

NOT FOR PUBLICATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	Chapter 11
)	
WORLDWIDE DIRECT, INC., et)	Case Nos. 99-108 (MFW)
al.,)	through 99-127 (MFW)
)	
Debtors.)	(Jointly Administered
)	Under Case No. 99-108 (MFW)

OPINION¹

'Twas the month before Christmas
and inside the Court,
Debtors filed an omnibus objection
which appears to purport

That we should disallow certain claims
under 502(d),
because pre-petition those creditors received
preferred money.

The Debtors' objection included
Exhibits F and G,
which seek to deny claims
in whole, or partially.

In Court, we originally stated
that we did not agree
that a preference action should be granted
under 502(d).

Without complaint filed,
Debtors wish to proceed
to deny creditor claims, despite
Rules they must heed.

¹ While not written in prose,
Our holding's still true.
This opinion is a conclusion of law
Under Rule seventy-fifty-two.

Though their motion was noticed,
and received no reply,
in Court, we told Debtors' counsel
this motion we would deny.

Despite our stance from the bench
that denied such relief,
we permitted Debtors' counsel
to file their brief.

In their memorandum,
Debtors now urge us to grant
their omnibus motion to which they've
received no dissent.

Adversaries are unneeded
do these Debtors say;
disallowance of claims
are permitted a different way.

The Debtors have supplied us with
five case references,²
in which courts have denied claims
based on alleged preferences.

After reviewing those cases,
we make the following finding:
those Courts' opinions, while grand,
upon us, are not binding.

Instead, we agree with a Florida decision³
penned by the wise Judge Paskay
which, in our opinion,
points out the right way.

² See America's Shopping Channel, Inc., 110 B.R. 5 (Bankr. S.D. Cal. 1990); In re Stoecker, 143 B.R. 118 (Bankr. N.D. Ill. 1992); In re Eye Contact, Inc., 97 B.R. 990 (Bankr. W.D. Wisc. 1989); In re Larson, 80 B.R. 784 (Bankr. E.D. Va. 1987); Churchill Nut Co., 251 B.R. 143 (Bankr. N.D. Cal. 2000).

³ See Woolley's Parkway Ctr., Inc., 147 B.R. 996 (Bankr. M.D. Fla. 1992).

In Woolley's, a creditor tried to disallow other creditor votes by setting off "possible" preferences,⁴ so the Court wrote.

The Court denied the objection because it was insufficient; relying on such a "possibly" rendered it fatally deficient.⁵

Section 502(d) permits disallowing a claim from whom money is due, but to determine the creditors' liability the Debtors must first sue.

Before we may pronounce that a claimant is liable, Debtors must commence an adversary complaint which is triable.

As always, we are mindful that statutory construction is not pliable.⁶ Therefore, there must be a judgment to find these creditors "liable."⁷

After doing some research,

⁴ Id. at 999.

⁵ Id. at 999-1000.

⁶ See United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 240 (1989) ("The task of resolving the dispute over the meaning of [a statute] begins where all such inquiries must begin: with the language of the statute itself."); Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992) ("In interpreting a statute a court should always turn first to one cardinal canon before all others. . . . Courts must presume that a legislature says in a statute what it means and means in a statute what it says there").

⁷ See Creditors of Melon Produce, Inc. v. Braunstein, 112 F.3d 1232, 1327 (1st Cir. 1997) ("the key phrase in this inquiry is 'the amount . . . for which such entity or transferee is liable'").

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we found other such cases,⁸
which made similar findings
in far away places.

If interests in property
Debtors wish to dissect,
they must proceed by
Rule 7001 et seq.⁹

The Debtors assert 502(d) is
such a tool,
but we disagree -
it would unwrite the Rule.

For the preceding reasons
we deny Debtor's presumption,¹⁰
although we would permit the objections
upon the resumption

⁸ See Campbell v. United States (In re Davis), 889 F.2d 658, 662 (5th Cir. 1989) (Section 502(d) "is designed to be triggered after a creditor has been afforded reasonable time in which to turn over amounts adjudicated to belong to the bankruptcy estate"); In re Mountaineer Coal Co., Inc., 247 B.R. 633, 641 (Bankr. W.D. Va. 2000) ("[Section 502(d)] would not appear applicable unless and until a finding under one of the cited sections had been made and then the claimant had failed to comply with such ruling").

⁹ See Committee of Unsecured Creditors v. Interfirst Bank Dallas, N.A. (Wood and Locker Inc.), 868 F.2d 139, 142 (where Debtor and Committee sought to recover a preference through a claim objection under 502(d), Court held the Debtor and Committee "were compelled by Rule 7001 to file an adversary proceeding to which Part VII of the Bankruptcy Rules applies.")

¹⁰ Where a creditor has filed a properly filed and supported proof of claim, it is deemed prima facie valid, and the burden is on the Debtor to "produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992).

By filing complaints
to recover those amounts
which then disallow claims, minus
avoided discounts.

There is no problem
in law, fact, or procedurally
with Debtor's Omnibus objection,
save Exhibits F and G.¹¹

Though Debtors received no objection,
no one hemmed, hawed, or cried,
the Code and Rules mandate -
Debtors' MOTION DENIED.

BY THE COURT:

Dated: November 22, 2000

Mary F. Walrath
United States Bankruptcy Judge

¹¹ On November 7, 2000, we entered an Order which granted Debtors' omnibus objection, except as it related to offsetting claims against avoidable, but not yet avoided, transfers.

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O R D E R

AND NOW, this **22ND** day of **NOVEMBER**, 2000, upon consideration of the Debtors' Fifth Omnibus Objection to Claims, and consistent with this Court's November 7, 2000, Order, for the reasons set forth in the accompanying Opinion, it is hereby

ORDERED that the Debtors' request to setoff prepetition section 502(d) claims, is **DENIED**.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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