IN RE:)	
) Chapter 7
SHALOM HOSPITALITY, INC.	,)
)
	Debtor.) Bankruptcy No. 02-00276
	SHERYL YOUNGBLUT, TRUSTEE,)
) Adversary No. 02-9122
Plaintiff,)	
vs.)	
) ALLIANT ENERGY COMPANY and) INTERSTATE POWER
& LIGHT CO.,)	
Defendants.)	

ORDER RE MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came on for telephonic hearing on December 13, 2002 on Trustee's Motion for Summary Judgment. Defendant Alliant Energy Company ("Alliant") was represented by Attorney Verle Norris. Trustee/Plaintiff Sheryl Youngblut was represented by Attorney Eric Lam. After hearing 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 January 31, 2002, Debtor Shalom Hospitality, Inc. filed a Chapter 11 petition. Alliant was a creditor of Debtor at the time the petition was filed. On November 1, 2001, Alliant received a \$6,000 check from Debtor. Alliant also received a \$3,000 check from Debtor November 30, 2001 and a check for \$3,000 on January 5, 2002. After these payments, Debtor remained indebted to Alliant in the amount of \$5,085.93.

Trustee asserts that the payments made by Debtor to Alliant constitute preferential transfers under § 547(b). She further asserts that the transfers are avoidable and that she has satisfied all of the elements of § 547(b) as a matter of law.

Trustee requests partial summary judgment be entered establishing all elements of § 547(b), leaving Alliant's defenses the only issues in dispute.

Alliant claims a dispute may exist regarding whether the transfer was made while Debtor was insolvent. Trustee responds that the presumption provided by § 547(f) establishes Debtor's insolvency on the date that the Alliant received the checks. In the alternative, she asks this Court to partially grant her motion for summary judgment on the elements of § 547(f) not in dispute.

CONCLUSIONS OF LAW

Summary judgment is a drastic remedy and must be exercised with extreme care. <u>Wabun-Inini v. Sessions</u>, 900 F.2d 1234, 1238 (8th Cir. 1990); see also Geiger v. Tokheim, 191 B.R. 781, 785 (N.D. Iowa 1996). In considering a motion for summary judgment, the Court must determine "whether the record, viewed in a light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Rabushka v. Crane Co., 122 F.3d 559, 562 (8th Cir. 1997).

PREFERENTIAL TRANSFER

A trustee may avoid a preferential transfer when an interest in property of the debtor is transferred: (1) to a creditor; (2) for or on account of an antecedent debt; (3) while the debtor is insolvent; (4) within 90 days preceding commencement of the case; and (5) where the creditor receives a greater benefit than it would have received under the distribution provisions of the Bankruptcy Code. 11 U.S.C. § 547(b); In re Mason, 189 B.R. 932, 935 (Bankr. N.D. Iowa 1995).

Trustee asserts the parties do not dispute that a transfer to a creditor of debtor's interest in property was made on account of an antecedent debt, within 90 days before the filing of the petition, and that the preference payment was more than the distribution Alliant would receive as an unsecured creditor in Debtor's case. Alliant asserts a dispute may exist regarding whether the transfer was made while Debtor was insolvent.

Insolvency is a question of fact for the Court. At this time, the Trustee's motion for summary judgment is premature. Alliant has not completed the discovery process. Based on the above, this Court concludes that summary judgment is inappropriate.

WHEREFORE, Trustee's Motion for Summary Judgment is DENIED.

SO ORDERED this 6th day of January, 2003.

_____ PAUL J. KILBURG

CHIEF BANKRUPTCY JUDGE