

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	Chapter 7
)	
BURNHAM HOLDINGS, INC.)	Case No. 00-3467 and 00-3470
et. al,)	(MFW)
Debtors)	Jointly Administered
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)	
BURNHAM SERVICE CORP. and)	Adv. Pro. No. 01-195
BURNHAM SERVICE COMPANY, INC.)	
)	
Plaintiffs,)	
v.)	
)	
PACIFIC STATES LOGISTICS,)	
MANAGEMENT, LLC, ROLAND M.)	
STEWART, SR., AN ATTORNEY)	
AT LAW, EAGLE CAPITAL, LTD.,)	
ROLAND M. STEWART, AN)	
INDIVIDUAL, AND LEONARD L.)	
MILES, JR., AN INDIVIDUAL)	
)	
Defendants.)	

MEMORANDUM OPINION¹

Before the Court is the Motion of Eagle Capital for Summary Judgment on the Trustee's Complaint and its counterclaim as well as the Response of the Chapter 7 Trustee. For the reasons set forth below, we will deny the Motion.

I. FACTUAL BACKGROUND

On August 29, 2000, BVL Holdings, Inc., Burnham Service Corporation, Burnham Service Company, Inc., and Bullet Pallet Systems, Inc. (collectively "the Debtors") filed petitions under

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

chapter 11. Prior to the petition date, the Debtors provided logistics support to large corporations.

During September and October of 2000, the Debtors conducted an auction under section 363 of the Bankruptcy Code of their Network Business. Two bidders, Pacific States Logistics ("PSL") and the Kreis Group, participated in this auction. PSL made a \$200,000 deposit in connection with its initial bid of \$2,000,000. After the auction, the Debtors ultimately selected PSL with a successful bid of \$4,103,500. The parties executed an Asset Purchase Agreement ("the APA") on October 25, 2000. The Debtors requested an additional deposit of \$300,000 from PSL. Eagle paid \$200,000 of that deposit on November 6, 2000. The APA was approved by this Court at the sale hearing on October 31, 2000.

At the sale hearing, concerns arose over the viability of the business. Upon learning this, PSL sent a letter to the Debtors stating that it was hesitant to go forward with the sale. The largest customer terminated its contract with the Debtors on November 6, 2000. As a result, PSL did not close the sale.

On February 1, 2001, Eagle filed a Motion requesting a return of its \$200,000. The Debtors objected to this Motion and, at the direction of this Court, commenced this adversary proceeding on March 12, 2001, seeking a declaratory judgment that they are entitled to the deposits due to PSL's breach of the APA.

Subsequently, the Debtors' cases converted to chapter 7. The Chapter 7 Trustee is prosecuting the adversary on behalf of the estate.

On April 23, 2003, the Trustee obtained a default judgment against PSL. Eagle filed an answer to the Complaint asserting various defenses and a counterclaim for return of the \$200,000 it had deposited with the Debtors.

On January 16, 2004, Eagle filed a Motion for Summary Judgment on its counterclaim and the Trustee's Complaint. The Trustee opposes this Motion. Briefing was complete on May 14, 2004, and this matter is ripe for decision.

II. JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(1)(A), (B), (E), (N) & (O).

III. DISCUSSION

A. Summary Judgment Standard

A court may grant summary judgment only where "there is no genuine issue of any material fact" and the moving party is entitled to judgment on the remaining legal questions. Fed. R. Bankr. P. 7056. In determining whether any such issues of fact exist, the court must view all inferences in the light most favorable to the nonmoving party. Rosen v. Bezner, 996 F.2d

1527, 1530 (3d Cir. 1993).

If the moving party has established that there are no genuine issues of material fact, the nonmoving party must come forward with proof that questions of fact do exist. Id. The court's task is issue finding, not issue resolution. Thaler v. Erdheim (In re Erdheim), 197 B.R. 23, 28 (Bankr. E.D.N.Y. 1996). Only where it is irrational to find against the moving party is summary judgment appropriate. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).

In practical terms, if the opponent has exceeded the 'mere scintilla' threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. It thus remains the province of the factfinder to ascertain the believability and weight of the evidence.

Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1362 (3d Cir. 1992). A fact is material if its determination could resolve the case. In re Am. MetroComm Corp., 274 B.R. 641, 649 (Bankr. D. Del. 2002).

B. Eagle's Motion

Eagle argues that it has no privity with PSL and, therefore, cannot be held liable for the breach of contract between PSL and the Debtors. Furthermore, even if it could be liable, Eagle argues that a liquidated damages agreement, made in a "Side Agreement" executed contemporaneously with the APA, limited damages to the first \$200,000 deposit. Finally, Eagle argues

that PSL had no obligation under the bidding procedures to increase its deposit when it increased its bid. Therefore, Eagle concludes that there is no basis for the Trustee's suit against it.

The Trustee argues that two genuine issues of material fact exist. First, it argues that Eagle's reliance on two different APAs creates a triable issue of fact. The Trustee argues that the unmarked APA Eagle submitted in its demand for release of its money and the interlined APA submitted with this Motion differ. Thus, the Trustee argues, a question of fact exists as to which of the APAs is the operative one. Eagle asserts that there is no difference between the two APAs. Instead, Eagle argues that the APA attached to the Motion for Summary Judgment, with handwritten notes, is materially the same as that attached to the demand request. Eagle asserts that the only difference between the two APAs is that the interlined notes were typed into the final document.

We agree with Eagle. After reviewing both APAs, we find that there is no material difference between them. Thus, there is no question of fact as to which APA controls.

Second, the Trustee argues that the relationship between Eagle and PSL is in dispute. He argues that because there is an agency relationship between Eagle and PSL, Eagle can only seek recovery from PSL, not from the Debtors. The Trustee provides

evidence that suggests that Eagle was involved in the auction as a business partner or a financier of PSL. The Trustee's evidence on this point is substantial: a principal of Eagle was involved in the negotiations of the APA; wire instructions from Eagle indicate that the deposit was made in connection with the PSL transaction; and during the auction Eagle performed tasks on behalf of PSL, such as providing documents to the Debtors. The Trustee supports its argument with the affidavit of John Hedges, an officer of the Debtors involved in the auction.

Eagle paints a different portrait of its dealings with PSL. In its original motion, Eagle argued that it never tendered a deposit on behalf of PSL. In this motion, Eagle denies that it has any affiliation, privity, or business relationship with PSL. Thus, the relationship between PSL and Eagle is, at the very least, disputed.

A genuine issue of material fact exists when reasonable minds could disagree on the result. See Matsushita, 475 U.S. at 587. From the facts presented to this Court, reasonable minds could disagree on what relationship, if any, Eagle had with PSL. This is a material fact because if Eagle lacked a direct relationship with PSL it is unclear how Eagle, a third party, could enforce the Side Agreement PSL had with the Debtors. Furthermore, if Eagle was merely an agent of PSL, then the default judgment against PSL might preclude Eagle from denying

the estate's entitlement to the deposits.

Further, this disputed fact is material. Resolution of this dispute could resolve the entire case. Therefore, a genuine issue of material fact exists and we cannot grant summary judgment to Eagle.

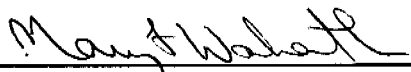
IV. CONCLUSION

For the reasons set forth above, the Motion for Summary Judgment will be denied.

An appropriate order is attached.

Dated: February 2, 2005

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge