

IN RE: )

) Chapter 7

ROBERT W. PEPMEYER, )

)

Debtor. ) Bankruptcy No. 00-02486

----- SHERYL YOUNGBLUT, Trustee, )

) Adversary No. 01-9207

Plaintiff, )

)

VS. )

) QUAG'S EQUIPMENT L.L.C., )

)

Defendant. )

ORDER RE: MOTION FOR RECONSIDERATION OF ORDER

This matter came on for hearing on May 28, 2002 on Defendant's Motion for Reconsideration of Order re: Motion for Summary Judgment Filed April 26, 2002. Defendant Quag's Equipment L.L.C. was represented by Attorney John Titler. Trustee/Plaintiff Sheryl Youngblut was represented by Attorney Tim DeBoom. After oral argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (F).

## STATEMENT OF THE CASE

On April 25, 2002, the Court granted summary judgment on Trustee's claim under § 548(a)(1)(B). The Court concluded that Trustee established all the elements of a fraudulent transfer. Defendant asks the Court to reconsider the summary judgment order. It asserts the order contains some misstatements of fact which raise genuine issues of material fact precluding summary judgment.

In summary, Debtor Robert Pepmeyer received checks issued by Webb's Transmission and Kirkwood Community College and deposited them into his personal checking account. He then issued personal checks to his then-defunct sole proprietorship, Quagco Automotive Equipment or Quag's Equipment Co. (Quagco), and to Defendant Quag's Equipment L.L.C. (the L.L.C.). The L.L.C. is a new entity which was organized on September 12, 2000 by Debtor's wife, Susan Pepmeyer. Debtor operated Quagco as a sole proprietorship but went out of business, also on September 12, 2000. Subsequently, he operated the L.L.C. as its manager and employee. Both entities sold, delivered and serviced automotive equipment and operated at the same location, 550 Ford Lane, Center Point, Iowa.

Trustee's Complaint seeks to recover the payments to the L.L.C. as either preferential transfers under § 547(b) or fraudulent transfers under § 548(a)(1)(B). The Court denied summary judgment under § 547(b), concluding issues of fact exist regarding the parties' relationship and whether an antecedent debt existed.

The Court granted Trustee summary judgment under § 548(a)(1)(B). One of the elements of Trustee's claim under this section is that Debtor did not receive reasonably equivalent value for the transfer. The L.L.C. asserts factual disputes exist regarding this element.

Specifically, the L.L.C. asserts the Court mistakenly found as a fact that Quagco issued an invoice to Kirkwood in the amount of \$2,995 on August 22, 2000. Rather, Quagco issued a quote or purchase order to Kirkwood in that amount on August 21, 2000 and no corresponding invoice is shown in the record. The

L.L.C. also controverts the Court's statement in the Order that the payments received from Webb's Transmission and Kirkwood were on Quagco's accounts receivable. Instead, the L.L.C. asserts that the L.L.C. sold and delivered the equipment for which Kirkwood paid \$2,995 and Webb's paid \$11,900.

In general, the L.L.C. asserts that Debtor's uncontroverted affidavit shows the L.L.C. sold and delivered equipment to Webb's and Kirkwood for which it was entitled to be paid. The payments from Webb's and Kirkwood went to Debtor's address, which was also the address of the L.L.C. and of Quagco before it went out of business. The L.L.C. asserts that, although the checks were sent to Debtor's address and deposited in Debtor's checking account, the funds actually belonged to the L.L.C. or Quagco as payment of their respective sales and services of automotive equipment to Webb's and Kirkwood.

The L.L.C. also takes issue with the Court's conclusions arising from a statement in its answers to interrogatories. In response to Trustee's Interrogatory No. 6, the L.L.C. states there was no consideration paid to Debtor from the L.L.C. for the checks received from Webb's and Kirkwood. The L.L.C. argues that the summary judgment order appears to take this statement out of context to use it as a basis for finding Debtor did not receive equivalent value in exchange for the transfers by check to the L.L.C. It asserts that the record shows that Debtor acted only as a conduit in correctly disbursing the funds received from Webb's and Kirkwood to Quagco and the L.L.C. for their respective sales of automotive equipment to these customers. The L.L.C. asserts its answer to Interrogatory No. 6 merely indicates that it received no fee for depositing the customers' checks and making the respective disbursements to Quagco and the L.L.C.

The L.L.C. argues that viewing these facts in the light most favorable to it, Trustee is not entitled to judgment on her § 548(a)(1)(B) claim. It asserts issues of fact exist at least on the element of whether Debtor received reasonably equivalent value for the transfers at issue. Trustee argues that any misstatements of fact in the Court's order are not material and do not require the Court to change the result of its summary judgment order.

The Court has reviewed the record as well as the cases cited in the briefs and in the Court's April 26, 2002 Order. The facts are somewhat complicated by the three different roles Debtor occupied in September 2000. He operated a sole proprietorship which went defunct; he managed the L.L.C. owned by his wife; and he is an individual. After going out of business as Quagco, Debtor as manager of the L.L.C. entrusted checks from customers to himself as an individual to disburse between Quagco and the L.L.C. It is difficult to differentiate between the roles in which Debtor was acting when the quotes were issued to Webb's and Kirkwood compared to when the invoices were issued and checks received and disbursed.

The Court admits its order granting summary judgment may have mischaracterized the record regarding these matters. In these circumstances, the determination of whether the Trustee is entitled to avoid transfers is more fact-intensive than is normally the case. Upon reconsideration of the record presented and viewing the record in the light most favorable to Defendant, genuine issues of material fact remain disputed and summary judgment is improper. The Court concludes summary judgment on Trustee's § 548(a)(1)(B) claim should be vacated as improvidently granted. Discussion of the underlying facts in this order shall not have preclusive effect in this matter. The Court makes no findings of fact herein.

**WHEREFORE**, Defendant's Motion for Reconsideration of Order re: Motion for Summary Judgment Filed April 26, 2002 is GRANTED.

**FURTHER**, Trustee's Motion for Summary Judgment on a theory of fraudulent transfer under § 548(a)(1)(B) is DENIED.

**FURTHER**, a trial-setting conference shall be held on

**July 19, 2002 at 10:45 a.m.**

In the Bankruptcy Court Room, 425 Second Street SE, 8th Floor, CEDAR RAPIDS,  
IOWA.

**SO ORDERED** this 3rd day of July, 2002.

PAUL J. KILBURG  
CHIEF BANKRUPTCY JUDGE