

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

<i>In Re:</i>)	
)	
UNION STAMPING & ASSEMBLY, INC.,)	Bankruptcy Case No. 06-20586
)	Chapter 11
)	
Debtor.)	
_____)	
)	
ROBERT L. JOHNS , solely in his)	
capacity as the Liquidating Trustee of the)	
Union Stamping & Assembly, Inc.)	
Liquidating Trust,)	
)	Adversary Proceeding No. 08-_____
Plaintiff,)	
)	
v.)	
)	
MH EQUIPMENT CORPORATION)	
)	
Defendant.)	
_____)	

COMPLAINT TO AVOID AND RECOVER PREFERENTIAL TRANSFERS

The Plaintiff, Robert L. Johns, solely in his capacity as the Liquidating Trustee of the Union Stamping & Assembly, Inc. Liquidating Trust (the “Plaintiff”), by counsel, pursuant to Sections 544, 547, and 550 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rule 7001(1) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), for his complaint against MH Equipment Corporation (the “Defendant”), respectfully states and alleges as follows:

THE PARTIES

1. The Plaintiff is the Liquidating Trustee of the Union Stamping & Assembly, Inc. Liquidating Trust (the “Liquidating Trust”).

2. The Defendant is MH Equipment Corporation, a North Carolina corporation with its principal offices located at P.O. Box 50, Mossville, IL 61552 and 3306 Gilmore Industrial Blvd, Louisville, KY 40213. The Defendant's registered agents for service of process are John S. Wieland, 306 Gilmore Industrial Blvd, Louisville, KY 40213 and CT Corporation, 225 Hillsborough Street, Raleigh, NC 27603.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of West Virginia (the "Bankruptcy Court") has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(F) and (H) and Bankruptcy Rule 7001(1). This proceeding is referred to the Bankruptcy Court pursuant to Local Rule of Civil Procedure 83.13 of the United States District Court for the Southern District of West Virginia.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F) and (H).

5. Venue of this adversary proceeding is proper in this Court pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in and related to a Chapter 11 case pending in this district.

6. The statutory predicates for this relief requested in this adversary proceeding are Sections 502(d), 544(b), 547, and 550 of the Bankruptcy Code.

FACTUAL BACKGROUND

7. On September 20, 2006 (the "Petition Date"), an involuntary petition for relief under Chapter 11 of the Bankruptcy Code was filed against Union Stamping & Assembly, Inc. (the "Debtor") in the Bankruptcy Court.

8. On October 3, 2006, upon the consent of the Debtor to the relief requested in the involuntary petition, the Bankruptcy Court entered a Consent Order for Relief Pursuant to 11 U.S.C. § 303 and converted the involuntary case to a voluntary case.

9. On June 7, 2007, the Bankruptcy Court entered an order (the “Confirmation Order”) confirming the Debtor's Amended Liquidating Chapter 11 Plan (the “Plan”). The Effective Date of the Plan occurred on June 21, 2007.

10. Pursuant to the Plan, the Confirmation Order, and that certain Liquidating Trust Agreement dated June 21, 2007 executed by the Plaintiff and the Debtor (the “Liquidating Trust Agreement”), the Plaintiff was appointed as the Liquidating Trustee of the Liquidating Trust as of June 21, 2007. The Liquidating Trust was created for the purpose of receiving, holding and effectuating an orderly liquidation of various assets for the benefit of the Debtor’s creditors in accordance with the Plan

11. Pursuant to the Plan, the Confirmation Order, and the Liquidating Trust Agreement, the Plaintiff has the power to prosecute any and all causes of action of the Debtor arising under Sections 544, 547, and 550 of the Bankruptcy Code.

COUNT I
Avoidance of Preferential Transfers Under 11 U.S.C. § 547(b)

12. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 11 above as if set forth fully herein.

13. Defendant received from the Debtor certain transfers of interests of the Debtor in property totaling \$105,102.04 as more particularly described on Exhibit A attached hereto and incorporated by this references as if set forth fully herein (together with any other recoverable transfers discovered by Plaintiff, the “Transfers”).

14. The Transfers were made by the Debtor to or for the benefit of the Defendant.

15. The Transfers were made by the Debtor to the Defendant for or on account of an antecedent debt owed by the Debtor to the Defendant before the Transfers were made.

16. At the time the Transfers were made, the Debtor was insolvent.

17. The Transfers were made by the Debtor to the Defendant on or within 90 (ninety) days before the Petition Date.

18. The Transfers enabled the Defendant to receive more than the Defendant would have received if (i) the Debtor's case was a case under Chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) the Defendant received from the Debtor's Chapter 7 estate payment of the debts satisfied by the Transfers to the extent permitted by the provisions of the Bankruptcy Code.

19. By reason of the foregoing, the Trustee may avoid the Transfers pursuant to Section 547 of the Bankruptcy Code.

COUNT II
Recovery of Preferential Transfers Under 11 U.S.C. § 550(a)

20. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 19 above as if set forth fully herein.

21. Section 550(a) of the Bankruptcy Code provides:

[To] the extent that a transfer is avoided under section . . . 547 . . . , the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from –

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

22. The Defendant is the initial transferee of the Transfers from the Debtor, the entity for whose benefit the Transfers were made, or an immediate or mediate transferee of the initial transferee pursuant to Section 550(a) of the Bankruptcy Code.

23. To the extent that the Transfers are avoided, Plaintiff may recover the property transferred, or the value of the transferred property, from the Defendant pursuant to Section

550(a) of the Bankruptcy Code, together with interest on that amount from the date of the Transfers until the date of payment and the Plaintiff's attorney fees and costs incurred in this adversary proceeding.

COUNT III
Disallowance of Claims Under 11 U.S.C. § 502(d)

24. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 23 above as if set forth fully herein.

25. Pursuant to Section 502(d) of the Bankruptcy Code, any claims of Defendant against the Debtor must be disallowed until such time as the Defendant pays to Plaintiff an amount equal to the aggregate amount of all the Transfers.

COUNT IV
Attorney Fees and Costs

26. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 25 above as if set forth fully herein.

27. The Plaintiff has found it necessary to employ attorneys to investigate and prosecute the claims stated herein. Accordingly, the Plaintiff seeks recovery from the Defendant for the Plaintiff's reasonable and necessary attorney fees and costs as are equitable and just, and such other costs and fees as may otherwise be permitted by law.

WHEREFORE, the Plaintiff respectfully prays that the Court grant and enter a judgment in his favor and against the Defendant as follows:

- (a) Avoiding the Transfers as preferential transfers pursuant to Section 547(b) of the Bankruptcy Code;
- (b) Directing and ordering the Defendant to pay to the Plaintiff the value of the Transfers or return the property transferred, with interest thereon at the highest

legally permissible rate from the date of the Transfers until payment or transfer of such amount by the Defendant pursuant to Section 550 of the Bankruptcy Code;

- (c) Disallowing any claim held by the Defendant until the Defendant satisfies the judgment pursuant to Section 502(d) of the Bankruptcy Code;
- (d) Awarding the Plaintiff his costs and attorney fees incurred in connection with the prosecution of this adversary proceeding; and
- (e) Granting such other and further relief as the Bankruptcy Court deems just, equitable, and proper.

Dated: Charleston, West Virginia
September 10, 2008

ROBERT L. JOHNS, solely in his capacity
as the Liquidating Trustee of the Union
Stamping & Assembly, Inc. Liquidating
Trust

By Counsel

/s/ William F. Dobbs, Jr.
William F. Dobbs, Jr. (WV Bar #1027)
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Exhibit A

MH EQUIPMENT CORPORATION

<u>Check Number</u>	<u>Check Date</u>	<u>Clearing Date</u>	<u>Amount</u>
306596	7/12/06	8/4/06	4,050.00
306827	7/26/06	8/10/06	34,651.05
306915	8/3/06	8/16/06	150.00
306970	8/9/06	8/28/06	28,505.00
307041	8/18/06	8/23/06	2,700.00
307092	8/24/06	8/30/06	1,350.00
307201	9/7/06	9/12/06	28,505.00
307257	9/12/06	9/19/06	3,032.36
307396	9/20/06	9/26/06	2,158.63
Total:			105,102.04