

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

GERARD M. COSTELLO and
KATHLEEN D. COSTELLO,
Debtors.



Chapter 7 Case
03-11517

AMENDED ORDER

**APPROVING SETTLEMENT STIPULATION, APPROVING STIPULATION AND TOLLING AGREEMENT
AND SPECIFYING THE TERMS FOR DISMISSAL OF § 727 COMPLAINT¹**

WHEREAS the Debtors, Middlebury Equity Partners, LLC (“MEP”) and John R. Canney, III, in his capacity as chapter 7 trustee (the “Trustee”) have entered into a settlement agreement (doc. #288) (the “Proposed Settlement”) intended to resolve all outstanding issues between the Parties, including but not limited to, the adversary proceeding MEP initiated to deny the Debtors’ discharge under § 727 (A.P.# 05-1007); and

WHEREAS at the April 26, 2005 hearing on the Trustee’s motion to approve the Proposed Settlement only MEP and the Trustee appeared and the Court raised questions about whether there were sufficient grounds to permit the dismissal of MEP’s § 727 complaint, see Wolinsky v. Maynard (In re Maynard), 273 B.R. 369, 373-74 (Bankr. D. Vt. 2002), aff’d, 290 B.R. 67 (D. Vt. 2002), which neither MEP nor the Trustee could answer without consulting the Debtors; and

WHEREAS, in response to the Court’s inquiries about the § 727 cause of action, MEP indicated that, in light of the settlement, it had no interest in prosecuting its § 727 adversary proceeding and the Trustee reported that (1) he was not yet prepared to make a determination as to whether to pursue a § 727 action against the Debtors, (2) he had previously extended the deadline for his filing of such a complaint through April 30th (see doc. #285), and (3) he wanted to extend the deadline to a date that was distant enough to allow the Proposed Settlement to be completed or all creditors to be paid in full; and

WHEREAS under its equitable powers the Court treated the Trustee’s statement at the hearing as an oral motion to extend the deadline for his filing of a complaint objecting to the Debtors’ discharge; and

WHEREAS, on May 2, 2005, the Parties filed a Stipulation and Tolling Agreement (doc. # 297) to extend the Trustee’s time for filing a complaint objecting to the Debtors’ discharge under § 727, to

¹ In response to the Parties’ need for an immediate order approving the settlement and terminating the hearing set for May 3, 2005, the Court entered an abbreviated order approving the settlement on May 3, 2005. The Court enters this Amended Order to expand the scope and title of the original order, to provide further details of the Court’s rationale for granting dismissal of the § 727 complaint and extending the Trustee’s time for objecting to the Debtors’ discharge, and to articulate the terms and conditions on which the § 727 complaint is dismissed.

supplement and modify the Proposed Settlement, and to respond to the concerns the Court raised at the initial hearing to consider the Proposed Settlement; and

WHEREAS the Parties have given proper and sufficient notice of the motion to approve the settlement agreement pursuant to Bankruptcy Rule 7041;

NOW, AFTER DUE CONSIDERATION of the particular facts and circumstances of this case, including the numerous and complicated causes of actions the Parties have initiated against one another both in this Court and state court, the level of animus between the Debtors and MEP, the extent and cost of the litigation that would be necessary to resolve the pending disputes, MEP's unwillingness to prosecute the § 727 complaint, the Trustee's extended time period for investigating, and if warranted, filing a § 727 complaint, the global nature of the settlement presented, and the apparent thoroughness and reasonableness of the Proposed Settlement as supplemented by the Stipulation and Tolling Agreement,

IT IS HEREBY ORDERED that the Stipulation and Tolling Agreement is approved *nunc pro tunc* to the date of the oral motion, viz., April 26, 2005; and

IT IS FURTHER ORDERED, pursuant to Bankruptcy Rule 7041, that the Proposed Settlement as supplemented and modified by the Stipulation and Tolling Agreement is approved on the following terms:

1. the acts contemplated by the Proposed Settlement, including but not limited to those set forth in Sections 2 through 8, shall be completed within the timeframes set forth in the Proposed Settlement, and where no timeframe is set forth, then those acts shall be performed with due diligence and completed as soon as practicable;
2. the Trustee's time for filing a complaint objecting to the Debtors' discharge under § 727 is further extended to the later of
 - (i) the Trustee's filing of a report of no distribution or final report; or
 - (ii) the complete consummation of all acts required under the Proposed Settlement.

However, nothing herein shall be interpreted to prohibit the Trustee from voluntarily terminating his extended rights hereunder upon his verification that all allowed unsecured claims have been paid in full.

SO ORDERED.

May 6, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge