

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

In re:)	
)	
OODC, LLC)	Case No. 01-11322 (MFW)
f/k/a Optical Datacom, LLC,)	
)	Chapter 11
Debtor.)	
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Frederick B. Rosner, as Chapter 11 Trustee)	
for the Estate of OODC, LLC,)	Adversary Proceeding
)	03-58706 (PBL)
Plaintiff.)	
v.)	
)	Related Document: 17, 18, 21, 23
Runway Investments, LLC,)	
)	
Defendant.)	

MEMORANDUM

Plaintiff has brought this adversary proceeding seeking avoidance and recovery of certain transfers, in the aggregate amount of \$449,651.66, under Sections 544, 547, 548 and 550 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., and under certain provisions of the Colorado Uniform Fraudulent Transfer Act (Colo. Rev. Stat. §§ 38-8-105, 106, and 110). This Court has jurisdiction of this matter under 26 U.S.C. §§ 157 and 1334. This is a core proceeding under 26 U.S.C. §§ 157(b)(2), (A), (F), (H), and (O).

The matter before the Court is the Motion for Summary Judgment (“the Motion”) filed on August 31, 2004 by Runway Investments, LLC, the Defendant in the above-captioned adversary

proceeding. This Court has considered the Motion, supporting brief, and exhibits submitted by Defendant; the Response of Plaintiff in opposition to the Motion, and Defendant's Reply Brief and accompanying exhibits.

Initially, the Court notes that in its response, Plaintiff does not object to, or even refer to, the portion of Defendant's Motion which seeks summary judgment as to Plaintiff's causes of action under § 548 of the Bankruptcy Code and under the Colorado Uniform Fraudulent Transfer Act. Thus, Plaintiff has conceded Defendant's entitlement to summary judgment as to each of those causes of action.

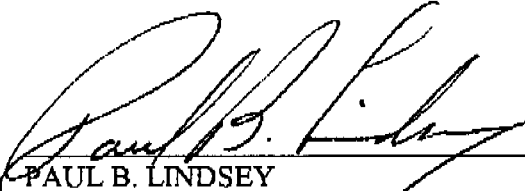
In its response, Plaintiff addresses only the attack upon its cause of action under § 547 of the Bankruptcy Code. Plaintiff acknowledges that of the \$449,651.66 of payments sought to be avoided and recovered under §§ 547 and 550, payments totaling \$287,018.15 were made pursuant to certain unexpired leases which were assumed under § 365 of the Bankruptcy Code during the course of its Chapter 11 bankruptcy case, and that as such, under *Kimmelman v. Port Auth. of N.Y. and N.J. (In re Kiwi Int'l Air Lines, Inc.)*, 344 F.3d 311 (3d Cir. 2003), they may not be avoided. Thus, Defendant is entitled to partial summary judgment as to transfers by Debtor to Defendant totaling \$287,018.15.

In this Court's view, genuine issues of material fact exist which preclude the Court from determining that Defendant is entitled to judgment as a matter of law, including a determination of whether Defendant has established the affirmative defense claimed by it under § 547(c)(1) of the Bankruptcy Code.

Based upon the foregoing, Summary Judgment will be granted to Defendant and against Plaintiff as to the Second, Third and Fourth Causes of Action contained in Plaintiff's complaint;

partial summary judgment will be granted to Defendant and against Plaintiff as to transfers totaling \$287,018.15 referred to in the First Cause of Action contained in Plaintiff's complaint; and Defendant's motion for summary judgment will be in all other respects denied. An appropriate judgment will be issued contemporaneously herewith.

Dated this 8th day of December, 2004.



PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE

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)	
Defendant.)	

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

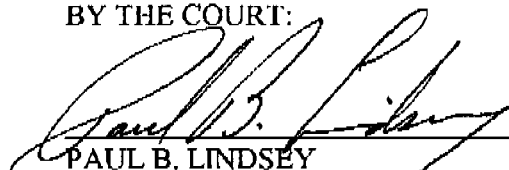
For the reasons set forth in the Court's Memorandum of this date, **IT IS HEREBY ORDERED** that summary judgment is granted to Defendant and against Plaintiff as to the Second, Third and Fourth Causes of Action contained in Plaintiff's complaint;

ORDERED that partial summary judgment is granted to Defendant and against Plaintiff as to transfers totaling \$287,018.15 referred to in the First Cause of Action contained in Plaintiff's complaint; and

ORDERED that Defendant's motion for summary judgment is, in all other respects, **DENIED**.

Dated: December 8, 2004
Wilmington, DE

BY THE COURT:



PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE