

Bond Case Briefs

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BANKRUPTCY - SOUTH CAROLINA

In re Jasper Pellets, LLC

United States Bankruptcy Court, D. South Carolina - December 15, 2023 - B.R. - 2023 WL 9062959

Successful bidder on Chapter 11 debtor's assets at auction brought adversary proceeding against debtor, asserting claims for breach of contract, violation of South Carolina Unfair Trade Practices Act, fraud, negligent misrepresentation, fraud in the inducement, breach of contract accompanied by a fraudulent act, fraudulent concealment, unjust enrichment, and declaratory judgment. Case was converted to one under Chapter 7. Later, trustee filed motion seeking approval of settlement.

Debtor's main secured creditor objected.

The Bankruptcy Court held that:

- Proposed global settlement agreement was fair, equitable, and in best interest of estate, and therefore would be approved, and
- Settlement agreement did not require creditor's consent.

Proposed global settlement agreement of \$655,000 paid to trustee was fair, equitable, and in best interest of estate, and therefore would be approved by Bankruptcy Court in Chapter 7 case converted from one under Chapter 11, in adversary proceeding brought by successful bidder on debtor's assets at auction asserting claims against debtor for, inter alia, breach of contract, violation of South Carolina Unfair Trade Practices Act, fraud, unjust enrichment, and declaratory judgment; trustee identified avoidable transfers totaling approximately \$566,000 and commercial torts believed to be worth in excess of \$1 million, whereas bidder asserted claims of over \$43 million, and if settlement agreement was not approved, trustee would have to continue litigating factually complex issues with uncertainty as to any recovery for the estate and with no funds whatsoever to do so.

Creditor's security interest did not extend to escrowed good faith deposit in connection with asset purchase agreement between debtor and successful bidder in auction of debtor's assets, which creditor claimed was part of its collateral, and thus global settlement agreement between bidder and trustee in debtor's Chapter 7 case converted from one under Chapter 11, which ascribed no value to the asset purchase agreement, did not require creditor's consent; Bankruptcy Court never entered an order approving the sale with any liens of secured creditors to attach to the proceeds, and good faith deposit remained in escrow subject to creditor's claims that it was refundable to it and thus never vested to the bankruptcy estate.