

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Chapter 11
)	
Gulf Packaging, Inc.,)	Case No. 15-15249
)	
Debtor.)	Honorable Judge Pamela S. Hollis
)	
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)	
Joseph E. Myers, as Creditor Trustee for)	
the Gulf Packaging Creditor Trust,)	
)	Adv. No. 16-_____
Plaintiff,)	
)	
v.)	
)	
Falcon Express, Inc.)	
)	
Defendant.)	
)	

COMPLAINT

Joseph E. Myers, as Creditor Trustee (the “*Creditor Trustee*”) for the Gulf Packaging, Inc. Creditor Trust (the “*Creditor Trust*”), through its undersigned counsel, brings this complaint (the “*Complaint*”) to avoid and recover transfers and for related relief under §§ 544, 547, 548, 550, and 502(d) of title 11 of the United States Code (the “*Bankruptcy Code*”). The Creditor Trustee alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this adversary proceeding (the “*Adversary Proceeding*”), which arises under the Bankruptcy Code, and arises in and relates to a case under the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, case number 15-15249, under 28 U.S.C. §§ 157 and 1334. This is a core proceeding

within the meaning of 28 U.S.C. § 157(b)(2), and venue is proper in the Northern District of Illinois under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Complaint are §§ 544, 547, 548, 550 and 502(d) of the Bankruptcy Code, and Federal Rule of Bankruptcy Procedure 7001(1).

BACKGROUND

I. The Debtor's Operations

3. Gulf Packaging, Inc. (the "*Debtor*") was formed as a Texas corporation on February 14, 2012. The Debtor held itself out as a national distributor of packaging equipment and supplies.

4. On or about March 31, 2014, the Debtor entered into a Loan and Security Agreement (the "*Loan*") with FCC, LLC ("*FCC*") under which FCC made certain loans to the Debtor.

5. In connection with the Loan, the Debtor granted FCC first priority liens on substantially all of its assets.

6. The FCC Loan permitted the Debtor to borrow up to 85% of eligible accounts receivable and 50% of eligible inventory.

7. Upon information and belief, the value of the Debtor's assets, including accounts receivable and inventory, were significantly less than their reported book values.

8. During the two years preceding April 29, 2015 (the "*Two Year Period*"), the amount of the Debtor's liabilities exceeded the value of its assets.

9. During the Two Year Period, it was the Debtor's business practice to routinely pay vendors for goods that were not shipped to, or received by, the Debtor.

10. During the Two Year Period, it was also the Debtor's business practice to routinely make payments on invoices that vendors had issued to the affiliates, rather than to the Debtor.

II. The Bankruptcy Case

11. The Debtor filed its voluntary chapter 11 bankruptcy petition on April 29, 2015 (the "*Petition Date*").

12. After the sale of substantially all of the Debtor's assets in the bankruptcy case, the Debtor submitted a plan of liquidation (the "*Plan*") to the Court,¹ providing for the orderly liquidation of the Debtor's remaining assets. The Court confirmed the Plan by an order dated December 15, 2015 (the "*Confirmation Order*").²

13. The Creditor Trust was created under the Plan for the benefit of holders of allowed claims and interests in the Debtor's estate. The purpose of the Creditor Trust is to provide a means of liquidating and monetizing Creditor Trust proceeds, in part through the prosecution of transferred avoidance actions under chapter 5 of the Bankruptcy Code.

14. Under the terms of the Plan, Confirmation Order, and related Creditor Trust Agreement,³ all of the Debtor's remaining assets were transferred to the Creditor Trust on January 22, 2016, the effective date of the Plan. Included among the assets transferred to the Creditor Trust were actions under chapter 5 of the Bankruptcy Code.

15. Under section 3.2 of the Creditor Trust Agreement, the Creditor Trustee is charged with prosecuting and liquidating chapter 5 avoidance actions. Accordingly, the Creditor Trustee has the authority to prosecute and settle the claims asserted in this Complaint.

¹ (Dkt. 266.)

² (Dkt. 317.)

³ (Dkt. 331.)

16. This Adversary Proceeding is governed by the procedures approved by the Court's April 12, 2016 *Order Granting the Creditor Trustee's Motion to Establish Procedures Governing Adversary Proceedings*.⁴

17. On information and belief, the defendant's name is Falcon Express, Inc. (the "*Defendant*"), and is a business entity organized under the laws of the state of Illinois, with its principal place of business in Illinois.

COUNT I
Avoidance of Fraudulent Transfers Under 11 U.S.C. § 548(a)(1)(B)

18. The Creditor Trustee incorporates all preceding paragraphs of this Complaint as if fully realleged here.

19. During the two years preceding the Petition Date, the Debtor made one or more transfers to the Defendant totaling at least \$11,112.91, including, without limitation, those transfers more specifically identified in *Exhibit A* attached to this Complaint and incorporated here by reference, together with any other transfers later identified (the "*Fraudulent Transfers*" or "*Transfers*") by the Creditor Trustee.

20. Each Fraudulent Transfer constituted a transfer of an interest of the Debtor in property; namely, cash from a deposit account in the Debtor's name.

21. Each Transfer was made within two years before the Petition Date.

22. Upon information and belief, each fraudulent transfer paid an invoice issued by the Defendant to an Affiliate and was not billed to the Debtor by the Defendant, or for goods that were not shipped to, or received by, the Debtor.

⁴ (Dkt. 385.)

23. As such, the Fraudulent Transfers were not made on account of antecedent debts owed by the Debtor to the Defendant, and the Debtor did not receive reasonably equivalent value in exchange for the Fraudulent Transfers.

24. The Debtor's liabilities exceeded its assets in the two years preceding the Petition Date because the value of the Debtor's accounts receivable and inventory was significantly less than its reported book value.

25. On the date each Transfer was made, the Debtor:

- a. was insolvent or became insolvent as a result of such Transfer;
- b. was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with such Debtor was an unreasonably small capital; or
- c. intended to incur, or believed it would incur, debts that would be beyond its ability to pay as such debts matured.

26. For these reasons, the Creditor Trustee may avoid the Transfers as fraudulent under § 548(a)(1)(B) of the Bankruptcy Code.

COUNT II
Avoidance of Preferential Transfers Under 11 U.S.C. § 547(b)
Plead in the Alternative to Count I

27. The Creditor Trustee incorporates paragraphs 1-17 of this Complaint as if fully realleged here.

28. During the ninety-day period preceding the Petition Date, between January 29, 2015 and April 29, 2015 (the "*Preference Period*"), the Debtor continued to operate its business affairs, including the transfer of property, either by checks, cashier checks, wire transfers, direct deposit, or otherwise to certain entities, including the Defendant.

29. During the Preference Period, the Debtor made one or more transfers to the Defendant totaling at least \$11,112.91, including, without limitation, those transfers more specifically identified in *Exhibit A* attached to this Complaint and incorporated here by reference,

together with any other transfers later identified (the “*Preferential Transfers*,” and together with the Fraudulent Transfers, the “*Avoidable Transfers*”) by the Creditor Trustee.

30. The Defendant was a creditor of the Debtor within the meaning of § 101(10)(A) of the Bankruptcy Code at the time of each of the Preferential Transfers.

31. The Creditor Trustee has determined that the Preferential Transfers made by the Debtor were transfers of an interest of the Debtor in property through payments totaling at least \$11,112.91.

32. Each Preferential Transfer was made to or for the benefit of the Defendant, within the meaning of § 547(b)(1) of the Bankruptcy Code, because each Preferential Transfer either reduced or fully satisfied a debt then owed by the Debtor to the Defendant.

33. Each Preferential Transfer was made for or on account of an antecedent debt owed by the Debtor to the Defendant before such Preferential Transfer was made.

34. The Debtor was insolvent throughout the Preference Period because the sum of the Debtor’s respective debts was greater than the fair value of its respective assets.

35. Each Preferential Transfer was made on or within ninety days before the Petition Date.

36. Each Preferential Transfer enabled the Defendant to receive more than the Defendant would have if:

- a. the Debtor’s case was brought under chapter 7 of the Bankruptcy Code;
- b. the Preferential Transfers had not been made; and
- c. the Defendant had received payment of such debt to the extent provided by the Bankruptcy Code.

37. For these reasons, the Creditor Trustee may avoid the Preferential Transfers under § 547(b) of the Bankruptcy Code.

COUNT III
Recovery of Avoidable Transfers Under 11 U.S.C. § 550

38. The Creditor Trustee incorporates paragraphs 1-17 of this Complaint as if fully realleged here.

39. The Defendant was either (a) the initial transferee of the Avoidable Transfers; (b) the entity for whose benefit the Avoidable Transfers were made; or (c) an immediate or mediate transferee thereof.

40. Upon the avoidance of the Avoidable Transfers under §§548 or 547 of the Bankruptcy Code, the Creditor Trustee may recover the Avoidable Transfers, or the value of the Avoidable Transfers, from the Defendant or any mediate or immediate transferee under § 550 of the Bankruptcy Code.

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

41. The Creditor Trustee incorporates paragraphs 1-17 of this Complaint as if fully realleged here.

42. Section 502(d) of the Bankruptcy Code provides that the claim of any entity or transferee receiving a payment that is avoidable under §§ 547 or 548 of the Bankruptcy Code shall be disallowed unless the entity or transferee turns over the payment or value of the payment.

43. The Defendant is the transferee of the Avoidable Transfers.

44. The Defendant has, or may claim to have, a claim or claims against the Debtor's estate.

45. The Defendant has neither paid nor surrendered the Avoidable Transfers or the value of the Avoidable Transfers to the Creditor Trustee.

46. The Creditor Trustee objects to any and all claims of the Defendant, including, without limitation, all prepetition and postpetition claims, pursuant to § 502(d) of the Bankruptcy Code.

47. For these reasons, the Creditor Trustee is entitled to judgment against the Defendant disallowing all claims of the Defendant unless and until the Defendant returns all amounts due to the Debtor's bankruptcy estate, and any other separately filed objections to such claims are resolved as provided by § 502(d) of the Bankruptcy Code.

RESERVATION OF RIGHTS

48. The Creditor Trustee reserves the right to bring any and all other causes of action he may maintain against the Defendant, including causes of action arising out of the same transactions set forth in this Complaint, and to the extent discovery in this action or further investigation by the Creditor Trustee reveals such other causes of action.

RELIEF REQUESTED

Wherefore, the Creditor Trustee requests that the Court enter judgment in his favor and against the Defendant, granting the following relief:

- A. Avoidance and recovery of the Avoidable Transfers under §§ 548, 547, and 550 of the Bankruptcy Code;
- B. Disallowance of any and all claims filed by the Defendant under § 502(d) of the Bankruptcy Code;
- C. An award to the Creditor Trustee of prejudgment interest at the legally allowable rate;
- D. An award to the Creditor Trustee of costs and expenses of this suit; and

E. Such other and further relief the Court deems just and appropriate.

Date: July 15, 2016

Joseph E. Myers, as Creditor Trustee for the Gulf Packaging, Inc. Creditor Trust

By: /s/ Tricia L. Schwallier
One of Its Attorneys

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