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DEC 11 2019

U.S. BANKRUPTCY COURT
NEWARK, N.J.

BY  DEPUTY

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re:


ALFRED CARL ECKERT, III,

Debtor.

Case No.: 11-38852

**DECISION AND ORDER RE: MOTION TO REOPEN CASE
AND ENFORCE CONFIRMATION ORDER**

The relief set forth on the following pages, numbered two (2) through eight (8), is hereby
ORDERED.


HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE

Dated: December 11, 2019

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Debtor: Alfred Carl Eckert, III

Case No.: 11-38852 (JKS)

Caption of Order: **Decision and Order Re: Motion to Reopen Case and Enforce Confirmation Order**

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INTRODUCTION

Alfred Carl Eckert, III (the “Debtor”) confirmed his Second Amended Chapter 11 Plan of Reorganization in January 2012 (the “Plan,” Doc. 215). One of the major features of the Debtor’s bankruptcy case was an ongoing matrimonial dispute with his ex-wife, Claire Chamberlain, formerly known as Claire Eckert (“Ms. Chamberlain”). The dispute was mediated and settled in the context of the Debtor’s Chapter 11 case. As part of the settlement, Ms. Chamberlain was granted a broad release – including a release of third-party claims.

After the Debtor’s Plan was confirmed, the Debtor and Ms. Chamberlain filed an amended tax return for 2008, reporting an additional \$5 million of income. The New Jersey Division of Taxation (“New Jersey”) claims that additional taxes in the amount of \$705,127 are due from the Debtor and Ms. Chamberlain. In her motion, Ms. Chamberlain asks the Court to enjoin New Jersey’s claims against her because such claims were released under the Debtor’s Plan. For the reasons set forth below, the Court grants the relief requested by Ms. Chamberlain.

DISCUSSION

The narrow issue here is whether New Jersey’s claim against Ms. Chamberlain is barred under the terms of a global settlement between the Debtor and Ms. Chamberlain that was approved by the Bankruptcy Court and incorporated into the Debtor’s Plan. The global settlement was reached during a Court-sanctioned mediation on November 22, 2011. Ms. Chamberlain claims that she made “massive financial concessions” to the Debtor in exchange for a fixed domestic support payment and a release from the Debtor and his creditors. [Doc. 288, §§ 12-16].

The terms of the global settlement were memorialized in a motion filed with the Bankruptcy Court. [Docs. 139 and 144]. On December 6, 2011, an Order approving the settlement was entered. [Doc. 157]. As to the release of claims against Ms. Chamberlain, the Order provided:

. . . the settlement between the Debtor and Ms. [Chamberlain] shall be deemed null and void unless this Court enters an Order approving Debtor's Plan of Reorganization that (i) incorporates the terms of this Settlement and (ii) contains a complete release and third-party injunction in favor of Ms. [Chamberlain] for any joint or several debts with the Debtor or any debt incurred by Mr. Eckert individually. . . .

New Jersey received notice of the motion to approve the global settlement and did not object. [Doc. 153].

Since the global settlement agreement was contingent upon confirmation of the Debtor's Plan, the terms of the Plan are also relevant. [Doc. 156]. The terms of the settlement between the Debtor and his ex-wife are incorporated in the Plan in the section that relates to her treatment under the Plan. [Doc. 156, p. 11]. Also, the Plan provides as follows with respect to the release of claims against Ms. Chamberlain:

IV. EFFECT OF CONFIRMATION OF PLAN

A. Discharge

. . . The provisions of this Plan shall be binding upon Debtor and all Creditors, regardless of whether such Claims are impaired or whether such parties accept this Plan, upon Confirmation thereof.

B. Release of Claims

Except as otherwise expressly provided for in this Plan, the distributions and rights afforded in the Plan shall be complete and full satisfaction and release, effective as of the Effective Date, of all Claims against the Debtor and Claire Eckert and any of their assets or properties of any nature whatsoever. Commencing on the Effective Date, except as otherwise expressly provided for in this Plan, all Claimants shall be precluded forever from asserting against the Debtor and Claire Eckert and their respective agents, employees, principals, members, officers, shareholders, representatives,

heirs, successors, financial advisors, accountants, attorneys, or employees and their respective assets and properties any other or further liabilities, liens, Claims, encumbrances, or obligations, including but not limited to all principal and accrued and unpaid interest on the debts of the Debtor and Claire Eckert based on any act or omission, transaction or other activity or security instrument or other agreement of any kind or nature occurring, arising or existing prior to the Effective Date, that was or could have been the subject of any Claim, whether or not Allowed.

On and after the Effective Date, as to every Claim, every Holder of a Claim shall be precluded from asserting against the Debtor and Claire Eckert and their respective agents, employees, principals, officers, members, shareholders, representatives, heirs, successors, financial advisors, accountants, attorneys or employees and their respective assets and/or properties any further Claim based on any document, instrument, act, omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

Pursuant to Bankruptcy Rule 9019, confirmation of the Plan shall constitute, and all consideration distributed under this Plan shall be in exchange for and in complete satisfaction, settlement, and release of and an injunction against, all as of the Effective Date, any and all Claims, demands, allegations or causes of action, against the Debtor and Claire Eckert and their respective agents, representatives, officers, shareholders, members, financial advisors, heirs, successors, accountants, attorneys, or employees for any liability for actions taken or omitted to be taken in good faith under or in connection with the Plan or in connection with the Chapter 11 case or the operation of the Debtor during the pendency of the Chapter 11 case.

Thus, the Plan incorporated the settlement and provided for a release and injunction in favor of Ms. Chamberlain as required by the December 7, 2011 Order Approving Settlement.

Importantly, New Jersey was engaged in the process of confirmation of the Plan and filed an objection on December 27, 2011 [Doc. 187]. Among other things, New Jersey's objection raised issues with the Plan provisions that provided for the discharge of the Debtor's liabilities. [Doc. 187, ¶¶ 18-19]. New Jersey did not oppose the release and injunction provisions in the Plan in favor of Ms. Chamberlain. New Jersey's objection to confirmation was settled pursuant to the terms of a Stipulation which was filed on January 10, 2012. [Doc. 210]. Ms. Chamberlain was not a party to this Stipulation. In the Stipulation, the Debtor agreed to pay any taxes due to New Jersey which accrued before or during the Chapter 11 case. With the objection of New Jersey

resolved, on January 11, 2012, the Bankruptcy Court entered an Order Confirming the Plan. [Doc. 215].

At this point, it appeared that Ms. Chamberlain was free and clear of any claims by creditors of her ex-husband, including claims for which she was jointly liable – like New Jersey’s tax claims. But, in September 2012 (eight months after confirmation), the Debtor and Ms. Chamberlain filed an amended tax return for the 2008 tax year which reported \$5 million of additional income for that year. [Doc. 296-2, Ex. B]. New Jersey asserts that this amendment results in additional tax due from both the Debtor and Ms. Chamberlain in the amount of \$705,127 as of February 2013 (now over \$1.2 million). New Jersey argues that its claim for these taxes is not precluded by the Bankruptcy Court’s Order confirming the Plan. Its primary arguments are addressed below.

- (1) New Jersey argues that the claim is a non-dischargeable tax claim under § 523(a)(1) of the Bankruptcy Code and thus cannot be discharged under a plan pursuant to § 1141(d)(2). This argument would be compelling if it was the Debtor that was claiming that New Jersey’s claim was discharged under the Plan. But Ms. Chamberlain is not a debtor in a Chapter 11 case. Rather, she is a third party that entered into a settlement with a debtor where she gave value in exchange for a release from her ex-husband and his creditors.

In this jurisdiction, third party releases in Chapter 11 plans are allowed in certain exceptional circumstances. Many courts consider the factors set forth in *In re Master Mortgage Investment Fund, Inc.*, 168 B.R. 930, 937-38 (Bankr. W.D. Mo. 1994):

- (1) the identity of interest between the debtor and non-debtor such that a suit against the non-debtor will deplete the estate’s resources;
- (2) a substantial contribution to the plan by the non-debtor;
- (3) the necessity of the release to the reorganization;

- (4) the overwhelming acceptance of the plan and release by creditors and interest holders; and
- (5) the payment of all, or substantially all, of the claims of the creditors and interest holders under the plan.

Also, the Third Circuit Court of Appeals has described the “hallmarks” of permissible non-consensual releases as “fairness, necessity to the reorganization, and specific factual findings to support those conclusions.” *In re Continental Airlines*, 203 F.3d 203, 214 (3d Cir. 2000). Thus, the release in favor of Ms. Chamberlain under the Debtor’s Plan was before the Bankruptcy Court at the hearing on confirmation of the Debtor’s Plan and New Jersey had the right to object to it or seek to limit it. But New Jersey did not object. Under these circumstances, the Court must enforce the release that was granted to Ms. Chamberlain under the Plan as it is written. While § 1141(d)(2) might limit the discharge of the Debtor under his Plan, it does not apply to Ms. Chamberlain.

(2) New Jersey contends that the claim for 2008 taxes did not arise until September 2012 – when the amended tax return was filed. But the Court disagrees. The claim for the 2008 taxes, though not known to New Jersey, related to a tax year that was before the effective date of the Plan. Thus, this claim was within the broad scope of the release provided to Ms. Chamberlain which covered “any act or omission, transaction or other activity or security instrument or other agreement of any kind or nature occurring, arising or existing prior to the Effective Date, that was or could have been the subject of any claim, whether or not Allowed.”

(3) Finally, New Jersey suggests that the Plan does not comply with the terms of the Order Approving Settlement [Doc. 157] and thus the releases in favor of Ms. Chamberlain are not effective. But, as set forth above, the Court has found that the Plan has incorporated

the terms of the settlement between the Debtor and Ms. Chamberlain. And, it contains a broad and unqualified release and injunction in her favor.

The Court was troubled by the fact that the amended 2008 tax return was filed just eight months after the Plan was confirmed. If Ms. Chamberlain knew that she and her ex-husband had underreported their income for 2008 and deliberately withheld this information, the result here might be different. Under Federal Rule of Civil Procedure 60(b) (Bankruptcy Rule 9024), a court can grant relief from a judgment or order based on fraud, misrepresentation or misconduct by an opposing party. Here, the only evidence referred to by New Jersey was the fact that Ms. Chamberlain signed the amended 2008 tax return. This alone is not proof of fraud or misconduct. At the time the Debtor's bankruptcy case was filed, he and his wife were in the midst of a contentious divorce. Ms. Chamberlain negotiated a settlement where she claims to have made substantial financial concessions to the Debtor in exchange for a release from claims of the Debtor's creditors, including New Jersey. Nothing in the record moves the Court to disturb a settlement that was approved and implemented with New Jersey's knowledge and participation.

CONCLUSION

For the foregoing reasons, Ms. Chamberlain's motion to reopen this Chapter 11 case to enforce the January 11, 2012 Confirmation Order is granted. The Order releases Ms. Chamberlain from her joint liability with the Debtor for the 2008 taxes sought by New Jersey.