UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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Re: Scott Peltz, As Liquidating Trustee for the USN Communications Liquidating Trust v. Dahlgren's Mailing Service, Inc.
Adv. Proc. No. A-00-01886

Dear Counsel:

This is with respect to the motion (Doc. # 4) of Dahlgren's Mailing Service, Inc. ("Defendant") to strike and

dismiss the complaint to recover avoidable transfers ("Complaint"). I will deny the motion for the reasons discussed below.

USN Communications, Inc. ("USN") and its affiliates (collectively, "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on February 18, 1999 ("Petition Date"). On April 5, 2000, Scott Peltz ("Plaintiff") was appointed as Liquidating Trustee for the USN Communications Liquidating Trust.[1] Subsequently, on December 15, 2000, Plaintiff commenced the instant action against Defendant seeking, pursuant to 11 U.S.C. § 547[2], to avoid alleged preferential transfers ("Alleged

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[1] This was done pursuant to the First Amended Joint Consolidated Plan of Reorganization ("Plan"), the confirmation order (Doc. # 624, Case No. 99-383), and a liquidating trust agreement dated April 5, 2000.

[2] 11 U.S.C. § 547 provides in pertinent part:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property-

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made-

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if-

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

Transfers") in the amount of $26,156.35.[3] (Pl.'s Obj'n (Doc. # 6) at 1.) Thereafter, on January 16, 2001, Defendant filed its motion to strike and dismiss the Complaint.

Defendant fails to cite the legal authority and/or the statutory provision on which it bases its motion to strike and dismiss the Complaint.[4] Rather, Defendant simply argues that its motion is proper because: (1) Defendant did not do any business with Debtors prior to the dates the Alleged Transfers allegedly took place (Def.'s Mot. (Doc. # 4) ¶ 2); (2) Defendant was unaware that Debtor was allegedly insolvent (id. at ¶ 3); (3) Defendant's services, given in exchange for the Alleged Transfers, were performed in the ordinary course of business (id. at ¶¶ 5, 10); and (4) the Alleged Transfers were intended to be a contemporaneous exchange for new value (id. at ¶ 9). In addition, Defendant also states that neither Defendant, nor Debtors engaged in any unusual collection or payment activity (id. at ¶ 11), that the transaction giving rise to the Alleged Transfers falls within the normal mailing industry practice (Def.'s Mot. (Doc. # 4) ¶ 12), that § 547(c)(2) is meant to protect customary credit transaction incurred and paid in the ordinary course of business (id. at ¶ 13), and that

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[3] 11 U.S.C. §§ 101 et seq. is hereinafter referred to as "§ __".

[4] The Court presumes that Defendant brings its motion to strike pursuant to Fed. R. Civ. P. 12(f) and its motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). These rules are applicable in bankruptcy pursuant to Fed. R. Bankr. P. 7012.

these transactions "are neither fraudulent nor preferential transfers" (id. at ¶ 13). None of these reasons support a decision to strike or dismiss the Complaint under Rules 12(f) ("Rule 12(f)")[5] and 12(b)(6) ("Rule 12(b)(6)")[6] of the Federal Rules of Civil Procedure.

Motions to strike are disfavored and should only be granted where a defendant cannot reasonably be expected to frame a responsive pleading or to defend against those portions of the complaint which the defendant contends constitutes a "redundant, immaterial, impertinent, or scandalous matter", Fed.R.Civ.P. 12(f). See FDIC v. Wise, 758 F.Supp. 1414, 1420 (D. Colo. 1991).

In addition, under Rule 12(b)(6), a defendant's motion to dismiss must be denied "unless it appears beyond doubt that the

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[5] Fed. R. Civ. P. 12(f) provides:

> **Motion to Strike**. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

[6] Fed. R. Civ. P. 12(b)(6) provides:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:
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> * * *
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> 6) failure to state a claim upon which relief can be granted,

plaintiff can prove no set of facts in support of [its] claims which would entitle [the plaintiff] to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957). The Federal Rules of Civil Procedure do not require a plaintiff to set out detailed facts to support its claims. Id. at 47. All the Rules require is a short and plain statement of the claim that will give the defendant fair notice of the nature of plaintiff's claims and the grounds upon which they rest. Id.; see also Fed.R.Civ.P. 8(a). In evaluating the sufficiency of a complaint for the purposes of Rule 12(b)(6), the Court must accept as true all allegations in the Complaint and construe all inferences in the light most favorable to the Plaintiff. Rogin v. Bensalem Township 616 F.2d 680, 685 (3d Cir. 1980). "The issue is not whether a plaintiff will ultimately prevail but whether a claimant is entitled to offer evidence to support [its] claims." Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974), *overruled on other grounds*, Davis v. Scherer, 468 U.S. 183, 104 S.Ct. 3012, 82 L.Ed.2d 139 (1984).

Applying these standards to the Complaint, I find the allegations contained therein sufficient to support Plaintiff's claims to avoid and recover allegedly preferential transfers pursuant to § 547. First, with respect to Defendant's motion to strike, Defendant does not allege that any portions of the Complaint are redundant, immaterial, impertinent, or scandalous.

In addition, Defendant's arguments in support of both its motion to strike and to dismiss pertain solely to the strength and validity of Plaintiff's claims, not to the sufficiency of the allegations set forth in the Complaint. The fact that Defendant did not do any business with Debtors prior to the dates the Alleged Transfers allegedly took place is irrelevant for the purposes of § 547. So too is the fact that Defendant was allegedly unaware that Debtor was insolvent.

In addition, the fact that Defendant contends that the Alleged Transfers fall within the contemporaneous value and ordinary course of business exceptions set forth in § 547(c) does not support a decision to strike or dismiss the Complaint. As stated above, the issue at this stage of the proceedings is not whether Plaintiff will ultimately prevail on its claims, but whether the Complaint provides Defendant with fair notice of the nature and grounds for Plaintiff's claims. See Scheuer, 416 U.S. at 236; Conley, 355 U.S. at 47. I find that it does and therefore, Defendant's motion to strike and dismiss the Complaint (Doc. # 4) is denied.

SO ORDERED.

Very truly yours,

Peter J. Walsh

PJW:ipm