

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Case No. 02-02474
	)	
KMART CORPORATION, etal	)	Chapter 11
	)	Chief Judge Susan Pierson Sonderby
Debtors	)	
	)	

MOTION FOR SUMMARY JUDGEMENT

Now comes the Claimant, David Kersh [Kersh] and states his motion:

1. On August 3, 2007, Kersh received a check for \$10, 595.18 [exhibit 1] from the debtor which he never cashed along with a letter [exhibit 2] which stated as follows:

“Solely, in order to avoid costs of continued litigation over your claim, and without admitting the merits of your claim, Kmart has elected to allow your claim as filed, specifically as a secured claim for \$96, 119”.

2. As such, the only issue before this court is a determination what constituted the secured claim and whether this court had jurisdiction over the claim.
3. Kmart, in the letter, makes the claim that the collateral that might have secured the claim no longer exists as follows:

“Because whatever collateral that might have once secured the claim no longer exists, and because there is no security agreement or UCC Financing Statement that describes any collateral, Kmart will pay you the value of the collateral which it determines as zero”

5. In fact, the collateral still exists because the collateral is cash collected by Kmart in December 1990 from the sale of the Metro Passbook memberships which they placed in segregated account and then lost the account number.
6. If Kmart had title to the Metro Passbook memberships then ~~on the cash they collected~~ would

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properly be part of this bankruptcy and the Metro Passbook memberships would be the collateral, but according to the contracts between Kmart and the claimant, Kmart agreed that it had no title or ownership in the Metro Passbook memberships [paragraph 3A-exhibit 4] as follows:

“The title and ownership of said memberships consigned under the terms of this contract, and all proceeds from the sale of same, shall remain vested in the consignor, and be his sole property and subject to his order; until the full amount to be received for said memberships as herein provided, shall have been received by the consignor.”

7. As Kmart never acquired title or ownership of the Metro Passbook memberships they have no ownership in the proceeds from the sale of the memberships and this court has no jurisdiction over the claim.
8. As such, this court should order this claim removed to the Federal Court along with the \$96,119 being held by Kmart in trust.
9. Under the contract between the parties, Kmart has been holding the claimant's cash since December 1990 although it has never had any legal right to do so and this court must order Kmart to turn over the claimant's \$96,119.00 to him.
10. At all times the failure of Kmart to pay the claimant money which they should have properly segregated to the present date and then falsely claiming that the cash was not cash thereby permitting it to become part of this bankruptcy constitutes fraud which is not dischargeable in bankruptcy.
11. As such, the claimant is entitled to the immediate payment of the full \$96,119.00 because of the fraud of the debtor.
12. The claimant relies on his brief herein attached.

Wherefore Kersh prays for the relief requested.

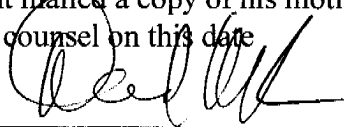
August 23, 2009



DAVID KERSH  
PO BOX 75166  
HONOLULU, HI 96836

Proof of mailing

The claimant mailed a copy of his motion  
to opposing counsel on this date



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