

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

Case No. 6:06-bk-01313-ABB  
Chapter 7

BARGAIN BOOKS & MORE, INC.,

Debtor.

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LEIGH RICHARD MEININGER,  
CHAPTER 7 TRUSTEE,

Plaintiff,

vs.

Adv. Pro. No. 6:07-ap-00067-ABB

ABSINTHE BISTRO, L.L.C. and  
JOHN DOBSON,

Defendants.

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**MEMORANDUM OPINION**

This matter came before the Court on the Motion for Summary Judgment and Memorandum of Law (Doc. No. 15) (“Motion”) filed by Leigh Richard Meininger, the Chapter 7 Trustee of the above-captioned Chapter 7 case and the Plaintiff herein (“Trustee”), seeking summary judgment on each of the counts contained in his Complaint (Doc. No. 1) filed against Absinthe Bistro, L.L.C. (“Absinthe”) and John Dobson (“Dobson”), the Defendants herein (collectively, the “Defendants”).<sup>1</sup> The Court makes the following findings of fact and conclusions of law after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

**FINDINGS OF FACT**

Dobson is the President and 100% shareholder of Bargain Books & More, Inc., the Debtor herein (“Debtor”), and a 50% owner of

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<sup>1</sup> An evidentiary hearing was held on the Trustee’s Motion for Entry of Default (Doc. No. 9) (“Default Motion”) on September 10, 2007 at which the Trustee appeared. The Defendants did not respond to the Default Motion or appear at the hearing. The Court, based upon the Defendants’ response to the Complaint and the Default Motion, determined this matter was ripe for a summary judgment determination.

Absinthe, a defunct bistro and bar formerly located in downtown Orlando. Dobson caused the Debtor to file a voluntary petition on June 8, 2006 (“Petition Date”). He is an insider of the Debtor.

The Trustee filed a seven-count Complaint against the Defendants seeking recovery of three prepetition transfers of funds (collectively, the “Transfers”): (i) \$50,000.00 transferred by the Debtor to Absinthe on or about May 14, 2006 by check number 102 drawn upon the Debtor’s Wachovia bank account (Account Number 725261144028) and signed by Dobson; (ii) \$35,000.00 transferred by the Debtor to Dobson on or about March 31, 2006 by a credit line cash advance counter check drawn upon the Debtor’s Wachovia bank account (Account Number 4401380310031748); and (iii) \$7,500.00 transferred by the Debtor to Dobson on or about May 7, 2006 by check number 101 drawn upon the Debtor’s Wachovia bank account (Account Number 725261144028) and signed by Dobson.

The Debtor and Absinthe executed a promissory note on or about May 31, 2006 setting forth the \$50,000.00 transfer constitutes a loan to Absinthe to be repaid in 120 equal monthly installments with interest accruing at the rate of eight percent per annum. Dobson executed the promissory note on behalf of the Debtor and Mark Dollard, who was Absinthe’s chef and other 50% owner, executed it on behalf of Absinthe.<sup>2</sup> No payments were made pursuant to the promissory note.<sup>3</sup>

The Transfers are not listed in the Debtor’s Statement of Financial Affairs and the promissory note is not listed as an asset in the Debtor’s Schedules (Doc. No. 1). The Debtor’s Summary of Schedules (Doc. No. 1) lists liabilities of \$83,110.04 and assets of \$58,956.57.

The Trustee alleges various and alternative grounds for recovery of the Transfers including fraudulent transfer, preferential transfer, and property of the estate. Dobson, *pro se*, filed a letter (Doc. No. 4) in answer to the Complaint, apparently on behalf of both Defendants, stating:

The \$35,000 was paid from the line of credit to pay off existing line of credit that financed the moving of the company to the new warehouse.

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<sup>2</sup> Doc. No. 12: Transcript of Trustee’s deposition of Dobson on August 7, 2007 at p. 9.

<sup>3</sup> *Id.* at p. 10.

The \$7,500 was for pulling money out since I had not been paid in months.

As far as the \$50,000 the Bankruptcy Court already has it as well as everything else John Dobson as well as Absinthe Bistro Owned . . . Absinthe Bistro is closed and my family as well as business is insolvent

. . . Please just tell me what is required I have nothing left and have to start over anyway.

Dobson's statements in the letter are consistent with his deposition testimony. Dobson conceded he was a creditor of the Debtor when the Transfers occurred.<sup>4</sup> He admitted he caused the Debtor to borrow \$35,000.00 from Wachovia bank on a line of credit which was used to pay off a personal line of credit with Bank One.<sup>5</sup> The \$50,000.00 transfer was used for Absinthe's start-up costs.<sup>6</sup> Dobson took \$7,500.00 from the Debtor because he "needed some money."<sup>7</sup>

The allegations of the Complaint are unrefuted by the Defendants and the Trustee's Motion is unopposed. The Debtor's Schedules establish the Debtor was insolvent on the Petition Date and the presumption of insolvency at the time of the Transfers is un rebutted. There are no genuine issues of material fact in dispute and the Trustee has established he is entitled to judgment as a matter of law.

The Transfers constitute fraudulent transfers. The Debtor transferred funds totaling \$92,500.00, constituting property of the Debtor, to Dobson and Absinthe within one year of the Petition Date. The Debtor, as established by the circumstantial evidence, made the Transfers with the actual intent to hinder, delay, or defraud the Debtor's creditors. The Debtor received less than reasonably equivalent value in exchange for the Transfers and was insolvent at the time of the Transfers.

The transfers totaling \$42,500.00 to Dobson constitute preferential transfers. They were transfers of the Debtor's property made by the Debtor to a creditor within ninety days of the Petition Date for or on account of an antecedent debt owed by the Debtor

to Dobson pre-transfer. The Debtor was insolvent when the transfers were made. The transfers enabled Dobson to receive more than he would have been entitled to receive if the Debtor's estate were liquidated in Chapter 7.

The Transfers are avoidable and the Trustee is entitled to recover the Transfers from the Defendants for the benefit of the estate. Judgment is due to be entered in favor of the Trustee and against Absinthe in the amount of \$50,000.00. Judgment is due to be entered in favor of the Trustee and against Dobson in the amount of \$42,500.00.

### **CONCLUSIONS OF LAW**

Granting 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 the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c) (2007).<sup>8</sup> The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). A court determining entitlement to summary judgment must view all evidence and make reasonable inferences in favor of the party opposing the motion. Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995).

There are no genuine issues of material fact in dispute and the Trustee has established he is entitled to judgment as a matter of law. The Trustee carries the burden of establishing the Transfers were fraudulent pursuant to 11 U.S.C. Section 548. In re Ramsurat, 361 B.R. 246, 252 (Bankr. M.D. Fla. 2006). The circumstantial evidence establishes the Debtor made the Transfers with the actual intent to hinder, delay, or defraud the Debtor's creditors. In re XYZ Options, Inc., 154 F.3d 1262, 1272-74 (11th Cir. 1998) (explaining actual intent is determined by looking at "evidence through the prism of badges of fraud . . ."). The Trustee has established each of the elements of 11 U.S.C. Sections 548(a)(2)(A) and (B). The transfers totaling \$92,500.00 made by the Debtor to Dobson and Absinthe constitute fraudulent transfers of assets of the Debtor and are avoidable pursuant to Section 548(a).

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<sup>4</sup> Doc. No. 12 at pp. 15-6.

<sup>5</sup> Doc. No. 12 at pp. 13-4.

<sup>6</sup> Doc. No. 12 at p. 8.

<sup>7</sup> Doc. No. 12 at p. 15, ll.13-14.

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<sup>8</sup> Federal Rule of Civil Procedure 56 is made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056.

The Trustee has the burden of establishing the avoidability of the transfers to Dobson pursuant to 11 U.S.C. Section 547(b) and Dobson has the burden of proving the nonavoidability of the transfers pursuant to Section 547(c). 11 U.S.C. § 547(g). Dobson presented no defenses to the Trustee's allegations. The Trustee established the transfers totaling \$42,500.00 from the Debtor to Dobson are avoidable preferential transfers pursuant to Section 547(b).

The Trustee is entitled to summary judgment on his Complaint. The transferred funds constitute property of the bankruptcy estate of the Debtor and are subject to recovery and administration by the Trustee pursuant to 11 U.S.C. Sections 550(a) and 541(a)(3). The Trustee is entitled to recover \$50,000.00 from Absinthe and \$42,500.00 from Dobson for the benefit of the estate pursuant to 11 U.S.C. Section 550(a).

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Trustee's Motion (Doc. No. 15) is hereby **GRANTED**.

A separate judgment in favor of the Trustee and against the Defendants consistent with these Findings of Fact and Conclusions of Law shall be entered contemporaneously.

Dated this 13<sup>th</sup> day of November, 2007.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge