IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
ORBCOMM GLOBAL, L.P., et al.,	)	Case Nos. 00-3636 (MFW) through 00-3643 (MFW)
	)	
Debtors.	)	(Jointly Administered Under Case No. 00-3636 (MFW))
	)	
CAROL HANNA, AS LIQUIDATING TRUSTEE FOR THE OC GLOBAL LIQUIDATING TRUST,	)	
	)	Adversary No. 02-1914 (MFW)
Plaintiff,	)	
	)	
v.	)	
	)	
STANTON CRENSHAW,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION[1]

This matter is before the Court on the Motion filed by Carol Hanna, as Liquidating Trustee for the OC Global Liquidating Trust ("the Liquidating Trustee") for Summary Judgment in its action to avoid an alleged preferential payment made to Stanton Crenshaw ("Crenshaw"). For the reasons set forth below, the Motion will be granted.

I. FACTUAL BACKGROUND

ORBCOMM Global, L.P., and its affiliates and subsidiaries (collectively, "the Debtors") all filed voluntary Chapter 11 petitions on September 15, 2000. As of that date, the Debtors'

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

liabilities exceeded $250 million. On April 23, 2001, the Debtors sold substantially all their assets for $500,000 in cash, two promissory notes totaling $6,750,000 and a 5% equity stake in the buying entity. The Debtors' Liquidating Plan of Reorganization ("the Plan") was confirmed on November 15, 2001, and became effective on December 31, 2001. In accordance with the Plan, all assets of the Debtors were transferred as of the Effective Date to the Liquidating Trustee. On February 7, 2002, the Liquidating Trustee filed a complaint against Crenshaw to avoid and recover an alleged preferential transfer of $31,472.68 to Crenshaw.

II. JURISDICTION

This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157(b)(2)(F).

III. DISCUSSION

A. Standard for Summary Judgment

The underlying purpose of summary judgment is to avoid the inefficiencies of conducting an unnecessary trial. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038 (1977). Under Fed. R. Civ. P. 56(c), summary judgment is appropriate "if 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."[2] Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When presented with a motion for summary judgment, all of the facts must be reviewed and any reasonable inferences must be drawn in the non-moving party's favor. See Matsushita Elec. Indus. Co., 475 U.S. 574, 587 (1986).

B. Standard for Avoidance of a Preference

Under section 547(b), the trustee may avoid a transfer if it was:

> (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;

---

[2] Rule 56 of the Federal Rules of Civil Procedure is made applicable to adversary proceedings pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure.

> (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.

11 U.S.C. § 547(b). The Liquidating Trustee has the burden of proof on all elements of a preference.

In this case, Crenshaw concedes that the Liquidating Trustee has established all elements except the fourth one, that the Debtors were insolvent at the time of the transfer.

C. The insolvency requirement of § 547

Crenshaw's sole argument in support of its assertion that the transfer to it was not preferential is that the Debtors were solvent at the time of the transfer. Section 547(f) creates a presumption that a debtor was insolvent for the ninety (90) days prior to the filing of its bankruptcy petition.[3] The party challenging an avoidance action bears the burden of rebutting that presumption by offering non-speculative evidence sufficient to permit a court to conclude that the debtor was indeed solvent at the time of the transfer. 11 U.S.C. § 547(g). If that burden is satisfied, the burden of proof then shifts back to the moving party, obligating it to show that the debtor was, in fact, insolvent. Id. See also Brothers Gourmet Coffees, Inc. v.

[3] In this case the alleged preferential transfer was within ninety days of the Debtors' filing under chapter 11.

Armenia Coffee Corporation, 271 B.R. 456, 458 (Bankr. D. Del. 2002).

> Insolvency is a "financial condition such that the sum of [the] entity's debts is greater than all of [its] property, at fair valuation. . . ." 11 U.S.C.A. § 101(32) (1993). A debtor is presumed insolvent on and during the 90 days before filing for bankruptcy. . . . The party seeking to rebut the presumption must introduce some evidence to show that the debtor was solvent *at the time of the transfer*. . . . Summary judgment in favor of the trustee is appropriate when the party seeking to rebut the presumption fails . . . or when there is no genuine issue of material fact concerning insolvency and the trustee is entitled to judgment as a matter of law. . . .

Gasmark Ltd. Liquidating Trust v. Louis Dreyfus Natural Gas Corp., 158 F.3d 312, 315 (5th Cir. 1998) (emphasis in original).

Crenshaw contends that, in order to determine whether the Debtors were solvent, it is necessary to look at the "fair market value" of both the assets and the debts. Specifically, Crenshaw asserts that the language "fair valuation" in section 101(32)(A) applies to debt as well as assets. Crenshaw notes that, at the time of the transfer, the Debtors' business was, for all intents and purposes, on its "financial deathbed." Therefore, it asserts that the Debtors' public debt must be discounted below its face value to reflect the Debtors' true worth.

In response, the Liquidating Trustee asserts that for insolvency purposes we must compare the fair market value of the

assets with the face value of the debts. It asserts that there is no basis to discount the debt.

Both the Liquidating Trustee and Crenshaw rely upon the case Travelers Int'l AG v. Trans World Airlines, Inc. (In re Trans World Airlines, Inc.), 134 F.3d 188 (3d Cir. 1998).[4] In that case, the Third Circuit concluded that the proper standard of valuation of the debt is face value, rather than market value, if the debtor is treated as a going concern. Id. at 196. Crenshaw asserts, however, that the Debtors here were not sold as a going concern, but were liquidated. Therefore, Crenshaw asserts that the Trans World Airlines case does not mandate that the debt be kept at face value.

We disagree. The Court in Trans World Airlines foresaw the fallacy of Crenshaw's argument. "If holders of claims are fully informed of the debtor's affairs and the asset values are less than the face amount of the claims, they would never value their claims at more than the value of the assets. Likewise, the fully informed debtor would never be willing to pay claimants more than

---

[4] All the cases cited by Crenshaw dealt with the appropriate standard for the valuation of assets and are, therefore, not applicable to this issue. See, e.g., Utility Stationary Stores, Inc. v. Southworth Company (In re Utility Stationary Stores, Inc.), 12 B.R. 170 (Bankr. N.D. Ill. 1981); Matter of Taxman Clothing Co., Inc., 905 F.2d 166 (7th Cir. 1990); Fryman v. Century Factors, Factor for New Wave (In re Art Shirt Ltd.), 93 B.R. 333 (E.D. Pa. 1988); Neuger v. Casgar (In re Randall Construction), 20 B.R. 179 (N.D. Ohio 1981).

claimants would be willing to take. Thus, the value of the claims would never exceed the value of the assets and insolvency could never occur." 134 F.3d at 197 n.7 (citing In re Trans World Airlines, Inc., 180 B.R. 389, 424 (Bankr. D. Del. 1994)). We agree with this reasoning. If Crenshaw's argument were correct, insolvency could never occur, which is an absurd result. Therefore, we conclude for purposes of determining whether a debtor is insolvent under section 547, the liabilities of the debtor must be valued at face value. Crenshaw has failed, therefore, to present credible evidence to rebut the presumption in section 547(f) that the Debtors in this case were insolvent at the time of the transfer.

III. CONCLUSION

For the foregoing reasons, the Liquidating Trustee's Motion for Summary Judgment will be granted.

An appropriate Order will be entered.

BY THE COURT:

Dated: June 12, 2003

Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
ORBCOMM GLOBAL, L.P., et al.,	)	Case Nos. 00-3636 (MFW) through 00-3643 (MFW)
	)	
Debtors.	)	(Jointly Administered Under Case No. 00-3636 (MFW))
	)	
CAROL HANNA, AS LIQUIDATING TRUSTEE FOR THE OC GLOBAL LIQUIDATING TRUST,	)	Adversary No. 02-1914 (MFW)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
STANTON CRENSHAW,	)	
	)	
Defendant.	)	

O R D E R

AND NOW, this **12TH** day of **JUNE, 2003**, upon consideration of the Plaintiff's Motion for Summary Judgment and the response of the Defendant thereto, it is hereby

ORDERED that the Motion is hereby **GRANTED**; and it is further

ORDERED that judgment is entered in favor of the Plaintiff and against the Defendant in the amount of $31,472.68.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

SERVICE LIST

William H. Sudell, Esquire
Derek C. Abbott, Esquire
Michael G. Busenkell, Esquire
MORRIS NICHOLS ARSHT & TUNNELL, LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
Counsel for Plaintiff

Roland Gary Jones, Esquire
1285 6th Avenue, Suite 3500
New York, NY 10019
Counsel for Stanton Crenshaw

Jeffrey M. Boyer, Esquire
SNYDER & ASSOCIATES, P.A.
300 Delaware Avenue, Suite 1014
Wilmington, DE 19801
Counsel for Stanton Crenshaw

OFFICE OF THE UNITED STATES TRUSTEE
J. Caleb Boggs Federal Building
844 King Street
Lockbox 35
Suite 2313
Wilmington, DE 19801