

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division**

IN RE:

Case No. 04-30343-BKC-SHF
Chapter 7 Proceeding

DENNIS ALAN BRAMMEIER,

Debtor _____ /

MICHAEL R. BAKST, Trustee in
Bankruptcy for Dennis Alan Brammeier,

Plaintiff,

v.

Adv. No. 06-1095-BKC-SHF-A

DELRAY STAKE & SHAVING, INC.,
a Florida Corporation and
SPACE COAST TRUSS, INC.,
a Florida Corporation ,

Defendants. _____ /

**SUMMARY
ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS**

It is the position of SCT that judgment on the pleadings is warranted in their favor since the trustee's claims are barred by the doctrine of *in pari delicto*. If an affirmative defense is clearly established by the pleadings, then a judgment on the pleadings is appropriate. *Bennett v. Parker*, 898 F.2d 1530, 1535, n.2 (11th Cir. 1990).

SCT argues that the trustee could not maintain a claim pursuant to 11 U.S.C. § 541(a), which provides that the debtor estate includes all legal or equitable interests of the debtor in the property as of the commencement of the case, since the affirmative defense of *in pari delicto* bars the recovery by the trustee due to the debtor's involvement in the sale of assets from DSS to SCT. Specifically, SCT points out that the allegations enumerated in the Second Amended Complaint demonstrate that Brammeier, the debtor, was an officer and principal shareholder of DSS and participated in the negotiations and effectuated the completion of the sale of DSS's assets to SCT. Therefore, because Brammeier was an active participant in the transfer of assets from DSS to SCT, Brammeier could not have a cause of action against SCT at the commencement of the petition. And since Brammeier could not have a cause of action at the commencement of the petition, neither could the trustee.

Held: The Court is satisfied that the debtor was an equal participant in the alleged wrongdoing. Therefore, the trustee's claims for relief are barred by the doctrine of *in pari delicto* and SCT's Motion for Judgment on the Pleadings is **granted**.