

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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April 13, 2004

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Counsel for the Estate-  
Plaintiff

**Re: TWA Inc. Post Confirmation Estate v.  
J.R. Heritage Construction Inc.  
Adv. Proc. No. 02-75023**

Dear Counsel:

This ruling is with respect to the motion (Doc. # 5) for summary judgment filed by J.R. Heritage Construction, Inc. ("Defendant"). By its complaint, the TWA Inc. Post Confirmation Estate ("TWA") seeks to recover an alleged preferential transfer. For the reasons set forth below, the Court will deny the

Defendant's motion.

In the fall of 2000, J.R. Heritage Construction, Inc., was hired by the Debtor to fabricate and install break room and ticket counters at the Anchorage Airport. The Defendant billed the Debtor, in two separate invoices, for the completed work. The first invoice was issued on September 7, 2000 for \$10,630.00 and due on October 7, 2000. The second invoice was for \$6,770, billed on October 4, 2000 with a November 3, 2000 due date. On November 22, 2000, a \$10,000.00 payment was made by the Debtor to the Defendant, which left a \$7,400.00 deficiency.

On January 10, 2001 the Debtor and twenty-six of its subsidiaries filed voluntary petitions for relief in this Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code").<sup>1</sup> The plan was confirmed on June 14, 2002 and all rights and assets of the Debtor were transferred to TWA on June 25, 2002. The Defendant filed a \$7,400.00 proof of claim for amounts owed from the two invoices. TWA filed a complaint on December 10, 2002 to avoid and recover the \$10,000.00 as an alleged preferential transfer under §§ 547(b) and 550(a).

The trustee bears the burden of proving the avoidability of the transfer and the party against whom "avoidance is sought has

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<sup>1</sup> Individual sections of the Bankruptcy Code will be cited herein as "§ \_\_\_\_".

the burden of proving the nonavoidability of a transfer under subsection ©)." 11 U.S.C. § 547(g).

The Defendant claims that the \$10,000.00 transfer was in exchange for new value, as set forth in § 547(c)(1), and, therefore, TWA cannot avoid this transaction. Section 547 states in relevant part:

The trustee may not avoid under this section a transfer--

- (1) to the extent that such transfer was
  - (A)intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
  - (B)in fact a substantially contemporaneous exchange.

11 U.S.C. § 547(c)(1)

New value is defined in § 547(a)(2) and has been broadly construed by the Third Circuit Court of Appeals to include "any consideration sufficient to support a contract." See Ross v. Phila. Housing Auth. (In re Ross), No. 97-0063, 1997 WL 331830, at \*6 (Bankr. E.D. Pa. June 10, 1997).

Here, the Defendant argues that the "new value" is derived from postponing its right to enforce a lien imposed by a state statute. Alaska statute section 34.35.180 states:

A person who expends labor, skill, or materials upon a chattel, at the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor of the chattel, has a lien upon the chattel for the contract price of the expenditure, or in the absence of a contract price, for the reasonable worth of the expenditure, for a period of six months from the expenditure, notwithstanding the fact that the possession of the

chattel is surrendered to the owner or lawful possessor.  
Alaska St. § 34.35.180 (2003).

The Defendant claims that since TWA did not pay either invoice in full, under the state statute the installed break room and ticket counters were subject to a lien, giving the Defendant the right to file a lien notice and repossess the cabinets. The Defendant alleges that it did not repossess the materials because it waived the lien in exchange for \$10,000.00, therefore conveying "new value."

On the contrary, TWA argues that the Defendant did not waive its lien rights, failed to satisfy its burden under § 547(g) and did not provide any evidence that it had an enforceable lien. Furthermore, TWA challenges the applicability of the Alaska statute, since it is not clear that the break room and ticket counters are chattels and not real property.

There is a dispute as to several material facts, specifically whether the Defendant had a lien and, if so, whether the Defendant waived that lien. Consequently, the Defendant's motion for summary judgment is denied.

Very truly yours,



Peter J. Walsh

PJW:ipm

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
TWA INC. POST CONFIRMATION ) Case No. 01-0056 (PJW)  
ESTATE, )  
) Jointly Administered  
Debtor. )  
\_\_\_\_\_)  
)  
TWA INC. POST CONFIRMATION )  
ESTATE, )  
)  
Plaintiff, )  
)  
v. ) Adv. Proc. No. 02-75023 (PJW)  
)  
J.R. HERITAGE CONSTRUCTION, )  
INC., )  
)  
Defendant. )

ORDER

For the reasons set forth in the Court's Letter Ruling of this date, the motion for summary judgment (Doc. # 5) filed by defendant, J.R. Heritage Construction, Inc., is **DENIED**.

  
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Peter J. Walsh  
United States Bankruptcy Judge

Dated: April 13, 2004