

**FILED**

Lucinda B. Rauback, Clerk  
United States Bankruptcy Court  
Augusta, Georgia  
By jpayton at 4:33 pm, Jan 21, 2014

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Dublin Division

IN RE:	)	Chapter 11 Case
SARALAND, LLLP,	)	Number <u>12-30113</u>
	)	
	)	
Debtor	)	
_____	)	
TODD BOUDREAUX, TRUSTEE	)	
	)	
Plaintiff	)	
	)	
v.	)	Adversary Proceeding
	)	Number <u>13-03008</u>
	)	
BEARDON OIL, d/b/a Shorty's	)	
	)	
Defendant	)	
_____	)	

OPINION AND ORDER

Before the Court is a Motion for Summary Judgment filed by Beardon Oil, d/b/a Shorty's ("Shorty's") alleging it is entitled to judgment as a matter of law because the plaintiff, Todd Boudreaux, Trustee ("Trustee") has not offered proof that the post-petition payments he seeks to avoid were made through checks written from the Debtor-in-Possession account ("DIP account") or that the money transferred belonged to Saraland, LLLP ("Debtor"). Conversely, the Trustee argues he is entitled to judgment as a matter of law as the transfers to Shorty's were unauthorized post-petition transfers.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and the Court has jurisdiction pursuant to 28 U.S.C. §1334. For the following reasons both motions are denied.

**UNDISPUTED FACTS**

Debtor filed a chapter 11 bankruptcy petition on March 29, 2012. After the petition was filed, Shorty's received approximately \$7,665.92 in checks written from Debtor's DIP account. Dckt. No. 1, Ex. A. Debtor's bankruptcy schedules list no equipment that uses diesel fuel or gasoline. See Chap. 11 Case No. 12-30113, Dckt. No. 1. Shorty's documented the payments received on ledgers under the account name of Lister Harrell ("Mr. Harrell"), Debtor's principal. The Trustee has provided copies of checks from the Debtor's DIP account made payable to Shorty's. Dckt. No. 25. The Trustee seeks to avoid these post-petition transfers alleging the transfers were unauthorized transfers made outside the ordinary course of Debtor's business for the benefit of Mr. Harrell, individually.

**CONCLUSIONS OF LAW**

Summary judgment is appropriate when "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 that the moving party is entitled

to a judgment as a matter of law." Fed. R. Civ. P. 56(c);<sup>1</sup> see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

[A] party seeking summary judgment always bears the initial responsibility of informing the . . . court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.

Celotex, 477 U.S. at 323 (internal quotations omitted). Once the moving party has properly supported its motion with such evidence, the party opposing the motion "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); First Nat'l Bank of Arizona v. Cities Servs. Co., 391 U.S. 253, 288-89 (1968); Fed. R. Civ. P. 56(e). "In determining whether the movant has met its burden, the reviewing court must examine the evidence in a light most favorable to the opponent of the motion. All reasonable doubts and inferences should be resolved in favor of the opponent." Amey, Inc. v. Gulf Abstract & Title, Inc., 758 F.2d 1486, 1502 (11th Cir. 1985) (citations omitted).

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<sup>1</sup> Pursuant to Federal Rule of Bankruptcy Procedure 7056, Rule 56 of the Federal Rules of Civil Procedure is applicable in bankruptcy adversary proceedings.

First, Shorty's moved for summary judgment alleging the Trustee has not provided any "documentary evidence to prove that these payments were made through checks written from the Debtor-in-Possession account or that the money in question in said transfers came from the bankruptcy estate of Debtor." Dckt. No. 23. The Trustee has now produced copies of each check payable to Shorty's showing that the checks were written from the Debtor's DIP account at Wells Fargo Bank, N.A. Dckt. No. 25. Because the Trustee has provided evidence that the transfers were made through checks written from Debtor's DIP account, Shorty's motion for summary judgment is denied.

Conversely, the Trustee has moved for summary judgment alleging that the transfers are avoidable under 11 U.S.C. §549(a). Pursuant to 11 U.S.C. §549(a), the Trustee may recover unauthorized post-petition transfers of estate property. See 11 U.S.C. §549(a). Section 549(a) provides that "the trustee may avoid a transfer of property of the estate: (1) that occurs after the commencement of this case; and . . . (2) (b) that is not authorized under this title or by the court." Id. "To avoid a transfer under Section 549(a) a trustee need only demonstrate: (1) a post-petition transfer (2) of estate property (3) which was not authorized by the Bankruptcy Code or the court." In re Delco Oil, Inc., 599 F.3d 1255, 1258 (11th

Cir. 2010). Once the Trustee meets his initial burden, the burden of proof shifts to the opposing party to prove the transfer's validity. Id. citing Fed. R. Bankr. P. 6001.

In this case, there is no dispute that the transfers occurred post-petition and were made from Debtor's DIP account. The issue is whether the transfers were authorized by the Bankruptcy Code or this Court.<sup>2</sup> Namely, the Court must determine whether the transfers were the authorized use of property of the bankruptcy estate pursuant to 11 U.S.C. §363(c)(1). Section 363(c)(1) provides, "[I]f the business of the debtor is authorized to be operated . . . and unless the court orders otherwise, the trustee may enter into transactions, . . . in the ordinary course of business . . . and may use property of the estate in the ordinary course of business without notice or a hearing."

The Trustee argues he is entitled to summary judgment because Debtor's bankruptcy schedules do not list any vehicles that would require diesel or gasoline and because Shorty's ledgers indicate the account was in the name of Lister Harrell, individually. However, there is no affidavit or other evidence of the ordinary course of Debtor's business or for what exactly the

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<sup>2</sup> Neither party alleges, and the Court is unaware of, any court order authorizing the transfers. 11 U.S.C. §549(a)(2)(B).

payments were made. Because genuine issues of material fact remain, summary judgment is not appropriate at this time.

For the forgoing reasons, the parties' cross motions for summary judgment are ORDERED DENIED.



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SUSAN D. BARRETT  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 21<sup>st</sup> day of January, 2014.