

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
)
GULF PACKAGING, INC.,¹) Case No. 15-15249
)
Debtor.) Hon. Pamela S. Hollis
)

JOSEPH MYERS, not individually but
solely as trustee of the Gulf Packaging,
Inc. Creditor Trust,

Plaintiff,

v.

CAN AM PACKAGING SYSTEMS
LTD,

Defendant.

Adv. No. _____

**COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS AND
PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 502, 547, 548, AND 550**

Joseph Myers, not individually but solely as trustee (the “*Creditor Trustee*”) of the Gulf Packaging, Inc. Creditor Trust (the “*Creditor Trust*”), by and through his undersigned counsel, pursuant to sections 502, 547, 548, and 550 of title 11 of the United States Code, hereby alleges for his Complaint (the “*Complaint*”) against Can Am Packaging Systems Ltd (the “*Defendant*”), upon information and belief as to all matters, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this adversary proceeding which arises under title 11 of the United States Code (the “*Bankruptcy Code*”), and arises in and relates to a case under the Bankruptcy Code in the United States Bankruptcy Court for the Northern

¹ The last four digits of the Debtor’s tax identification number are 5030.

District of Illinois (the “*Court*”), case number 15-15249, pursuant to 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding under 28 U.S.C. § 157(b)(2).
3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409(a).
4. The statutory predicates for the relief requested herein are sections 502, 547, 548, and 550 of the Bankruptcy Code.

BACKGROUND

I. The Debtor’s Operations

5. Gulf Packaging, Inc. (the “*Debtor*”) was formed as a Texas corporation on February 14, 2012.

6. The Debtor held itself out as a national distributor of packaging equipment and supplies.

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

8. In connection with the Loan, the Debtor granted FCC first priority liens on substantially all of the Debtor’s assets.

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

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

11. During the two years prior to April 29, 2015 (the “*Two Year Period*”), the amount of the Debtor’s liabilities exceeded the value of its assets.

12. 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.

13. Additionally, during the Two Year Period, it was the Debtor's business practice to routinely pay invoices that were issued by vendors to the Debtor's affiliates rather than to the Debtor.

II. The Bankruptcy Case

14. On April 29, 2015 (the "*Petition Date*"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

15. After the sale of substantially all of the Debtor's assets in the bankruptcy case, the Debtor filed the First Amended Chapter 11 Plan (the "*Plan*") [ECF No. 266], which provided for the orderly liquidation of the Debtor's remaining assets.

16. On December 15, 2015, the Court entered an order confirming the Plan, which included approval of the Gulf Packaging, Inc. Creditor Trust Agreement (the "*Creditor Trust Agreement*") [ECF No. 331].

17. The Plan became effective on January 22, 2016.

18. Pursuant to Section 3.2 of the Creditor Trust Agreement, the Creditor Trustee is authorized to, among other things, analyze, prosecute and settle avoidance actions under chapter 5 of the Bankruptcy Code.

19. Accordingly, the Creditor Trustee has authority to commence this action on behalf of the Creditor Trust.

20. This adversary proceeding is governed by the procedures approved by the Court's Order Granting the Creditor Trustee's Motion to Establish Procedures Governing Adversary Proceedings dated April 12, 2016. [ECF No. 385.]

21. On information and belief, the Defendant is a business entity with its principal place of business in Quebec, Canada.

COUNT I

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

22. The Creditor Trustee repeats and realleges the allegations of paragraphs 1 through 21 as though fully set forth herein.

23. During the two years prior to the Petition Date, the Debtor made one or more transfer(s) totaling \$645,569.88 (collectively, the “*Fraudulent Transfers*”) to the Defendant.

24. A list of the Fraudulent Transfers, including check number, amount, and payment date, is attached hereto and incorporated herein as Exhibit A.

25. 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.

26. Each Fraudulent Transfer was made within the Two Year Period.

27. Upon information and belief, each Fraudulent Transfer paid an invoice issued by the Defendant to an affiliate of the Debtor and was not billed to the Debtor by Defendant or for goods which were not shipped to or received by the Debtor.

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

29. The Debtor’s liabilities exceeded its assets in the two years prior to the Petition Date because the value of the Debtor’s accounts receivable and inventory was significantly less than its reported book value.

30. Accordingly, on the date each Fraudulent Transfer was made, the Debtor:

- a. Was insolvent or became insolvent as a result of the Fraudulent 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 the Debtor was an unreasonably small capital; or
- c. Intended to incur, or believed it would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

31. For these reasons, the Creditor Trustee may avoid the Fraudulent Transfers as fraudulent under 11 U.S.C. § 548(a)(1)(B).

COUNT II

(In the Alternative, Avoidance of Preferential Transfers Pursuant to Section 547 of the Bankruptcy Code)

32. The Creditor Trustee repeats and realleges the allegations of paragraphs 1 through 31 as if fully set forth herein.

33. During the ninety (90) day period immediately preceding the Petition Date, the Debtor made one or more transfer(s) totaling \$428,693.28 (collectively, the "*Preference Transfers*" together with the Fraudulent Transfers, the "*Avoidable Transfers*") to the Defendant.

34. A list of the Preference Transfers is attached hereto and incorporated herein as Exhibit B.

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

36. Each of the Preference Transfers was a transfer to, or for the benefit of, the Defendant.

37. The Defendant was a creditor of the Debtor within the meaning of section 101(10)(A) of the Bankruptcy Code at the time of each of the Preference Transfers.

38. To the extent that each Preference Transfer paid an invoice issued to the Debtor, each Preference Transfer was for, or on account of, an antecedent debt owing by the Debtor to the Defendant before such Preference Transfers were made.

39. Based on the facts and circumstances of these cases and the presumption of insolvency set forth in section 547(f) of the Bankruptcy Code, each Preference Transfer was made while the Debtor was insolvent.

40. Each Preference Transfer was made on or within ninety (90) days prior to the Petition Date.

41. Each Preference Transfer enabled the Defendant to receive more than it would receive if:

- a. the Debtor's case were cases under chapter 7 of the Bankruptcy Code;
- b. such Preference Transfer had not been made; and
- c. the Defendant received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

42. By reason of the foregoing, Creditor Trustee may avoid the Preference Transfers as preferential transfers pursuant to section 547(b) of the Bankruptcy Code.

COUNT III

(Recovery of Avoidable Transfers Pursuant to Section 550 of the Bankruptcy Code)

43. The Creditor Trustee repeats and realleges the allegations of paragraphs 1 through 42 as though fully set forth herein.

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

45. The Avoidable Transfers, to the extent that they are avoided pursuant to sections 547 or 548 of the Bankruptcy Code, may be recovered by the Creditor Trust pursuant to section 550 of the Bankruptcy Code.

COUNT IV

(Disallowance of Claims Pursuant to Section 502(d) of the Bankruptcy Code)

46. The Creditor Trustee repeats and realleges the allegations of paragraphs 1 through 45 as though fully set forth herein.

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

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

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

50. The Defendant has neither paid nor surrendered the Avoidable Transfers or the value thereof to the Debtor's estate or the Creditor Trust.

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

52. By reason of the foregoing, any claim which the Defendant has filed must be disallowed pursuant to section 502(d) of the Bankruptcy Code until the Avoidable Transfers or the value thereof are returned to the Creditor Trust.

WHEREFORE, the Creditor Trustee respectfully requests that:

- (a) the Avoidable Transfers be avoided pursuant to section 547 or 548 of the Bankruptcy Code, as applicable;
- (b) the Defendant be directed to return the amount of the Avoidable Transfers to the Creditor Trust pursuant to section 550 of the Bankruptcy Code;
- (c) any and all claims held by the Defendant against the Debtor's estate be disallowed pursuant to section 502(d) of the Bankruptcy Code unless and until the amount of such Avoidable Transfers are returned to the Creditor Trust;
- (d) all fees and costs be assessed against the Defendant; and
- (e) the Creditor Trustee be granted such other and further relief as is just and proper.

Dated: July 15, 2016

**JOSEPH MYERS, CREDITOR TRUSTEE
OF THE GULF PACKAGING, INC.
CREDITOR TRUST**

By: /s/ Shelly A DeRousse
One of His Attorneys

Shelly A. DeRousse, Esq.
Devon J. Eggert, Esq.
Elizabeth L. Janczak, Esq.
FREEBORN & PETERS LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677
Telephone: 312.360.6000
Facsimile: 312.360.6520
sderousse@freeborn.com
degert@freeborn.com
ejanczak@freeborn.com

Counsel for the Creditor Trustee