

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

In Re)	Chapter 11
)	
CAMBRIDGE INDUSTRIES HOLDINGS,)	Case Nos. 00-1919
INC., CAMBRIDGE INDUSTRIES INC.,)	through 00-1921 (LK)
and CE AUTOMOTIVE TRIM SYSTEMS,)	
INC.,)	
)	Jointly Administered
Debtors.)	
)	
JOHN J. CALIOLO, as Liquidating)	
Trustee for the Cambridge)	
Industries, Inc. Liquidating Trust)	
)	
Plaintiff,)	Adv. Proc. No. 02-3405
)	
v.)	
)	
TKA FABCO CORP.,)	
)	
Defendant.)	
)	

**MEMORANDUM OPINION ON DEFENDANT
TKA FABCO CORP.'S MOTION FOR SUMMARY JUDGMENT¹**

I. INTRODUCTION

Before the court is the motion of Defendant TKA Fabco Corp., formerly d/b/a Krupp Fabco Company, formerly d/b/a Fabricated Steel Products, Ltd. ("Defendant") for summary judgment pursuant to Fed.R.Civ.P. 56 as incorporated by Fed.R.Bankr.P. 7056 [Doc.

¹ This opinion constitutes the findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

No. 27]. The motion seeks dismissal of the Liquidating Trustee's ("Trustee") preference action.²

II. ISSUE

The issue presented by the motion is whether § 502(d) of the Code³ precludes a preference action against a creditor, when the creditor's claim was the subject of a claim objection by a debtor and was allowed by order of court.

III. FACTS

The Debtors filed their voluntary petition for relief under Chapter 11 of the Bankruptcy Code on May 10, 2000. The Debtors' Modified Second Amended Joint Consolidated Liquidating Plan of Reorganization was confirmed by Order of August 6, 2001 (Case No. 00-1919, Doc. No. 1578). The Liquidating Plan became effective on August 17, 2001.

There are two separate administrators provided for in the Confirmation Order. The Confirmation Order allows the Plan

² This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and 157 (a). This is a core proceeding pursuant to 28 U.S.C. § 157 (b) (1) and (b) (2) (F).

³ All statutory references herein are to the Bankruptcy Code, 11 U.S.C. § 101 et seq., unless otherwise indicated.

Administrator to resolve disputed claims and administer the Disputed Claims Reserve Trust [Confirmation Order at 13, ¶ 11]. In addition, the Order provides that the Liquidating Trustee shall have the right to bring preference avoidance claims. [Confirmation Order at 15, ¶ 14].

Defendant filed its timely proof of claim in the amount of \$173,425.63 on August 3, 2000. The Debtors objected to the proof of claim on December 27, 2000, through its Second Omnibus Objection to Claims (as of this date, the Plan had not been confirmed, so there was no Plan Administrator). The objection sought disallowance of the claim in its entirety [Case No. 00-1919, Doc. No. 893, Original NIBS Entry # 891]. The Debtors and Defendant resolved the claim after a reconciliation and negotiation process. As a result of the negotiations, Defendant's claim was ultimately allowed as a general unsecured claim in the amount of \$166,672.91 by Order of February 20, 2002 [Case No. 00-1919, Doc. No. 1954]. Defendant received its first distribution pursuant to the Plan in the amount of \$7221.46 in April 2002.

Thereafter, on May 9, 2002, the Liquidating Trustee, on behalf of the Debtors, filed the complaint in this action to avoid and recover preferential transfers to the Defendant pursuant to §§ 547 and 550. The complaint alleges that Defendant received avoidable preferential transfers in the aggregate amount

of \$91,227.84 [Amended Complaint ¶ 9, Doc. No. 6].

IV. DISCUSSION

A. Summary Judgment Standard

Fed.R.Civ.P. 56 (c) (applicable here by reason of Fed.R.Bankr.P. 7056) provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavit, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56 (c); Fed.R.Bankr.P. 7056. In other words, summary judgment is appropriate only when (i) there is no genuine issue concerning any material fact, and (ii) the undisputed facts entitle the moving party to judgment as a matter of law. Celotex Corp. V. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986); Wetzel v. Tucker, 139 F.3d 380, 383 n.2 (3d Cir. 1998). The substantive law determines which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Boyle v. County of Allegheny Pennsylvania, 139 F.3d 386, 393 (3d Cir. 1998). The court is required to view the facts, and all permissible inferences from such facts, in a light most favorable to the nonmoving party. Matsushida Elec. Indus. Co. V. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986); Boyle, 139 F.3d

at 393; Lasalle Nat'l Bank v. Perelman, 82 F.Supp.2d 279, 290 (D.Del. 2000).

B. Section 502(d)

As set forth in In re LaRoche Industries, Inc., 284 B.R. 406 (Bankr. D.Del. 2002), the language of § 502(d) and principles of fairness do not permit sandbagging of a creditor by, first, objecting to and obtaining a stipulated order allowing the claim in a reduced amount and, after the claim objection has been resolved, commencing an adversary proceeding alleging that the creditor received an avoidable preference.

Furthermore, through § 502(d), the principles of claim preclusion apply to the Order fixing the claim at \$166,672.91. Claim preclusion "generally refers to the effect of a prior judgment in foreclosing successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier claim." In re Continental Airlines, Inc., 279 F.3d 226, 232 (3d Cir. 2002).

The decision in In re Ampace Corporation, 279 B.R. 145 (Bankr. D.Del. 2002), does not require a different result. In that case, there had been no litigation concerning the creditor's claim before the preference avoidance adversary proceeding was commenced. Accordingly, issues of fairness and claim preclusion

were not presented.

Therefore, § 502(d) mandates that the resolution of the Defendant's claim also resolved any potential preference claim by the Debtor against the Defendant. For these reasons, summary judgment will be granted, because there is no genuine issue of material fact in dispute and the Defendant is entitled to judgment as a matter of law.

IV. CONCLUSION

An Order will be entered, granting Defendant's motion for summary judgment and dismissing this adversary proceeding.

Dated: April __, 2003

Lloyd King
United States Bankruptcy Judge

The Clerk shall furnish copies to:

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TKA FABCO CORP.,)	
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Defendant.)	
)	

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
AND DISMISSING COMPLAINT**

For the reasons stated in the Memorandum Opinion of even title and date herewith, it is **ORDERED** that:

- (1) Defendant TKA Fabco Corp.'s motion for summary judgment is hereby granted; and it is further
- (2) **ORDERED** that this adversary proceeding is hereby dismissed.

Dated: April __, 2003

Lloyd King
United States Bankruptcy Judge

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