

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

In re:	:		
	:		
TW, Inc., f/k/a Cablevision Electronics	:	Case No. 03-10785	(MFW)
Investments, Inc.,	:		
Debtor.	:		
	:		
	:		
TW, Inc., f/k/a Cablevision Electronics	:		
Investments, Inc.,	:		
	:		
Plaintiff,	:		
v.	:		
	:		
R.J. Palmer LLC	:	Adversary Proceeding No.	
Infinity Broadcasting Corp. d/b/a	:		
WNEW-FM 102.7	:	A 05-50579	(PBL)
CBS, Inc. d/b/a WCBS-TV	:		
Infinity Broadcasting Corp. d/b/a WINS-AM	:		
Clear Channel Communications, Inc. d/b/a	:		
WLTW-FM 106.7 Lite FM Clear Channel	:		
Radio	:		
CBS, Inc. d/b/a WCBS-AM Newsradio 880	:		
ABC, Inc. d/b/a WABC-TV, Inc.	:		
Infinity Broadcasting Corp. d/b/a WCBS-FM 101.1	:		
WLNY-TV, Inc.	:		
NBC Universal, Inc. f/k/a National Broadcasting	:		
Company, Inc.	:		
Fox Television Stations, Inc. d/b/a	:		
WNYW-New York	:		
Clear Channel Broadcasting, Inc. d/b/a WKTU-FM	:		
WQCD-FM 101.9	:		
WPIX, Inc.	:		
WWOR-TV, Inc.	:		
Infinity Broadcasting Corp. NY d/b/a	:		
WFAN-AM	:		
WPLJ FM Radio	:		
Infinity Broadcasting Corporation d/b/a	:		
WXRK-FM Infinity	:		
Clear Channel Communications, Inc. d/b/a	:		

WAXQ-FM Q104.3 Clear Channel Radio :  
Clear Channel Communications, Inc. d/b/a :  
WHTZ-FM, :  
: :  
Defendants. :  
: :  
\_\_\_\_\_ :

**MEMORANDUM**

**BY: PAUL B. LINDSEY, UNITED STATES BANKRUPTCY JUDGE**

This adversary proceeding was commenced on March 11, 2005 by the debtor, TW, Inc., f/k/a Cablevision Electronics Investments, Inc. (the “Plaintiff”), seeking to avoid and recover certain allegedly preferential transfers, pursuant to § 547(b) of the Bankruptcy Code, in the amount of \$2,569,463.37. Fox Television Stations, Inc. d/b/a WNYW-New York, and WWOR-TV, Inc. filed their Motion to Dismiss the Complaint (the “Motion”) on May 13, 2005. Two other defendants, namely NBC Universal, Inc., WABC Television, LLC, and WPLJ-FM Radio, Inc., have moved to join the Motion.<sup>1</sup> For the reasons set forth below, the Motions will be denied.

**I. Background**

Before filing for Chapter 11 protection on March 14, 2003, TW, Inc. was a retailer of various home entertainment and office products. In July, 2002, Plaintiff entered into a contract with R.J. Palmer whereby R.J. Palmer was to provide media buying services to Plaintiff for the promotion of its products through numerous media outlets. (Plaintiff’s Answering Brief

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<sup>1</sup> All moving defendants, to both the original Motion and the Joinder Motions, shall be collectively referred to as “Defendants.”

in Opposition to Memorandum of Law in Support of Defendant's Motion to Dismiss, at 2) According to the Complaint, R.J. Palmer purchased advertising space from nineteen radio and television stations. Plaintiff alleges that it paid R.J. Palmer for the advertising, who then retained a commission and forwarded the remaining funds to the nineteen radio and television stations. These radio and televisions stations have been named co-defendants in this proceeding.

## **II. Jurisdiction and Venue**

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334 and 157(b)(1), and it is a core proceeding under 28 U.S.C. §157(b)(2), (A), (B), (F) and (O). Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1409.

## **III. Discussion and Decision**

Defendants move to dismiss the adversary proceeding pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff has failed to allege sufficient facts in order to state a claim upon which relief can be granted, and further, that the Plaintiff is barred from amending its Complaint to cure such deficiencies by the applicable statute of limitations. Specifically, Defendants contend that Plaintiff has merely recited the statutory language of § 547(b) and has not identified any unlawful transfers made to Defendants. (Defendant's Memorandum of Law in Support of Motion to Dismiss Complaint Filed by Plaintiff, at 3)

In order to prevail on a motion to dismiss pursuant to Rule 12(b)(6), the movant must conclusively establish that there is no set of facts upon which the plaintiff could recover on its claim. *Pardo v. Gonzaba (In re APF Co.)*, 308 B.R. 183, 186 (Bankr.D.Del., 2004) (citing *Morse v. Lower Merion School Dist.*, 132 F.3d 902, 906 (3<sup>rd</sup> Cir.(Pa.), 1997)). The Court must construe the complaint in the light most favorable to the non-moving party. *Rocks v. City of*

*Philadelphia*, 868 F.2d 644, 645 (3d Cir.(Pa.), 1989). And further, it must “accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom.”

*Morse*, 132 F.3d at 906; *Hechinger Inv. Co. of Delaware Inc. v. M. G. H. Home Improvement (In re Hechinger Inv. Co. of Delaware Inc.)*, 288 B.R. 398, 400 (Bankr.D.Del., 2003).

Defendants rely upon *Valley Media, Inc. v. Borders, Inc. (In re Valley Media, Inc.)*, 288 B.R. 189 (Bankr.D.Del., 2003) to argue that Plaintiff has set forth the requisite information as to only one Defendant, R.J. Palmer, and has failed to include most of this information with respect to the other Defendants.<sup>2</sup> (Defendant’s Memorandum of Law, at 4) Defendants claim that the Complaint fails to identify the amounts, dates, and the antecedent debt for which the alleged transfers were made. Therefore, they urge this Court to dismiss the Complaint with prejudice.

Conversely, Plaintiff argues that the Complaint sufficiently states a claim based upon the facts as alleged and that those allegations satisfy Fed. R. Civ. P. 8. Plaintiff cites *The IT Group, Inc. v. Brandywine Apartments (In re The IT Group, Inc.)*, 313 B.R. 370 (Bankr.D.Del., 2004), in which this Court denied a motion to dismiss premised solely upon the argument that the plaintiff had failed satisfy the heightened pleading requirements of *Valley Media*. In *The IT Group*, this Court held that the plaintiff was not required to comply with the heightened pleading requirements:

While plaintiffs should be encouraged to provide specific

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<sup>2</sup> *Valley Media* required the following to be included in a complaint to avoid a preference in order to survive a motion to dismiss: (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.

information in support of their claims whenever possible, to require them to do so in their initial pleading in all cases, particularly with the specificity demanded by *Valley Media*, is in this court's view inappropriate and unnecessarily harsh. The fact that Bankruptcy Rule 7008, which contains special pleading requirements in certain adversary cases before bankruptcy judges, fails to provide any such additional requirements for preference actions indicates it was intended that the adequacy of pleadings in such actions be judged under the notice pleading standard of Civil Rule 8(a)(2), which requires only a "short and plain statement of the claim showing that the pleader is entitled to relief." So long as the defendant is provided "fair notice of what the plaintiff's claim is and the grounds upon which it rests," *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 103 (1957) the complaint should not be dismissed for failure to state a claim. Further elaboration, if required, may be obtained through the discovery process.

*Id.*, at 373.

Plaintiff also directs this Court to consider *TWA Inc. Post Confirmation Estate v. Marsh USA Inc., et al., (In re TWA Inc. Post Confirmation Estate)*, 305 B.R. 228 (Bankr.D.Del., 2004). The facts in *TWA* were similar to this proceeding. The defendant, Marsh USA Inc. ("Marsh") was an insurance broker/ agent for TWA Inc. ("TWA") and arranged insurance coverage for the other defendants to that proceeding. Marsh was paid by a single check from the debtors for the aggregate amount of the insurance premiums. Marsh then forwarded the appropriate amounts to each defendant while retaining a portion of the funds as an agency commission. After filing for bankruptcy under Chapter 11 in January, 2002, TWA demanded that Marsh return the payment by letter, dated November 22, 2002. Marsh failed to respond or return the payment, and TWA filed an adversary proceeding to avoid and recover the payment as an allegedly preferential transfer.

Marsh subsequently filed a motion to dismiss the complaint pursuant to Fed. R.

Civ. P. 12(b)(6), alleging that TWA had not plead sufficient facts and therefore, had failed to state a claim based upon *Valley Media*. The Court held that the complaint did not plead sufficient facts and granted the motion to dismiss but allowed TWA the right to file an amended complaint within thirty days. In allowing the amendment, the Court reasoned:

In drafting the amendment TWA might face difficulty satisfying the elements set forth in *Valley Media* because, given the fact that the Debtors were transferring payments through Marsh, they presumably do not have the specific information as to the amounts and when they were transferred by Marsh to the individual insurance carriers. Thus, the fact situation we have here would warrant a relaxation of the rule as I articulated it in the two prior decisions. TWA will be entitled to pursue these details in discovery. Thus, the detail required of TWA for a proper complaint is essentially the information set forth in the November 22, 2002 letter.

*Id.*, at 234. The November 22, 2002 letter, while referenced, was not attached to nor made part of the complaint.

Plaintiff's Complaint in this proceeding alleges that the co-Defendants were immediate or mediate transferees of the payments made by Debtor to R.J. Palmer, or alternatively, "to the extent that RJ Palmer is not a transferee under 11 U.S.C. § 547 of the Debtor's Transfers, Plaintiff is entitled under 11 U.S.C. § 550(a)(1) to recover the Transfers as Preferences from the entities for whose benefit such Transfers were made." (Complaint, at 8) Exhibit A to the Complaint details the payments made to R.J. Palmer, including the invoice number, date, and amount, and the check number, date and amount.

It is clear that the information contained within the Complaint and listed on Exhibit A was enough to put Defendants on notice of the claims against them and satisfy the requirements of Fed. R. Civ. P. 8. Moreover, it is also evident pursuant to the holding in *TWA*

that based upon the fact situation as it is presented here, Plaintiff would not have the specific information on the alleged transfers with regard to Defendants in this proceeding. Plaintiff cannot and should not be required to plead in accordance with *Valley Media*.

Therefore, Defendants' Motions to Dismiss will be **DENIED** in their entirety. Defendants will be allowed ten days in which to file an answer to the Complaint. An appropriate order follows.

Dated: August 31, 2005  
Wilmington, DE

A handwritten signature in cursive script that reads "Paul B. Lindsey". The signature is written in black ink and is positioned above the printed name and title.

PAUL B. LINDSEY  
UNITED STATES BANKRUPTCY JUDGE

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**ORDER DENYING MOTIONS OF CERTAIN DEFENDANTS  
TO DISMISS COMPLAINT**

For the reasons set forth in the accompanying Memorandum of even date herewith, the Defendants' Motions to Dismiss the Complaint are hereby **DENIED**. Defendants shall have ten (10) days from the date of this Order to answer the Complaint.

Dated: August 31, 2005  
Wilmington, DE

BY THE COURT:



PAUL B. LINDSEY  
UNITED STATES BANKRUPTCY JUDGE