

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In Re:	)	
	)	Chapter 11
IMPERIAL HOME DECOR GROUP,	)	
INC., <i>et al.</i> ,	)	Case No. 00-19 (WS)
Debtors.	)	
_____	)	
	)	
IHDG LITIGATION TRUST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No. 02-1115 (WS)
	)	
WESTAFF (USA), INC.,	)	
	)	
Defendant.	)	
_____	)	

**MEMORANDUM OPINION DENYING MOTION  
TO DISMISS SECOND AMENDED COMPLAINT<sup>1</sup>**

Upon consideration of Defendant's Motion to Dismiss the Second Amended Complaint Filed in this Adversary Proceeding for Failure to State a Claim (Docket Nos. 63, 64 and 68); Plaintiff's Response thereto (Docket No. 65); and after due deliberation; the Court concludes that the motion is denied.

On October 19, 2004, Plaintiff IHDG Litigation Trust filed its Second Amended Complaint to Avoid Preferential Transfers and Recover Property (Docket No. 60) after the Amended Complaint was dismissed for failure to state a claim upon which relief can be granted (Docket No. 58). Judge Walrath's Dismissal Order allowed Plaintiff thirty days to amend, requiring Plaintiff to clarify: "(1) the name of the debtor to whom each Westaff invoice was sent,

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<sup>1</sup> This Memorandum Opinion constitutes the Court's findings of fact and opinions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

(2) the amount of each Weststaff invoice, and (3) the name of the debtor who made each transfer.”

The Second Amended Complaint was timely filed and unambiguously complies with Judge Walrath’s Order. Exhibit A to the Second Amended Complaint clearly lists: the name of the specific debtor making transfer, the date of each check, the check number, the check amount, the name of the debtor on each invoice, the invoice number, the invoice amount and the invoice date. The substance of Judge Walrath’s Order carries with it a strong implication that if Plaintiff included the required additional information in a further amended complaint, that complaint would survive a dismissal motion.

Regardless, the Second Amended Complaint complies with the heightened pleading standard cited by Defendant. *See TWA, Inc. v. Marsh USA, Inc.*, 2004 WL 180421, at \*1 (Bankr. D. Del. Jan. 20, 2004); *Valley Media, Inc. v. Borders, Inc. (In re Valley Media, Inc.)*, 288 B.R. 189, 192 (Bankr. D. Del. 2003); *Posman v. Bankers Trust Co.*, Adv. Pro. No. 97-245 (Bankr. D. Del. July 29, 1999). Under that standard, complaints to avoid preferential transfers must provide: “(a) an identification of the nature and amount of each antecedent debt and (b) an identification of each alleged preference transfer by (i) date, (ii) name of debtor/transferor, (iii) name of transferee and (iv) the amount of the transfer.” *Valley Media*, 288 B.R. at 192 (citation omitted). Defendant asserts that the Second Amended Complaint fails to provide the “nature” of the alleged preferential transfers because it is not clear what Defendant did to or for Plaintiff. Defendant’s interpretation of “nature” misconstrues *Valley Media*’s heightened pleading standard. Information regarding the “nature” of each antecedent debt need only detail whether the alleged transfer falls within the group of avoidable transfers delineated in section 547. *See* 11 U.S.C. § 547(b). The Second Amended Complaint clearly specifies the “nature” of the each

antecedent debt by stating: "Within ninety (90) days before the Petition Date, the Defendant received payments totaling at least \$19,010.29 (the "Payments") from the Debtors as set forth on Exhibit A hereto." This allegation states the "nature" of the antecedent debt by following the language of section 547(b)(4)(A).<sup>2</sup> Exhibit A then identifies the amount, date, name of debtor/transferor, name of transferee and the amount of the transfer regarding each antecedent debt. The Second Amended Complaint therefore meets the heightened pleading standard for complaints to avoid preferential transfers. If Defendant interprets the "nature" requirement as requiring a description of the goods or services that Defendant provided, that is neither a proper nor an appropriate interpretation of the heightened pleading standard. In effect, that argument means in the context of this case, that Plaintiff, on pain of dismissal, and in addition to what is provided in the Second Amended Complaint and the referred to exhibit, must repeat in the body of that pleading the very same facts that are self evident from the exhibit and Defendant's own invoices. To state that position is to deny its logic and strain past the breaking point the applicable pleading concepts in the federal procedural arena, even when applying the heightened pleading standard.

Furthermore, there is a difference of opinion in this District as to whether or not that so-called heightened standard is the proper one. *Compare TWA*, 2004 WL 180421, at \*1, *and Valley Media*, 288 B.R. at 192, *with In re The IT Group, Inc.*, 313 B.R. 370, 373 (Bankr. D. Del. 2004), *and In re Webvan Group, Inc.*, 2004 WL 483580, at \*2 (Bankr. D. Del. March 9, 2004). It is altogether possible, if it was necessary for this Court to do so, that it might agree with the


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<sup>2</sup> Unless otherwise indicated, all citations to statutory sections are to the Bankruptcy Code ("Code"), 11 U.S.C. § 101 *et seq.*

latter cases. However, that decision is not necessary case given the other grounds for the Court's conclusion.

For the reasons set forth above, the Defendant's Motion to Dismiss is DENIED. A separate order denying the motion shall enter.

Dated: February 24, 2005



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Honorable Walter Shapero  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE


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_____	)	

**ORDER DENYING MOTION TO DISMISS SECOND AMENDED  
COMPLAINT AND REQUIRING DEFENDANT TO FILE ANSWER**

For the reasons set forth in the Court's Memorandum Opinion of this date, Defendant's Motion to Dismiss the Second Amended Complaint Filed in This Adversary for Failure to State a Claim (Docket No. 63) is **DENIED**.

Defendant shall file and serve its Answer to the Second Amended Complaint on or before March 7, 2005.

Dated: February 24, 2005

  
\_\_\_\_\_  
Honorable Walter Shapero  
United States Bankruptcy Judge

cc: James E. Huggett, Esquire<sup>1</sup>

<sup>1</sup> Counsel shall distribute a copy of this Opinion and Order to all interested parties and the parties listed on the attached Service List and file a Certificate of Service with the Court.

SERVICE LIST

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