

**UNITED STATES BANKRUPTCY COURT
for the
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 99-11286-MWV
Chapter 7

Paula Martin Amirault,
Debtor

MEMORANDUM OPINION

The Court has before it the trustee's "Motion To Compromise and Assign Claims Under Prenuptial Agreement." The compromise is with the Debtor's spouse, M. Randall Martin, who is presently involved in divorce proceedings with the Debtor and a defendant in a law suit in state court concerning the prenuptial agreement that is the subject of the proposed compromise. The Debtor, Paula Martin Amirault, has objected to the compromise. Because the compromise has a termination date of December 31, 2000, time restraints dictate that this opinion and order be concise.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

This motion was filed by the trustee on December 5, 2000. On December 18, 2000, the Court conducted a four hour evidentiary hearing on the proposed compromise and indicated that it would render a timely opinion given the termination date for the compromise. At the hearing, testimony was given by Mr.

Martin, the Debtor and Attorney Leonard Deming, the Debtor's counsel in her previous Chapter 11 bankruptcy.

The history of this case is tortuous at best. The case was filed by the Debtor as a Chapter 7 on April 16, 1999. The schedules were without substance. The case converted to Chapter 13 at the Debtor's request on June 1, 1999. On December 17, 1999, the case was converted back to Chapter 7 on motion of the Chapter 13 Trustee for Debtor's failure to cooperate. Upon reconversion to Chapter 7, Attorney Askenaizer was appointed trustee. The Debtor's failure to cooperate continued, although somewhat lessened with the appearance of Attorney Sheridan as Debtor's new counsel. Although the Court realizes that the Debtor does have significant health problems, she attended a Court ordered 2004 examination only after threat of apprehension by the United States Marshals.

The original schedules neither listed the prenuptial agreement as an asset or the one creditor filing a proof of claim, Michael Hudick, who filed a claim for \$100,062 plus interest for loans made to the Debtor prior to and just after her original Chapter 7 was filed.

The prenuptial agreement was executed on April 30, 1990. It provides for payments of \$75,000 annually to the Debtor and an additional \$28,000 for child support, with cost of living increases to both. The child support terminates when a child reaches age 22 or finishes college, whichever is later. There are two children involved. The payment to the Debtor is without any termination date, and the agreement indicates that in the event of a divorce, the payments would continue as alimony and child support.

The testimony concerning the origination and consideration for the prenuptial agreement is conflicting. Mr. Martin testified that it was executed to provide an income stream to the Debtor in order to fund a previous Chapter 11 plan of the Debtor. He, at least, implied that it was never intended to be a real prenuptial agreement, although upon cross-examination, he admitted that at the time he executed it, he thought it was enforceable. It is uncontested that no payments were ever made to the Debtor, although child support has been regularly paid.

The Debtor testified that in 1990, in order to protect Mr. Martin's career, they agreed that only she would file the Chapter 11 proceeding in order to prevent a foreclosure. She further argued that she felt that because of the filing her credit would be forever damaged and her career in buying and selling real estate would end. It is for this reason that she needed another source of income. Under either scenario, the prior Chapter 11 appears to be the driving force in the execution of the prenuptial agreement.

The testimony further indicated that Mr. Martin has current income in excess of \$500,000 and works as a consultant and a partner at firm of Deloitte & Touche. At the hearing, he presented an income and expense statement and balance sheet. As might be suspected, the income statement indicated that his expenses equaled his income, and the balance sheet showed that his net worth equaled roughly the payment to the trustee under the compromise of \$130,000.

This brings the Court to the terms of the compromise. As indicated above, Mr. Martin would pay the trustee \$130,000 on or before December 31, 2000. That payment would be taxable to the bankruptcy estate, significantly reducing the benefit to the estate and also providing a benefit to Mr. Martin. In return for the payment, the trustee would agree to "assign to Mr. Martin all rights of the estate in the Agreement [prenuptial] and in the Lawsuit [state law suit] and that the Trustee shall execute 'Neither Party Docket Markings' for filing in the Hillsborough County Superior Court — South to settle the Lawsuit." (Trustee's Motion at ¶ 8 (b).) Further, "[u]pon receipt of the lump sum payment, Randall Martin's obligations and duties pursuant to the Prenuptial Agreement and potential liability pursuant to the Lawsuit known as Paula Martin v. Randall Martin, 98-C-0053 are hereby terminated." (Trustee's Motion at ¶ 8(c).) It is upon these provisions that the Court must deny the motion to compromise. If the compromise only pertained to the prepetition obligations allegedly due under the prenuptial agreement, this decision might be otherwise. However, although the trustee argues that *according to Mr. Martin's lawyer*, the Debtor's future rights will not be severely hampered, the Court will virtually terminate the Debtor's rights under the prenuptial agreement if the compromise is approved. It is also evident that Mr. Martin has the current ability to create significant income and wealth. Furthermore, as indicated above, Mr. Martin, on cross-examination,

indicated that he thought that at the time the agreement was executed, it was enforceable. The Court is not suggesting that Mr. Martin may not now have defenses to the continued payments thereunder, but it does not wish to cut the Debtor completely off from her ability to try to enforce the agreement.

The Court is aware of the standards enunciated for the approval or denial of a settlement, both within this Circuit and in others. Based on the facts of this case, the Court cannot find that the compromise is in the best interest of the estate and cannot approve the compromise. In making this decision, the Court has also taken into consideration that there is only one creditor who has filed a proof of claim in this case and that the Debtor has objected to that claim alleging an unusual set of circumstances surrounding the creation of the debt. This objection will be heard in the ordinary course.

Finally, in rendering this opinion, the Court is not faulting the trustee for entering into the compromise agreement. This has been a difficult case, resulting in the necessity for the trustee to expend time and expenses that should not be necessary absent the failure of the Debtor to cooperate.

CONCLUSION

For the reasons set out herein, the motion to compromise is denied. The Court has set January 4, 2001 at 9:00 a.m. for a hearing on pending motions. The Court will first consider the trustee's motion for sanctions and then consider the Debtor's motion to dismiss this case.

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 21st day of December, 2000, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge