

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

THE WORTH COLLECTION, LTD.,
Debtor

Chapter 7

Case No. 20-10337 (BLS)

DOUGLAS T. TABACHNIK, in his
capacity as the Chapter 7 Trustee of the
bankruptcy estate of The Worth
Collection, Ltd.,

Plaintiff,

v.

ERIKA SZYCHOWSKI,

Defendant.

Adv. Pro. No. 23-50317 (BLS)
D.I. 16, 17, 21, 22

**MEMORANDUM ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT¹**

Before the Court is the Defendant's Motion to Dismiss the Amended Complaint for failure to state a claim.² The Trustee opposes the Motion to Dismiss.³ The Defendant filed a reply⁴ and this matter is ripe for consideration.⁵ For the reasons stated below, the Motion to Dismiss will be granted.

¹ This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 157 and § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (2)(F) and (H).

² Adv. Docket No. 16, 17 (the "Motion to Dismiss").

³ Adv. Docket No. 21.

⁴ Adv. Docket No. 22.

⁵ Although a request for oral argument has been made, the Court does not deem it necessary to resolve this motion.

Background

An involuntary Chapter 7 petition was filed in this Court against The Worth Collection, Ltd. (the “Debtor”) on February 14, 2020 (the “Petition Date”). Over a year later, the Bankruptcy Court entered an Order for Relief against the Debtor on March 25, 2021 (the “Relief Date”), thereby allowing the Chapter 7 case to proceed. The Chapter 7 Trustee was appointed on June 23, 2021.

The Trustee filed a complaint against the Defendant seeking to avoid and recover transfers made by the Debtor to the Defendant under Bankruptcy Code Sections 544, 547, 548 and Delaware fraudulent transfer law. After the Defendant moved to dismiss the original complaint, the Trustee filed an amended complaint.⁶

The Amended Complaint describes 14 transfers totaling \$125,182.63 made by the Debtor to the Defendant between August 19, 2019 and January 15, 2020 (the “Exhibit A Transfers”).⁷ The Complaint also alleges that the Defendant received other transfers from the Debtor in the aggregate amount of at least \$575,655.85 (the “Additional Transfers”),⁸ but provides no details about those transfers.⁹ The Trustee alleges that the Defendant served as the Debtor’s Chief Marketing Officer and was an “insider” when the Defendant received the Transfers.¹⁰ The Complaint relies on the one-year preference period for insiders to recover the Transfers pursuant to Bankruptcy Code § 547. The Complaint also seeks to recover all

⁶ Adv. Docket No. 15 (the “Amended Complaint”).

⁷ Adv. Docket No. 15, Exhibit A.

⁸ The Exhibit A Transfers and the Additional Transfer are jointly referred to herein as the “Transfers.”

⁹ Amended Compl. ¶ 80. The Complaint does not contain any details about the Additional Transfers.

¹⁰ Amended Compl. ¶ 76.

Transfers as constructive and/or actual fraudulent transfers under Bankruptcy Code § 548 and § 544 and applicable Delaware law.

Standard - Motion to Dismiss

When considering a motion to dismiss under Rule 12(b)(6), a Court should accept well-pleaded factual allegations as true and determine whether they plausibly support an entitlement to relief.¹¹ A complaint built on “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” will not survive a motion to dismiss.¹²

“A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”¹³ This determination is a context specific task, drawing on the reviewing court’s judicial experience and common sense.¹⁴

Claims to avoid and recover preferential transfers

To survive a motion to dismiss, a preference complaint must include: (a) identification of the nature and amount of each antecedent debt, (b) identification of each alleged preference transfer by (i) date of the transfer, (ii) name of the debtor/transferor, (iii) name of the transferee, and (iv) the amount of the transfer.¹⁵

¹¹ *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 221 (3d Cir. 2011).

¹² *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

¹³ *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

¹⁴ *Ashcroft*, 556 U.S. at 679.

¹⁵ *Miller v. Easy Star Records (In re DA Liquidating Corp.)*, 622 B.R. 172, 176 (Bankr. D. Del. 2020) (quoting *THQ Inc. v. Starcom Worldwide, Inc. (In re THQ Inc.)*, No. 12-13398 (MFW), 2016 WL 1599798, at *3 (Bankr. D. Del. Apr. 18, 2016)).

The Defendant moves to dismiss the preference count in the Amended Complaint for failing to allege any facts (and offering only conclusory statements) describing the antecedent debt in connection with the Transfers as required by § 547(b)(2). The Defendant also argues that there are no facts alleged to support the claim that the Defendant was an “insider” of the Debtor.

The Trustee argues that the Complaint sufficiently describes the antecedent debts behind the Exhibit A Transfers in paragraphs 87, 88, and 114 of the Amended Complaint. Paragraph 87 provides:

The Transfers to the Defendant during the Insider Preference Period were made on account of antecedent debt – namely, based on the agreement and trade relationship between the Debtor and the Defendant, of the commissions for sales procured by the Defendant or, in certain situations, of the commissions for sales procured by others who were in some manner affiliated with the Defendant.

The language in paragraphs 88 and 114 are similar. The language is similar to that used in the complaints filed in the Stylist adversaries,¹⁶ which was previously determined to be lacking in detail.

Courts have dismissed preference claims when a complaint fails to include adequate information about an antecedent debt.¹⁷ As this Court observed when

¹⁶ See Main Case No. 20-10337, Docket No. 470, 2024 WL 4280104 (Bankr. D. Del. Sept. 24, 2024).

¹⁷ *DA Liquidating Corp.*, 622 B.R. at 176-77 (“Trustee must sufficiently plead all elements of a preference, including an antecedent debt. The only factual allegations in the Complaint are that Defendant was a vendor or creditor of Debtors, and the Transfers were made on account of Debtor’s purchase of products or services from Defendant. Neither of these statements identify an antecedent debt.”); *Miller v. Mitsubishi Digital Elec. Am. Inc. (In re Tweeter Opco)*, 452 B.R. 150, (Bankr. D. Del. 2011) (“The Complaint provides no detail of any relationship between the Debtors and Mitsubishi such as identity of contracts between the parties or any description of good or services exchanged. Without such information, the Court determines that the Trustee has failed to describe sufficiently the nature of the antecedent debt.”).

considering the motion to dismiss the Stylists' complaints, the Amended Complaint's language about antecedent debt boils down to: we know you had a relationship with the Debtor, and we know you received payments. This broad, general language does not provide a factual basis describing an antecedent debt. The Amended Complaint does not satisfy the requirement that the pleading plausibly asserts all the required elements of a preference claim. Therefore, the preference claim will be dismissed.

Claims to avoid and recover actual fraudulent transfers

The Amended Complaint alleges that the Debtor made the Transfers to the Defendant with actual intent to hinder, delay or defraud other creditors who supplied inventory to the Debtor (the "Vendors"). The Defendant argues that the allegations lack particular facts to support any claims based on actual intent to defraud other creditors. The Trustee argues that the Amended Complaint provides sufficient notice of the alleged fraudulent misconduct by including specific facts that constitute badges of fraud.

Rule 9(b) of the Federal Rules of Civil Procedure requires the circumstances of the alleged fraud to be plead with particularity.¹⁸ This requirement may be relaxed somewhat for a bankruptcy trustee because "the trustee often does not have all the facts that the debtor in possession would have about the conduct of parties pre-petition."¹⁹

¹⁸ Fed.R.Civ.P. 9(b).

¹⁹ *Forman v. Kelly Capital, LLC (In re Nat'l Serv. Indus., Inc.)*, 2015 WL 3827003, *4 (Bankr. D. Del. June 19, 2015) (citing *Off'l Comm. of Unsecured Creditors of Fedders N. Am., Inc. v. Goldman Sachs Credit Partners L.P. (In re Fedders N. Am., Inc.)*, 405 B.R. 527, 544 (Bankr. D. Del. 2009)).

“Because direct evidence of fraudulent intent is often unavailable, courts usually rely on circumstantial evidence to infer fraudulent intent”²⁰ by allegation “badges of fraud,” which include (without limitation):

- (1) the relationship between the debtor and the transferee;
- (2) consideration for the conveyance;
- (3) insolvency or indebtedness of the debtors;
- (4) how much of the debtor’s estate was transferred;
- (5) reservation of benefits, control or dominion by the debtor over the property transferred; and
- (6) secrecy or concealment of the transaction.²¹

“The presence or absence of any single badge of fraud is not conclusive.”²²

“Although the presence of a single factor, i.e., badge of fraud, may cast suspicion on the transferor’s intent, the confluence of several in one transaction generally provide conclusive evidence of an actual intent to defraud.”²³

The Amended Complaint includes “additional allegations regarding actually fraudulent transfers” in paragraphs 96 – 106. The Trustee argues that these allegations, read in context with other allegations in the Amended Complaint, describe how the “Debtor acted with actual intent to defraud the Vendors by paying inflated salary and commissions to the Defendant in order to incentivize the quick

²⁰ *Off'l Comm. of Unsecured Creditors of Fedders North America v. Goldman Sachs Credit Partners, L.P. (In re Fedders North America, Inc.)*, 405 B.R. 527, 544 (Bankr. D. Del. 2009). Fed.R.Civ.P. 9(b), made applicable hereto by Fed.R.Bankr.P. 7009, provides: “In alleging fraud or mistake, a party must state the particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”

²¹ *Id.* (citing *In re Hechinger Inv. Co. of Del.*, 327 B.R. 537, 551 (D. Del. 2005)).

²² *Id.* (citing *Dobin v. Hill (In re Hill)*, 342 B.R. 183, 198 (Bankr. D.N.J. 2006)).

²³ *Id.*

sale of the Debtor's merchandise to fund the Debtor's winddown and liquidation before the Debtor's Vendors stopped providing additional inventory."²⁴

The Court has already evaluated the same allegations in the Stylist adversaries and determined that the "badges of fraud" do not contain facts to support a plausible claim that the Debtor's transfers to the Defendant were made with actual intent to hinder, delay or defraud other creditors, such as the Vendors.²⁵ As further recognized in this Court's decision considering the adequacy of the same allegations in the complaints in the Stylist adversaries:

The Trustee further contends that the Court's analysis should not be limited to the badges of fraud but should also consider other facts establishing fraudulent intent. "If the 'natural consequence' of a debtor's action is to hinder, delay or defraud creditors, a court may infer an intentional fraudulent conveyance."²⁶ The Trustee argues that fraud was the natural consequence of not telling the vendors that the Debtor was winding down its business and was holding a going-out-of-business sale, while paying increased commissions to the Stylists. Although the Amended Complaints describe a liquidation sale that included a robust incentive program to encourage the Stylists to aggressively pursue sales, ... the allegations are too vague to jump to a conclusion of a fraudulent scheme against vendors.²⁷

The allegations in the Amended Complaint in this case are almost identical the allegations in the Stylist adversaries. Assuming the truth of the Trustee's averments that the Debtor failed to notify the vendors about the Debtor's

²⁴ Def. Mem. Of Law, Adv. Docket No. 21, p. 22.

²⁵ See *Worth*, 2024 WL 4280104 at *5 - *6 for a detailed analysis of identical factual allegations under the badges of fraud. The Defendant denies that she was a Stylist or was paid commissions or incentives as a Stylist.

²⁶ *Kirschner v. J.P. Morgan Chase Bank, N.A. (In re Millennium Lab Holdings II, LLC)*, 2019 WL 1005657, *3 (Bankr. D. Del. Feb. 28, 2019) (citing *In re Tribune Co.*, 464 B.R. 126, 162 (Bankr. D. Del. 2011)) (internal punctuation omitted).

²⁷ *Worth*, 2024 WL 4280104 at *6.

winddown, without more facts, does not establish a plausible basis for an actual fraud claim. The motion to dismiss claims based on actual fraud will be granted.

Claims to avoid and recover constructive fraudulent transfers

The Amended Complaint also asserts claims to avoid and recover constructive fraudulent transfers asserting that the Debtor did not receive reasonably equivalent value for the Transfers, which were made when the Debtor was (i) insolvent or (ii) engaged (or was about to engage) in a business or transaction for which the Debtor's remaining assets were unreasonably small in relation to the business or transaction.

The Defendant argues that the Amended Complaint makes conclusory allegations about the Debtor's financial condition. As already noted, the Amended Complaint is almost identical to the complaints in the Stylist adversaries and this Court has already determined that the Trustee's vague and conclusory allegations were insufficient to support a claim that the Debtor was insolvent at the time the Transfers were made. The Court wrote:

While the Court agrees that precise calculations are not required at this stage, the allegations must contain more than allegations of net losses in 2015-2016 (as of the 2016 LBO Transaction closing), coupled with conclusory statements that the Debtor's financial picture never improved through the Relief Date.²⁸

The Amended Complaint does not allege sufficient facts regarding the Debtor's insolvency or unreasonably small assets to support a claim for constructive

²⁸ *Worth*, 2024 WL 4280104 at *4.

fraud. The claims based on constructive fraud in the Amended Complaint will be dismissed.

AND NOW, for the reasons set forth above, it is hereby ORDERED that the Defendant's Motion to Dismiss is GRANTED and the entirety of the Amended Complaint is DISMISSED.²⁹

FOR THE COURT:



BRENDAN LINEHAN SHANNON
UNITED STATES BANKRUPTCY JUDGE

December 18, 2025

²⁹ All Counts, including those that are dependent on the preference and fraudulent transfer claims (*i.e.*, Counts II, III, VII, VIII and IX) are hereby dismissed.