

ORIGINAL

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

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IN RE:)
)
PATHNET OPERATING, INC.,)
)
Debtor.)
_____)

Case No. 01-12266-SSM

Chapter 7

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MOTION TO APPROVE SETTLEMENT AGREEMENT WITH SUNBELT TELECOMMUNICATIONS, L.P. AND MEMORANDUM IN SUPPORT THEREOF

Gordon P. Peyton, Chapter 7 Trustee (the "Trustee") for Pathnet Operating, Inc. (the "Debtor"), by and through the undersigned counsel, pursuant to Rules 9019(a) and 2002(a)(3) of the Federal Rules of Bankruptcy Procedure, hereby moves for the approval of the settlement agreement to resolve claims asserted against Sunbelt Telecommunications L.P. ("Sunbelt"). In support of this Motion, the Trustee states as follows:

Introduction

1. On April 2, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").
2. The case was subsequently converted to Chapter 7 and the Trustee was appointed Chapter 7 Trustee.
3. In the 90 days prior to the Petition Date, the Debtor made transfers to Sunbelt in the amount of \$43, 421.84 (the "Alleged Preferential Transfers").
4. On March 4, 2003, the Trustee sent a letter to Sunbelt demanding the return of the
Alleged Preferential Transfers.

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John G. McJunkin, VSB # 31011
J. David Folds, VSB # 44068
Piper Rudnick LLP
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
(703) 773-4155 - Telephone
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5. After engaging in settlement discussions, the Trustee and Sunbelt entered into a stipulation of settlement (the "Settlement Agreement"), a copy of which is attached hereto as Exhibit A. The Trustee and Sunbelt entered into the Settlement Agreement, subject to this Court's approval, to resolve the amount owed to the Trustee by Sunbelt as a result of the Alleged Preferential Transfers.

6. Under the terms of the Settlement Agreement, Sunbelt and the Trustee agreed that Sunbelt shall pay the Trustee the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00) (the "Settlement Amount") in full settlement of any and all claims that could have been asserted by the Trustee against Sunbelt related to the Alleged Preferential Transfers.

Relief Requested

7. By this Motion, the Trustee requests that the Court approve the Settlement Agreement pursuant to Bankruptcy Rule 9019(a) and Section 105 of the Bankruptcy Code.

8. The standard for approving a settlement, whether it is in the best interest of the estate, entails an examination of the settlement's terms with the litigation's probable cost and benefits. In re Bond, 16 F.3d 408 (4th Cir. 1994).

9. The Settlement Agreement meets this test. Sunbelt received payments in the 90 days before the Petition Date totaling \$43,421.84. After reviewing the facts and circumstances of the transaction, and evaluating the defenses raised by Sunbelt, the Trustee has concluded that compromising the claim for a payment of \$17,500.00 is a fair compromise of the claim. The Trustee submits that the proposed settlement is in the best interests of the creditors in this case as it will result in an immediate payment of \$17,500.00 without incurring the expenses and inherent risk of litigation. The settlement will also eliminate any issue as to difficulty in collection following litigation, if successful.

Notice

10. Notice of this Motion has been provided to the United States Trustee, counsel for Sunbelt, the creditors in this case and each of the parties requesting notice pursuant to Bankruptcy Rule 2002.

Conclusion

WHEREFORE, the Trustee respectfully requests the entry of an order (a) approving the Settlement Agreement by and between the Trustee and Sunbelt Telecommunications, L.P. attached hereto as Exhibit A and (b) granting such other relief as the Court considers just and proper.

Reston, Virginia
June 11, 2003

Respectfully submitted,

**Gordon P. Peyton, Chapter 7
Trustee for Pathnet Operating, Inc.**

By: /s/ J. David Folds
J. David Folds

**Counsel to Gordon P. Peyton,
Chapter 7 Trustee for Pathnet Operating, Inc.**

John G. McJunkin, VSB # 31011
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1775 Wiehle Avenue, Suite 400
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(703) 773-4155 – Telephone
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Approve Settlement and proposed Order were served electronically as available, and mailed, postage prepaid, on June 11, 2003 to the following:

Michael R. Dorey, Esquire
Sayles, Lidji & Werbner
4400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

Office of the U.S. Trustee
115 S. Union Street
Alexandria, Virginia 22314

and via first class mail on June 11, 2003 to entities who have requested notice pursuant to Bankruptcy Rule 2002 as set forth on the attached service list.*

/s/ J. David Folds

J. David Folds

*Pursuant to Local Rule 5005-1(C) (8), the attached service lists are not being served on each of the parties, but are attached to the original Certificate of Service filed with the Court.

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

IN RE:)	
)	
PATHNET OPERATING, INC.,)	Case No. 01-12266-SSM
)	
Debtor.)	Chapter 7
_____)	

**ORDER APPROVING SETTLEMENT AGREEMENT
WITH SUNBELT TELECOMMUNICATIONS, L.P.**

Having considered the Motion to Approve Settlement Agreement with Sunbelt Telecommunications, L.P. (the "Motion") filed by Gordon P. Peyton, Chapter 7 Trustee (the "Trustee") for Pathnet Operating, Inc. (the "Debtor") and any opposition to the Motion, and finding that there is cause to grant the relief requested, it is hereby

ORDERED, ADJUDGED AND DECREED that the Motion is granted.

It is so ORDERED this ____ day of _____, 2003.

Stephen S. Mitchell
United States Bankruptcy Judge

**STIPULATION BY AND BETWEEN GORDON P. PEYTON,
CHAPTER 7 TRUSTEE FOR PATHNET OPERATING, INC.
AND SUNBELT TELECOMMUNICATIONS L.P.**

This stipulation (the “Stipulation”) is made by and between Gordon P. Peyton, Chapter 7 Trustee the (“Trustee”) for Pathnet Operating, Inc. (the “Debtor”) and Sunbelt Telecommunications, L.P., the successor-in-interest to Sunbelt Telecommunications, Inc. (collectively, “Sunbelt”);

WHEREAS, on April 2, 2001 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”), Case Number 01-12266 SSM (the “Bankruptcy Case”); and

WHEREAS, the Bankruptcy Case was subsequently converted to Chapter 7 and the Trustee was appointed Chapter 7 Trustee; and

WHEREAS, on or about the Trustee alleges that within 90 days of the Petition Date, the Debtor made one or more transfers to Sunbelt in the amount of \$43,421.84, which the Trustee alleges are avoidable under 11 U.S.C. § 547(b) (the “Preferential Payments”); and

WHEREAS, the parties have engaged in settlement negotiations and have agreed to the terms of this Stipulation taking into consideration the costs, risks and delay which would otherwise be attendant to litigating this matter; and

WHEREAS, the Trustee have evaluated the terms of the Stipulation and believes it is in the best interests of the Debtor’s estate.

NOW, THEREFORE, based upon the foregoing, the Trustee and Sunbelt, subject to the approval of the Bankruptcy Court, intending to be legally bound, hereby stipulate and agree as follows:

1. Sunbelt shall pay the amount of \$17,500.00 (the "Settlement Amount") by check made payable to "Gordon P. Peyton, Chapter 7 Trustee for Pathnet Operating, Inc.," and deliver the Settlement Amount to David Folds, Piper Rudnick LLP, 1775 Wiehle Avenue, Suite 400, Reston, Virginia, 20190 upon execution of this Stipulation. The Trustee shall hold the Settlement Amount in escrow until the Bankruptcy Court approves the Stipulation.
2. Effective upon Bankruptcy Court approval of this Stipulation and subject to Paragraph 9 below, the Trustee, on one hand, and Sunbelt, on the other, hereby release and discharge each other, their successors and assigns, their agents, and attorneys from all claims, known or unknown, which each party may have against the other. This general release includes without limitation (i) any and all claims from or relating to the transaction(s) related to the Preferential Payments; and (ii) any and all claims from or relating to any other transaction(s) between the Debtor and Sunbelt, other than as set forth in any proof of claim that Sunbelt has filed against the Debtor's estate, or the Trustee's right to challenge an object to any such proof of claim.
3. The parties expressly acknowledge that the waivers and agreements herein shall become effective upon the entry of an Order by the Bankruptcy Court approving this Stipulation and may not thereafter be rescinded or revoked.
4. Each party shall bear its own costs and expenses in connection with this matter, including legal fees and expenses.

5. The Bankruptcy Court shall retain jurisdiction to hear and determine any matters or disputes arising from or relating to this Stipulation.

6. This Stipulation shall be governed and interpreted in accordance with the law of the Commonwealth of Virginia, without consideration of the principles of conflict of law.

7. This Stipulation shall be binding upon the parties hereto and their respective executors, heirs, successors and assigns.

8. This Stipulation may be executed in counterparts, and when all counterparts have been executed, each executed counterpart will have the force and effect of the original.


9. Nothing herein shall be construed to waive any proof of claim that Sunbelt has filed against the Debtor's estate, or the Trustee's right to challenge or object to any such proof of claim.

10. This Stipulation constitutes the entire agreement between the Trustee and Sunbelt regarding the matters stated herein. This Stipulation may not be amended, modified, or extended with respect to any party to this Stipulation except by a written instrument executed by both parties hereto.

11. The undersigned certify that they are duly authorized to execute this Stipulation on behalf of the parties thereto.

Sunbelt Telecommunications, L.P.
Successor-in-interest to Sunbelt
Telecommunications, Inc.

By: General SBT Holdings, LLC,
Its general partner

By: 
Paula Mann, President

Gordon P. Peyton, Chapter 7
Trustee for Pathnet Operating, Inc.

By: 
J. David Folds