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Automatic Stay Violation
Post-petition Transfer

Sticka v. Eck, et al. 98-6305-fra
In re Schwartzberg Vineyards, Inc. 697-64653-fra7

1/25/99 FRA Unpublished

The Debtor obtained credit while it was in Chapter 11 from Defendant Administrative Systems, Inc., granting it a lien against Debtor's 1997 grape harvest. The case subsequently converted to Chapter 7.

The Plaintiff/Trustee alleges that after the hearing at which the case was ordered converted, Defendants Thomas Eck and Zahra Gilak met with the principals of the Debtor, Helmut and Helga Schwartz, and insisted that they pay them out of estate funds the \$21,000 that had been loaned to Administrative Systems and buy back stock for \$10,000 with Debtor's funds. The complaint states claims against all three Defendants for violation of the automatic stay and for avoidance of the post-petition transfer.

Defendants Eck and Gilak answered by denying all substantive allegations against them and by filing a motion for judgment on the pleadings. They argued that the fact that the checks issued on Debtor's funds were made out to Administrative Systems rather than to themselves proved that they had not violated the stay and were not liable for the funds so transferred.

The court held that agents of principals may be liable for violations of the automatic stay just as the principals may themselves be liable. As to the alleged post-petition transfer, § 550, the provision affording liability for avoided transfers, provides liability for mediate and intermediate transferees. The Defendants could therefore be found liable under § 549 and § 550 for the post-petition transfer even though the checks were made out to Administrative Systems. Because the Defendants denied the substantive allegations of the complaint, there were material issues of fact which precluded a judgment on the pleadings.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

IN RE)
)
SCHWARTZENBERG VINEYARDS, INC.,) Case No. 697-64653-fra7
)
Debtor.)
)
RONALD R. STICKA, TRUSTEE,) Adv. Proc. No. 98-6305-fra
)
Plaintiff,)
)
v.)
)
F. THOMAS ECK, ZAHRA GILAK,)
and ADMINISTRATIVE SYSTEMS,)
INC.,)
)
Defendants.) MEMORANDUM OPINION

Plaintiff is the duly appointed Chapter 7 Trustee in the
Schwartzenberg Vineyards, Inc. bankruptcy. He filed this action
against the Defendants for violation of the automatic stay,
avoidance of post-petition transfers, and for declaratory
judgment. Defendants Eck and Gilak filed a motion for judgment
on the pleadings. For the reasons that follow, Defendants'
motion will be denied.

1 property of the estate, and enforcing a lien against property of
2 the estate. Compensatory and punitive damages are claimed.

3 2) Avoidance and recovery of the post-petition transfer
4 under 11 U.S.C. §§ 549 and 550.

5 3) Declaratory judgment regarding the rights of the parties
6 with respect to the amount of Defendant Administrative System's
7 lien and its right to demand and obtain the subject funds from
8 the Debtor.

9 JUDGMENT ON THE PLEADINGS

10 Defendants Eck and Gilak filed a motion for judgment on the
11 pleadings along with a memorandum of points and authorities.
12 Attached to the motion were affidavits by the two defendants and
13 an exhibit.

14 For purposes of a motion for judgment on the pleadings,
15 the allegations of the non-moving party must be
16 accepted as true, while the allegations of the moving
17 party which have been denied are assumed to be false. .
18 . Judgment on the pleadings is proper when the moving
19 party clearly establishes on the face of the pleadings
20 that no material issue of fact remains to be resolved
21 and that it is entitled to judgment as a matter of law.

19 Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d
20 1542, 1550 (9th Cir. 1990) (citing Doleman v. Meiji Mutual Life
21 Ins. Co., 727 F.2d 1480, 1482 (9th Cir. 1984)).

22 The question of what is considered part of the pleadings may
23 be answered with reference to case law regarding motions to
24 dismiss under Fed.R.Civ.P. 12(b)(6) because a court "may not
25 consider any material beyond the pleadings in ruling on a Rule
26 12(b)(6) motion." Hal Roach Studios, 896 F.2d at 1555 n. 19.

1 "Material which is properly submitted as part of the complaint
2 may be considered on a motion to dismiss." Id. "A document is not
3 'outside' the complaint if the complaint specifically refers to
4 the document and if its authenticity is not questioned." Branch
5 v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citing Townsend v.
6 Columbia Operations, 667 F.2d 844, 848-849 (9th Cir. 1982)).

7 With regard to the Defendant's motion, the court may thus
8 consider the complaint, the answer, and those documents attached
9 to the complaint which were included as exhibits.

10 It is not proper, however, for the court to consider
11 affidavits or other factual evidence not contained in the
12 pleadings when ruling on a motion for judgment on the pleadings.
13 Fed.R.Civ.P. 12(c), made applicable by Fed.R.Bankr.P. 7012,
14 states in relevant part:

15 If, on a motion for judgment on the pleadings, matters
16 outside the pleadings are presented to and not excluded
17 by the court, the motion shall be treated as one for
18 summary judgment and disposed of as provided in Rule
56, and all parties shall be given reasonable
opportunity to present all material made pertinent to
such a motion by Rule 56.

19 The primary difficulty in treating this as a motion for summary
20 judgment is that discovery is at an early stage in this case and
21 has been limited by the court until February 1, 1999 to preclude
22 depositions prior to that date. The Plaintiff may therefore not
23 be in a position at this point to present all the facts necessary
24 to support his claims and rebut factual statements attached to
25 the Defendants' motion. I am therefore excluding all
26 documentation in the form of affidavits and exhibits attached to

1 Defendants' motion and will not consider them in ruling on
2 Defendants' motion.¹

3 DISCUSSION

4 The Defendants state that the complaint alleges that they
5 insisted that the Debtor make out the checks to *them*, while the
6 copies of the checks attached to the complaint clearly show that
7 the checks were made out to Administrative Systems, Inc. This,
8 they argue, demonstrates that the claims against them cannot
9 survive a motion for judgment on the pleadings.

10 Violation of Automatic Stay

11 11 U.S.C. § 362(a) states, in part, that the filing of a
12 bankruptcy petition operates as a stay of any act to obtain
13 possession of or exercise control over property of the estate (§
14 362(a)(3)) and of any act to enforce a lien against property of
15 the estate (§ 362(a)(4)). The complaint alleges that the
16 Defendants insisted that the principals of the Debtor write two
17 checks from funds belonging to the estate and that those checks
18 were given to the Defendants. Further, it may be inferred from the
19 complaint that the Defendants' acts were an attempt to enforce
20 the lien that Administrative Systems, Inc. had against the
21 proceeds of the Debtor's 1997 crop. It is further alleged that
22 the Defendants' acts were willful and intentional. By answer,
23 the Defendants deny they insisted that the Schwartz' write the

24
25 ¹ Based on my disposition in this matter, it is doubtful
26 that consideration of these documents would affect the outcome in
any case.

1 checks and that any money was paid to the Defendants.

2 The acts complained of, if proven true, would constitute a
3 violation of the automatic stay of § 362. The fact that the
4 Defendants may have been acting as agents of another party is not
5 material.² An agent can be held liable for acts in violation of
6 the automatic stay which that agent commits for the benefit of a
7 principal. See Ramirez v. Fuselier, et al., 183 B.R. 583 (BAP 9th
8 Cir. 1995); Ledford v. Tiedge, et al., 106 B.R. 485 (Bankr. S.D.
9 Ohio 1989); Johns-Manville Corp. v. Doan, 26 B.R. 919 (Bankr.
10 S.D.N.Y. 1983); Carter v. Van Buskirk, 691 F.2d 390 (8th Cir.
11 1982). Defendants deny the substantive allegations of the claim.
12 There is thus a material issue of fact which must be determined
13 at trial.

14 Avoidance of Post-Petition Transfer

15 11 U.S.C. § 550 provides for liability for an avoided
16 transfer and states in relevant part:

17 (a) Except as otherwise provided in this section, to
18 the extent that a transfer is avoided under section
19 544, 545, 547, 548, 549, 553(b), or 724(a) of this
20 title, the trustee may recover, for the benefit of the
estate, the property transferred, or, if the court so
orders, the value of such property, from

21 (1) the initial transferee of such transfer or the
22 entity for whose benefit such transfer was
made; or

23
24 ² 11 U.S.C. § 362(a) states that the "section operates as a
stay, applicable to all entities" [emphasis added].
25 "Entities" is defined at 11 U.S.C. § 101(15) to include "person,
estate, trust, governmental unit, and United States trustee." An
26 agent of a principal would thus constitute an "entity" for
purposes of § 362.

1 (2) any immediate or mediate transferee of
2 such initial transferee.

3 The complaint alleges that the transfer of funds occurred
4 after the commencement of the case and was not authorized by
5 either the Bankruptcy Code or by the court. § 550 states that
6 the immediate or mediate transferee of the initial transferee may
7 be liable under that provision. The fact that the exhibit
8 attached to the complaint shows that the checks were made out to
9 Administrative Systems rather than the Defendants indicates that
10 the Plaintiff is alleging that the Defendants were immediate or
11 mediate transferees. The Defendants' flat denial in their answer
12 clearly shows that there is a material issue of fact to be
13 determined at trial.

14 Declaratory Judgment

15 The claim for declaratory judgment seems directed to
16 Administrative Systems, rather than to the Defendants who are a
17 party to this motion. Moreover, Defendants Eck and Gilak did not
18 contest the allegations in the complaint regarding the third
19 claim for relief. Judgment on the pleadings with respect to this
20 claim would therefore not be appropriate in these circumstances.

21 Request for Sanctions

22 Fed.R.Bankr.P. 9011 requires that a motion for sanctions
23 under that rule be made by a separate motion and served as
24 provided in Fed.R.Bankr.P. 7004. Given the court's disposition
25 of the Defendants' motion and the procedural irregularities in
26 the Defendants' request for sanctions, the request for sanctions

1 under Rule 9011 is denied.

2
3 CONCLUSION

4 The allegations contained in Plaintiff's First and Second
5 Claims for Relief are sufficient to state a cause of action.
6 Defendants' denial of the substantive allegations of those claims
7 requires a finding that there are material issues of fact
8 outstanding which must be determined at trial. The Third Claim
9 for Relief, which is directed to Defendant Administrative
10 Systems, Inc., is not contested by Defendants Eck and Gilak.
11 Defendants' motion for judgment on the pleadings is therefore
12 denied.

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16 FRANK R. ALLEY, III
17 Bankruptcy Judge
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