

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

In re:

Case No. 9:03-bk-13397-ALP
Chapter 7

JAMES T. CHEARS, and
ANNA MARIE CHEARS

Debtors.

**ORDER ON MOTION TO
DETERMINE VALUE OF DEBTORS'
INTEREST IN STOCK AND DEBTORS'
INTEREST IN BANK ACCOUNT IN SPOT-
LITE AACTION PEST CONTROL, INC.
(Doc. No. 46)**

THIS CAUSE came on at a duly scheduled final evidentiary hearing to consider Motion to Determine Value of Debtors' Interest in Stock and Debtors' Interest in Bank Account in Spot-Lite Aaction Pest Control, Inc. (Doc. No. 46), filed by James T. Chears and Anna Marie Chears (Debtors) on June 21, 2004. In the Motion, the Debtors seek the entry of an Order by this Court that determines the value of their stock interest in a corporation known as Spot-Lite Aaction Pest Control, Inc. (Spot-Lite) and their interest in monies deposited in Charlotte State Bank (Bank).

A brief summary of the relevant procedural as well as factual history is as follows. Prior to the filing of this Chapter 7 case, the Debtors were the 100% shareholders of a company called Aaction Pest Control, Inc. (Aaction). Aaction was involuntarily dissolved on September 24, 1999, while it owed in excess of \$82,331.00 to the Internal Revenue Service (IRS). The IRS duly recorded its liens in the Public Records of Charlotte County, Florida. It is without dispute that at the time of the involuntary dissolution, Aaction owned several vehicles, tools, equipment, and inventory, in addition to a checking account at the Bank.

On December 4, 2002, the Debtors incorporated a new business named "Spot-Lite Aaction Pest Control, Inc." The record reflects that the Debtors are the 100% shareholders of Spot-Lite. It is without dispute that Spot-Lite used the vehicles and assets of Aaction for daily operations.

The dischargeability of the IRS tax lien is not at issue in this case. The sole issue before this Court is whether Spot-Lite is liable for the debts and liabilities of Aaction when Aaction transferred all of its assets to Spot-Lite. Under general corporate law, when a corporation (the transferor) transfers all of its assets to another corporation (the transferee), the transferee is not automatically liable for the debts and liabilities of the transferor. *See* 19 Am Jurisprudence 2d, Corporations § 1546. However, the transferee may be held liable for the debts of the transferor if: (1) there is an express or implied assumption of liability; (2) the transaction amounts to a consolidation or merger; (3) the transaction was fraudulent; (4) some of the elements of a purchase in good faith were lacking, as where the transfer was without consideration and the creditors of the transferor were not provided for; or (5) where the transferee corporation was a mere continuation or reincarnation of the old corporation. *Id.*

In the case at hand, it is without dispute that the ownership and control in the transferor and transferee corporations are identical. This is similar to the facts in Florida Brogdex Distributors v. Hulsey, 138 So. 728 (Fla. 1931), where the court held that the transferee was a mere continuation of the transferor and thus was held liable for the transferor's debts. *See also*, State Board of Administration v. Pasco County, 22 So.2d 387 (Fla. 1945). In that case, the court noted generally that when stockholders and officers of an original corporation form a new corporation, and the new corporation uses the assets and pays debts of the old corporation, creditors may collect from the new corporation to the extent of the assets received from the old company. Likewise, in Bishop v. Dura-Lite Manufacturing Co., 489 F.2d 710 (6th Cir. 1973), the court found that the transferee, Dura-Lite, was engaged in substantially the same business, used the same tools, operated in the same location, had the same management and owners of the transferor company. The court concluded that there was no significant difference between the transferor company and the transferee.

Based on the foregoing, this Court is satisfied that Spot-Lite is merely a continuation of Aaction, and therefore liable for the debts and liabilities of Aaction. From this it logically follows that the IRS lien attaches to the assets of Spot-Lite except to any newly acquired assets of Spot-Lite if any, which are not subject to the tax lien of the IRS. Therefore, the Debtors' Motion should be granted.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Motion to Determine Value of Debtors' Interest in Stock and Debtors' Interest in Bank Account in Spot-Lite Aaction Pest Control, Inc. (Doc. No. 46) be, and the same is hereby, granted. It is further

ORDERED, ADJUDGED AND DECREED that this Court shall conduct a final evidentiary hearing on November 17, 2004, beginning at 9:00 a.m. at the United States Bankruptcy Courthouse, Fort Myers, Federal Building and Federal Courthouse, Room 4-117, Courtroom D, 2110 First Street, Fort Myers, Florida, to determine the value of the corporate stock and assets encumbered by the IRS tax lien to determine whether or not there is equity in Spot-Lite, as well as the equity in the account at the Bank.

DONE AND ORDERED at Tampa, Florida, on October 22, 2004.

/s/ Alexander L. Paskay
Alexander L. Paskay
United States Bankruptcy Judge