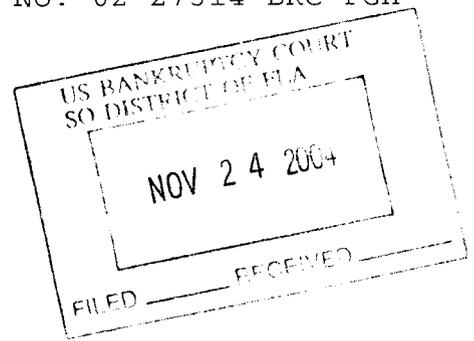


UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In Re)
)
DEER CREEK PRODUCTS, INC.,)
a/k/a GOLDEN AGE PRODUCTS,)
INC., a/k/a THAT SPECIAL)
LOOK, INC., a/k/a PC)
SERVICES SYSTEMS, INC.,)
)
Debtor.)
_____)
)
MARIKA TOLZ, Trustee,)
)
Plaintiff,)
)
v.)
)
QUAD GRAPHICS, INC.,)
)
Defendant.)

In Bankruptcy
Case No. 02-27314-BKC-PGH
Adversary No. 04-2032-BKC-PGH-A



OPINION

At all relevant times, the Debtor, Deer Creek Products, Inc. ("Debtor") was engaged in the direct-mail marketing business and was located in Pompano Beach, Florida. Debtor filed a petition in bankruptcy pursuant to Chapter 11 of the Bankruptcy Code on September 27, 2002. The case was converted to Chapter 7 on August 25, 2003. Marika Tolz ("Trustee") was subsequently appointed Chapter 7 Trustee of the Debtor's bankruptcy estate.

Trustee filed this adversary action against the Defendant, Quad Graphics, Inc. ("Defendant") on February 2, 2004. Pursuant to

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Section 547(b) of the Bankruptcy Code, Trustee seeks to set aside an allegedly preferential transfer.

During the period of time that Debtor was operating as a debtor in possession under Chapter 11 of the Bankruptcy Code, Defendant printed Debtor's catalogs pursuant to a contract between the parties. The catalogs were printed at Defendant's Georgia plant. Trustee seeks to recover a payment of \$22,251.74 made to Defendant on August 29, 2002, and applied toward Invoice #733796. The parties have filed cross-motions for summary judgment and have stipulated that the material facts are not in dispute.

In order to prevail, Trustee must prove that the subject payment was (i) made to or for the benefit of a creditor, (ii) for or on account of an antecedent debt owed by the debtor, (iii) while the debtor was insolvent, (iv) within 90 days of the filing of the bankruptcy petition, and (v) the payment allowed the creditor to receive more than the creditor would have received in a Chapter 7 distribution.

The parties have stipulated that the two issues of law for decision are: (i) whether the payment was on account of an antecedent debt, and (ii) whether Defendant received more than it would have received in a Chapter 7 distribution.

The first question is easily answered in the affirmative. Defendant printed the catalogs on August 2, 2002, and the payment on Invoice #733796 was made on August 29, 2002. Thus, the payment

was clearly on account of an antecedent debt.

As to the second question - whether Defendant received more than it would have in a Chapter 7 distribution - Trustee asserts that Defendant is an unsecured creditor and the dividend payable to it would have been less than it received.

Defendant asserts that it was a secured creditor under Georgia law and that it did not receive more than it would have received in a Chapter 7 distribution. Trustee counters that Florida law, not Georgia law, is applicable in this case but, even if the reverse were true, the result would be the same because Defendant is an unsecured creditor.

The Court finds that Georgia law controls. In analyzing the conflict of law issue, the Court must determine the category of law under which the relevant issue falls, and then determine the law that applies to the legal issue. Garcia v. Public Health Trust of Dade County, 841 F.2d 1062, 1064 (11TH Cir. 1988). The legal issue here is whether Defendant held a lien against the catalogs in its possession at the time Invoice #733796 was paid by wire transfer.

The Restatement (Second) Conflicts of Laws (1971) § 251 provides that:

- (1) The validity and effect of a security interest in a chattel as between the immediate parties are determined by the local law of the estate which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the security interest under the principles stated in § 6.

- (2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel at the time that the security interest attached than to any contact in determining the state of the applicable law.

Based upon the Restatement, the state which has the most significant relationship to the catalogs at the time that they were printed is Georgia, and the law of Georgia should apply in determining whether the Defendant had a valid lien. The facts supporting this conclusion are as follows: (i) the paper on which the catalogs were printed was purchased from Defendant in Georgia, (ii) the paper was maintained at Defendant's facility in Georgia, (iii) the printing occurred in Georgia, and (iv) following the completion of the printing, the catalogs were kept by Defendant in Georgia until the time they were shipped post-petition. Thus, Georgia law applies in determining whether Defendant had a valid lien at the time Invoice #733796 was paid.

Under Georgia law, Defendant had a statutory lien on the printed catalogs pursuant to Ga. Ann. Code § 44-14-409, which provides:

[t]he bailee for hire of labor and service shall have a special lien for his labor and services upon the thing bailed until he parts with possession; and if he delivers up a part of the thing bailed, the lien shall attach to the remainder in his possession for the entire claim under the same contract.

Trustee asserts that, even if Defendant were a bailee and even if Defendant had a lien on the catalogs, the lien would have been

unperfected, pursuant to Georgia Code Section 11-9-310, which provides in part as follows:

(a) **GENERAL RULE; PERFECTION BY FILING.** Except as otherwise provided..., a financing statement must be filed to perfect all security interests. . .

(b) **EXCEPTIONS; FILING NOT NECESSARY.** The filing of a financing statement is not necessary to perfect a security interest:

.

4) In goods in possession of a bailee which is perfected under paragraph (1) or (2) of subsection (d) of Code Section 11-9-312.

Georgia Code Section 11-9-312(d) provides in pertinent part:

(d) **GOODS COVERED BY NONNEGOTIABLE DOCUMENT.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods, a security interest in the goods may be perfected by

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

Trustee asserts that there is no evidence that any of the elements under the foregoing section of the Georgia Code was met by Defendant. Even if Defendant had been successful in obtaining and perfecting a lien on the catalogs under Georgia bailment law, Trustee argues it could have lost its perfected interest because a perfected security interest in goods in possession of a bailee remains perfected for only 20 days absent filing, according to Georgia Code Section 11-9-312(f). Defendant printed the catalogs

on August 2, 2002, and Debtor made a partial payment 27 days later on August 29, 2002. Therefore, it is Trustee's position that, even if Defendant had perfected its security interest in the catalogs as a bailee, it would have lost its perfection due to the passage of time.

Defendant asserts that Trustee's reliance on several sections of Georgia's codification of the Uniform Commercial Code to undercut Defendant's position as a secured creditor is misplaced. Georgia Code Sections 11-9-310(a) and (b)(4) and 11-9-312(d) and (f) address a situation entirely different from that currently before this Court. Those sections concern the obligation of a third party secured creditor, such as a bank or other lending institution, that wishes to assert its prior perfected security interest in property that is in the possession of the bailee. The Court agrees. The Trustee's analysis of Georgia law is not accurately applied to the undisputed facts of this case. Here, Defendant is a bailee who acquired by statute a security interest in goods in its possession, not a third party who claims an interest in goods that are in the possession of a bailee. The provision of the Georgia Code cited by the Trustee are inapplicable to the case at bar. Therefore, under Georgia law, Defendant was a bailee with a valid lien under Ga. Ann. Code Section 44-14-409.

Defendant correctly asserts that it was not required to perfect its bailee's lien under Georgia's enactment of Article 9.

According to Georgia Code Section 11-9-313(a), the perfection of a statutory interest can occur by possession. This section provides that a secured party may perfect a security interest in goods by taking possession of the collateral. Defendant was a secured party by virtue of its status as a bailee and the resulting statutory lien granted pursuant to Ga. Ann Code Section 44-14-409. Defendant was in possession of the paper when it received the payment on August 29, 2002, as well as when the Debtor filed bankruptcy on September 27, 2002. Because it possessed the paper in the form of printed catalogs, Defendant's lien was perfected.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: **NOV 24 2004**



LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

NOV 24 2004
c: John A. Moiffa, Esq. 
7800 W. Oakland Park Blvd.
Suite E-214
Sunrise, FL 33351

Adam Marshall, Esq.
3500 E. Las Olas Blvd. #1000
Ft. Lauderdale, FL 33301