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

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

Case No. 01-12266-SSM

Chapter 7

COMMISSION
CLERK

JUN 13 AM 9:26

FPSC

MOTION TO APPROVE SETTLEMENT AGREEMENT WITH TECHNICAL TRANSPORTATION, INC. 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 Technical Transportation, Inc ("Technical Transportation"). 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 Technical Transportation in the amount of \$7,602.50 (the "Alleged Preferential Transfers").
4. On March 4, 2003, the Trustee sent a letter to Technical Transportation 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
(703) 773-5035 - Facsimile

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

The Settlement Agreement

5. After engaging in settlement discussions, the Trustee and Technical Transportation entered into a stipulation of settlement (the "Settlement Agreement"), a copy of which is attached hereto as Exhibit A. The Trustee and Technical Transportation entered into the Settlement Agreement, subject to this Court's approval, to resolve the amount owed to the Trustee by Technical Transportation as a result of the Alleged Preferential Transfers.

6. Under the terms of the Settlement Agreement, Technical Transportation and the Trustee agreed that Technical Transportation shall pay the Trustee the sum of Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) (the "Settlement Amount") in full settlement of any and all claims that could have been asserted by the Trustee against Technical Transportation 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. Technical Transportation received payments in the 90 days before the Petition Date totaling \$7,602.50. After reviewing the facts and circumstances of the transaction, and evaluating the defenses raised by Technical Transportation, the Trustee has concluded that compromising the claim for a payment of \$2,500.00 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 \$2,500.00 without incurring the expenses and inherent risk of litigation. The settlement, which

requires a complete payment upon final Court approval, 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 the Defendant, 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 Technical Transportation, Inc. attached hereto as Exhibit A and (b) granting such other relief as the Court considers just and proper.

Respectfully submitted,

Reston, Virginia
June 11, 2003

**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
J. David Folds, VSB # 44068
Piper Rudnick LLP
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
(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:

Bryon R. Hammer, Esquire
Bourland, Wall & Wenzel, P.C.
City Center Tower II
301 Commerce Street, Suite 1500
Fort Worth, Texas

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 TECHNICAL TRANSPORTATION, INC.**

Having considered the Motion to Approve Settlement Agreement with Technical Transportation, Inc. (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

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
)
_____)

**STIPULATION BY AND BETWEEN GORDON P. PEYTON,
CHAPTER 7 TRUSTEE FOR PATHNET OPERATING, INC.
AND TECHNICAL TRANSPORTATION, INC.**

This stipulation (the "Stipulation") is made by and between Gordon P. Peyton, Chapter 7 Trustee (the "Trustee") for Pathnet Operating, Inc. (the "Debtor") and Technical Transportation, Inc. ("Technical Transportation");

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 Bankruptcy 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, the Trustee alleges that within ninety (90) days of the Petition Date, the Debtor made one or more transfers to Technical Transportation in the total amount of \$7,602.50, 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 has evaluated the terms of the settlement proposal and believes its acceptance is in the best interests of the Debtor's estate.

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

1. Technical Transportation shall pay the amount of \$2,500.00 (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, the Trustee, on one hand, and Technical Transportation, 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 Technical Transportation.

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.

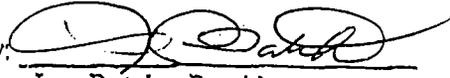
9. Nothing herein shall be construed to waive any proof of claim that Technical Transportation has filed against the Debtor's estate, or the Trustee's right to challenge or object to any such proof of claim.

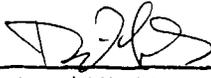
10. This Stipulation constitutes the entire agreement between the Trustee and Technical Transportation regarding the matters stated herein. This Stipulation may not be amended, modified, or extended with respect to any party to this Stipulation except by a written instrument executed by both parties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

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

Technical Transportation, Inc.

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

By: 
Len Batcha, President
Date: 4/30/03

By: 
J. David Folds
Date: 6/10/03