

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
CAMBRIDGE INDUSTRIES HOLDINGS,)	Case No. 00-1919 (LK)
INC.; CAMBRIDGE INDUSTRIES, INC.,)	
and CE AUTOMOTIVE TRIM)	Jointly Administered
SYSTEMS, INC.,)	
)	
Debtors.)	
)	
JOHN J. CALIOLO, as Liquidating)	
Trustee for the Cambridge)	
Industries, Inc. Liquidating)	Adv. Proc. No. 02-3344
Trust)	
)	
Plaintiff,)	
)	
v.)	
)	DO NOT PUBLISH
SAGINAW BAY PLASTICS, INC.)	
)	
Defendant.)	
)	

MEMORANDUM OPINION ON DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS PURSUANT TO
FED. R. CIV. P. 12(c) and FED. R. BANKR. P. 7012(c)

I. INTRODUCTION

This is an adversary proceeding in bankruptcy (Fed. R. Bankr. P. 7001), seeking to avoid alleged preferential transfers. 11. U.S.C. § 547.¹ Before the court is Defendant Saginaw Bay Plastics, Inc.'s ("Saginaw") motion for judgment on the pleadings

¹ All statutory references herein are to the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 et seq., unless otherwise noted.

in this adversary proceeding [Doc. No. 30].²

II. ISSUE

The issue is whether § 502(d) of the Bankruptcy Code precludes the John J. Caliolo, as Liquidating Trustee ("Trustee"), from prosecuting this preference action where the claim of Saginaw in the bankruptcy proceeding has objected to and allowed. The court finds that it does.

III. FACTS

The facts pertinent to this motion are not in dispute.³ Saginaw timely filed a proof of claim in the bankruptcy proceeding in the amount of \$48,924.71 [Motion ¶ 2]. On October 18, 2000, the Debtors filed its Notice of First Omnibus Objection seeking to reduce Saginaw's claim to \$41,726.61 [Motion Ex. A]. Saginaw responded to Debtors claim objection on October 20, 2000 [Doc. No. 830 (00-1919)]. The parties resolved the claim after a reconciliation and negotiation process and on February 20, 2002,

² The court has jurisdiction over this matter, which is a core proceeding, pursuant to 28 U.S.C. §§ 1334 and 157 (b) (1), (b) (2) (F).

³ The facts are taken from the motion. The Trustee did not dispute the facts in his opposition brief [Doc. No. 31].

a consent order was entered allowing Saginaw's general unsecured claim in the amount of \$36,108.36 [Doc. No. 1954 (00-1919)]. On April 4, 2002, Saginaw received its first distribution on the allowed claim in the amount of \$4,639.88, as shown by a copy of the check attached to the motion [Motion Ex. D]. On May 9, 2002, the Trustee commenced this adversary proceeding seeking to recover alleged preferential transfers in the amount of \$296,000 [Doc. No. 1].

IV. DISCUSSION

A. Fed. R. Civ. P. 12(c)

Fed. R. Civ. P. 12(c), as incorporated by Fed. R. Bankr. P. 7012(c), provides that "[a]fter the pleadings are closed ... any party may move for judgment on the pleadings." The standard to be applied to a Rule 12(c) motion is similar to the summary judgment standard. "Under Rule 12(c), judgment will not be granted 'unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.'" Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 290 (3d Cir. 1988), quoting Society Hill Civ Association v. Harris, 632 F.2d 1045, 1054 (3d Cir. 1980); See also Nat'l Fidelity Life Ins. Co. v. Karaqanis, 811 F.2d 357, 358 (7th Cir. 1987).

The facts in this motion are not contested. Therefore, there are no material facts at issue. The remaining issue is a legal issue which will determine if Saginaw is entitled to judgment as a matter of law.

B. § 502(d)

Section 502(d) states in relevant part:

Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity ... that is a transferee of a transfer avoidable under section ... 547 ... of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section ... 550 ... of this title.

Several recent decisions of this court have dealt with the preclusive effect of § 502(d): Cohen v. TIC Financial Systems (In re Ampace), 279 B.R. 145 (Bankr. D.Del. 2002); LaRoche Industries, Inc. v. General American Transportation Corp. (In re LaRoche), 284 B.R. 406 (Bankr. D.Del. 2002); and in another matter arising from the same bankruptcy case as the present matter now before the court John J. Caliolo, Liquidating Trustee v. TKA Fabco Corp. (In re Cambridge Industries Holdings, Inc.), 2003 WL 1818177 (Bankr. D.Del. 2003). Shortly after the TKA Fabco decision, a subsequent decision was entered that arose in another Cambridge adversary, John J. Caliolo, as Liquidating Trustee v. Azdel, Inc. (In re Cambridge Industries Holdings,

Inc.), 2003 WL 21697190 (Bankr. D.Del. July 18, 2003).

The TKA Fabco matter, relied on here by Saginaw,⁴ discussed the § 502(d) issue as well and contained the same factual scenario as the present motion.

In TKA Fabco the pertinent factual history was as follows:

1. The Defendant filed its timely proof of claim in the amount of \$173,425.63 on August 3, 2000.
2. The Debtors objected to the proof of claim on December 27, 2000.
3. The Debtors and the Defendant resolved the claim after a reconciliation and negotiation process.
4. The Defendant's claim was then allowed as a general unsecured claim in the amount of \$166,672.91 by Order of February 20, 2002.
5. The Defendant received its first distribution in the amount of \$7221.46 in April 2002.
6. On May 9, 2002, the Trustee commenced the adversary proceeding seeking to avoid and recover alleged preferential transfers to the Defendant.

TKA Fabco, 2003 WL 1818177 at *1.

The Azdel ruling was issued subsequent to the filing and briefing of the present matter. In Azdel, the court discussed at length the impact of § 502(d) on the exact same issue as is before the court now as well as the previous cases to deal with the issue. Relying on legislative history and prior case law,

⁴ Here, the Trustee relies on the papers that were filed in TKA Fabco in opposition to the motion for summary judgment based on the § 502(d) issue [Doc. No.31]. Thus the Trustee asserts the same arguments as were set forth in TKA Fabco on virtually identical facts.

the court found that § 502(d) requires that a dispute over avoidable transfers must be resolved in tandem with a claim dispute. Azdel, 2003 WL 21697190 at *5. "Where there is a court order resolving a dispute over the amount of a creditor's claim, the entry of that order precludes, pursuant to § 502(d), the commencement or continuation of litigation for the recovery from the creditor of allegedly avoidable transfers." Id. Due to the fact that there was an order concerning the Defendant's claim, the court granted the Defendant's motion for summary judgment and dismissed the complaint. Id. The court found that summary judgment was appropriate even though the preference action was filed before the claim objection was filed. That fact became irrelevant once the claim dispute was resolved and the order was entered allowing the Defendant's claim.

All three cases (LaRoche, TKA Fabco, and Azdel) are in agreement that when an order is entered resolving a disputed claim of a creditor, § 502(d) precludes any litigation to recover avoidable transfers from that creditor.

In the present matter, there is such an order - the February 20, 2002, consent order allowing Saginaw's claim [Doc. No. 1954 (00-1919)]. At that time, § 502(d) required that the alleged preferential transfers had to have been resolved as well. But the alleged preferential transfers were not resolved and this litigation commenced several months later. Therefore, on the

present facts and the reasons stated in TKA Fabco and Azdel, § 502(d) requires that the court grant Saginaw's motion for judgment on the pleadings and dismiss the Trustee's complaint. The court finds that there are no material facts in dispute and Saginaw is entitled to judgment as a matter of law. An appropriate judgment will follow.

Dated: September 25, 2003



Lloyd King
United States Bankruptcy Judge

The Clerk shall furnish copies to:

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Plaintiff,)	
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v.)	
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SAGINAW BAY PLASTICS, INC.)	
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Defendant.)	

JUDGMENT OF DISMISSAL

Pursuant to the memorandum opinion filed this date,
Defendant Saginaw Bay Plastics, Inc.'s Motion to Dismiss Pursuant
to Fed. R. Civ. P. 12(c) and Fed. Bankr. P. 7012(c) is hereby
GRANTED and the Plaintiff's complaint is hereby **DISMISSED**.

IT IS SO ORDERED.

Dated: September 25, 2003



Lloyd King
United States Bankruptcy Judge

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