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12 KRISTA L. FREITAG

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 SECURITIES AND EXCHANGE
COMMISSION,
17 Plaintiff,
18 v.
19 WORLD CAPITAL MARKET INC.;
WCM777 INC.; WCM777 LTD. d/b/a
20 WCM777 ENTERPRISES, INC.; and
MING XU a/k/a PHIL MING XU,
21 Defendants,
22 KINGDOM CAPITAL MARKET, LLC;
MANNA HOLDING GROUP, LLC;
23 MANNA SOURCE
INTERNATIONAL, INC.;
24 WCM RESOURCES, INC.; AEON
OPERATING, INC.; PMX
25 JEWELS, LTD. TOPACIFIC INC.;
TO PACIFIC INC.; VINCENT J.
26 MESSINA; and INTERNATIONAL
MARKET VENTURES,
27 Relief Defendants.

Case No. CV-14-2334-JFW-MRW
**RECEIVER'S NOTICE OF
MOTION AND MOTION FOR
APPROVAL OF SETTLEMENT
WITH DACK KING LEE**
Date: September 18, 2017
Time: 1:30 p.m.
Ctrm: 7A – 1st Street Courthouse
Judge: Hon. John F. Walter

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 18, 2017, at 1:30 p.m. in
3 Courtroom 7A of the above-entitled Court, located at 350 W. 1st Street,
4 Los Angeles, California 90012, Krista L. Freitag ("Receiver"), the Court-appointed
5 receiver for Defendants World Capital Market Inc., WCM777 Inc., and
6 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc., and Relief Defendants Kingdom
7 Capital Market, LLC; Manna Holding Group, LLC; Manna Source
8 International, Inc.; WCM Resources, Inc.; To Pacific, Inc.; ToPacific; and their
9 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby
10 does move the Court for an order approving the settlement with Dack King Lee
11 ("Motion").

12 This Motion is based on this Notice of Motion and Motion, the attached
13 Memorandum of Points and Authorities, the Declaration of Krista L. Freitag, the
14 documents and pleadings already on file in this action, and upon such further oral
15 and documentary evidence as may be presented at the time of the hearing.

16 **Procedural Requirements:** If you oppose this Motion, you are required to
17 file your written opposition with the Office of the Clerk, United States District
18 Court, 350 W. 1st Street, Suite 4311, Los Angeles, California 90012-4565, and
19 serve the same on the undersigned not later than 21 days prior to the hearing.

20 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
21 above date, the Court may grant the requested relief without further notice. This
22 Motion is made following the conference of counsel pursuant to L.R. 7-3.

23 Dated: August 17, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In the related action against Sue Wang *et al.*, including Huajian Wu and
4 Yuanhao, Inc. ("Wu Defendants"), the Receiver obtained a judgment against the Wu
5 Defendants in the amount of \$100,000. Before the Receiver could record an
6 abstract of judgment, Mr. Wu transferred his joint interest in real property located at
7 84850 58th Avenue, Thermal, California ("Property") to third-party Dack King Lee.
8 The Receiver then sought and obtained an order granting a lien on the Property such
9 that she could proceed to enforce the judgment against the Property. The Receiver
10 and Mr. Lee then agreed to settle the Receiver's claims to the Property, subject to
11 Court approval, in exchange for payments from Mr. Lee totaling \$80,000. The
12 Receiver now seeks approval of the settlement.

13 **II. RELEVANT FACTS**

14 **A. Entry of Judgment Against Wu Defendants**

15 After obtaining Court-authorization to pursue claims against Sue Wang and
16 related parties, the Receiver filed the related action on March 23, 2015, seeking
17 disgorgement of funds that were fraudulently transferred from the Receivership
18 Entities and paid, directly and indirectly, to the Wu Defendants. These fraudulent
19 transfers included transfers totaling \$500,000 that were paid to the Wu Defendants,
20 of which \$100,000 was retained by the Wu Defendants and never returned to the
21 Receivership Entities. In particular, the Wu Defendants received \$500,000 in funds
22 from the Receivership Entities for which no value or services of any kind was
23 provided to the Receivership in exchange. A total of \$400,000 was later returned to
24 the Receivership Entities, but \$100,000 remained outstanding. Declaration of Krista
25 Freitag filed herewith ("Freitag Decl."), ¶ 2.

26 The Wu Defendants were properly served with the Summons and Complaint
27 and, through counsel, filed answers on May 29, 2015, and June 2, 2015,
28 respectively. On November 16, 2015, the Receiver filed a motion seeking summary

1 judgment against the Wu Defendants in the amount of \$100,000, which was granted
2 on December 1, 2015. The Receiver then moved for entry of final judgment against
3 the Wu Defendants, which motion was granted on December 29, 2015, and a final
4 judgment in the amount of \$100,000 was entered on the same date against the Wu
5 Defendants and in favor of the Receiver. Freitag Decl., ¶ 3.

6 While the Receiver's summary judgment motion was pending, a settlement
7 was negotiated with the Wu Defendants contingent upon Court-approval and based
8 on the Wu Defendants' express representation that they had no significant assets
9 against which recovery could be pursued. Despite these representations, the
10 Receiver independently discovered Mr. Wu owned an undivided 50% interest in the
11 Property, with the remaining 50% interest owned by Mr. Lee.¹ As the Wu
12 Defendants had deliberately misrepresented their net worth and asset holdings, the
13 Receiver, through counsel, informed the Wu Defendants on December 9, 2015, that
14 she would not seek Court approval of the settlement and would, instead, seek entry
15 of final judgment and enforce the judgment against the Wu Defendants and their
16 assets. To that end, the Receiver requested and obtained an Abstract of Judgment,
17 issued on January 12, 2016, and recorded in the County of Riverside, where the
18 Property is situated, on January 14, 2016. Freitag Decl., ¶ 4.

19 **B. Wu Fraudulently Transfers Property to Avoid Judgment**
20 **Enforcement**

21 As noted above, the Receiver discovered that Mr. Wu transferred all interest
22 he previously held in the Property to Mr. Lee immediately after final judgment was
23 entered in a transparent attempt to put the asset out of the reach of Mr. Wu's
24 creditors and obstruct the Receiver's efforts to collect on the judgment. Specifically,
25 on January 11, 2016 (after judgment had been entered against the Wu Defendants
26 and one day before an abstract of judgment was issued), Mr. Wu signed a grant deed
27

28 ¹ Based on a recent appraisal of the Property, its market value is approximately
\$1.23 million and is encumbered by a senior lien of approximately \$562,000.

1 conveying all of his interest in the Property to Mr. Lee ("Grant Deed"). The Grant
2 Deed was recorded on January 12, 2016, the same day this Court issued the Abstract
3 of Judgment and two days before the Abstract of Judgment was recorded against the
4 Property. The Grant Deed further confirms that no documentary transfer tax was
5 paid for the transfer, evidently because this transfer was not an ordinary sale, but
6 was simply Mr. Wu's attempt to divest his interest in the Property and put the
7 Property out of the reach of his creditors. Freitag Decl., ¶ 5.

8 As Mr. Wu was well aware of the judgment and the Receiver's intent to
9 pursue collection at the time of the transfer, and because the transfer was to Mr. Lee,
10 a close friend of Mr. Wu, without any enforceable obligation that Mr. Lee pay
11 Mr. Wu, the Receiver filed a motion seeking a lien on the Property such that she
12 could proceed to enforce the judgment against the Property. The motion was
13 granted on July 12, 2017. Freitag Decl., ¶ 6.

14 **III. THE SETTLEMENT**

15 Subject to Court Approval, the Receiver and Mr. Lee have executed a
16 Settlement & Release Agreement ("Agreement") (Freitag Decl., ¶ 7, Ex. A), the
17 basic terms of which are summarized as follows:

18 1. Mr. Lee will pay the aggregate sum of \$80,000 to the Receiver.
19 Mr. Lee will make an initial payment of \$50,000 within two business days of entry
20 of an order by this Court approving the Agreement ("Approval Order"). The
21 remaining \$30,000 will be paid in three monthly installments of \$10,000 each due
22 on September 30, 2017, October 31, 2017, and November 30, 2017.

23 2. The Receiver has agreed to forbear on taking any steps to enforce her
24 judgment lien on the Property so long as Mr. Lee is timely making all payments due
25 under and pursuant to the Agreement.

26 3. The Receiver and Mr. Lee will release all claims against one another
27 (but the Receiver's claims against the Wu Defendants are not released).

28

1 4. Once all payments due to the Receiver under the Agreement have been
2 timely made, the Receiver will execute and deliver to Mr. Lee, through his counsel,
3 a Satisfaction of Judgment to be recorded by Mr. Lee at his expense.

4 **IV. ARGUMENT**

5 A federal equity receiver's power to compromise claims is subject to court
6 approval. As noted by the Ninth Circuit Court of Appeals in *S.E.C. v. Hardy*,
7 803 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an
8 equity receivership and to determine the appropriate action to be taken in the
9 administration of the receivership is extremely broad." With regard to settlements
10 entered into by a federal equity receiver, the Court's supervisory role includes
11 reviewing and approving those settlements in light of federal court policy to
12 promote settlements before trial. See Fed. R. Civ. P. 16(c), Advisory Committee
13 Notes.

14 Federal courts of equity often look to bankruptcy law for guidance in the
15 administration of receivership estates. See *SEC v. Capital Consultants, LLC*,
16 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*,
17 98 F.3d 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*,
18 273 F.3d 657, 665 (6th Cir. 2001); see also Local Civil Rule 66-8 ("a receiver shall
19 administer the estate as nearly as possible in accordance with the practice in the
20 administration of estates in bankruptcy"). A bankruptcy court may approve a
21 compromise of claims asserted by or against the estate if the compromise is "fair
22 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*,
23 839 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise
24 negotiated by a court appointed fiduciary "is an exercise of discretion that should
25 not be overturned except in cases of abuse leading to a result that is neither in the
26 best interest of the estate nor fair and equitable for the creditors." *In re MGS*
27 *Marketing*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

28

1 The Court has great latitude in approving compromises. In passing on the
2 proposed compromise, the Court should consider the following:

- 3 a. The probability of success in litigation;
- 4 b. The difficulties, if any, to be encountered in the matter of collection;
- 5 c. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending; and
- 6 d. The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

7
8 *In re Woodson*, 839 F.2d at 620.

9 Here, the Receiver believes the settlement is in the best interest of the
10 receivership estate. The Receiver would likely incur another \$10,000 or more in
11 legal fees to go through the lengthy process for forcing a sale of the Property. The
12 process would likely take six months and could take longer. There is also the risk
13 that Mr. Lee will stop making payments on the senior mortgage and the Property
14 could go into foreclosure, causing the Receiver to incur additional expenses to stop
15 the foreclosure. Therefore, the Receiver believes that securing a cash payment of
16 \$80,000 (or 80% of the judgment amount) without incurring further legal expenses
17 will maximize the net recovery for the receivership estate. Freitag Decl., ¶ 8.

18 **V. CONCLUSION**

19 For the reasons set forth herein, the Receiver respectfully requests entry of an
20 order granting this Motion and approving the Agreement.

21
22 Dated: August 17, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
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KRISTA L. FREITAG