
In re :
 : Chapter 7
STEPHEN J. O'BRIEN, :
 :
 :
 :
Debtor. :

**OPINION AND ORDER
REGARDING TRUSTEE'S MOTION TO EXPUNGE
CLAIM OF KATHLEEN DONNELLY**

Before the Court is the Chapter 7 Trustee's (the "Trustee") First Omnibus Objection (the "Objection") to certain claims asserted in the case of Stephen J. O'Brien (the "Debtor").

Pursuant to that Objection, the Trustee seeks to expunge the claim asserted by Kathleen Donnelly ("Donnelly"), the Debtor's former spouse, on the ground that her claim has been satisfied. Donnelly has interposed an objection asserting that she is still owed \$160,001.15 from the estate. For the reasons set forth below, the Court finds that the claim of Donnelly shall be reduced to the allowed amount of \$1.15 and the balance of the claim shall be disallowed.

BACKGROUND

On May 31, 2001, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On December 27, 2001, the Debtor moved to convert his case to a case under chapter 7 of the Bankruptcy Code. The Court granted the motion and on January 4, 2002, the Court entered an order converting the case. The Trustee was appointed interim trustee on

January 4, 2002 as well. The section 341 meeting of creditors was held on February 26, 2002. Following that meeting, pursuant to § 702(d),¹ the interim trustee became the trustee.

The Debtor is an orthopedic surgeon in the metropolitan New York area and generates substantial income from his practice. According to the pleadings, Donnelly and the Debtor were parties to a divorce action pending in the Supreme Court of the State of New York, County of Nassau (the "Divorce Action").² As of the filing of the pleadings in this matter, a judgment of divorce had not been entered.

During their marriage, the parties acquired several pieces of real property throughout the country including (1) two houses on Star Island, New Hampshire (the "New Hampshire Property"); (2) a vacant lot located on Brays Island, South Carolina (the "South Carolina Property"); and (3) the marital home located at 115 Hilton Avenue, Garden City, New York (the "Garden City Property"). All of these properties, except for one of the houses in New Hampshire,³ were held by both parties as tenants by the entirety. The State Bank of Long Island ("SBLI") held a first mortgage lien on the Garden City Property, which was a joint obligation of the Debtor and Donnelly. Pursuant to a pendente lite order issued in the Divorce Action, the Debtor was ordered to pay the mortgage obligations encumbering both the Garden City Property and the New Hampshire Property held solely in his name.

From November 1997 to March 2000, SBLI also made a series of unsecured loans to the Debtor in the form of promissory notes. On March 27, 2000, a promissory note (the "Note") was executed consolidating all of SBLI's prior loans to the Debtor. The Note is in the principal amount of \$1,125,000.00. On September 3, 2000, the Debtor defaulted on the Note and on

¹ "If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case." 11 U.S.C. § 702(d).

² Index No. 26737/99.

³ One of the properties located in New Hampshire is held in the Debtor's name only.

November 1, 2000 SBLI accelerated the amounts due under the Note. On December 7, 2000, SBLI commenced an action (the “SBLI Action”) in the Supreme Court of the State of New York, Nassau County against the Debtor and Donnelly to collect the balance of the Note. Donnelly is allegedly liable on the Note as a guarantor of the loan.

When the Debtor filed his bankruptcy petition on May 31, 2001, he listed SBLI as an unsecured creditor with a contested claim in the amount of \$1,218,726.55.⁴ On August 7, 2001, SBLI obtained a judgment on the Note against Donnelly in the amount of \$1,267,974.79, plus interest at the rate of 9% per annum from August 7, 2001 (the “SBLI Judgment”).⁵ No judgment was obtained against the Debtor, however, because the Debtor’s bankruptcy filing prevented such action. On March 5, 2002, SBLI filed the judgment with the Clerk of Sullivan County, New Hampshire. SBLI also initiated a special proceeding in the Supreme Court of New York, Nassau County⁶ against Donnelly to enforce the SBLI Judgment and to have the Nassau County Sheriff sell her interest in the Garden City Property. As a result of the SBLI Judgment and the subsequent filings in New Hampshire and New York, SBLI held a lien on Donnelly’s real property interest in the Garden City Property and the New Hampshire Property, each held as tenants by the entirety.

On July 22, 2002, the Trustee commenced an adversary proceeding, *Geltzer v. Donnelly*, Adv. Pro. 02-02728, seeking authority to sell the Debtor's and Donnelly’s interests in the Garden City Property, South Carolina Property and New Hampshire Property. On June 12, 2003, a stipulation was approved resolving a summary judgment motion permitting the Trustee to sell

⁴ In his petition the Debtor also listed SBLI as a secured creditor with a claim in the amount of \$6,426.28. SBLI subsequently filed a proof of claim listing itself as holding an unsecured claim in the amount of \$1,253,543.60 and a secured claim in the amount of \$618,188.04. The basis for the unsecured claim was the \$1,125,000.00 Note executed by the Debtor. The basis of the secured claim was the remaining mortgage on the Garden City Property.

⁵ The judgment was obtained in the *State Bank of Long Island v. Stephen J. O’Brien and Kathleen O’Brien*, Index No. 19267/00 (Sup. Ct. Nassau Cty.).

⁶ Index No. 03-007711.

the South Carolina Property and the two parcels located in New Hampshire – all three subject to higher and better offers. *Geltzer v. Donnelly*, Adv. Pro. 02-02728, ECF Docket No. 12. That stipulation did not address the sale of the Garden City Property.

On August 9, 2002, SBLI commenced an adversary proceeding against the Debtor, *State Bank of Long Island v. O'Brien*, Adv. Pro. 02-03029, objecting to the Debtor's discharge and seeking a determination of the dischargeability of the debt incurred on the Note. The Trustee was permitted to intervene on November 6, 2002. Donnelly was also permitted to intervene on March 31, 2003.⁷

Following the interventions, the Debtor, the Trustee, Donnelly and SBLI engaged in negotiations to resolve outstanding issues concerning SBLI's objection to discharge and dischargeability, as well as issues concerning division of estate property.⁸ The parties thereafter entered into a Global Settlement (the "Global Settlement") (Case No. 01-13183, ECF Docket No. 125, Ex. A), which the Court approved on March 17, 2004. Under the terms of the Global Settlement, SBLI agreed to accept \$925,000.00 "in full satisfaction of the [SBLI] Judgment and all other claims against [Donnelly] and the unsecured claim against the Debtor" (the "Reduced Claim") Global Settlement at 5. The Reduced Claim remained collateralized by the SBLI Judgment, which was reduced to \$925,000.00 (the "Reduced Judgment"). *Id.* at ¶ 10. Since the Reduced Claim was collateralized by the Reduced Judgment, any reduction in the Reduced Judgment would result in a corresponding reduction of the Reduced Claim. In light of this, the Global Settlement appears to use the terms defined as Reduced Claim and Reduced

⁷ The Trustee also commenced other actions in the case including (1) *Geltzer v. Stephen J. O'Brien*, Adv. Pro. 02-02728; (2) "certain adversary proceedings seeking to avoid preferential transfers"; and (3) "certain adversary proceedings seeking to avoid unauthorized post-petition transfers." See Global Settlement at 3-4.

⁸ On September 19, 2003, Donnelly and the Debtor entered into a Stipulation of Settlement in the Divorce Action.

Judgment interchangeably. For that reason, the Court will use the term Reduced Claim to refer to both the Reduced Claim and the Reduced Judgment, unless context requires otherwise.

As a preliminary matter, the Debtor was required to make an initial payment of \$210,000.00 to the Trustee within ninety days of Court approval of the agreement. Alternatively, if the Debtor was unable to make this \$210,000.00 payment, the Debtor could pay the Trustee \$250,000.00 in five equal consecutive monthly payments of \$50,000.00 with the first installment to issue within ninety days of Court approval of the Global Settlement (the “Installment Payments”). *See* Global Settlement ¶ 1. If the Trustee received the initial \$210,000.00 payment, the Trustee was directed to pay no less than \$260,000.00 to SBLI in partial satisfaction of its claim. *See id.* at ¶¶ 3(a)(1) & 10. However, the Trustee was authorized under any circumstance to pay \$155,700.00 to SBLI within ten days of entry of the order approving the agreement. This \$155,700.00 payment was to be applied against the \$260,000.00 payment due SBLI and represented SBLI’s pro-rata share of the net sales proceeds of the New Hampshire Property held by the Debtor and Donnelly as tenants by the entirety.⁹

If the Debtor chose to make five Installment Payments of \$50,000.00, those amounts received by the Trustee would be distributed on a pro-rata basis between SBLI, the Trustee and the Trustee’s professionals until the initial professional fees and Trustee’s commissions had been paid in full. After those obligations had been satisfied, any amount received by the Trustee in Installment Payments from the Debtor would be disbursed to SBLI in partial satisfaction of its Reduced Claim. *See* Global Settlement ¶ 3(b). From the record, it appears that the Debtor elected to make the five Installment Payments totaling \$250,000.00 to the Trustee. On March

⁹ The sale of the New Hampshire Property closed on November 26, 2003 and the estate held net proceeds of approximately \$302,000.00, which would be reduced further by real estate commissions.

30, 2004, the Trustee disbursed \$155,700.00 to SBLI in accordance with paragraph 3(a)(i) of the Global Settlement.

As collateral security for all the obligations set forth in the agreement, the Debtor agreed to a “Confession of Judgment” in favor of SBLI in the amount of the SBLI Judgment - \$1,267,974.79, and a “Confession of Judgment” in favor of the Trustee for the total amount due under the Global Settlement. Both judgments are nondischargeable under § 523. *See* Global Settlement ¶ 6. In the event the Debtor defaulted under the terms of the settlement, SBLI or the Trustee could enforce their respective judgments.¹⁰ *Id.* at ¶ 7.

With regard to Donnelly, under the Global Settlement she agreed to waive any distribution on any claim she may have against the Debtor’s estate. *Id.* at ¶ 15. Donnelly also agreed to surrender her interests in the South Carolina Property and the New Hampshire Property to the estate. In exchange, among other things, she became sole owner of the Garden City Property free and clear of any claims of the Debtor and the estate but subject to SBLI’s first mortgage and the Reduced Judgment.¹¹

Under Paragraph 10 of the Global Settlement, the Reduced Judgment of \$925,000.00 would be reduced by periodic payments received from the Trustee (the “Trustee Periodic Payments”).¹² Global Settlement ¶ 10 (“The balance of the Reduced Judgment shall be

¹⁰ If the Debtor defaulted under the terms of the Global Settlement, SBLI could enforce its Confession of Judgment against the Debtor and the Debtor would also have to pay an additional 10% of the Reduced Claim as a cost of collection. *See* Global Settlement ¶ 7.

¹¹ Global Settlement ¶ 15. (“[Donnelly] will receive, upon Court approval of this Stipulation, a Trustee’s Deed for the Estate’s interest in the Garden City Property . . . The Garden City Property shall be free and clear of any claims of liens, claims and other interests except for [SBLI’s] first mortgage and the Reduced Judgment . . . The Trustee and the Debtor shall each be deemed to have abandoned their respective claims against and interests in the foregoing real estate . . .”).

¹² SBLI would receive, among other payments, the following Trustee Periodic Payments:

1. \$2,000.00 per month until the New Hampshire property held in Debtor’s sole name is sold; and
2. \$12,388.87 per month for the first 20 months, increasing to \$17,388.87 for the subsequent 18 months, after the New Hampshire property held in Debtor’s sole name is sold.

See Global Settlement ¶¶ 4 & 5.

periodically reduced by payments SBLI receives under this Stipulation in connection with the SBLI [Reduced] Claim.”) Donnelly agreed to execute a “Consent to Judgment” ordering the Nassau County Sheriff to sell the Garden City Property to satisfy the Reduced Claim, subject to her \$10,000.00 homestead exemption. SBLI’s attorneys were directed to hold the Consent to Judgment in escrow until thirty-eight months after the Debtor began making certain periodic payments to the Trustee (the “Debtor Periodic Payments”).¹³ If Donnelly sold the Garden City Property before the expiration of the thirty-eight month time period, Donnelly would satisfy the balance of the Reduced Claim at the closing of the sale of the Garden City Property.

Pursuant to paragraph 12 of the Global Settlement, if Donnelly sold the Garden City Property, SBLI agreed to deliver to Donnelly at the closing of the sale a satisfaction of the Reduced Judgment if its claim was paid in full. SBLI would transfer its claim and its Confession of Judgment to Donnelly if the Reduced Claim was fully satisfied and was paid in part or in whole by (1) the proceeds of the sale of the Garden City Property conducted by Donnelly; (2) the foreclosure of the Reduced Judgment; or (3) with proceeds otherwise provided by Donnelly. If Donnelly provided any amount to satisfy the Reduced Claim, either through sale of the Garden City Property or otherwise, that amount was defined as the “Deficiency” under the Global Settlement.

If the Reduced Claim were assigned to Donnelly under paragraph 12, she would be entitled to receive all remaining distributions owing to SBLI under the Global Settlement¹⁴ and to exercise all rights held by SBLI before such assignment. After such assignment to Donnelly, she agreed to forbear enforcing her rights, including those assigned to her from SBLI, against the

¹³ The Debtor Periodic Payments to the Trustee were to commence upon the closing of the sale of the Debtor’s property in New Hampshire. Global Settlement ¶ 5.

¹⁴ Under paragraph 5(c), after the closing of the sale of the New Hampshire property, SBLI was to receive \$12,388.87 per month for the first twenty months and \$17,388.87 for the next eighteen months. *See* Global Settlement ¶ 5(c).

Debtor provided that the Debtor paid her \$5,000.00 every month (the “Monthly Payments”), in addition to the Trustee Periodic Payments she was entitled to as assignee of the Reduced Claim, up to the amount of the Deficiency. Therefore, the total amount Donnelly would receive in Monthly Payments from the Debtor would equal the difference between the Deficiency amount and the total amount of Trustee Periodic Payments. Taken together, the total amount of Monthly Payments combined with the Trustee Periodic Payments would be equal to the amount of the Deficiency.

On September 30, 2004 Donnelly sold the Garden City Property and satisfied the Reduced Claim by paying the Deficiency - \$710,722.53 - to SBLI, which was the amount remaining on the Reduced Claim. The Reduced Claim (\$925,000.00) was reduced by the payments (\$214,277.47) received by SBLI before the Garden City Property was sold. Pursuant to the Global Settlement, SBLI then assigned its remaining claim of \$710,722.53 to Donnelly. (Case No. 01-13183, ECF Docket No. 145.) Following the assignment, Donnelly began receiving the Trustee Periodic Payments in satisfaction of SBLI’s Reduced Claim. Both parties agree that Donnelly has received \$550,721.38¹⁵ from the Trustee as payments due SBLI under the Global Settlement.¹⁶

Also following the assignment of the Reduced Claim to Donnelly, the Debtor started making the Monthly Payments to Donnelly in the amount of \$5,000.00 from his personal bank

¹⁵ Under paragraph 5(c) of the Global Settlement, the total amount in Trustee Periodic Payments due to SBLI was \$560,777.06. *See supra* nn. 10-12. This amount is the sum of the twenty \$12,388.87 monthly payments and the eighteen \$17,388.87 monthly payments owed to SBLI. From the pleadings, it is unclear whether all Trustee Periodic Payments were still owed to SBLI when the Reduced Claim was assigned to Donnelly. Further, Donnelly has received ten checks from the estate beginning in November 2004 and has cashed nine of them. She has not cashed the last check in the amount of \$41,698.20, dated July 2007, because the Trustee issued the check in full and final payment of all obligations due under the Global Settlement.

¹⁶ On April 8, 2008, the Trustee and the Debtor entered into a Stipulation and Order resolving a dispute over whether the Debtor defaulted under the Global Settlement by failing to make certain Debtor Periodic Payments to the estate. *See Stipulation and Order Resolving Disputes Under Global Settlement Stipulation*. (Case No. 01-13183, ECF Docket No. 174.) Pursuant to this order, the Debtor paid \$200,000.00 to the Trustee, who subsequently used such proceeds to pay the balance of the Trustee Periodic Payments due under paragraph 5 of the Global Settlement. *Id.* at 3-4.

account. The Debtor has issued thirty-two \$5,000.00 checks to Donnelly, totaling \$160,000.00. Donnelly received the Monthly Payments starting in October of 2004 and continuing to May of 2007. From the date she sold the Garden City Property and was assigned the Reduced Claim, Donnelly has received a total of \$710,721.38 (\$550,721.38 in Trustee Periodic Payments and \$160,000.00 in Monthly Payments from the Debtor).

Donnelly claims that she is still owed \$160,001.15 from the Trustee. She alleges that since she was assigned the Reduced Claim, all obligations owing to SBLI must be paid to her from the Trustee. She argues that the amounts owed to her by the estate are in addition to the payments she received directly from the Debtor. Donnelly claims that the Monthly Payments made directly to her from the Debtor do not diminish the Trustee's obligations owing to her under the terms of the Global Settlement. Conversely, the Trustee argues that paragraph 12 of the Global Settlement set forth the payments owed to Donnelly and such obligations were satisfied by the payments made to her by the Trustee and the Debtor. The Trustee concedes that the estate owes Donnelly \$1.15, which would be the difference between the amount Donnelly claims to be owed from the estate (\$160,001.15) and the total amount paid to Donnelly from the Debtor (\$160,000.00).¹⁷ Further, the Trustee claims the opposition to the Objection asserted by Donnelly is frivolous and therefore he is entitled to \$877.50 in attorney's fees for the 1.5 hours he spent in replying to Donnelly's opposition.

¹⁷ Although the Trustee concedes that the estate owes Donnelly \$1.15, the Trustee does not indicate whether the shortfall stems from the Monthly Payments or the Trustee's Periodic Payments. The Trustee's Reply to Opposition of Kathleen Donnelly ("Trustee's Reply") alleges that the estate has fully satisfied its obligations to Donnelly under the Global Settlement by paying her \$550,721.38. *See* Trustee's Reply at 2 n.1 (Case. No. 01-13183, ECF Docket No. 178). The Trustee's Reply goes on to further assert that after paying \$550,721.38 to Donnelly, \$160,001.15 remained on the Reduced Claim (\$710,722.53). Of that remaining amount, the Debtor paid \$160,000.00 to Donnelly under paragraph 12 of the Global Settlement.

DISCUSSION

The Global Settlement was entered into by the Debtor, the Trustee, Donnelly and SBLI as a “global resolution of all issues, litigation and claims” in the Debtor’s case. *See* Global Settlement at 1. Specifically, the parties entered into the agreement to resolve all adversary and preference actions in the Debtor’s case, the SBLI Action and the SBLI Judgment. *Id.* at 5. The pertinent provision of the Global Settlement in dispute is paragraph 12. This provision provides

At the Closing, SBLI shall deliver to Kathleen a satisfaction of the Reduced Judgment upon the full payment of the SBLI [Reduced] Claim. In the event that the SBLI [Reduced] Claim is fully satisfied and is paid in whole or in part from the proceeds of the voluntary sale of the Garden City Property by Kathleen, or the foreclosure of the Reduced Judgment, or with proceeds otherwise provided by or on behalf of Kathleen (the “Deficiency”), the SBLI [Reduced] Claim and the SBLI Confession shall be promptly assigned to Kathleen, and Kathleen shall be entitled to (i) receive all remaining distributions due to SBLI including those distributions provided in paragraph 5(c) herein, and (ii) to exercise all of the rights held by SBLI in the same manner as existed prior to such assignment. Subsequent to the assignment of the SBLI [Reduced] Claim and SBLI Confession, and provided that the Debtor and/or the PLLC are not otherwise in Default, Kathleen will forebear from enforcing her rights thereunder against the Debtor and the PLLC, provided that the Debtor and/or the PLLC pay Kathleen in reduction of the Deficiency, the sum of \$5,000 per month in addition to the Debtor/PLLC Periodic Payments, payable on or before the 10th day of each month, until such time that the Deficiency is paid in full.

See Global Settlement ¶ 12. The Global Settlement, as a settlement and stipulation between the parties, constitutes a contract among the parties and will be interpreted as such. *Cauff v. Jacom Computer Servs. (In re Jacom Computer Servs.)*, 347 B.R. 2, 6 (S.D.N.Y. 2006); *see also Omega Eng'g, Inc. v. Omega, S.A.*, 432 F.3d 437, 443 (2d Cir. 2005); *In re Royster Co.*, 132 B.R. 684, 687 (Bankr. S.D.N.Y. 1991) (“A Stipulation and Order is a binding agreement between parties to a dispute which has been so ordered by the presiding court. When parties enter into a stipulation, the agreement is enforceable as a contract.”). In interpreting the settlement and its provisions as a whole, the Court notes that if the terms of the Global Settlement are “clear, definite and

complete on their face,” the Court will not look outside the four corners of the agreement to modify or vary the terms of the contract. *In re Chateaugay Corp.*, 116 B.R. 887, 903 (Bankr. S.D.N.Y. 1990). The interpretation of an unambiguous contract is a question of law reserved for the Court. *Golden Pac. Bancorp v. FDIC*, 273 F.3d 509, 515 (2d Cir. 2001). If an integrated contract is unambiguous, under the parole evidence rule, it cannot be altered by extrinsic evidence. *Id.* (citing 3 CORBIN ON CONTRACTS, § 573 (1960)). Only “when the terms are ambiguous or subject to interpretation by the parties, [may] parol evidence [] be admitted to determine the contract's meaning.” *Id.* “This includes both internal ambiguity which springs from the words of the contract, as well as external ambiguity which springs from the words of the contract within the context of the circumstances of the contract.” *In re Chateaugay Corp.*, 116 B.R. at 903. In the Second Circuit, a “word or phrase is ambiguous when it is capable of more than a single meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Garza v. Marine Transport Lines, Inc.*, 861 F.2d 23, 27 (2d Cir. 1988) (internal citations omitted). Interpretation of an ambiguous term in a settlement agreement will be decided under applicable state law.¹⁸ *White Farm Equipment Co. v. Kupcho*, 792 F.2d 526, 529 (5th Cir 1986); *see also Haber Oil Co. v. Swinehart (In re Haber Oil Co.)*, 12 F.3d 426, 443 (5th Cir. 1994) (“State law, however, provides the rules governing the interpretive process itself.”) (citing *River Prod. Co. v. Webb (In re Topco, Inc.)*, 894 F.2d 727, 738 (5th Cir. 1990)). Upon review, the Court finds that the Global Settlement is unambiguous because its provisions cannot be interpreted to have more than a single meaning when viewed objectively by a reasonably

¹⁸ “The law of the forum state normally controls interpretation of a settlement agreement.” *MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs. Co.*, 910 F. Supp. 913, 932 n.6 (S.D.N.Y. 1995). In this case, if there is an ambiguity in the settlement, New York law will control since the case was commenced in New York.

intelligent person who has examined the context of the entire Global Settlement. *Cohen v. Nat'l Union Fire Ins. Co. (In re County Seat Stores, Inc.)*, 280 B.R. 319, 324 (Bankr. S.D.N.Y. 2002) (citing *Garza*, 861 F.2d at 27). Therefore, the Court will not look beyond the four corners of the Global Settlement to determine the meaning of its provisions.

The Structure of the Global Settlement

In order to satisfy the Reduced Claim, payments totaling \$925,000.00 had to be made to SBLI. Directly or indirectly the Debtor was the source of the funds that satisfied the Reduced Claim. For example, under paragraphs 1 and 3, the Debtor was directed to make an initial payment of \$210,000.00, or Installment Payments totaling \$250,000.00, to the Trustee, who would then remit those payments to SBLI in partial satisfaction of the Reduced Claim.¹⁹ Further, under paragraph 5(c), the Trustee was required to make the Trustee Periodic Payments to SBLI. Under paragraph 4(c), the Trustee Periodic Payments were funded by the Debtor's sale of his New Hampshire Property. Paragraph 4(c) provides that upon the closing of the sale of the Debtor's New Hampshire Property, the Debtor was required to make Debtor Monthly Payments totaling \$660,000.00 to the Trustee, who subsequently remitted a portion of those payments to SBLI under paragraph 5(c). The Debtor funded similar Trustee payments to SBLI, which were applied to satisfy the Reduced Claim.²⁰ Further, any difference between the payments from the

¹⁹ As provided above, if the Debtor made the initial \$260,000.00 payment to the estate, the Trustee was required to pay "a sum of no less than \$260,000.00 to SBLI in partial satisfaction of [the Reduced Judgment]" Global Settlement ¶ 3(a)(i). If the Debtor elected to make Installment Payments to the estate

[T]he proceeds thereof received by the Estate . . . shall be distributed on a pro rata basis in the same proportions as set forth in paragraphs 3(a)(i) – (v) above as between SBLI, the Trustee's Professionals and the Trustee, until such time that the Initial Professional Payment and the Initial Trustee Commissions have been paid in full. Thereafter, the proceeds received by the Estate . . . on account of the [Debtor's Installment Payments] shall be distributed entirely to SBLI, in partial satisfaction of the Reduced Claim. Global Settlement ¶ 3(b).

²⁰ Under paragraph 4(a), the Debtor had to pay the Trustee \$2,000.00 each month until the New Hampshire property was sold. The Trustee was directed to remit this \$2,000.00 payment each month to SBLI in reduction of the Reduced Claim.

Trustee and the Reduced Judgment, if paid by Donnelly, was to be repaid to her by the Monthly Payments. As previously indicated, the Global Settlement defined this amount as the Deficiency.

The Debtor's ultimate responsibility, either directly or indirectly, for payment of the Reduced Claim is demonstrated by the parties express understanding that "depending on the sale price of the [New Hampshire] property and/or whether the Debtor fulfills his obligations under the Stipulation, the Debtor's payments [under the Global Settlement] may not fully satisfy the SBLI [Reduced] Claim. In such event, after the Expiration of the Escrow Date, SBLI may recover the balance of the SBLI [Reduced] Claim from the enforcement of the Reduced Judgment and/or Enforcement Judgment." Global Settlement ¶ 11. The Enforcement Judgment, as defined by the settlement, was the "Consent to Judgment" signed by Donnelly directing the Nassau County Sheriff to sell the Garden City Property to satisfy the Reduced [Claim]. *Id.* at ¶ 10. As such, if the Reduced Claim was not paid in full through Trustee Periodic Payments, SBLI could proceed to seek a sale of the Garden City Property. Under paragraph 12, if SBLI foreclosed on the Garden City Property, the Reduced Claim and Confession of Judgment would be transferred to Donnelly. Donnelly would be obligated under that provision to satisfy the balance of the Reduced Claim, defined, as stated previously, under the Global Settlement as the Deficiency. The Debtor would then be required to make Monthly Payments to Donnelly in reduction of the Deficiency. Fundamentally, the result is that the Debtor is funding the satisfaction of the Reduced Claim because the Debtor would be reimbursing Donnelly for satisfying the Reduced Claim to the extent the Reduced Claim had not been satisfied through SBLI's right to payments from the estate under the Global Settlement.

Further, if the Debtor did not fulfill all its obligations to the Trustee, the Trustee Periodic Payments would be in lesser amount and, therefore, the payments applied to the Reduced Claim

would be less than anticipated. In that scenario, where the Debtor defaults on its payments to the Trustee, SBLI's recourse under the Global Settlement was to either (1) enforce its Confession of Judgment against the Debtor; or (2) foreclose on the Reduced Judgment and seek a sale of the Garden City Property. Under both scenarios, the Debtor would ultimately be paying the balance of the Reduced Claim. This is consistent with the overall design of the Global Settlement in that to the extent Donnelly had to satisfy any portion of the Reduced Claim (thereby creating the Deficiency), the Debtor was responsible to fund the Trustee Periodic Payments and make Monthly Payments directly to Donnelly to satisfy the Deficiency. Once the Deficiency was satisfied, the holder of the Reduced Claim would no longer have any further amounts due because the Reduced Claim was satisfied as well. If the Debtor fully satisfied the Deficiency owed to Donnelly, to the extent the Deficiency was increased because of any failure of the Trustee to make the appropriate Trustee Periodic Payments in the correct amount, that dispute would be between the Trustee and the Debtor.

Performance Under the Global Settlement

From the record, it appears that the Trustee has fulfilled its obligations under the Global Settlement to disburse payments to SBLI in satisfaction of the Reduced Claim. First, under paragraph 3(a), if the Trustee received the initial \$210,000.00 payment from the Debtor, the Trustee was required to pay SBLI no less than \$260,000.00 in reduction of the Reduced Claim. In any circumstance, the Trustee was directed to make a payment of \$155,700.00 to SBLI. Under paragraph 3(b), if the Debtor elected to make the Installment Payments totaling \$250,000.00 to the Trustee, the Trustee's obligations to SBLI regarding those Installment Payments was to provide SBLI its pro-rata share and to distribute the remainder of the Installment Payments to SBLI after Trustee commissions and professional fees were paid. *See*

Global Settlement ¶ 3(b). Since the Debtor elected to make Installment Payments, the Trustee fulfilled its obligation under paragraphs 3(a) and (b) to make required disbursements to SBLI. Donnelly's opposition papers indicate that between the date of the approval of the Global Settlement and the sale of the Garden City Property, SBLI had received \$214,277.47 from the estate in partial satisfaction of its claim (a portion of which constitutes the \$155,700.00 payment required under paragraph 3(a)). Second, under paragraph 4(c), the Debtor was required to make Debtor Periodic Payments to the Trustee totaling \$660,000.00. Of these Debtor Periodic Payments, the Trustee was required to disburse a total of \$560,777.06 to SBLI in Trustee Periodic Payments in partial satisfaction of the Reduced Claim under paragraph 5(c). Pursuant to a stipulation entered into between the Debtor and the Trustee, the Debtor paid the Trustee the amount owed under paragraph 4(c), which the Trustee subsequently disbursed in accordance with the terms of the Global Settlement. *See* Stipulation and Order Resolving Disputes Under Global Settlement Stipulation. (Case No. 01-13183, ECF Docket No. 174.) However, even if the Debtor satisfied all his obligations under the settlement, there was a possibility that the Reduced Claim would not be fully satisfied. The Global Settlement specifically contemplated this result and, as shown above, it was ultimately the Debtor who was responsible for fully satisfying the Reduced Claim.

The parties do not dispute that the value of the Reduced Claim was \$710,722.53 when Donnelly sold the Garden City Property and was assigned the Reduced Claim. Nor do the parties dispute that the Trustee has issued checks totaling \$550,721.38 to Donnelly in satisfaction of the Reduced Claim. The dispute is whether the \$160,000.00 that Donnelly received from the Debtor should be attributed to paying down the Reduced Claim. Donnelly argues that satisfaction of the Reduced Claim had to come from Trustee payments, but as discussed above, it

was the Debtor who ultimately funded the Trustee's payments that satisfied the Reduced Claim. The requirement that the Debtor make Monthly Payments to Donnelly, who would also be receiving Trustee Periodic Payments (as holder of the Reduced Claim), until the Deficiency is paid in full, is consistent with the overall scheme of the Global Settlement requiring the Debtor to fund the satisfaction of the Reduced Claim. Once all payments were made under the Global Settlement, Donnelly was relieved of the Reduced Judgment and received the full value of the Garden City Property by her receipt of the Trustee Periodic Payments and the Monthly Payments from the Debtor. Her argument that the Monthly Payments should not reduce the Reduced Claim would result in the estate having to pay \$160,000.00. This would be inconsistent with the interrelationship of the various provisions of the Global Settlement as they relate to amounts to be paid to SBLI, Donnelly and the Trustee.

The terms of the Global Settlement specifically provide that upon Donnelly's sale of the Garden City Property she would step into the shoes of SBLI and exercise all rights held by SBLI under the Global Settlement via an assignment of the Reduced Claim. At the time of the sale, SBLI was still owed \$710,722.53 on its claim. Donnelly paid that amount to SBLI, and under the terms of the settlement, Donnelly was assigned SBLI's outstanding claim of \$710,722.53. *See id.*

Under paragraph 12, in the event that the Reduced Claim is fully satisfied in part or in whole from the proceeds of the voluntary sale of the Garden City Property by Donnelly, the amount used by Donnelly to satisfy the Reduced Claim is known as the "Deficiency." *Id.* Therefore, the Deficiency was in the amount of \$710,722.53. Further, paragraph 12 also provides that Donnelly, after sale of the Garden City Property and assignment of the Reduced Claim, is entitled to receive two forms of payment (1) the Trustee Periodic Payments that were

assigned to her, and (2) Monthly Payments from the Debtor until the difference between the total amount of Trustee Periodic Payments and the Deficiency was satisfied. Donnelly was entitled to both forms of payment only “...until such time that the Deficiency is paid in full.” *Id.* Reading this provision and the settlement as a whole, Donnelly was entitled to the Trustee Periodic Payments (\$550,721.38) and the Monthly Payments (\$160,000.00) from the Debtor until she recovered the amount she paid to SBLI - \$710,722.53. To give Donnelly an additional \$160,000.00 would contravene the language of paragraph 12 by allowing her to receive a double recovery of the \$160,000.00 amount. There is nothing in the Global Settlement that would support any other result.

Donnelly’s argument that she stepped into the shoes of SBLI and is, therefore, entitled to receive the entire remaining amount of the Reduced Claim from the Trustee at the time of the assignment, even if she received payments from the Debtor in satisfaction of \$160,000.00 of the same obligation, is unfounded. The language of paragraph 12 provides that the Debtor is required to make the Monthly Payments to Donnelly in reduction of the amount owed to Donnelly as a result of her satisfaction of the Reduced Claim. Donnelly’s receipt of Monthly Payments was a result of the Debtor’s obligations to satisfy any shortfall to Donnelly not satisfied by the remaining Trustee Periodic Payment total of \$550,721.38. Nowhere in the Global Settlement does it provide that when Donnelly was assigned the Reduced Claim would she be entitled to payments from the Trustee, on account of the Reduced Claim, above the amount provided in Trustee Periodic Payments. At the time, when the Reduced Claim was assigned to Donnelly, it appears that the Trustee’s remaining obligations to SBLI was to make the remaining Trustee Periodic Payments to SBLI totaling \$550,721.38. This amount is all that Donnelly is entitled to from the estate on account of holding the Reduced Claim. After the sale

of the Garden City Property, the balance of the Reduced Claim that remained unsatisfied, after disbursement of all Trustee Periodic Payments, was the obligation of the Debtor, who would satisfy such deficiency through Monthly Payments directly to Donnelly (as holder of the Reduced Claim).

As a result of the Trustee's and the Debtor's payments, Donnelly, as assignee of the Reduced Claim, has been satisfied in full, except for \$1.15. The Global Settlement clearly provides that the Debtor's Monthly Payments would be attributed to reducing the Reduced Claim and reimbursing Donnelly for the amount she paid to fully satisfy SBLI. As further support for the conclusion that the Monthly Payments reduced the Reduced Claim, the Court notes that the amount of the Debtor's obligation under the Monthly Payments was directly related to the amount of the Reduced Claim, in that the Reduced Claim, reduced by the Trustee Periodic Payments, determined the total amount in Monthly Payments the Debtor was required to pay. For example, had the Debtor paid down more of the Reduced Claim prior to the transfer of that claim to Donnelly, the amount the Debtor would have to pay Donnelly would be reduced as well. Therefore, the only reasonable interpretation of the Global Settlement is that the Reduced Claim was reduced by the Monthly Payments to Donnelly and, therefore, the remaining amount due on that claim is \$1.15.

Further, Donnelly also argues that the Monthly Payments should not be applied to the Reduced Claim because the Debtor had an obligation under an order in the Divorce Action to make the mortgage payments on the Garden City Property. The Global Settlement provided that the Garden City property would remain subject to the SBLI mortgage and the Reduced Judgment. *See supra* n.11. The Debtor's obligations regarding the Reduced Judgment were addressed in the Global Settlement and specifically the Monthly Payments were an integral part

of Debtor's obligations under the Global Settlement. The Debtor's obligations regarding the mortgage on the Garden City Property were not addressed in the Global Settlement. To the contrary, the Global Settlement set forth in paragraph 12 that the "Debtor and [Donnelly] hereby acknowledge that nothing contained [in the Global Settlement] is deemed to modify the obligations of the Debtor as provided in Matrimonial Stipulation." The Debtor made the Monthly Payments pursuant to the Global Settlement. All such obligations imposed by the Global Settlement were independent of any obligations imposed on the Debtor in the Divorce Action. Therefore, Donnelly's argument that Monthly Payments were in satisfaction of certain of the Debtor's obligations in the Divorce Action regarding the mortgage is without merit.

In his reply to Donnelly's opposition, the Trustee asks the Court to award him attorney's fees in the amount of \$877.50 for 1.5 hours spent in replying to the Donnelly's opposition. Since the Trustee has not established that the standards under FED. R. BANKR. P. 9011 or 28 U.S.C. § 1927²¹ have been met in order to award attorney's fees, the Court denies the request.

CONCLUSION

The Objection seeking to expunge the claim of Donnelly is denied and Donnelly's claim will be reduced to the allowed amount of \$1.15. Donnelly's opposition will be denied on the grounds that the joint payments from the Trustee and the Debtor reduced her claim under the terms of the Global Settlement. The Trustee's request for attorney's fees is denied.

Accordingly, for the foregoing reasons, it is hereby

ORDERED, the objection to Donnelly's claim is granted, in part, and denied, in part; and it is hereby further

²¹ "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

ORDERED, the claim of Donnelly is reduced by \$160,000.00; and it is hereby further

ORDERED, the claim of Donnelly is allowed in the amount of \$1.15; and it is hereby
further

ORDERED, the Trustee's request for attorney's fees is denied.

Dated: New York, NY
February 10, 2009

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE