UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
CHARLOTTE COMMERCIAL	)	
GROUP, INC.,	)	Case Number: 01-52684
	)	
Debtor.	)	

ORDER

THIS MATTER came on before the Court for hearing upon motion of the Trustee seeking approval by this Court of a Litigation Agreement dated April 26, 2002 between the Debtor and Robert M. Sauls ("Litigation Agreement"), the additional guaranty of the Debenture Holders, and the objection of Fleet National Bank ("Fleet"). Appearing at the hearing was David Meschan, counsel for the Debtor, William P. Miller, Trustee, Michael D. West, Bankruptcy Administrator, Kenneth Greene, counsel for Fleet, and Thomas W. Waldrep, counsel for Sauls.

The Court, after hearing the arguments of counsel, considering all the exhibits and reviewing the file, makes the following findings of fact and conclusions of law:

1. Under the terms of the Litigation Agreement, Sauls agrees to personally fund all expenses incurred in connection with the adversary proceeding. In return, the first proceeds of any settlement or other disposition of the adversary proceeding shall repay any expenses paid by Sauls. After the payment of such expenses, Sauls would receive 0% of the first $300,000 of any recovery; 90% of any recovery in excess of $300,000 but less than $600,000; 48% of any recovery in excess of $600,000 up to six million dollars; and 25% of any recovery over eight million dollars.

2. By comparison, special counsel for the Debtor, pursuant to the contingency fee arrangement that was proposed by the Debtor and approved by the Court, provides for a 2%

share in any recovery up to six million dollars. This fee includes payment for the time that special counsel will provide.

3. The Litigation Agreement essentially provides for the sale of a percentage of the Debtor's causes of action against Fleet in exchange for the payment of the litigation expenses. The Trustee anticipates that litigation expenses may run as high as $100,000.

4. When examining the preconfirmation sale of estate property pursuant to Section 363 of the Bankruptcy Code, most courts use the "sound business purpose test," which requires the trustee or debtor-in-possession to prove that (1) sound business reason or emergency justifies preconfirmation sale; (2) adequate and reasonable notice of sale was provided to interested parties; (3) sale has been proposed in good faith; and (4) purchase price is fair and reasonable. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir.1986); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir.1983).

5. Adequate and reasonable notice was simply not provided to interested parties in this case. The certificate of service indicates that the motion was only served on counsel and special counsel for the Debtor, counsel for Sauls, counsel for Fleet, counsel for the Debenture Holders and the Bankruptcy Administrator. Notice of the hearing, which was sent by the Bankruptcy Noticing Center to all parties in interest, did not include the terms and conditions of the sale or agreement, a time for filing objections, or a general description of the property interest to be sold.

6. The Court further finds that the Trustee has not provided sufficient evidence that the purchase price is fair and reasonable. Sauls' proposed 48% share in the recovery is simply not proportional to the amount of money he may have to provide.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that the Trustee's Motion to Approve Litigation Agreement is denied.

This the 1 day of July 2002.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge