

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: REVSTONE INDUSTRIES, LLC, et al, Debtors.	Chapter 11 Case No. 12-13262 (BLS) Jointly Administered
GREENWOOD FORGINGS, LLC., Plaintiff, v. ZF CHASSIS COMPONENTS, LLC, et al. Defendants.	Adv. Proc. No. 15-50033 (BLS) Re: Docket Nos. 1, 12, 37, 68, 69, 80, 81, 82, 83, 84, 86, 87, 88, 89, 91, 92, 93, 95, 96, 97, 98, 101, 103, 105, 107

**MEMORANDUM ORDER GRANTING ZF CHASSIS' CROSS-MOTION FOR
SUMMARY JUDGMENT¹**

1. Before the Court is the Motion filed by Greenwood Forgings, LLC (“Greenwood” or the “Plaintiff”) for Summary Judgment (the “Motion”).² ZF Chassis Components, LLC and its affiliates (collectively, “ZF” or the “Defendants”) oppose the Motion and present a Cross-Motion for Summary Judgment (the “Cross-Motion”).³ Greenwood has also has filed a Motion to Strike ZF’s Cross-Motion.⁴ For the reasons stated below, the Court will grant the ZF’s Cross-Motion and deny Greenwood’s Motions.

¹ This Memorandum Order constitutes the Court’s findings of fact and conclusions of law as required by Federal Rule of Bankruptcy Procedure 7052. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).

² Adv. Docket No. 80.

³ Adv. Docket No. 87.

⁴ Adv. Docket No. 98.

BACKGROUND

2. On December 3, 2012, Revstone Industries, LLC (“Revstone”) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. On January 7, 2013, Greenwood, an affiliate of Revstone, filed its own Chapter 11 voluntary petition, which was administratively consolidated with Revstone’s.

3. Prior to filing for bankruptcy, Revstone and its affiliates operated a variety of manufacturing facilities in the Midwest serving the automotive industry. Greenwood was a designer and manufacturer of aluminum forgings to the automotive and power sports markets. ZF was a major customer of Greenwood and typically owed substantial sums to Greenwood.

4. In August of 2012, Boston Finance Group LLC (“BFG”) obtained a judgment against Revstone, Greenwood, and other affiliates in the amount of \$5,050,425. On August 31, 2012, a Writ of Garnishment was served upon ZF, which identified the judgment BFG held against Revstone and its affiliates. The Writ obligated ZF to pay directly to BFG any funds ZF owed to Greenwood.

5. The record reflects that, following service of BFG’s Writ, Greenwood and ZF changed their payment relationship. In a nutshell, if ZF were to pay invoices directly to Greenwood, those funds would be intercepted by BFG due to the Writ of Garnishment. In the absence of receiving those payments from ZF, Greenwood would have likely shut down, depriving ZF of needed parts.

6. To avoid this prospect, the record reflects that Greenwood and ZF agreed that ZF would pay Greenwood’s bills, and take a dollar-for-dollar credit against amounts it owed to Greenwood. By way of example, if Greenwood owed a vendor \$100,000, and ZF owed Greenwood \$300,000, then ZF would pay the vendor in full and reduce its obligation to

Greenwood to \$200,000. The record reflects that ZF never made another direct payment to Greenwood following service of the Writ of Garnishment.

7. The undisputed record reflects that as of January 14, 2013, Greenwood's accounts receivable ledger indicated a balance of \$255,694.92 owed by ZF to Greenwood. ZF's position at the time was that it only owed Greenwood \$177,989.38 because it alleged it had made certain payments for the benefit of Greenwood, consistent with the scheme described above.

Greenwood contends that ZF improperly took credits in the amount of \$102,028 for payments to third parties that it did not actually make, and Greenwood commenced this lawsuit to recover those funds.

8. The Defendant argues that Greenwood and ZF settled the disputed claims pursuant to a valid post-petition settlement agreement, whereby ZF tendered to Greenwood the sum of \$177,989.38. The Defendant therefore argues that the Court should grant its Cross-Motion under a theory of accord and satisfaction.

STANDARD OF REVIEW

9. Under Rule 56 of the Federal Rules of Civil Procedure, a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986) ("Under Rule 56(c), summary judgment is proper '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 that the moving party is entitled to a judgment as a matter of law.'").

ANALYSIS

10. As discussed more fully below, the Court is persuaded by the Defendants' argument that the Greenwood is precluded from recovering the disputed funds because the parties resolved the matter by way of a valid post-petition settlement. Under the doctrine of accord and satisfaction, the post-petition settlement provides for acceptance of payment in final satisfaction of a debt.

11. Case law teaches that “[a]n accord and satisfaction exists when (1) a bona fide dispute existed as to the amount owed that was based on mutual good faith; (2) the debtor tendered an amount to the creditor with the intent that payment would be in total satisfaction of the debt; and (3) that the creditor agree to accept the payment in full satisfaction of the debt . . . [t]he burden to prove all the elements necessary for an accord and satisfaction is on the party alleging that it took place.” *In re Worldcom, Inc., et al.*, 2006 WL 2400326, at *4 (Bankr. S.D.N.Y. May 31, 2006) (citing *Acienero v. Worthy Bros. Pipeline Corp.*, 693 A.2d 1066, 1069 (Del. 1997))

12. The Plaintiff's argument in opposition to accord and satisfaction is that ZF waived this defense by not raising it timely or, alternatively, that the evidence is insufficient to establish that a post-petition settlement occurred. The record reflects that ZF did not raise the issue or defense of the post-petition settlement until May 1, 2017, nearly two years after this lawsuit was commenced.

13. The relevant emails between the parties demonstrate to the Court that a settlement occurred on or about January 30, 2013. The email correspondence from Bob LaCourciere, Revstone's Vice President of Sales, to ZF provides as follows:

We have receive[d] approval of the account reconciliation between ZF and Greenwood Forging. The approval of the prepetition account

is for \$177,989.38 as agreed with ZF. Payment of the \$177,989.38 will close all Prepetition accounts receivable with ZF.⁵

14. Similarly, in the deposition of the Plaintiff's expert, James Lukenda, he acknowledges that there was a settlement between the parties:

A. 896 and 897 are the final customer statement upon which ZF made the payment on the pre-petition amounts outstanding. 177,989.38.

Q. What was the last number you said?

A. Down at the bottom of page 897 in the corner, lower right-hand corner, 177,989.38. That was the final settled number among all the parties.⁶

15. The Court is persuaded that the Plaintiff represented to ZF that payment of \$177,989.38 would settle all outstanding accounts. This reconciliation amount was confirmed as adequate by management personnel on both sides.⁷ Further, the Plaintiff stated this resolution was adequate by referring to a "court order:"

The January 14, 2013, Email provided 'a listing of the account receivables owed by ZF' and concluded with a direction to ZF to '[p]lease pay the funds as directed by the court order.'⁸

16. The Court notes that the settlement was in fact never presented to the Court for approval under Rule 9019. However, it appears likely that this reconciling of accounts payable and receivable between ZF and Greenwood was a routine and ordinary course matter. Thus, although this settlement was not actually approved by court order, the record reflects that the representations by Greenwood supported the reliance of ZF.

⁵ Defendant Exhibit D, Adv. Docket No. 88-1, at 26.

⁶ Lukenda Deposition, Adv. Docket No. 88-1, at 37.

⁷ The record reflects that ZF applied credits that it was not entitled to take, thereby reducing the amount it paid to Greenwood. There is no evidence, however, that ZF fraudulently applied the credits. It is not unusual for parties to reconcile accounts during a business relationship. Greenwood's decision to settle the account for what turned out to be less than actual value is not unenforceable simply because ZF benefitted. Nothing in the record supports Greenwood's proposition that the account reconciliation was unauthorized.

⁸ Adv. Docket No. 88, Statement of Undisputed Facts in Opposition at 2-3.

17. Greenwood posits two arguments in opposition to ZF's settlement defense. First, Greenwood contends that ZF waited too long to assert the defense, and therefore it was waived. The record, however, reflects that ZF discovered the email correspondence memorializing the account reconciliation and settlement well after the commencement of this litigation. The circumstances do not warrant a determination by this Court that ZF waived (or is estopped from) the ability to assert an otherwise effective defense. Finally, Greenwood contends that there was not an enforceable settlement here, just negotiations between low-level employees. The Court disagrees: as noted above, ZF and Greenwood executed an enforceable reconciliation of accounts and effectively settled the dispute as a business matter.

18. Based upon the foregoing, the Court finds that a valid post-petition settlement occurred, which closed the Defendant's account with the Plaintiff. For all of these reasons, the Court holds that ZF is entitled to summary judgment on its Cross-Motion against Greenwood.

Accordingly, it is hereby

ORDERED, that the ZF's Cross-Motion for Summary Judgment against the Plaintiff is GRANTED; and it is further

ORDERED, that Greenwood's Motion for Summary Judgment and Motion to Strike are DENIED.

Dated: January 12, 2017
Wilmington, Delaware



BRENDAN LINEHAN SHANNON
CHIEF UNITED STATES BANKRUPTCY JUDGE