

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:)	
THE CONSOLIDATED FGH)	
LIQUIDATING TRUST)	
)	
f/k/a)	CASE NO. 01-52173 ERG
)	
FRIEDE GOLDMAN HALTER, INC.,)	
<i>et al., Jointly Administered</i>)	
_____)	
)	
LIQUIDATING TRUSTEE FOR THE)	
CONSOLIDATED FGH LIQUIDATING)	
TRUST)	
Plaintiff)	
v.)	ADVERSARY NO. 03-5187 ERG
)	
EAGLE-PRO ENGINEERING, INC.)	
Defendant)	

OPINION

The matter before the court is the Motion for Partial Summary Judgment filed by the Liquidating Trustee for the Consolidated FGH Liquidating Trust in the above styled adversary proceeding, as well as the opposition filed thereto. Having considered the pleadings, and the supporting documentation and memoranda, the court concludes that the Motion for Partial Summary Judgment should be granted to the extent of determining that the Trustee has satisfied the initial burden of proof under 11 U.S.C. §547(b) and §550(a). The court further concludes that the Motion for Partial Summary Judgment should be denied at this time to the extent it requests determination regarding appropriate calculations under the new value defense.

I. FACTUAL BACKGROUND

Friede Goldman Halter, Inc. and certain affiliates commenced petitions for relief under Chapter 11 of Title 11 of the United States Code by filing voluntary petitions. Friede Goldman

Delaware, Inc. filed a chapter 11 petition on April 16, 2001. Friede Goldman Halter, Inc. filed its chapter 11 petition on April 19, 2001. Each of the other debtors filed their petitions on April 20, 2001, except Amcane International, Inc. and Sabre Personnel Associations, Inc., which filed petitions on June 1, 2001. The Chapter 11 cases were consolidated under Case No. 01-52173 SEG.¹

On April 17, 2003, an adversary complaint to avoid and recover preferential transfers was filed by Friede Goldman Halter, Inc. and its affiliated jointly administered debtors in possession and the Official Unsecured Creditors Committee of Friede Goldman Halter, Inc. against Eagle-Pro Engineering, Inc. The complaint alleges that preferential transfers were made by Friede Goldman Offshore Texas Limited Partnership to the defendant in the amount of \$70,416.11, consisting of two checks, numbered 2008230 in the amount \$19,558.48, and check number 2900602 in the amount \$50,857.63.

The Liquidating Trustee for The Consolidated FGH Liquidating Trust (“Trustee”) filed a Motion for Partial Summary Judgment in the adversary proceeding on October 15, 2007, seeking judgment in its favor determining that the Trustee has satisfied the burden of proof under 11 U.S.C. § 547(a) and § 550(a) with respect to transfers made to the defendant. The Trustee also seeks partial summary judgment as to avoidable, recoverable transfers that remain after application of the subsequent new value defense under § 547(c)(4), asserting that \$61,517.06 remains recoverable after application of new value.

Eagle-Pro Engineering, Inc., included the following in its response to the request for

¹ A list of the entities constituting the consolidated debtors is contained in footnote 1 of the Liquidating Trustee’s Motion for Partial Summary Judgment, including Friede Goldman Offshore Texas Limited Partnership.

partial summary judgment:

We do not disagree with the desire to narrow the issues in this matter and to resolve facts that are truly not in dispute. . .

We do not dispute most of the alleged uncontested facts listed in the attachment to the motion. We do dispute the accuracy and method of calculation of the “new value” affirmative defense pursuant to § 547(c)(4)(A) . . .

The Plaintiff’s motion for summary judgment should be denied as there exist genuine issues of material fact with respect to the new value defense. Further, as the motion does not address the ordinary course defense, on which the Defendant is entitled to a trial, the request that the Court determine that the transfers in question are avoidable preferences should be denied.

Response of Eagle-Pro Engineering, Inc. filed November 15, 2007.

II. CONCLUSIONS OF LAW

The matter before the court is a core proceeding pursuant to 28 U.S.C. § 157. The court has jurisdiction over the parties and the subject matter to this proceeding pursuant to 28 U.S.C. § 157 and § 1334.

The Liquidating Trustee requests partial summary judgment against the defendant determining that the transfers are avoidable and recoverable preferential transfers under 11 U.S.C. § 547(b) and § 550(a) and determining that after applicable of subsequent new value pursuant to 11 U.S.C. § 547(c)(4), that \$61,517.06 may be avoided.

Summary judgment may be granted if the moving party establishes that there are no genuine issue as to any material fact upon which judgment is requested:

Rule 7056 of the Federal Rules of Bankruptcy Procedure governs summary judgment in an adversary proceeding in bankruptcy court. Rule 7056 incorporates Rule 56 of the Federal Rules of Civil Procedure. Fed. R. Bank. P. 7056. Under Rule 56(c), summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

Whitaker Construction Company, Inc. v. Benton & Brown, Inc. (In re Whitaker Construction Company, Inc.), 411 F.3d 197, 201 (5th Cir. 2005). *See also, Peoples State Bank v. General Electric Capital Corp. (In re Ark-La-Tex Timber Co., Inc.)*, 482 F.3d 319, 328 -329 (5th Cir. 2007), *Baker Hughes Oilfield Operations, Inc. v. Cage (In re Ramba, Inc.)*, 416 F.3d 394, 403 (5th Cir. 2005).

Based on the pleadings and supporting documentation and affidavit filed by the Trustee, the court concludes that the Trustee has established a prima facie case under 11 U.S.C. § 547(b) showing that the subject transfers were made to Eagle-Pro Engineering, Inc., for the benefit of the defendant, on account of an antecedent debt, while the debtor was insolvent,² within 90 days before filing of the petition, and that enabled the creditor to receive more than it would have received if the case were a case under chapter 7, the transfers had not been made and the creditor received payment to the extent provided under the Bankruptcy Code.³ The Trustee has further established that the defendant was the initial transferee of the transfers. Therefore, the court concludes that the Motion for Partial Summary Judgment should be granted to the extent of determining that the Trustee has established the requisites necessary to establish an avoidable preferential transfer pursuant to the requirements of 11 U.S.C. §547(b) and §550(a), except as follows.

The Trustee also seeks partial summary judgment as to the amount of recoverable transfers that remain after application of the subsequent new value defense available to the

² The debtor is presumed insolvent under 11 U.S.C. § 547(f).

³ The Trustee has established that the defendant-creditor received 100% of the amount owed, but that under the confirmed plan the estimated recovery for general unsecured claims is 3.2% - 6.2%.

defendant under 11 U.S.C. § 547(c)(4). However, the defendant has provided documentation to dispute the accuracy and method of calculation of the new value defense. The court concludes that summary judgment should not be granted as to the amounts avoidable after application of the new value defense, and the request for partial summary judgment should be denied to that extent.⁴

An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

This the 1st day of February, 2008.

/s/ Edward R. Gaines
EDWARD R. GAINES
UNITED STATES BANKRUPTCY JUDGE

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⁴ It is further noted that the request for partial summary judgment does not include a request for judgment on other defenses that may have been raised, such as the ordinary course defense, and the court's ruling herein does not make determinations as to such defenses.