

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

YOUNG TECHNOLOGIES GROUP, INC.  
d/b/a YOUNG FIRE EQUIPMENT CORP.

Case No. 91-11910 K

Debtor

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HAROLD P. BULAN, as Trustee of  
Young Technologies Group, Inc.  
d/b/a Young Fire Equipment Corp.

Plaintiff

-vs-

AP 92-1166 K

KARL KOFORD

Defendant

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DECISION AND ORDER

Introduction

The matter before me in this Adversary Proceeding is defendant's motion to dismiss for failure to state a claim under F.R.Civ.P. Rule 12(b)(6). Whether treated as such or as a motion for Summary Judgment, the motion must be denied.

Facts

Certain facts in this proceeding are undisputed. On March 14, 1991, Young Technologies Group, Inc. (Debtor) issued a check to its accountant, Mr. Karl Koford, for \$16,250. Mr. Koford was instructed to use the proceeds of the check to pay the creditors of the Debtor's business. Having followed these instructions, Mr. Koford retained approximately \$155 as his fee. On May 24, 1991 an involuntary Chapter 7 petition was filed against

the Debtor, and an order for relief was granted on June 17, 1991. The estate's Trustee now seeks to recover the \$16,250 paid to the accountant as a preferential transfer to which Mr. Koford was an initial transferee.

The sole issue raised by this motion is that of whether Koford's unsubstantiated attestation that he was a mere conduit of these funds and that he benefitted only as to \$155.10 which he retained as payment for services rendered, forecloses the relief sought by the Trustee and so warrants dismissal of the Complaint. This must be resolved against Mr. Koford.

#### Analysis

F.R.Civ.P. 12(b)(6) provides that a Complaint may be dismissed if it fails to state a claim upon which relief may be based. In considering the motion, all factual allegations in the Complaint must be taken as true and construed favorably for the plaintiff. Accordingly, when it appears beyond doubt that the plaintiff cannot prove facts in support of his claim then the motion to dismiss can be granted. *Allen v. Westpoint-Pepperell, Inc.*, 945 F.2d 40, 44 (2nd Cir. 1991).

Section 547(b) of the Bankruptcy Code states the conditions under which a trustee may avoid a Debtor's transfer of property. The statute provides that the trustee can avoid the transfer when it is:

- (1) to or for the benefit of a creditor;

- (2) for or on account of an antecedent debt owed by the creditor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made -
  - (A) on or within 90 days before the date of the filing of the petition; ...
- (5) that enables such creditor to receive more than such creditor would receive if -
  - (A) that case were a case under chapter 7 of this title;
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C.A. § 547(b) (West Supp. 1992)

Section 550(a) of the Bankruptcy Code further states that "... [T]o the extent that a transfer is avoided under section ... 547 ... the trustee may recover ... the property transferred ... from ... the initial transferee of such transfer or the entity for whose benefit such transfer was made ..." 11 U.S.C.A. § 550(a) (West Supp. 1992). This provision allows the Trustee to recover transfers even if the actual assets have been further distributed.

Taking all of the plaintiff's allegations as true, he has established a claim against Mr. Koford as an initial transferee. The Complaint states that Mr. Koford distributed money received from the Debtor to creditors for antecedent debts owed prior to the transfer. This qualifies Mr. Koford as an initial transferee under section 550(a) and I am not today prepared to rule that the fact of redistribution or the circumstances of redistribution here insulate Mr. Koford as a matter of law. These transfers occurred within the ninety day time frame when a transfer is voidable, and while the

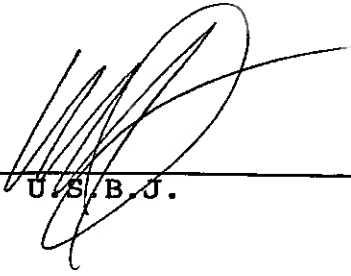
Debtor was allegedly insolvent. Finally, while it is unclear from the Complaint exactly how the provisions of section 547(b)(5) are going to be satisfied, this allegation must be taken as true for present purposes. Accordingly, the Trustee has sufficiently alleged all elements of a voidable preference against an initial transferee under sections 547(b) and 550(a) of the Bankruptcy Code, for purposes of the present motion.

The parties appear to agree that in actions such as this, the defenses recognized by the Court have been equitable in nature. Mr. Koford believes his own affidavit and exhibits sufficient to conclusively establish an equitable defense. Thus his motion is not unlike a Summary Judgment motion. To that extent the Trustee is entitled to the benefit of receiving an Answer to the Complaint, and discovery.

The defendant's motion is denied.

SO ORDERED.

Dated: Buffalo, New York  
September 16, 1992



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U.S. B. J.