

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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|---|---|-------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| GRUPPO ANTICO, INC. |) | Case No. 02-13283 (PJW) |
| f/k/a TREND HOLDINGS, INC., <i>et al.</i> , |) | |
| |) | Jointly Administered |
| Debtors. |) | |
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| |) | |
| ANTICO VACCA TECHNOLOGIES, |) | |
| INC. f/k/a TREND TECHNOLOGIES, INC., |) | Adversary Proceeding No. |
| |) | A 03-60216 (PBL) |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| STEEL TECHNOLOGIES, INC. |) | |
| d/b/a STEEL TECHNOLOGIES, SA de C.V., |) | |
| |) | Related Documents: 37, 45, 48 |
| Defendant. |) | |
| |) | |

**MEMORANDUM AND ORDER GRANTING THE MOTION OF STEEL
TECHNOLOGIES, INC. FOR SUMMARY JUDGMENT¹**

Before the Court is the Motion for Summary Judgment (“the Motion”) of Steel Technologies, Inc., Defendant in the above-captioned adversary proceeding. For the reasons set forth below, the Motion will granted in its entirety.

I. Background

This adversary proceeding was commenced on December 29, 2003 by Antico Vacca Technologies, Inc. (hereinafter referred to as “Plaintiff”) to avoid and recover certain alleged

¹ This memorandum will constitute the findings of fact and conclusions of law of the Court required by Federal Rule of Bankruptcy Procedure 7052.

preferential transfers pursuant to §§ 547 and 550 of the Bankruptcy Code² in the amount of \$544,022.90. Steel Technologies, Inc. (hereinafter referred to as “Defendant”) filed its Answer on February 12, 2004 denying the allegations contained within the Complaint. Defendant filed its Motion for Summary Judgment on September 20, 2004 and briefing was completed on the Motion on November 11, 2004. The Motion is therefore ripe for disposition.

II. Standard for Summary Judgment

Federal Rule of Civil Procedure 56(c), made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7056, provides that summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *See also, Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In deciding a motion for summary judgment, all factual inferences must be viewed in the light most favorable to the non-moving party. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 547, 587–588 (1986) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)). After sufficient proof has been presented to support the motion, the burden shifts to the non-moving party to show that genuine issues of material fact still exist and that summary judgment is not appropriate. *Matsushita* at 587. A genuine issue of material fact is present when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

² 11 U.S.C. §§ 101 *et seq.* Hereinafter, references to statutory provisions by section number alone will be to provisions of the Bankruptcy Code unless otherwise noted.

III. Discussion

Defendant contends in its Motion that Plaintiff has failed to prove the required elements under § 547(b).³ Defendant specifically denies that it received any preferential payments from Plaintiff on or within ninety days of the petition date of the Debtor, Gruppo Antico, Inc. Furthermore, Defendant alleges that Plaintiff has not produced any documentation either in response to the Motion, or included with the Complaint, to support Plaintiff's cause of action.

Defendant alleges that there is no genuine issue of material fact and that it is entitled to summary judgment. In support of its position, Defendant has submitted the September 16, 2004 affidavit of its Corporate Controller, Steve Nosil, who stated that he is responsible for the department which receives all payments, including wire transfers, of Defendant. After reviewing the alleged transfers listed on Exhibit A attached to the Complaint, Mr. Nosil stated that Defendant did not receive the payments at issue.

Plaintiff opposes the Motion and in response argues that the alleged payments were made in the aggregate amount by wire transfer to Defendant and deposited into its account at the

³ Under § 547(b), the trustee may seek to avoid, as a preference, ". . . 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 90 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."

International Bank of Commerce-Laredo. Plaintiff concedes that the alleged transfers were made to Steel Technologies SA de CV, but argues that it believes that Steel Technologies SA de CV and Steel Technologies de Mexico are wholly owned subsidiaries of Defendant.


In reply to Plaintiff's Response to the Motion, Defendant offered the affidavit of its Secretary, Mr. John M. Baumann. Mr. Baumann stated that neither Steel Technologies de Mexico, Steel Technologies SA de CV, nor Steel Technologies (Mexico) are wholly owned subsidiaries or fictitious business names of Defendant. Defendant has also submitted the November 12, 2004 affidavit of Mr. Nosil, who further testified that Account No. 114902528 at the International Bank of Commerce-Laredo is not the account of Defendant and that Defendant does not have an account at the International Bank of Commerce-Laredo.

IV. Decision

Based upon the affidavits submitted by Defendant, it is apparent that alleged payments were not made to or for the benefit of Defendant in this adversary proceeding. The Court finds that Plaintiff has failed to prove by preponderance of the evidence that the transfers in question were made to Defendant and further, Plaintiff has made no showing that there is a genuine issue of material fact in this instance.

IT IS HEREBY ORDERED that the Defendant's Motion for Summary Judgment is therefore **GRANTED** in its entirety. An appropriate judgment follows.

Dated: January 25, 2005
Wilmington, DE


PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

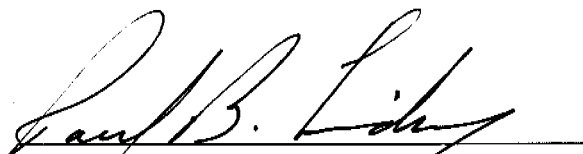
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SUMMARY JUDGMENT

Upon entry of the Memorandum and Order Granting the Motion of Steel Technologies, Inc. for Summary Judgment, the Court hereby grants judgment in favor of Steel Technologies, Inc. and against Plaintiff, Antico Vacca Technologies, Inc..

IT IS HEREBY ORDERED that Judgment is entered in favor of Steel Technologies, Inc. and against Antico Vacca Technologies, Inc. as to the transfers in the total amount of \$544,022.90. Plaintiff's Complaint against Steel Technologies, Inc. shall be dismissed.

Dated: January 25, 2005
Wilmington, DE


Paul B. Lindsey
United States Bankruptcy Judge