

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
US WOOD PRODUCTS, INC.,)	Cases No. 00-3198 (MFW)
Debtor.)	
_____)	
)	
MONTAGUE CLAYBROOK, CHAPTER 7)	
TRUSTEE,)	
)	
Plaintiff,)	
v.)	Adversary No. 03-53711 (MFW)
SOL BUILDING MATERIALS)	
CORPORATION,)	
Defendant.)	

MEMORANDUM OPINION¹

Before the Court is the Motion for Summary Judgment filed by SOL Building Materials Corporation ("the Defendant") in response to the Complaint filed by the Chapter 7 Trustee ("the Plaintiff") on behalf of US Wood Products, Inc. ("the Debtor") to avoid and recover preferential transfers made by the Debtor pursuant to section 547 of the Bankruptcy Code. For the following reasons, we deny the Defendant's Motion.

I. FACTUAL BACKGROUND

Prior to filing for bankruptcy, the Debtor sold lumber and lumber related products. The Defendant supplied the Debtor with birch plywood that the Debtor used in its business. On March 27,

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

2000, the Defendant issued an invoice to the Debtor in the amount of \$15,844.00 for goods supplied. On May 16, 2000, the Debtor paid \$15,685.56 to the Defendant for the invoice, and on July 14, 2000, the Debtor paid the remaining amount due (\$158.44).

In addition to supplying the Debtor with birch plywood, the Defendant was also a customer of the Debtor. On or about May 1, 2000, the Defendant ordered goods from the Debtor in the amount of \$11,440.00. On May 10, 2000, the Defendant ordered additional goods from the Debtor in the amount of \$8,043.75. The goods were shipped by the Debtor on April 24, 2000, and May 3, 2000, respectively. All of the goods were received and accepted by the Defendant². The Defendant paid \$11,440.00 for the May 1 purchase from the Debtor on July 14, 2000, and \$8,043.75 for the May 10 purchase on July 23.

On July 31, 2000, the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code. On July 29, 2002, the case was converted to chapter 7. On June 4, 2003, the Plaintiff filed a complaint to avoid and recover the \$15,685.56 transfers which the Debtor made to the Defendant pursuant to section 547 of the Bankruptcy Code. On March 12, 2004, the Defendant filed a Motion for Summary Judgment asserting that the alleged preferential transfers are not avoidable because it provided new

² The transactions between the Debtor and Defendant are summarized chronologically on Exhibit A, attached hereto.

value to the Debtor in excess of those transfers. The Trustee opposes the Motion. A notice of completion of briefing was filed on April 2, 2004, and the matter is ripe for decision.

II. JURISDICTION

This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(2)(A), (E), (F), & (O).

III. DISCUSSION

Section 547 of the Bankruptcy Code allows a trustee to avoid any transfer made within ninety days of the debtor's bankruptcy filing in which the debtor transfers its property while insolvent thereby enabling a creditor to receive more than it otherwise would have received in the bankruptcy. See 11 U.S.C. § 547(b). However, section 547(c) provides that a trustee may not avoid a transfer to the extent that the creditor gave "new value" to the debtor after the transfer. See 11 U.S.C. § 547(c)(4). The Plaintiff contends that the two payments made by the Debtor to the Defendant were preferential under section 547(b). In the Motion for Summary Judgment, the Defendant contends that the payments received from the Debtor were not preferential as a matter of law because it provided new value to the Debtor in excess of the alleged preferential transfers.

A. Standard for Summary Judgment

Summary judgment is appropriate if there exists no genuine issue of material fact such that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In deciding a motion for summary judgment, all facts must be viewed and all reasonable inferences must be drawn in favor of the non-moving party.

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

B. New Value

There are three elements to the new value defense under section 547(c).

First, the creditor must have received a transfer that is otherwise voidable under section 547(b). Second, after receiving the preferential transfer, the preferred creditor must advance "new value" to the debtor on an unsecured basis. Third, the debtor must not have fully compensated the creditor for the "new value" as of the date that it filed its bankruptcy petition.

In re New York City Shoes, Inc., 880 F.2d 679, 680 (3d Cir. 1989). If a creditor satisfies these elements, it is entitled to set off the amount of "new value" against the amount which the creditor is required to return to the trustee on account of the preferential payments it received. Id.

Here, it is uncontested that the first element is satisfied. The Defendant received two transfers from the Debtor that are otherwise voidable under section 547(b). However, the Defendant

contends that it is protected by section 547(c) because it advanced "new value" to the Debtor in excess of the alleged preferential transfers.

Section 547(a) (2) provides that

"new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation.

11 U.S.C. §547(a) (2). Applying the definition of "new value" as stated in the Bankruptcy Code, the Defendant contends that it provided "new value" because it gave the Debtor "money" in the form of two checks. Accordingly, the Defendant asserts that the Plaintiff should be precluded from recovering the alleged preferential payments as a matter of law.

We disagree. The definition of "new value" was intended to codify the usual rules of consideration. See Spada v. Spada (In re Spada), 903 F.2d 971, 976 (3d Cir. 1990). The Restatement Second of Contracts provides that the payment of a debt, not in dispute, does not constitute valid consideration. Restatement (Second) of Contracts § 76. Accordingly, a transfer in payment of an antecedent debt does not constitute "new value." See Peltz v. New Age Consulting Servs., Inc., 279 B.R. 99, 103-04 (Bankr. D. Del. 2002). Here, the Defendant admits that the payments made to the Debtor were on account of an antecedent debt. (Memorandum

in Support of Defendant's Motion for Summary Judgment p. 2.)
Consequently, we conclude that the payments made by the Defendant
to the Debtor do not constitute "new value" under section
547(c)(4).

Additionally, our conclusion is bolstered by the Third
Circuit's third element of a "new value" defense. See New York
City Shoes, 880 F.2d at 680. A creditor may not use the "new
value" defense when the debtor has fully compensated the creditor
for the "new value" as of its bankruptcy filing. Id. Here, the
Defendant admits that it received all of the goods it had ordered
from the Debtor and that the payments were on account of the
outstanding balances. Therefore, even if we were to agree that
the Defendant provided "new value" to the Debtor, the "new value"
defense is not available because the Defendant was fully
compensated for those payments.

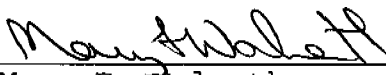
IV. CONCLUSION

For the reasons set forth above, we deny the Defendant's
Motion for Summary Judgment.

An appropriate order is attached.

BY THE COURT:

Dated: April 22, 2004



Mary F. Walrath
United States Bankruptcy Judge

Exhibit A

Summary of Transfers between SOL Building Materials and US Wood Products

March 27, 2000:

- SOL Building Materials issued invoice to US Wood for goods sold in the amount of \$15,844.00.

May 1, 2000:

- SOL Building Materials agrees to purchase goods from US Wood in the amount of \$11,400.00.

May 10, 2000:

- SOL Building Materials agrees to purchase goods from US Wood in the amount of \$8,043.75.

May 16, 2000: alleged preferential transfer

- US Wood paid SOL Building Materials \$15,685.56 for the March 27 invoice.

July 14, 2000: asserted "new value" transfer

- SOL Building Materials paid US Wood \$11,440.00 for the May 1 agreement to purchase.

July 14, 2000: alleged preferential transfer

- US Wood paid SOL Building Materials \$158.44 for the remaining balance of the March 27 invoice.

July 23, 2000: asserted "new value"

- SOL Building Materials paid US Wood \$8,043.75 for the May 10 agreement to purchase.

July 31, 2000: Petition Date

- US Wood filed voluntary petition under Chapter 11 of the Bankruptcy Code.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

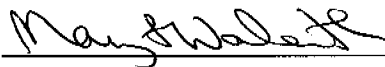
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TRUSTEE,) Adversary No. 03-53711 (MFW)
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 Plaintiff,))
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 v.))
))
SOL BUILDING MATERIALS)
CORPORATION,))
))
 Defendant))

ORDER

AND NOW, this 22nd day of April, 2004, upon consideration of the Motion for Summary Judgment by SOL Building Materials Corporation, it is hereby

ORDERED that the Motion is **DENIED**.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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