

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL
OF SETTLEMENT RELATING TO VENNES PARTIES APPEAL**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust (collectively, the "*Liquidating Trusts*"), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of appellate proceedings currently pending in the United States Circuit Court for the Eighth Circuit that relate to Frank E. Vennes, Jr. and Metro Gem, Inc. (collectively, the "*Vennes Parties*"). In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

1. These bankruptcy cases relate to a *ponzi* scheme perpetrated by Thomas J. Petters and others.

2. On September 24, 2008, federal agents raided Mr. Petters' offices. Thereafter, Mr. Petters, his companies, the Vennes Parties and others (collectively, the "**Receivership Defendants**") were placed into a federal receivership which is currently pending in the United States District Court for the District of Minnesota ("**District Court**").

3. Douglas A. Kelley was appointed receiver for Petters and several of his entities ("**Petters Receiver**") while Gary Hansen was appointed receiver for the Vennes Parties and then later, after dissolution of the Vennes Parties' receivership, liquidating trustee ("**Vennes Parties Liquidator**").

4. As part of the receivership, the District Court imposed a litigation stay barring any third parties from commencing or prosecuting any action against the Receivership Defendants except to preserve any applicable statute of limitations.

5. On April 20, 2011, the United States charged Mr. Vennes with several crimes relating to actions he committed in connection with Petters' *ponzi* scheme. The criminal proceedings against Mr. Vennes are pending.

6. In accordance with the litigation stay imposed by the District Court, on November 29, 2011, the Liquidating Trustee commenced an adversary proceeding against the Vennes Parties in the United States Bankruptcy Court for the Southern District of Florida. Thereafter, on January 24, 2012, the Liquidating Trustee filed a motion in the District Court seeking relief from the stay of litigation as to the Vennes Parties ("**Stay Relief Motion**").

7. The Stay Relief Motion was opposed by Petters Receiver, the Vennes Parties Liquidator, the United States of America and a limited number of third parties ("**Faith Community Investors**").

8. On March 12, 2012 the District Court entered an Order denying the Stay Relief Motion. On April 10, 2012 the Liquidating Trustee appealed the District Court's ruling which is now currently pending before the United States Circuit Court for the Eighth Circuit ("*Appeal*").

II. The Settlement Terms

9. After filing the Appeal, the Petters Trustee and Liquidating Trustee entered into a settlement agreement that in sum, apportioned potential proceeds of mediations relating to individuals and entities that received monies from the Vennes Parties ("*Vennes Transferees*"). This settlement was approved by the Court. See [ECF No. 1350].

10. The settlement between the Petters Trustee and Liquidating Trustee has facilitated a collective effort to resolve claims against the Vennes Transferees. To that end, the United States of America is in possession of certain financial data relating to the Vennes Parties and their transferees ("*Vennes Financial Data*").

11. To obtain access to the Vennes Financial Data, the Liquidating Trustee, the Vennes Parties, the United States of America, the Vennes Parties Liquidator and the Faith Community Investors have agreed to a settlement that resolves the Appeal and other related issues.

12. The key aspects of the settlement agreement ("*Settlement Agreement*") are the following:¹

- a) Vennes Financial Data. The Vennes Parties authorize the United States of America to turn over the Vennes Financial Data to the Petters Trustee and the Liquidating Trustee.

¹ A copy of the Settlement Agreement is attached as Exhibit 1. To the extent the terms of the agreement differ with the terms set forth in this Motion, the agreement shall control.

b) Dismissal and Withdrawal. The Liquidating Trustee will dismiss the Appeal provided that the Liquidating Trustee may seek to terminate the litigation stay after the conclusion of Mr. Vennes' criminal trial (*i.e.*, through return of a unanimous jury verdict, guilty plea or dismissal). In the event the Liquidating Trustee again seeks relief to lift the litigation stay: (a) the Petters Trustee agrees to support such relief; (b) the Vennes Parties Liquidator and the United States of America agree not to object to such relief and (c) all parties to the agreement agree that dismissal of the Appeal does not bar a subsequent attempt by the Liquidating Trustee to seek such relief. The Petters Trustee will also withdraw relief currently pending in the Petters bankruptcy case that seeks access to the Vennes Financial Data.

c) Discovery related to the Vennes Parties. The Petters Trustee and Liquidating Trustee agree not to depose the Vennes Parties until the conclusion of Mr. Vennes' criminal trial.

d) Petters Trustee Actions Against Vennes Transferees. The Petters Trustee agrees not to commence any actions against the Vennes Transferees until the conclusion of Mr. Vennes' criminal trial.

III. Relief Requested

13. The Liquidating Trustee seeks an Order approving the Settlement Agreement.

14. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that [o]n motion . . . and after a hearing on notice to creditors; the debtor . . . and to such other entities as the Court may designate, the Court may approve a compromise or settlement.”

15. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

16. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. *The Settlement Agreement Ought to be Approved*

17. The Settlement Agreement attempts to resolve several related issues that have arisen with respect to the Vennes Parties. Based upon the above legal principles, the Liquidating Trustee asserts that the Settlement Agreement falls well above the lowest point of the range of reasonableness and thus, should be approved.

Probability of success in litigation

18. The Liquidating Trustee believes that his Appeal is meritorious and ultimately will be successful. Nonetheless, it is simply impossible to predict whether the Eighth Circuit will ultimately rule in favor of the Liquidating Trustee, lift the litigation stay and allow the

Liquidating Trustee or others to obtain discovery from the Vennes Parties relating to the Vennes Transferees. Moreover, it is difficult to predict how long it will take the appellate process to conclude.

19. To that end, the Settlement Agreement resolves this issue by immediately resulting in access to the Vennes Financial Data so that causes of action can be more effectively litigated and resolved.

20. Although the Vennes Parties still maintain the benefit of a litigation stay, this consideration is outweighed by the benefits of pursuing potential significant claims against the Vennes Transferees. Moreover, the Settlement Agreement provides for an effective safety valve for the Liquidating Trustee in terms of the litigation stay. Upon conclusion of Mr. Vennes' criminal trial, the Liquidating Trustee may again seek stay relief to proceed as against Mr. Vennes and Metro Gem, Inc. with the number of objecting parties and the scope of any objection being streamlined and limited.

Collectability

21. This is not a meaningful issue in terms of resolving the disputes.

Complexity of litigation and attendant expense, inconvenience and delay

22. This is a meaningful consideration that militates in favor of approval of the Settlement Agreement.

23. The Settlement Agreement reduces administrative costs and streamlines issues going forward. Specifically, the Settlement Agreement results in an elimination of the administrative costs associated with the Appeal and any subsequent effort by the Liquidating Trustee to seek stay relief will, as stated above, be limited in terms of objecting parties and scope.

Paramount interest of creditors

24. The Settlement Agreement is in the paramount interest of creditors. It is in the interests of the estates to afford the Liquidating Trustee access to data that will enable him efficiently to prosecute and resolve claims against the Vennes Transferees.

WHEREFORE, the Liquidating Trustee requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (1) approving the Settlement Agreement; and (2) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 8, 2012, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3 and via U.S. Mail to the parties listed on the matrix attached as Exhibit 4.

s/ Jonathan S. Feldman
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STIPULATION

This Stipulation is entered into by and among Barry E. Mukamal, as Liquidating Trustee (defined below), Douglas A. Kelley, as PCI Trustee (defined below); Gary Hansen as Vennes Plan Trustee (defined below), the United States of America, Frank E. Vennes, Jr., Metro Gem, Inc. and the Faith Community Investors (defined below) (each a "Party" and collectively the "Parties").

WHEREAS, Barry E. Mukamal is the Liquidating Trustee of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach II Liquidating Trust (the "Liquidating Trustee") in the jointly administered bankruptcy case captioned *In re Palm Beach Finance Partners, L.P.*, Case No. 09-36379 pending in the United States Bankruptcy Court for the District of Florida; and

WHEREAS, Douglas A. Kelley is the Chapter 11 Trustee (the "PCI Trustee") of, among others, Petters Company, Inc. in the jointly administered bankruptcy case captioned *In re Petters Company, Inc.*, Case No. 08-45257 currently pending in the United States Bankruptcy Court for the District of Minnesota; and

WHEREAS, Gary Hansen (the "Vennes Plan Trustee") was appointed as receiver for, among others, Frank E. Vennes, Jr. ("Vennes") by the United States District Court for the District of Minnesota (the "District Court") in the case captioned *United States v. Petters, et al.*, Case No. 08-5348 (the "Vennes Receivership Case") and is currently serving as a liquidating trustee for Vennes' assets pursuant to an Order entered in that case; and

WHEREAS, Vennes is a defendant before the United States District Court for the District of Minnesota in a criminal proceeding, Criminal Case No. 11-141 (the "Vennes Criminal Case"); and

WHEREAS, in the Vennes Receivership Case, the United States District Court for the District of Minnesota has entered an order staying litigation commenced by the Palm Beach Liquidating Trustee against Frank E. Vennes, Jr. and Metro Gem, Inc., which litigation is pending in the United States Bankruptcy Court for the Southern District of Florida; and

WHEREAS, on January 24, 2012, the Liquidating Trustee filed a motion seeking relief from the stay of litigation against Frank E. Vennes, Jr. and Metro Gem, Inc. (the "Lift Stay of Litigation Motion"); and

WHEREAS, A1 Plus, Glen and Sue Silker, Silker Investments, Timothy J. Finley, IOC Distribution, Jeffrey Siemon and Mark T. Wyder Family Trust (the "Faith Community Investors"), and the PCI Trustee, the Vennes Plan Trustee and the United States of America opposed the Lift Stay of Litigation Motion; and

WHEREAS, on March 12, 2012 the District Court entered an Order denying the Lift Stay of Litigation Motion and on April 10, 2012 the Liquidating Trustee appealed the Order denying the Lift Stay of Litigation Motion (C.A. No. 12-1880) (the "Appeal"); and

WHEREAS, the PCI Trustee and the Liquidating Trustee have each entered into a settlement agreement which apportions potential proceeds of mediations and possible settlements scheduled to commence in July 2012 relating to individuals and entities who received funds from and transferred funds to Vennes and Metro Gem, Inc.; and

WHEREAS, in order to facilitate the mediations and potential settlements referred to above, the PCI Trustee has filed a motion seeking authorization to conduct limited discovery with respect to Vennes and Metro Gem, Inc. in the United States Bankruptcy Court for the District of Minnesota in Adversary Case No. 10-4328; and

WHEREAS, the United States of America holds certain financial records maintained in a Quickbooks database (the "Financial Data") regarding Metro Gem, Inc. and Frank E. Vennes, Jr.;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED between the parties identified below:

1. Metro Gem, Inc. and Vennes hereby authorize the forthwith release of the Financial Data by the Office of the United States Attorney for the District of Minnesota to the Liquidating Trustee and to the PCI Trustee.
2. The United States of America will produce the Financial Data to the Liquidating Trustee and to the PCI Trustee within three business days of executing this stipulation.
3. Upon receiving the Financial Data, the Liquidating Trustee immediately will move the United States Court of Appeals for the Eighth Circuit to voluntarily dismiss Case No. 12-1880.
4. Upon receiving the Financial Data, the PCI Trustee immediately will seek to withdraw the pending Motion for an Order Narrowly Lifting the Stay of Discovery in Adv. No. 10-4352 pending before the United States Bankruptcy Court for the District of Minnesota.
5. The Liquidating Trustee and the PCI Trustee will not seek to depose or otherwise examine Vennes or a designated representative of Metro Gem, Inc. prior to the return of a unanimous verdict, guilty plea or dismissal with respect to Vennes in the Vennes Criminal Case.
6. The PCI Trustee will not commence adversary proceedings against transferees of Vennes or Metro Gem, Inc. prior to the return of a unanimous verdict, guilty plea or dismissal with respect to Vennes in the Vennes Criminal Case.
7. The Liquidating Trustee will not seek relief from the stay of litigation now in place in the Vennes Receivership Case pending before the District Court prior to the return of a unanimous verdict, guilty plea or dismissal with respect to Vennes in the Vennes Criminal Case.
8. Upon return of a unanimous verdict, guilty plea or dismissal with respect to Vennes in the Vennes Criminal Case, the United States and the Vennes Plan Trustee agree not to

oppose the Liquidating Trustee's actions to seek relief from the stay of litigation in place in the Vennes Receivership Case.

9. Upon return of a unanimous verdict, guilty plea or dismissal with respect to Vennes in the Vennes Criminal Case, the PCI Trustee agrees to support the Liquidating Trustee's actions to seek relief from the stay of litigation in place in the Vennes Receivership Case.
10. Upon return of a unanimous jury verdict, guilty plea or dismissal with respect to Vennes in the Vennes Criminal Case, the parties to this stipulation agree that the Liquidating Trustee may renew his motion seeking relief from the stay of litigation before the United States District Court for the District of Minnesota and shall not be prejudiced in any respect by virtue of having dismissed the Appeal. Each Party to this Stipulation agrees not to assert, and unequivocally waives, any argument that the dismissal of the Appeal, or the Liquidating Trustee's failure to pursue the Appeal to conclusion, bars the Liquidating Trustee from renewing his motion seeking relief from the stay of litigation in the Vennes Receivership Case or from bringing a new motion for relief from the stay of litigation in the Vennes Receivership Case, whether such argument be based in collateral estoppel, res judicata, law of the case, failure to exhaust remedies, or any other theory of finality or otherwise.
11. Each of the parties to this Stipulation acknowledge that agreement to its terms by the Liquidating Trustee will become effective and binding upon the Liquidating Trustee only upon entry of court order approving this stipulation by the United States Bankruptcy Court for the Southern District of Florida pursuant to Bankruptcy Rule 9019 in *In re Palm Beach Finance Partners, L.P.*, Case No. 09-36379.

Dated: July 17, 2012

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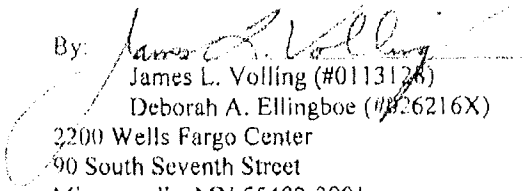
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In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**ORDER APPROVING LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL
OF SETTLEMENT RELATING TO VENNES PARTIES APPEAL**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement Relating to Vennes Parties [ECF No. ____] ("**Motion**"). The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and settlement is sufficient to comply with Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any

other applicable notice requirement, and accordingly, it is:

ORDERED that the Motion is **GRANTED** and the Settlement Agreement is **APPROVED**.

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Submitted By:

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Copies Furnished To:

Jonathan S. Feldman, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

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