**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| **In re: PENNSYLVANIA GEAR CORPORATION** | : | **CIVIL ACTION** |
| **STRANAHAN FAMILY LIMITED PARTNERSHIP, et al.** | : | |
| **v.** | : | **No. 04-5101** |
| **CHRISTINE C. SHUBERT, CHAPTER 7 TRUSTEE, et al.** | : | |

**Diamond J.** **March 11, 2004**

**MEMORANDUM AND ORDER**

Appellants, Stranahan Charitable Trust, Stranahan Family Limited Partnership, L.P., and H&W Associates, challenge a Bankruptcy Court Order approving the settlement between Appellees Christine Shubert (Trustee for the Debtor, Pennsylvania Gear Corporation) and Fleet National Bank (Debtor's secured creditor). Appellants argue that the Bankruptcy Court should have held an evidentiary hearing before it approved the settlement. Appellees argue that a hearing was unnecessary because the settlement was unopposed. I affirm.

**FACTS**

On November 18, 2002, after Fleet filed a state court writ of replevin against the Debtor -- a corporation whose shares were privately held by Appellants -- the Debtor sought temporary Chapter 11 protection in the United States Bankruptcy Court for the Eastern District of Pennsylvania. (R. 5 at 2.) At Fleet's urging, the Bankruptcy Court ordered the Debtor's

liquidation, appointing Christine Shubert as the Debtor's Trustee. (N.T. Feb. 25, 2005 at 10-11; R. 5 at 6.) This apparently was the genesis of the ensuing bitter litigation between the Debtor's former owners (the Stranahan family) and Fleet.

Seeking to satisfy Fleet's demands, on August 1, 2003, the Trustee asked the Bankruptcy Court to approve a Stipulation and Agreed Order allowing the sale of the Debtor's property and the collection of receivables. (R. 6.) The Stipulation also provided that the Trustee would have until September 15, 2003, to investigate whether she could in good faith bring any claims against Fleet. (R. 6 at 1, Ex. A at 4.) If she could not, she would release Fleet from any such claims. (Id.)

On August 18, 2003, Appellants filed objections to the Stipulation, arguing that the Debtor had claims against Fleet, and that the Trustee should either bring those claims or assign them to Appellants. (Shubert Brief App. at A32-A56, A57-A86.) On September 15, 2003, the parties placed on the record their agreement resolving this dispute: (1) the Trustee's deadline to investigate claims against Fleet was extended until October 15, 2003; (2) there would be a 90 day cooling off period respecting the Trustee's adversary complaints against the Stranahans and their various companies; (3) nothing in the Stipulation would prevent the Stranahans from asserting non-derivative claims against Fleet; and (4) the Trustee agreed to consider in good faith any proposal to assign or sell claims that the Debtor had against Fleet. (R. 7 at 2-3.) Appellants' counsel confirmed the terms of the Agreement, stating that "[Appellants'] objections [were] withdrawn based on those modifications." (R. 7 at 3.) The Bankruptcy Court instructed the parties that "the stipulation ought to be amended in writing to reflect those changes, [a]nd when that [was] submitted, [the Court would] sign off on an order approving [the Amended Stipulation]

without further hearing." (R. 7 at 3.) The parties agreed. (Id. at 3-4.)

The Trustee then circulated for final approval the Amended Stipulation, which included three of the four terms set out during the September 15th hearing: the final term -- the Trustee's agreement to consider proposals to bring, assign, or sell claims -- was instead memorialized in a letter from the Trustee's counsel to Appellants' counsel. (R. 8.; R. 9; Shubert Brief App. at A101.) The Trustee submitted the Amended Stipulation on September 26, 2003; the Bankruptcy Court approved it on October 3, 2003 without opposition or objection. (R. 5 at 30; R. 9; R. 13 at 5-6.)

The Trustee had not brought, assigned, or sold any claims against Fleet by October 15, 2003 -- the last day she could do so under the Amended Stipulation. Evidently dismayed by her decision, Appellants filed Motions to: (1) Amend the [Amended] Stipulation Regarding the Sale of Personal Property of the Debtor and Collection of Accounts Receivable; and (2) Compel the Trustee to Abandon or Assign Claims Against Fleet National Bank and to Amend the Stipulation and Agreed Order to Prevent Release of Claims. (R. 10; R. 5 at 30, 31.) At the Bankruptcy Court's December 1, 2003 hearing, Appellants' counsel confirmed that his clients did not timely object to the terms of the Amended Stipulation even though they had the opportunity to do so. (R. 13 at 5-6.) As significant, Appellants presented no evidence supporting their challenge to the propriety of the Trustee's decision not to sue Fleet or sell or assign any claims the Debtor might have had against Fleet. (R. 13; N.T. Feb. 25, 2005 at 28-33.) Accordingly, the Bankruptcy Court refused to alter or vacate the Amended Stipulation. (R. 13.)

On December 4, 2003, Henry Stranahan, acting *pro se*, appealed the Bankruptcy Court's denial of the Motion to Amend the [Amended] Stipulation. I dismissed the appeal with leave to re-file after Appellants obtained counsel. (R. 21.) Having retained counsel, Appellants filed the

instant appeal, initially raising two issues. In their brief, Appellants contended that, contrary to their lawyer's statement on December 1, 2003, they did not have an adequate opportunity to object to the Amended Stipulation before its October 3, 2003 approval. (Appellants' Brief at Argument C.) At the February 25, 2005 hearing before me, however, Appellants withdrew this contention. (N.T. Feb. 25, 2005 at 14.) Thus, Appellants contend here only that the Bankruptcy Court should have held an evidentiary hearing before approving the Amended Stipulation. In Appellants' view, the Trustee's decision not to sue Fleet or sell or assign the Debtor's claims against Fleet was so obviously wrong that a hearing to review the decision was obligatory -- even in the absence of any objections to the Amended Stipulation. (N.T. Feb. 25, 2005 at 14-15.)

## DISCUSSION

Whether the Bankruptcy Court should have held an evidentiary hearing is a question of law reviewed *de novo*. See In re Rfe Indus., 283 F.3d 159, 165 (3d Cir. 2002); see also In re Scarborough, Misc. No. 03-228, 2004 U.S. Dist. LEXIS 21701 (E.D. Pa. October 29, 2004); Berkery v. Commissioner, 192 B.R. 835, 837 (E.D. Pa. 1996), aff'd, 111 F.3d 125 (3d Cir. 1997). The Third Circuit has directed that when a Bankruptcy Court reviews a proposed settlement, the Court must hold an evidentiary hearing only when a party objects to the proposal. See In re Martin, 91 F.3d 389 (3d Cir. 1996); see also In re Rfe Indus., 283 F.3d 159, 165 (3d Cir. 2002). The hearing requirement is inapplicable, however, when there are no objections to the proposed settlement. See New Jersey, Dep't of Envtl. Protection & Energy v. Heldor Indus., 989 F.2d 702, 708-09 (3d Cir. 1993) (where appellants have withdrawn their objections, there is no "case or controversy," and thus no requirement to hold an evidentiary hearing on the settlement agreement).

Here, as Appellants concede, they did not object to the Amended Stipulation before it was entered. (R. 7 at 3; R. 13 at 5-6; N.T. Feb 25, 2005 at 16.) Accordingly, there was no "case or controversy" respecting the Amended Stipulation, and the Bankruptcy Court was not required to hold an evidentiary hearing. See Heldor Indus., 989 F.2d at 708-09. Indeed, the Third Circuit has suggested that holding a hearing in such circumstances would be impermissible. See id. ("there was no 'live controversy' for the bankruptcy judge to decide [after objections were withdrawn] . . . and he was, therefore, constitutionally disabled from [holding a hearing].")

Finally, once they belatedly objected to the Amended Stipulation, Appellants had the opportunity to present evidence in support of their contentions respecting the Trustee's decision not to sue Fleet or sell or assign its claims against Fleet. (N.T. Feb. 25, 2005 at 28-33; R. 19.) Appellants presented no such evidence. (Id.) In fact, the only record evidence respecting that decision was provided by the Trustee herself, who explained that Appellants had acted dishonestly in trying to "manipulate the Trustee" into pursuing claims she believed were meritless. (Shubert Brief App. at A132- A135.)

In these circumstances, it is manifest that the Bankruptcy Court has acted properly. Accordingly, I affirm. An appropriate order follows.

**BY THE COURT:**

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**Paul S. Diamond, J.**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| **In re: PENNSYLVANIA GEAR CORPORATION** | : | **CIVIL ACTION** |
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**ORDER**

**AND NOW**, this 11th day of March, 2005, for the reasons given in the accompanying Memorandum Opinion, it is **ORDERED** that the decision of the Bankruptcy Court is **AFFIRMED** and the appeal **DENIED.**

The Clerk of Court shall close this matter for statistical purposes.

**BY THE COURT.**

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**Paul S. Diamond, J.**