

FILED IN UNITED STATES  
BANKRUPTCY COURT  
DISTRICT OF UTAH

APR 3 1986

ROBERT M. WILLY

IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF UTAH  
CENTRAL DIVISION

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LOREN D. MARTIN,

Defendant-Appellant,

-vs-

WASATCH FACTORING, INC., a  
Utah corporation,

Plaintiff-Appellee.

MEMORANDUM DECISION  
AND ORDER

Civil No: C-86-0025W

C.P. No. 85 PA-0687

This matter is before the court on appeal from the bankruptcy court. Appellant Loren D. Martin ("Martin") claims that the bankruptcy court erred in granting summary judgment in favor of appellee Wasatch Factoring, Inc. ("Wasatch"). A hearing was held on March 25, 1986. Appellant Martin was represented by Claron C. Spencer. Appellee Wasatch was represented by Gary N. Anderson. At the conclusion of the hearing, the court took the matter under advisement. The court has reviewed and carefully considered the parties' oral arguments, the record on appeal, and the briefs, including various authorities cited therein. Now being fully advised, the court renders the following memorandum decision and order.

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### Background

On or about July 11, 1983, Wasatch issued a \$5,000 check payable to N. Blaine Cook, Bruce M. Cook, and Dwight D. Cook. The Cooks were officers and/or directors of Wasatch. The \$5,000 transfer was made pursuant to a corporate indemnity agreement, whereby Wasatch had agreed to indemnify the Cooks for expenses incurred in defending lawsuits against them in their capacity as officers and directors of Wasatch. At the time of the transfer, Wasatch was a debtor in possession in a Chapter 11 bankruptcy proceeding. The transfer was not authorized by the bankruptcy court.

The Cooks endorsed and transferred the check to Martin, an attorney retained to defend the Cooks in a lawsuit, for deposit in a trust account to pay for legal services which Martin had agreed to render in the Cooks' behalf. As services were rendered, Martin withdrew funds, totalling \$3,456.80, from the trust account. Martin returned the balance of the trust account to the Cooks.

Wasatch brought an 11 U.S.C. § 550 action against Martin, alleging that the \$3,456.80 Martin received for rendering legal services in behalf of the Cooks was recoverable as an avoidable postpetition transfer from Wasatch.

### Discussion

The parties acknowledge that Wasatch's transfer of the

\$5,000 to the Cooks was a voidable postpetition transfer. See 11 U.S.C. § 549(a).<sup>1</sup> Hence, Wasatch may recover the \$5,000 or any portion thereof, pursuant to 11 U.S.C. § 550(a), from (1) the initial transferee of the transfer or the entity for whose benefit the transfer was made, or from (2) any immediate or mediate transferee of the initial transferee.

It is clear as a matter of law that Martin was not the § 550(a)(1) initial transferee of the \$5,000 transferred from Wasatch to the Cooks. The Cooks, who received the payment pursuant to Wasatch's indemnification obligations, were clearly the initial transferees.

The bankruptcy court determined, however, that Martin came within § 550(a)(1) because Martin was the entity for whose benefit Wasatch's transfer of the \$5,000 was made and that Wasatch could therefore recover the \$3,456.80 that Martin received for rendering legal services for the Cooks. This court is of the opinion, however, that as a matter of law, Martin was not the entity for whose benefit the \$5,000 transfer was made by Wasatch. Although Martin ultimately benefitted from the transfer by depositing the \$5,000 into the trust account as security for services to be performed and subsequently receiving \$3,456.80,

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<sup>1</sup> 11 U.S.C. § 549(a) provides in relevant part: "[T]he trustee may avoid a transfer of property of the estate--(1) made after the commencement of the case; and (2) . . . (B) that is not authorized under this title or by the court."

Wasatch transferred the \$5,000 check for the benefit of the Cooks. As officers and directors of Wasatch, the Cooks were entitled to the funds pursuant to the indemnification arrangement between the Cooks and Wasatch. Section 550(a)(1) only applies to entities for whose benefit the transfer from the debtor was made, not to every entity who ultimately benefits from the transfer. Consequently, this court agrees with Martin's position that the bankruptcy court erred in determining that Martin was the entity for whose benefit the transfer was made. Summary judgment should have been granted in Martin's favor on the issues of whether Martin was an initial transferee and whether he was an entity for whose benefit the transfer was made, as described in 11 U.S.C. § 550(a)(1).

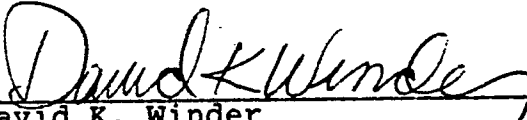
As an additional matter, although Martin does not come within 11 U.S.C. § 550(a)(1) because he is not the initial transferee or the entity for whose benefit the \$5,000 transfer was made, it is clear that Martin comes within 11 U.S.C. § 550(a)(2), since he was an immediate transferee of the initial transferees (the Cooks). Thus, Wasatch may recover from Martin the money transferred to him by the Cooks, unless Martin can prove the 11 U.S.C. § 550(b) defense. 11 U.S.C. § 550(b) states in relevant part: "The trustee may not recover under section (a)(2) of this section from--(1) a transferee that takes for value, including satisfaction or securing of a present or

antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided." Whether Martin took the transfer of funds from the Cooks in good faith and without knowledge of the voidability of the transfer is a genuine issue of material fact that cannot be disposed of on a summary judgment motion. This court will therefore remand this case to the bankruptcy court so that the factual issues raised by § 550(b)(1) can ultimately be considered and decided.

Accordingly,

IT IS HEREBY ORDERED that the bankruptcy court's summary judgment in favor of Wasatch is reversed. The case is remanded to the bankruptcy court to proceed in accordance with this memorandum decision and order.

Dated this 31<sup>st</sup> day of March, 1986.

  
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David K. Winder  
United States District Judge