

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

In re	:	Chapter 11
	:	
Linens Holding Co., et al.,	:	Case No. 08-10832 (CSS)
	:	
Debtors.	:	
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	:	
Charles M. Forman, Trustee for the	:	
Estate of Linens Holding Co., et al.	:	
	:	
Plaintiff,	:	Adv. Pro. Nos. 11-50121 (CSS)
	:	
v.	:	
	:	
Dragon Key Co., Ltd.,	:	
	:	
Defendant.	:	

**MEMORANDUM ORDER**

Upon the Motion (the "Motion"), dated May 3, 2011, of Dragon Key Co., Ltd. (the "Defendant"), pursuant to Rules 12(b)(2), (5) and (6) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure, to dismiss the Complaint ( the "Complaint") brought by Charles M. Forman, Chapter 7 Trustee for the estate of Linens Holding Co., *et al.* ("Plaintiff"); and this Court finding that due and proper notice of the Motion was provided and it appearing that no other notice is necessary; and upon consideration of all responses and objections to the Motion; after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is DENIED with prejudice for the foregoing reasons:

1. Plaintiff has sufficiently pled a plausible claim for recovery of a preferential transfer under section 547(b) of the Bankruptcy Code (Count I). *Bell Atl. V. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, and *Fowler v. UPMS Shadyside*, 578 F.3d 203 (3d Cir. 2009).<sup>1</sup>

2. Plaintiff has sufficiently pled a plausible claim for recovery of a preferential transfer under section 550 of the Bankruptcy Code (Count II). *Id.*

3. Plaintiff has sufficiently pled a plausible claim for disallowance of a claim under section 502(d) of the Bankruptcy Code (Count III). *Id.*

5. This Court has subject matter jurisdiction over the Complaint under 28 U.S.C. §1334 and the judicial power to enter a final order. *In re USDigital, Inc.*, \_\_\_ B.R. \_\_\_, 2011 WL 6382551 (Bankr. D. Del. December 20, 2011).

4. This Court has personal jurisdiction over the Defendant. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); and *Grand Entertainment Group v. Star Media Sales*, 988 F.2d 476 (3d Cir. 1993) (finding personal jurisdiction over a defendant who directed twelve communications to the forum and engaged in negotiations for an agreement that would create rights among citizens of the forum). If the minimum contacts hurdle can be achieved by contract negotiations with forum residents; then the Defendant's continuous shipment of goods to the United States must meet the minimum contacts standard.

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<sup>1</sup> The stricter standard under *Valley Media Inc. v. Borders, Inc. (In re Valley Media, Inc.)*, 288 B.R. 189 (Bankr. D. Del. 2003) is **not** the controlling standard to judge a motion to dismiss a preference complaint under Rule 12(b)(6). However, as it is a stricter, satisfaction of the *Valley Media* standard, by definition, is sufficient for a plaintiff to survive a motion to dismiss.

5. Service of the Complaint and the *Alias Summons* via international registered mail to the Defendant was sufficient under Rules 4(f)(2)(A) and (m) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 70042 of the Federal Rules of Bankruptcy Procedure. *MAS Litigation Trust v. Plastech LDM (In re Meridian Auto Sys.)*, 2007 WL 4292130, \*3 (Bankr. D. Del. 2007) (holding that “lack of proper service generally does not require dismissal until the 120 day period for service of process has expired.”); and *Radnor Holdings Corp. v. PPT Consulting, LLC (In re Radnor Holdings Corp.)*, 2009 WL 64608, \*1 (Bankr. D. Del. Jan. 9, 2009) (“Regardless of whether Radnor's first attempt at service was ineffective, Radnor properly served PPT pursuant to Fed. R. Bankr.P. 7004(b)(3) within the time allotted by Fed.R.Civ.P. 4(m). Accordingly, valid service was made and the deficiencies claimed in PPT's motion have been mooted.”)



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Christopher S. Sontchi  
United States Bankruptcy Judge

Dated: December 29, 2011