

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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WILMINGTON, DE 19801  
(302) 252-2925

August 12, 2004

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Counsel for The MDIP Litigation Trust

Counsel for Defendant,  
Michel Rapoport

**RE: The MDIP Litigation Trust v. Rapoport  
Adv. Proc. No. 03-55178**

Dear Counsel:

This is with respect to Defendant's motion for a protective order (Doc.# 19) and related pleadings, Defendant's second motion for a protective order (Doc.# 24) and related pleadings, Plaintiff's motion to compel responses (Doc.# 15) and related pleadings, and Defendant's motion to dismiss (Doc.# 21) and related pleadings.


With respect to the discovery disputes I believe the transactions information being sought by the Plaintiff is entirely appropriate for discovery. While Defendant asserts that it has waived the defense of ordinary course, it seems to me that the requested information may be relevant in addressing other

§ 547(c) defenses. Furthermore, despite the reams of papers that both counsel have submitted on these matters, no one seems to have focused on the fraudulent conveyance count of the complaint. It seems to me that all transactions and dealings between the Debtor and Defendant (including transfers by the Debtor) during the one year period would be quite relevant to the kind of issues typically raised in a fraudulent conveyance dispute, particularly one involving an "insider". Therefore, I will deny Defendant's discovery motions and grant Plaintiffs discovery motion.

With respect to Defendant's motion to dismiss, I believe it is premature to address the matter. If and when Plaintiff seeks recovery on any transaction other than the two identified in the complaint, we can decide whether those transactions fall within the notice embodied in the complaint. For example, it is conceivable that given Defendant's denial of receiving the two identified transfers, it may be that different transfers that actually occurred could be substituted for the two identified transfers. It is simply premature to address these types of questions in the factual vacuum that presently exist. Therefore, Defendant's motion to dismiss will be denied.

Enclosed herewith is a copy of the order which has been entered in this adversary proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter J. Walsh". The signature is fluid and cursive, with a long horizontal line extending to the right.

Peter J. Walsh

Enclosure

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
MDIP INC. (formerly Mosler, ) Case No. 01-10055 (PJW)  
INC.), et al., ) Jointly Administered  
)  
Debtors. )  
\_\_\_\_\_)  
THE MDIP LITIGATION TRUST, )  
INC., et al., )  
Plaintiffs, )  
v. ) Adv. Proc. No. 03-55178  
)  
MICHEL RAPOPORT )  
)  
Defendant. )

**ORDER**

For the reasons stated in the Court's letter ruling of this date:


1. Defendant's motion for a protective order (Doc. # 19) is DENIED.

2. Defendant's second motion for protective order (Doc. # 24) is DENIED.

3. Plaintiff's motion to compel responses (Doc. # 15) is GRANTED.

4. Defendant's motion to dismiss (Doc. # 21) is DENIED.

Dated: August 12, 2004

  
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Peter J. Walsh  
United States Bankruptcy Judge