

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
)  
CVEO CORPORATION )  
f/k/a CONVERSE, INC. ) Case No. 01-0223 (MFW)  
)  
Debtor. )  
)  
\_\_\_\_\_) Adversary No. 03-50377  
ARGUS MANAGEMENT GROUP, )  
as Trustee for the )  
CREDITORS RESERVE TRUST )  
)  
Plaintiff, )  
)  
vs. )  
)  
ISAAH RIDER, )  
)  
Defendant. )  
)

MEMORANDUM OPINION<sup>1</sup>

Before the Court is the Motion of Isaiah Rider ("the Defendant") to Dismiss with prejudice the Complaint filed by Argus Management Group ("the Plaintiff") for failure to state a claim upon which relief can be granted. The Motion is opposed by the Plaintiff. After considering the arguments of the parties, we will deny the Motion to Dismiss for the reasons set forth below.

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

I. BACKGROUND

On January 22, 2001, CVEO Corporation, f/k/a Converse, Inc., ("the Debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("the Code"). Prior to the filing, the Debtor was both a global designer, manufacturer, marketer and licensor of athletic footwear, and a licensor of sports apparel and accessories.

The Debtor filed its Second Amended Chapter 11 Plan ("the Plan"), which was confirmed on June 6, 2002, and went effective on July 31, 2002. A Creditors Reserve Trust ("the Trust") was created under the Plan to prosecute avoidance actions on behalf of the Debtor's estate. The Plaintiff was appointed to administer the Trust.

A. Contract

Pre-petition, the Debtor had signed an exclusive Endorsement Contract ("the Contract") with the Defendant, wherein the Defendant agreed, inter alia, to wear and endorse the Debtor's products, participate in certain promotion and media events, and advise and consult with the Debtor on the production and design of basketball shoes. For this, the Defendant was to receive one percent of the net sales of the style of shoes he wore during competitive basketball games, four percent of the net sales of activewear he endorsed, and approximately \$1.8 million payable over 5 years. Section 11(c) of the Contract allowed the Debtor

to terminate it upon thirty days written notice if the Defendant was "convicted of a crime involving moral turpitude."

On August 31, 1995, the Debtor terminated the Contract, nearly one year after the Defendant was convicted of fifth degree assault. The Defendant sued for breach of contract and the matter was referred to arbitration. The arbitrator ruled that the Debtor lacked sufficient grounds to terminate the Contract and ordered that it be reinstated. On March 28, 1997, the Debtor and the Defendant entered into a Termination Agreement, whereby the Contract was cancelled and the Defendant received a settlement of \$900,000 (payable over 3 years) and a final allotment of complementary merchandise.

#### B. Claim

On January 20, 2003, the Plaintiff filed the Complaint against the Defendant seeking to avoid and recover, pursuant to sections 544 and 550 of the Code, the \$900,000 the Debtor had paid to the Defendant under the Termination Agreement. On April 1, 2003, the Defendant filed the Motion to Dismiss the Complaint with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. He asserts that the Complaint does not articulate facts sufficient to support a finding that the transfers at issue were made for less than reasonably equivalent value. The Defendant also contends that the action is subject to a three-year statute of limitations under California law, which

would effectively limit the Plaintiff's maximum recovery to \$300,000.

The Motion has been fully briefed, and the matter is ripe for decision.

#### I. JURISDICTION

This Court has jurisdiction over this adversary, which is a core proceeding, pursuant to 28 U.S.C. §§ 1334 and 157(b)(1), (2)(A), (H) & (O).

#### III. DISCUSSION

##### A. Standard for Motion to Dismiss

A court may dismiss a complaint under Rule 12(b)(6) only if the movant establishes "beyond doubt that the plaintiff can prove no set of facts" that would entitle it to the relief requested. Haines v. Kerner, 404 U.S. 519, 521 (1972) (quoting Conley v. Gibson, 355 U.S. 41, 45-6 (1957)). See also Hishon v. King & Spalding, 467 U.S. 69, 81 (1984). In making its determination, the court is required to "accept the allegations of the complaint as true and draw all reasonable factual inferences in favor of the plaintiff." Weston v. Pennsylvania, 251 F.3d 420, 425 (3d Cir. 2001). See also Boqosian v. Gulf Oil Corp., 561 F.2d 434, 462 (3d Cir. 1977).

1. Reasonably Equivalent Value

The Defendant argues that the Complaint should be dismissed because it does not allege facts sufficient to establish that the transfers at issue were made for less than reasonably equivalent value.<sup>2</sup> However, we cannot dismiss the Complaint on this basis for two reasons.

First, this Court is required to accept as true the factual allegations in the Complaint. See Weston, 251 F.3d at 425. Therefore, at this juncture, we must accept as true the Plaintiff's contention that the transfers were made for less than reasonably equivalent value. Furthermore, before determining if the Defendant conveyed to the Debtor value reasonably equivalent to the \$900,000 he received, we must make an "express factual determination as to whether the debtor received any value at all" from the Defendant. In re R.M.L., Inc., 92 F.3d 139, 149 (3d Cir. 1996). This raises a factual dispute on the merits, the resolution of which is improper at the current pleading stage. See e.g., Sanner v. Board of Trade of the City of Chicago, 62 F.3d 918, 926 (7th Cir. 1995) ("factual disputes. . . should not be resolved on a motion to dismiss").

Second, Rule 8(a) does not require that a plaintiff prove

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<sup>2</sup> To recover a fraudulent conveyance under the Uniform Fraudulent Transfer Act, as promulgated under California law, it must be proved that a debtor received less than reasonably equivalent value in exchange for the transfer. Cal Civ. Code §§ 3439.04 and 3439.05.

its allegations, rather it demands only a short, plain statement that gives the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." Posman v. Bankers Trust Co. (In re Lomas Fin'l Corp.), 1999 WL 33742299, \*2 (Bankr. D. Del. July 28, 1999) (quoting Conley, 355 U.S. at 47).<sup>3</sup> See also Valley Media, Inc. v. Borders, Inc., (In re Valley Media, Inc.), 288 B.R. 189, 192 (Bankr. D. Del. Jan. 7, 2003).

In the case before the Court, the Complaint complies substantially with the Posman requirements: paragraph 30(b) lists \$900,000 as the amount the Plaintiff seeks to avoid and recover; paragraph 22 states that the transfers were made pursuant to the Termination Agreement, lists the approximate date and amount of each transfer, and identifies the Debtor as transferor and the Defendant as transferee. The Complaint also alleges that the Debtor did not receive reasonably equivalent value for the transfer. Thus, the Complaint satisfies the pleading requirements of Rule 8(a).

Therefore, dismissal of the Complaint is improper because a factual determination on the merits of the Complaint is premature, and the Complaint is well-pleaded under 8(a) of the Federal Rules.

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<sup>3</sup> Posman involved an action to recover preferences, whereas the instant case is an action to recover fraudulent transfers. Nonetheless, we believe that Posman is instructive in this case.

## 2. Applicable Law

The Defendant asserts that the Complaint should be dismissed on the grounds that it lacks a cognizable legal theory, since the Plaintiff does not plead the specific authority - presumably, either section 338 of the California Code of Civil Procedure or section 3439 of the California Civil Code - under which it seeks to avoid the allegedly fraudulent transfers. He further argues that this warrants application of section 338, which has a shorter statute of limitations, instead of the more generous section 3439.09(b). Otherwise, the Defendant argues, the Plaintiff will be "[rewarded] unjustly for its lack of diligence."

We reject these arguments and, accordingly, decline to dismiss the Complaint. As we stated previously, Rule 8(a) requires only that a complaint provide a short and plain statement sufficient to put the Defendant on notice of the Plaintiff's claims against him and the basis for such claims, which the Complaint accomplishes. See, e.g., Bartholet v. Reishauer, 953 F.2d 1073, 1078 (7th Cir. 1992) (a complaint under Rule 8 should be short and simple and need not identify a legal theory; "details of both fact and law come later in other documents"); Ghebreselassie v. Coleman Security Service, 829 F.2d 892, 895 (9th Cir. 1987) (plaintiff in federal court is not required to specify law under which claim arises).

Therefore, we will not dismiss the Complaint on the grounds that the Plaintiff failed to plead the specific state law applicable to the allegations asserted therein. Further, since this case is only at the pleading stage, it is not necessary to determine which statute of limitations is applicable.

II. CONCLUSION

For the reasons set forth above, we deny the Defendant's Motion to Dismiss with prejudice the Plaintiff's Complaint pursuant to Rule 12(b)(6).

An appropriate Order is attached.

BY THE COURT:

  
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Mary F. Walrath  
United States Bankruptcy Judge

Dated: September 13, 2004



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

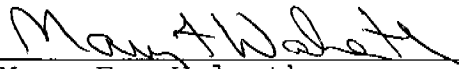
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ISAAH RIDER, )  
)  
Defendant. )

O R D E R

AND NOW this 13<sup>th</sup> day of September, 2004, upon consideration of Isaiah Rider's Motion to Dismiss with prejudice the Complaint of Argus Management Group ("the Plaintiff") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the Response of the Plaintiff thereto, and for the reasons set forth in the Memorandum Opinion attached hereto, it is hereby:

**ORDERED** that the Motion to Dismiss is **DENIED**.

BY THE COURT:

  
\_\_\_\_\_  
Mary F. Walrath  
United States Bankruptcy Judge

cc: Theodore J. Tacconelli, Esq.<sup>1</sup>

<sup>1</sup> Counsel is to distribute a copy of this Order to all interested parties and file a Certificate of Service with the Court.