

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
EXDS, INC. (f/k/a EXODUS ) Case No. 01-10539 (PJW)  
COMMUNICATIONS, INC.), et al., )  
) Jointly Administered  
Debtors. )  
\_\_\_\_\_)  
)  
EXDS, INC. (f/k/a EXODUS )  
COMMUNICATIONS, INC.), )  
)  
Plaintiff, )  
)  
v. ) Adv. Proc. No. 02-05935 (PJW)  
)  
FINISAR CORPORATION, )  
)  
Defendant. )

MEMORANDUM OPINION

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Dated: March 19, 2004

WALSH, J.



Pending before the Court is the Motion for Summary Judgment (Doc. # 14) filed by defendant Finisar Corporation ("Finisar"). For the reasons set forth below, the Motion will be denied.

#### BACKGROUND

On September 26, 2001, EXDS, Inc. (f/k/a Exodus Communications, Inc.) ("the Debtor") and certain affiliated entities filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On June 5, 2002, the Court entered an order confirming a reorganization plan.

On October 15, 2002, pursuant to §§ 547 and 550 of the Bankruptcy Code, the Debtor commenced this adversary proceeding against Finisar seeking to avoid and recover a pre-petition payment of \$42,998.79 made to Finisar. Finisar filed an answer to the complaint and on June 13, 2003, Finisar filed the Motion, arguing that there was no antecedent debt because there was no creditor-debtor relationship between the Debtor and Finisar.

In a purchase order ("the Purchase Order") dated October 18, 2000, Exodus Internet (Canada) Inc. ("Canada"), a non-debtor subsidiary of the Debtor, ordered from Finisar certain fiber optic equipment. The Purchase Order directed Finisar to ship the product to "Sanrise C/O Hitachi" ("Sanrise") at Sanrise's business location. On October 25, 2000, Finisar sent an invoice to the

Debtor's address and on October 26, 2000, Finisar performed by shipping the goods ordered by Canada to Sanrise. On April 20, 2001, Canada paid the invoice in Canadian dollars. That payment was rejected by Finisar and thereafter the Debtor tendered a check for \$42,998.79 in United States dollars.

The Debtor had created Canada to expand into the Canadian marketplace. Pursuant to two agreements between the Debtor and Canada, the Debtor agreed to pay mostly all of Canada's costs and debts. When the Debtor did not directly pay Canada's invoices, it transferred funds into Canada's bank account to cover the amounts of the invoices.

#### DISCUSSION

"Summary judgment may only be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact. . . .'" Carter v. Exxon Co. USA, 177 F.3d 197, 202 (3d Cir. 1999). The moving party bears the burden of demonstrating that there are no issues of fact and all inferences must be drawn in a light most favorable to the non-moving party. Id.

Finisar argues that the Debtor simply paid the obligation of its affiliate, and that payment was not for an obligation of the Debtor to Finisar, and therefore, it was not a payment of an antecedent debt. The Debtor argues that summary judgment is

premature because a material issue of fact exists as to which party - the Debtor or Canada - was obligated to pay for the purchase of Finisar's products.

Section 547(b)(2) of the Bankruptcy Code provides that a trustee may "avoid any transfer of an interest of the debtor in property . . . for or on account of an antecedent debt owed by the debtor before such transfer was made. . . ." 11 U.S.C. § 547(b)(2). Debt is defined as a "liability on a claim." 11 U.S.C. § 101(12). A claim is defined broadly to include a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. 101(5). "A common sense approach for determining whether a loan repayment is 'for . . . [an antecedent] debt owed by the debtor' is to consider whether the creditor would be able to assert a claim against the estate, absent the repayment." Smith v. Creative Fin. Mgmt. Inc. (In re Virginia-Carolina Fin. Corp.), 954 F.2d 193, 197 (4th Cir. 1992) (citing 11 U.S.C. § 547(B)(2)).

Federal Rule of Civil Procedure 56(f), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, states that the court "may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had" where the party opposing the summary judgment application "cannot . . . present by

affidavit facts essential to justify the party's opposition." Fed. R. Civ. P. 56(f). The Debtor asserts its entitlement to conduct such discovery.

Clearly the Purchase Order contains language which suggests that the Debtor may have been liable for payment of the Purchase Order. First, the Purchase Order states: "ATTN: FOR PROMPT PAYMENT, SEND ALL INVOICES TO: Exodus Communications," stating a Santa Clara, California address. Second, the Purchase Order refers to the "agreement of Exodus Communications, Inc. . . . to purchase the goods." Third, the facsimile stamp on the Purchase Order states: "From-Exodus Purchasing". The Purchase Order names Canada, stating its address in Brampton, Ontario. However, that reference does not establish that Canada is solely responsible for payment to Finisar. Significant to this issue is the invoice which Finisar sent to the Debtor. It is not addressed to "Exodus Communications," nor is it addressed to "Canada" c/o Exodus Communications; it is addressed to "Exodus Communications, Inc. . . . Attn: A/P Dept." The Canada name appears nowhere on the invoice.

Given the language used in the Purchase Order and the invoice, it can reasonably be inferred that Finisar had a basis for asserting a claim against the Debtor. Indeed, further discovery may show that Finisar had an expectation from the Purchase Order that there was a purchase agreement with the Debtor and that the

Debtor would make the payment.

Presumably, Finisar had knowledge of the parent/subsidiary relationship between the Debtor and Canada. Thus, Finisar may have relied upon the creditworthiness of the Debtor and believed that the Debtor would be liable for the payment on the Purchase Order.

#### CONCLUSION

For the reasons set forth above, it is clear that there are material issues of fact as to existence of a creditor-debtor relationship between Finisar and the Debtor. Given the evidence supporting a finding of such a relationship, this matter is decidedly not ripe for summary judgment. Consequently, I deny Finisar's Motion.

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FINISAR CORPORATION, )  
)  
Defendant. )

ORDER

For the reasons set forth in the Court's Memorandum Opinion of this date, Defendant Finisar Corporation's Motion for Summary Judgment (Doc. # 14) is DENIED.

  
Peter J. Walsh  
United States Bankruptcy Judge

Dated: March 19, 2004