 264 Minn. 369, 373, 119 N.W.2d 739, 743 (1963); 15A C.J.S. Compromise and Settlement §1, at 170 (1967). The typical settlement resolves uncertain claims and defenses, and the settlement obviates the necessity of further legal proceedings between the settling parties. We have long held that voluntary settlements of legal disputes should be encouraged, with the terms of settlements not inordinately scrutinized. See, e.g., Bakke v. Bakke, 242 Iowa 612, 618-19, 47 N.W.2d 813, 817 (1951); Messer v. Washington Nat'l Ins. Co., 233 Iowa 1372, 1380, 11 N.W.2d 727, 731-32 (1943).

Wright v. Scott, 410 N.W. 2d 247, 249 (Iowa 1987).

3. A settlement agreement resolving a contract dispute is said to operate as a substituted contract, cancelling or modifying the prior contract to the extent that the two are inconsistent. See Sirota v. Econo-Car International, Inc., 556 F.2d 676, 681 (2d Cir. 1977); Jersey Central Power and Light Co. v. Local 327, IBEW, 508 F.2d 687, 703 & n. 44 (3rd Cir. 1975); Restatement of Contracts §408 (1932 & Supp. 1979); 6 Corbin on Contracts §1293 (1962). Whether the provisions of a subsequent contract are deemed to supersede the provisions of a prior contract turns on the parties' intent which is ascertained from the contracts themselves when they are unambiguous. See Jersey Central Power & Light Co., 508 F.2d at 703.

Schneider v. Dumbarton Developers, Inc., 767 F.2d 1007, 1015 (D.C. Cir. 1985).

4. Settlement agreements are by their very nature the voluntary resolution of uncertain claims and defenses. Because parties are unsure about the outcome of litigation they have a real incentive to accept a compromise settlement agreement, realizing that if they continue they may fare better but they may fare worse. It is therefore well settled that "to vitiate a settlement, a mistake must be mutual, material, and concerned with a present or past fact." Anderson v. Ciba-Geigy Corp., 490 F.2d 438, 442 (8th Cir. 1974); Stetzel v. Dickenson, 174 N.W.2d 438, 440 (Iowa 1970). Similarly, for a mistake of law to render void a settlement agreement, the mistake generally must be mutual and material. 15A Am.Jur.2d Compromise and Settlement §34, at 806 (1976). Voluntary settlements will not be disturbed for ordinary mistakes of law. Bakke v. Bakke, 242 Iowa 612, 618-19, 47 N.W.2d 813, 817, (1951); see Bergman v. Bergman, 247 Iowa 98, 103, 73 N.W.2d 92, 95-96 (1955). We do not have in this case the exceptional circumstance of a

mistake of law procured by fraud or misrepresentation that may be a ground for invalidating a settlement agreement. See Baker v. Bockelman, 208 Iowa 254, 258, 225 N.W. 411, 412 (1929); Kelly v. Chicago Rock Island & Pac. Ry. Co., 138 Iowa 273, 280, 114 N.W. 536, 539 (1908) ("[I]t is even more a matter of good policy and good morals to stamp the law's disapproval upon settlements which bear the taint of fraud and undue advantage.").

Wright v. Scott, 410 N.W.2d 247, 249 (Iowa 1987).

5. A dispute concerning the existence or terms of a settlement agreement is a question of fact. TCBY Systems, Inc. v. EGB Associates, Inc., 2 F.3d 288, 291 (8th Cir. 1993); see also Vaughn v. Sexton, 975 F.2d 498, 506 (8th Cir. 1992) (court's finding of no settlement agreement was factual one). A district court "does not have the power ... to decide ... that a draft settlement agreement was binding when the parties did not agree on it." Id. at 290 (citing Wang Lab., Inc. v. Applied Computer Sciences, Inc., 958 F.2d 355, 359 (Fed. Cir. 1992)). However, the fact that "'the parties left insubstantial matters for later negotiation, ... does not vitiate the validity of the agreement reached,'" Trnka v. Elanco Products, 709 F.2d 1223, 1226 n. 2 (8th Cir. 1983), nor does the fact that the agreement had to be reduced to writing, if the parties agreed to all material terms. Worthy v. McKesson Corp., 756 F.2d 1370, 1373 (8th Cir. 1985).

McEnany v. West Delaware County Comm. School Dist., 844 F.Supp. 523, 528 (N.D. Iowa 1994).

6. To be valid, a party must give "knowing and voluntary" consent to a settlement agreement. Alexander v. Gardner-Dever Co., 415 U.S. 36, 52 n. 15, 94 S.Ct. 1011, 1021 n. 15, 39 L.Ed.2d 147 (1974); Worthy v. McKesson Corp., 756 F.2d 1370, 1372 (8th Cir. 1985). Parties to a voluntary settlement agreement cannot avoid the agreement simply because the agreement ultimately proves to be disadvantageous. Worthy, 756 F.2d at 1373; Trnka v. Elanco Products Co., 709 F.2d 1223, 1227 (8th Cir. 1983). "If a party to a Title VII suit who has previously authorized a settlement changes his mind ..., that party remains bound by the terms of the agreement." Worthy, 756 F.2d at 1373 (quoting with approval Fulgence v. J. Ray McDermott & Co., 662 F.2d 1207, 1209 (5th Cir.1981)).

McEnany v. West Delaware County Comm. School Dist., 844 F.Supp. 523, 529 (N.D. Iowa 1994).

7. A settlement entered into by a party's attorney may be set aside if there is evidence that the attorney lacked the authority to settle the case on the party's behalf. Id. Although an attorney is presumed to possess authority to act on behalf of the client, "a judgment entered upon an agreement by the attorney may be set aside on affirmative proof that the attorney had no right to consent to its entry." Kansas City Laborers Pension Fund v. Paramount Indus., 829 F.2d 644, 645 (8th Cir. 1987) (quoting Surety Ins. Co. of California v. Williams, 729 F.2d 581, 582-83 (8th Cir. 1984)). An attorney must have express authority to settle a case on a client's behalf. Id. at 646; Turner v. Burlington Northern R.R. Co., 771 F.2d 341, 345 (8th Cir. 1985). An attorney's authority to settle a case can be created by written or spoken words or the conduct of the principal which, reasonably interpreted, causes an agent to believe that the principal desires the attorney to act in a particular manner on the principal's behalf. Turner, 771 F.2d at 345. Once it is shown, however, that an attorney has entered into an agreement to settle a case, the party who denies that the attorney was authorized to enter into the settlement has the burden to prove that authorization was not given. Kansas City Laborers Pension Fund v. Parmount Indus., 829 F.2d 644, 646 (8th Cir. 1987) (citing Turner, 771 F.2d at 346). This is a heavy burden. Id.

McEnany v. West Delaware County Comm. School Dist., 844 F.Supp. 523, 529 (N.D. Iowa 1994).

ANALYSIS

It is undisputed in this record that when Mr. Lam and Dr. Nicola left Mr. Peiffer's office on January 13, 1998, all three individuals understood that a settlement agreement had been reached. It was later that evening that Dr. Nicola decided, and the following morning expressed her wishes to Mr. Peiffer, to repudiate the agreement. When disputes arise concerning the terms of a settlement agreement, the existence of the agreement itself as well as the terms of the agreement are questions of fact. TCBY Systems, Inc. v. EGB Associates, Inc., 2 F.3d 288, 291 (8th Cir. 1993).

The facts establish that Attorney for the Trustee, Eric Lam, and Attorney for Dr. Nicola, Joseph Peiffer, were in agreement as to the operative terms of the settlement. Both attorneys memorialized the agreement independently and when compared, there is little room to argue that their understanding of the agreement varies in any substantial degree. The only variance appears to be a minor difference in the ability of Dr. Nicola to object to the sale price. This is not a substantive difference and either Mr. Lam's version or Mr. Peiffer's version could be accepted without doing damage to the substance of the agreement. As such, it is beyond significant dispute that Mr. Lam and Mr. Peiffer reached an agreement to settle.

Settlement agreements are contractual in nature. The requirements to enforceability are identical to those necessary to enforce a contract. There must exist a meeting of the minds and sufficient consideration to support a contract. As already stated, it is beyond dispute that counsel for the Trustee and counsel for Dr. Nicola had reached a meeting of the minds as to all substantive terms of the settlement agreement. The adversary proceeding involved not only the Mercedes automobile but also a parcel of real estate. As a result of the settlement, the transfer of the real estate by Debtor to Dr. Nicola would be unchallenged. In addition, the terms of the settlement involving the automobile itself supply sufficient consideration to support a simple contract. It is the conclusion of this Court that ample consideration exists in this settlement agreement to support the agreement. The parties had, without doubt, reached a meeting of the minds.

It is unnecessary for the Court to determine whether the bargain achieved was well-balanced or fair to both sides. In evaluating the enforceability of settlement agreements, the courts have unanimously stated that the idea of a settlement agreement is to reach a resolution outside of the courtroom because litigation is uncertain and the settlement obviates the necessity for trial. Courts have intentionally refrained from overly scrutinizing the terms of any settlement. Wright v. Scott, 410 N.W.2d 247, 248 (Iowa 1987).

Dr. Nicola asserts that she misunderstood the terms of the agreement. The terms of the settlement agreement are fairly straight forward. Nevertheless, Dr. Nicola testified that she did not understand those terms and, therefore, should not be bound by the settlement agreement. During her testimony, she testified concerning her understanding. She stated that she and Mr. Peiffer had agreed to some terms which were presented to Mr. Lam and an agreement was reached between Mr. Lam and Mr. Peiffer. She testified that later she realized that she did not understand the settlement.

She explains her misunderstanding by stating that it was her thinking that the payment of funds to the Trustee would come from Mr. West but under the terms of the settlement, she would in effect have been paying for the one-half of the car that was going to the Trustee. She testified that they had talked about the car being split up and one-half going to the Trustee but she had not fully comprehended how the cash flow would work. She testified that they did agree that they had a deal and that both her and Mr. Peiffer thought that they understood each other at the time they left the office. It is the conclusion of this Court that the parties had reached an agreement as to the terms of this settlement. It is not within the Court's purview to review the terms of the settlement to evaluate fundamental fairness.

Attorney Lam and Attorney Peiffer understood the terms of the settlement and agreed to them. Dr. Nicola was presented with the terms of the settlement and she also agreed to the terms. Later she concluded that she did not understand them and when she came to comprehend the terms of the agreement, she determined that they were unacceptable. Reviewed most favorably to Dr. Nicola, the best that can be said is that her misunderstanding constituted a unilateral mistake. In order to constitute grounds for obviating a settlement, the mistake must be mutual. No mutuality of mistake exists and if Attorney Peiffer was authorized to enter into the settlement agreement, no mistake of any type existed.

Secondly, the record does not support the conclusion that Dr. Nicola misunderstood the agreement between Mr. Lam and Mr. Peiffer. She understood the terms of the agreement and her confusion, if any, relates only to the ultimate consequences of the agreement. She appears to argue that as a result of the earlier dissolution stipulation, she paid funds into the homestead which would ultimately benefit Debtor. When she agreed to divide the proceeds from the sale of the Mercedes, this was in effect her money and not that of Debtor because she had already paid full value for his half of the vehicle. While, this may be a collateral consequence of the agreement, it is not part of the agreement itself. A misunderstanding as to the collateral consequences of an agreement does not vitiate a voluntary settlement. There is no evidence in this record that Attorney Peiffer shared this misunderstanding. The unilateral misunderstanding of Dr. Nicola as to collateral consequences of the agreement does not support a finding that the agreement should be set aside.

The final issue is whether Attorney Peiffer had authority to settle this case. Attorney Peiffer and Dr. Nicola discussed the various terms that they would require in order to achieve a settlement. Dr. Nicola testified that she and Mr. Peiffer had agreed upon some terms and she authorized Mr. Peiffer to discuss them with Mr. Lam in private. At no time did she personally have a conversation with Mr. Lam about the terms of the settlement. After Mr. Peiffer returned, Dr. Nicola and Mr. Peiffer agreed with Mr. Lam that they had reached an agreement of settlement this case. There is no dispute that Attorney Peiffer possessed the authority to act on behalf of his client. As Attorney Peiffer acted on behalf of his client with her full authority, and as he fully understood the terms of the settlement as memorialized in his letter of January 15, 1998, the agreement entered into between himself and Mr. Lam is binding upon Dr. Nicola.

WHEREFORE, the Motion to Compel Settlement filed by Plaintiff Trustee is GRANTED.

FURTHER, Defendant, Dr. Elaine Nicola, is directed to perform the terms of the settlement which are as follows:

1. The transfer by Debtor to Dr. Elaine Nicola of Debtor's interest in the Mercedes C-220 is set aside without a specific finding that this was a fraudulent conveyance.

2. As a result of setting aside the transfer of this automobile, the bankruptcy estate owns one-half of the automobile and Dr. Elaine Nicola owns the other half.

3. The Chapter 7 Trustee is authorized to sell the Mercedes automobile pursuant to 11 U.S.C. §363.

4. Of the sale proceeds, the first $12,500 plus $500 of estate expenses will go to the bankruptcy estate.

5. The remaining proceeds of the sale will be distributed to Dr. Elaine Nicola.

6. If the net proceeds are less than $12,500, Dr. Elaine Nicola will absorb any deficiency.

7. If Dr. Elaine Nicola determines that the sale price is too low, she may elect to try and sell the Mercedes.

FURTHER, as part of the adversary involves a complaint under 11 U.S.C. §727, notice shall be provided to all creditors, in the same manner as a voluntary settlement. A bar date may be provided and if no objections are filed, the foregoing settlement will be finally approved and judgment entered accordingly.

SO ORDERED this 15th day of April, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge