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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 96-42535
14 & 76 FIREWORKS, INC.)	
DEBTOR)	CHAPTER 7
)	
)	
MICHAEL BUZULENCIA, TRUSTEE)	ADVERSARY NO. 99-5102
PLAINTIFF)	[Previous Adversary No. 98-4065,
))	Transferred From Youngstown, Ohio]
vs.)	
)	JUDGE MARILYN SHEA-STONUM
SAMUEL ABDALLA, ET AL.)	
DEFENDANTS)	MEMORANDUM DECISION

This matter came before the Court on a complaint filed by plaintiff-trustee on June 26, 1998 and an answer filed by defendants, Samuel Abdalla ("Abdalla") and Safety Fourth Fireworks, Inc. ("Safety Fourth") on October 15, 1998.¹ The Court held a trial in this matter on October 18 and 19, 1999. Appearing at the trial were Sandor Sternberg, counsel for plaintiff-trustee and Thomas Zena, counsel for defendants. During the trial, the Court

¹ Pursuant to Local Bankruptcy Rule 1071-1, 14 & 76 Fireworks, Inc. filed its chapter 7 bankruptcy petition in the Bankruptcy Court for the Northern District of Ohio, Eastern Division at Youngstown and the case was assigned to Judge William T. Bodoh. This adversary proceeding was commenced in that same court. On June 14, 1999, Judge Bodoh recused himself from this adversary proceeding and, pursuant to an Order entered by Chief Bankruptcy Judge Richard Speer on June 16, 1999, this adversary proceeding was transferred to Judge Shea-Stonum on June 23, 1999.

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received evidence in the form of exhibits and in the form of testimony from (1) Abdalla; (2) Michael Buzulencia, the plaintiff in this adversary proceeding and the trustee in the chapter 7 case of 14 & 76 Fireworks, Inc. (14 & 76 Fireworks, Inc. shall hereinafter be referred to as either "14&76" or "debtor"); and (3) Allen Owens ("Owens"), a certified public accountant retained by defendants.

After the evidence phase of the trial but prior to closing arguments, the parties indicated to the Court that they had reached a settlement. The trial was then adjourned to allow plaintiff-trustee to file a motion to compromise this matter and for the Court to consider that motion. Objections to the motion to compromise were filed and at a December 1, 1999 hearing on the matter, the motion was denied. At the conclusion of the hearing on the motion to compromise, plaintiff-trustee and defendants elected to submit their respective closing arguments from the trial of this matter in writing. Those pleadings were timely filed and the matter was then taken under advisement.²

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is a core proceeding pursuant to 28

² As their closing argument, defendants, on December 17, 1999, filed a document that was multi-captioned as "Closing Argument Exhibits / Motion to Supplement Record / Affidavit / Certification." That pleading did not contain any argument and/or legal authority to support defendants' defense in this matter. What it did contain was a request by defendants that "the record of this matter be supplemented and that [counsel] be permitted to include to supplement the record and, in the alternative, as exhibits for closing argument, copies of actual accountings delivered [to plaintiff-trustee]. . . ." Included with that pleading were copies of documents that defendants marked as "Motion Exhibits." During the trial, defendants chose not to present or move to introduce any documentary evidence to support their defense and in their "Motion to Supplement Record" defendants provide absolutely no legal authority for how or why they should be permitted to introduce evidence after they rested their case. Accordingly, defendants' "Motion to Supplement Record" is hereby denied and the exhibits attached to that motion will not be considered by this Court and will not be addressed any further in this Memorandum Opinion.

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U.S.C. §157(b)(2)(A), (E), (H) and (O) over which this Court has jurisdiction pursuant to 28 U.S.C. §1334(b). Based upon testimony and evidence presented at the trial, the arguments of counsel and the pleadings in this adversary proceeding and the main chapter 7 case, the Court makes the following findings of fact and conclusions of law.

FACTS

Prior to trial, the parties filed with the Court a list of facts which they agreed were not in dispute. Those facts, as well as other facts that are not disputed in this case, are as follows:

1. That on or about July 1, 1986, the State of Ohio issued a wholesale fireworks license (the "Fireworks License") to 14&76 for the business location at 4427 State Route 14, Edinburg, Ohio (the "Route 14 Store").
2. That on July 1, 1993, a judgment in the principal amount of \$200,000 was entered against 14&76 and in favor of Midwest Fireworks Manufacturing Company, Inc. and Larry D. Lomaz in the Common Pleas Court of Portage County, Ohio (the "1993 Judgment").
3. That because the 1993 Judgment remained wholly unsatisfied, the Portage County Common Pleas Court appointed a receiver for 14&76 on February 15, 1995.
4. That on May 10, 1996, the state court appointed receiver commenced a lawsuit against, among others, Abdalla and Safety Fourth (the "Receiver Lawsuit").
5. That in the Receiver Lawsuit, the state court appointed receiver alleged, *inter alia*, that the Fireworks License was fraudulently transferred from 14&76 to Abdalla, individually, then from Abdalla to Safety Fourth, and then from Safety Fourth to Abdalla and Safety Fourth, jointly and that the monies earned from

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operations under the Fireworks License were improperly diverted from the receivership.

6. That on November 8, 1996, 14&76 filed a voluntary chapter 7 bankruptcy petition.
7. That on January 29, 1997, plaintiff-trustee was substituted for the state court appointed receiver in the Receiver Lawsuit and relief from the automatic stay was granted to enable plaintiff-trustee to prosecute that matter in state court.
8. That on July 22, 1997, a bench trial was held in the Receiver Lawsuit and on August 5, 1997 judgment was entered in favor of plaintiff-trustee and against Abdalla and Safety Fourth (the "1997 Judgment").
9. That pursuant to the 1997 Judgment, Abdalla and Safety Fourth were required to account to plaintiff-trustee for the year 1995, and for so many years thereafter as to demonstrate a profit or withdrawal from Safety Fourth and/or 14&76 of the amount of the 1993 Judgment, with interest; and that the purpose of that accounting was clear, i.e., to determine the ongoing value of the subject of the fraudulent transfer and the transferees' liability to the judgment holder.
10. That on July 27, 1998, an order was entered in 14&76's chapter 7 case setting forth the minimum requirements of the accountings required to be delivered to plaintiff-trustee pursuant to the 1997 Judgment.
11. That on September 22, 1999, the Ohio Supreme Court refused to accept the 1997 Judgment for review and that the 1997 Judgment is final and non-appealable.
12. That Safety Fourth reported in its 1995 Federal Income Tax Return gross

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receipts of \$903,045.00 and ordinary income of \$234,922.00.

13. That Abdalla is the owner and operator of a business known as the Aquanaut Lounge and has been the owner and operator of that business for more than 20 years.
14. That during the years 1995 and 1996, \$642,345.00 was withdrawn from the earnings of Safety Fourth and paid to either Abdalla or the Aquanaut Lounge.

In addition to the foregoing and, based upon the evidence presented at trial, the Court makes the following findings of fact:

1. That on June 11, 1999, the Court entered an order pursuant to which 14&76 and defendants were required to retain in an account (the "Account") all receipts from the Route 14 Store for the period June 11, 1999 through and including July 5, 1999, "deducting therefrom only necessary sums for payment of actual wages of onsite employees and necessary tax deposits in connection with the payment of those wages, public utilities as they came due in the regular course of business, payments at cost for replacement of inventory to any third-party supplier but not to any affiliate of [d]efendants and any other payments to nonaffiliates that may be necessary to continue the business" (the "June 11 Order"). The June 11 Order further provided that "[n]o payment shall be made to . . . Abdalla or any of his business interests for any purpose whatsoever, all pending further order of the court."
2. That on August 12, 1999, the Court entered an "Agreed Judgment Entry" whereby plaintiff-trustee and defendants agreed that the sum of \$210,000.00, then on deposit in the Account, would be retained in the Account and that any withdrawals could only be made by an order of this Court.

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3. That Abdalla has been the president and sole shareholder of Safety Fourth from at least sometime in 1991.
4. That Abdalla has been the president of 14&76 since at least sometime in 1993.
5. That Safety Fourth does business as Prism's Fireworks Factory.
6. That through Safety Fourth, d.b.a. Prism's Fireworks Factory, Abdalla operates five fireworks retail stores all under different names.
7. That Abdalla also operates two other fireworks retail stores through an entity known as Liberty Fireworks.
8. That merchandise for all seven of those retail locations are purchased in bulk; that Abdalla has chosen the following admittedly arbitrary cost allocation method: Each location is charged 75% of its total receipts as the cost of goods sold at that location; and that according to the best evidence adduced at trial, the actual cost of goods sold at such locations is unlikely to exceed 40% of the total receipts of any particular location.
9. That Safety Fourth has purchased all inventory for Abdalla's multiple fireworks retail stores (including the Route 14 Store) since at least sometime in 1995.
10. That Abdalla and his wife currently own and have owned since at least 1983 the land on which the Route 14 Store is located.
11. That as of the date of trial, the amount owed on the 1997 Judgment totaled somewhere between \$260,000.00 and \$280,000.00.
12. That as discussed more fully below, neither Abdalla nor Safety Fourth has ever complied with the requirements of the 1997 Judgment, but instead have pursued a wilful course of evasive actions.
13. That defendants transferred the Fireworks License with an intent to defraud

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both current and future creditors of 14&76.

14. That after the trial in this matter, plaintiff-trustee sought to employ an independent accountant to review and, if necessary, audit Abdalla's and Safety Fourth's records for the period September through December, 1999 to determine if withdrawals were made from debtor's business during that time and on March 20, 2000, the Court entered and Order approving the retention of David R. Snyder ("Snyder").

DISCUSSION

In the Complaint, plaintiff-trustee set forth six counts each stemming from the 1997 Judgment. Through count one of the Complaint, plaintiff-trustee essentially requests that this Court enforce defendants' obligation to provide him with the accounting that was ordered by the 1997 Judgment. At the beginning of trial, the parties agreed that, because the 1997 Judgment has become final and non-appealable, whether the state court was correct in ordering an accounting can no longer be challenged by defendants. However, whether defendants have ever provided the required accounting to plaintiff-trustee was an issue. Because that issue forms the crux of this case, it is addressed first.

A. Whether Defendants Provided Plaintiff-Trustee With a Proper Accounting.

In the 1997 Judgment, the Portage County Common Pleas Court ordered that Abdalla and Safety Fourth, as successors to the Fireworks License, must "account to the Trustee in Bankruptcy for the year 1995 (the year in which the receiver was appointed) and so many years thereafter as to demonstrate a profit, or withdrawal from the entities, of the amount of the judgment plus interest." *See* Plaintiff-Trustee Ex. "tt" at ¶59. The 1997 Judgment further provided that "[t]o the extent the successor entities [sic] accounting demonstrates withdrawals from the accounts of earnings or profits, judgment shall be granted in consecutive amounts

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against each of the defendants herein until the amount of the prior judgment debt is realized to the Trustee in Bankruptcy." *See* Plaintiff-Trustee Ex. "tt" at ¶59 (emphasis added).

On July 27, 1998, an order was entered in debtor's main chapter 7 case by Judge William Bodoh to clarify what information defendants needed to provide to plaintiff-trustee to satisfy the accounting ordered by the 1997 Judgment. The July 27, 1998 Order was entered pursuant to a motion filed by Adballa and Safety Fourth seeking reconsideration of an earlier court order granting leave to plaintiff-trustee to file a complaint seeking to undo the transfer of the Fireworks License. *See* Plaintiff-Trustee Ex. "xx-8" at pg. 1. In the July 27, 1998 Order, it was noted that, defendants had still not made an appropriate accounting to plaintiff-trustee. *See* Plaintiff-Trustee Ex. "xx-8" at pg. 2. Through their motion for reconsideration, defendants claimed that no accounting had yet been made because their counsel was under a belief that the bankruptcy court would provide some guidance as to the type of accounting needed. *See id.* To support that claim, defendants provided an affidavit of Owens in which he attested:

3. That the form of accounting required by the [Portage County Common Pleas] Court was not specified and the term accounting can be given numerous meanings.
4. That as a certified public accountant, the term accounting is usually considered to be one of three forms: audit accounting, review accounting and compilation accounting
5. That all three of the above types of accounting are usually performed pursuant to generally accepted accounting principles, with specific reference to any deviations from same.

See Plaintiff-Trustee Ex. "xx-8" at pg. 2 (*citing* Owens Affidavit at ¶¶3-5).

Based upon defendants' continued failure to provide the accounting required by the 1997 Judgment and their claim that in order to comply they needed more guidance, Judge

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Bodoh entered an order which set forth the following:

The Court orders that the accounting to be provided must follow generally accepted accounting principles for at least a compilation and establish, from and including the year 1995 and for every year thereafter, a full record of all receipts, disbursements, assets, inventory and purchases. This accounting shall include, and not be limited to, a record of when all receipts and disbursements were made, to whom, in what amount and for what purpose. The Court also requires to be included, but not limited to, a record of tax payments, salary payments, rent and any and all other expenses of the business for the same time period. Mr. Abdalla and Safety Fourth must also provide copies of annual, or other periodic, profit and loss statements or similar records with documentation in support thereof. If Mr. Abdalla and Safety Fourth's accountant is unable to provide an appropriate accounting which shows all receipts, disbursements, purchases, profits and losses according to generally accepted accounting principles and to the satisfaction of the Trustee and this Court, the parties will be required to provide the Trustee or an accountant hired by the Trustee all original records, copies thereof or access to them, so that a proper accounting can be made.

See Plaintiff-Trustee Ex. "xx-8" at pg. 2. Because Judge Bodoh viewed defendants' motion for reconsideration as "yet another delay tactic by Mr. Abdalla and Safety Fourth to avoid providing Trustee with the necessary accounting previously ordered by the state court," the July 27, 1998 Order further provided that "[d]ue to the extended time [] Abdalla and Safety Fourth have previously been afforded to gather the necessary documents and provide the accounting, the Court orders that they have twenty (20) days from the date of entry of this order to provide an accounting to the Trustee in compliance with this order, subject to penalties for contempt." *See* Plaintiff-Trustee Ex. "xx-8" at pgs. 3-4.

During the trial, plaintiff-trustee testified that he has only received from defendant "summary statements" and random, disorganized business documents that do not constitute the accounting ordered by either the 1997 Judgment or Judge Bodoh's July 27, 1998 Order. In particular, plaintiff-trustee pointed out three "profit and loss statements" that were prepared by Adballa for the Prism Fireworks Factory for the years 1995, 1996 and 1997. *See*

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Plaintiff-Trustee Ex. "WW," "XX," and "YY." Each of those statements is only one page long, does not attach any documentation to support the reported numbers and shows a total net loss for each year. Under the "Expenses" header, the following are listed: "Merchandise Expense," "Travel & Lodging Expense," "Utilities Expense," "Telephone Expense," "Legal Expense," "Advertising Expense," "Payroll Expense," and "Miscellaneous Expense." There is no expense entry for sales taxes, despite Abdalla's testimony that sales taxes must be collected on many fireworks sales and what exactly constitutes the "Miscellaneous Expense" category is not explained. During his testimony, Abdalla claimed that he could not remember how he derived the number in the "Miscellaneous Expense" category and that the information contained in those profit and loss statements were not accurate because he prepared them in a hurry.

In addition to these "Profit and Loss Statements," Abdalla also provided plaintiff-trustee with "Income Statements" for Prism Fireworks Factory for the years 1995, 1996, 1997 and 1998. *See* Plaintiff-Trustee Ex. "xx-1," "xx-2," "xx-3," and "xx-4." These documents were prepared by Owens who, during the trial, testified that he was first hired by Abdalla in March, 1998. Owens explained that he compiled the "Income Statements" from information provided to him by Abdalla and that he did not independently verify any of the information he used to compile those reports. Although the "Income Statements" include more categories than those listed by Abdalla on the "Profit and Loss Statements," they also include no supporting documentation.

During his testimony, Owens stated that he was aware that the "Income Statements" were to be prepared pursuant to a court order. However, Owens testified that the only court order he was ever shown by Abdalla was the 1997 Judgment. Despite having provided an affidavit to support defendants' claim that the accounting ordered by the 1997 Judgment

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needed to be clarified, Owens testified that, during his retention, he was never provided with a copy of Judge Bodoh's July 27, 1998 Order. After being given a chance to review that July 27, 1998 Order, Owens stated that, in his opinion as a certified public accountant, the "Income Statements" did not comply with the ordered "accounting."

At the onset of trial, the parties agreed that plaintiff-trustee bore the burden of proving that defendants failed to provide him with a proper accounting. Based upon the testimony of plaintiff-trustee and Owens, and based upon defendants' inability to convincingly contradict that testimony, the Court finds that plaintiff-trustee met his burden and that defendants have failed to provide a proper accounting.

B. The Remainder of Plaintiff-Trustee's Complaint.

In addition to the first count regarding an accounting, plaintiff-trustee set forth five other counts in the Complaint. In the second count (the "Second Count") plaintiff-trustee alleges that debtor's transfer of the Fireworks License constituted a fraudulent transfer under Ohio Revised Code §1336.04(A)(1) and (2) and (B)(1-10). *See* Complaint at ¶¶12 and 13. In the third count (the "Third Count") plaintiff-trustee alleges that pursuant to §544(b) of the Bankruptcy Code he is authorized to avoid any transfer of the debtor's interest in the Fireworks License. *See* Complaint at ¶¶14 and 15. In the fourth count (the "Fourth Count") Plaintiff-Trustee alleges that pursuant to §548(a)(2)(A) and (B) of the Bankruptcy Code he is entitled to avoid debtor's transfer of its interest in the Fireworks License to Abdalla. *See* Complaint at ¶¶16 and 17. In the fifth count (the "Fifth Count") plaintiff-trustee claims that pursuant to §550(a)(1) and (2) of the Bankruptcy Code he is "authorized to recover for the benefit of the estate the fireworks license, or, alternatively . . . the value of said property." *See* Complaint at ¶¶18 and 19. Finally, in the sixth count of the complaint (the "Sixth Count") Plaintiff-Trustee contends that "in the event the debtor's transfer of the fireworks license is

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ordered by this court to be avoided, same is entitled to be preserved for the benefit of the estate." *See* Complaint at ¶¶20 and 21.

Count Two: The same cause of action raised in Count Two (that the transfer of the Fireworks License was fraudulent pursuant to Ohio Revised Code §1336.04(A) and (B)) was also raised in the Receiver Lawsuit and, pursuant to the 1997 Judgment, it was ultimately determined that the transfer of the Fireworks License to defendants, Abdalla and Safety Fourth, was fraudulent. *See* Plaintiff-Trustee Ex. "x-8" at ¶¶26-39. Accordingly, the doctrine of res judicata bars relitigation of that matter and pursuant to the Full Faith and Credit Statute, 28 U.S.C. §1738, this Court must accept the state court's finding that the transfer of the Fireworks License was fraudulent. *See Rally Hill Productions, Inc. v. Bursack (In re Bursack)*, 65 F.3d 51, 53 (6th Cir. 1995) (holding that a bankruptcy court must "give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered"). *See also Quality Ready Mix, Inc. v. Mamone*, 520 N.E.2d 193, 35 Ohio St. 3d 224 (Ohio 1988) (setting forth the elements of res judicata as (1) an existing final judgment; (2) rendered on the merits; (3) by a court of competent jurisdiction; (4) that is conclusive of all rights, questions, and facts then in issue; (5) as to the parties and their privies; and (6) in all other actions in the same or any other judicial tribunal or concurrent jurisdiction).

Notwithstanding the application of res judicata as it pertains to the claim of Midwest, this Court is not limited to the scope of the 1997 Judgment because plaintiff-trustee initiated a separate proceeding standing in the shoes of all holders of claims against 14&76. Given the ongoing opportunity to generate income that the Fireworks License did and still does provide and based upon the evidence presented during trial, the Court further finds that defendants' transfer of the Fireworks License was done with an intent to not only defraud 14&76's

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creditors that existed at the time of the transfer but as to future creditors as well.

Count Three and Count Four: In Count Three, plaintiff-trustee claims that pursuant to §544(b) of the Bankruptcy Code he is authorized to avoid any transfer of debtor's interest in the Fireworks License. In Count Four, plaintiff-trustee claims that the transfer of the Fireworks License can also be avoided pursuant to §548(a) of the Bankruptcy Code. Although based upon Ohio law and not the Bankruptcy Code, a similar request to avoid the transfer of the Fireworks License was made in the Receiver Litigation. In the 1997 Judgment the state court held that, although an intentional legal wrong was committed for which an equitable remedy should be fashioned, "[t]hat remedy cannot be revocation of the license transfer or order to the State Fire Marshall to execute a license, retroactively, to the Trustee in Bankruptcy." *See Plaintiff-Trustee Ex. "x-8" at ¶41.* That holding was based, in part, on the fact that after an administrative hearing on the matter, the state fire marshal ultimately affirmed the transfer of the Fireworks License from debtor to defendants. *See Plaintiff-Trustee Ex. "x-8" at ¶21.* *See also Plaintiff-Trustee Ex. "x-8" at ¶22* ("In the administrative hearings both the receiver and Midwest were denied standing. This court has previously ruled that they cannot now challenge the factual or legal integrity of the reinstatement of the license by the State Fire Marshall.").

Aside from a general reference to this Court's equitable powers under §105 of the Bankruptcy Code, plaintiff-trustee has not provided the Court with any argument or legal authority for how or why this Court should hold differently from the state court and order that the transfer of the Fireworks License be undone. Fireworks licenses are only operable at the listed venue and the transfer of a wholesale fireworks license from one entity to another is governed by Ohio Revised Code §3743.17. That code provision requires, among other things, that before a wholesale fireworks license may be transferred, an application must be

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made to and approved by the state fire marshal. *See* Ohio Revised Code §3743.17(D)(1) At no time during the trial of this matter or in any of the trial related pleadings (i.e. proposed findings of fact and conclusions of law or written closing arguments) has plaintiff-trustee addressed whether he has applied to the state fire marshal for transfer of the Fireworks License. Nor has plaintiff-trustee addressed in what way, if any, this Court's equitable powers may override the State of Ohio's decision to legislate how and when fireworks licenses may be transferred from one entity to another.

This Court is not bound by the holding of the state court in the 1997 Judgment but finds that holding persuasive. Given plaintiff-trustee's failure to present any evidence or legal argument to persuade it otherwise, the Court finds that the transfer of the Fireworks License should not be avoided. Although the Fireworks License itself will not be transferred to plaintiff-trustee for the benefit of debtor's creditors, this Court agrees with the Portage County Common Pleas Court that "[i]t would be manifestly unjust to the creditors of a sole corporation to be denied access to the benefits of the exercise of a license simply because the corporation initiated and effectively caused the licensing authority to issue a new, transferred license to another entity or corporation also owned and operated by the same person." *See* Plaintiff-Trustee Ex. "x-8" at ¶36. Thus, plaintiff-trustee may, for the benefit of holders of all allowed claims in debtor's chapter 7 case and to the full extent of such claims, and to satisfy the administrative costs of administering the bankruptcy estate, avoid the transfer of any profits that were derived from use of the Fireworks License and diverted away from debtor's estate by defendants' fraudulent actions.

Count Five: In Count Five, plaintiff-trustee contends that pursuant to §550(a)(1) and (2) of the Bankruptcy Code, he is authorized to recover for the benefit of the bankruptcy estate the Fireworks License or, alternatively, the value of said property. Section 550 states,

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in part:

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, . . . [or] 548 . . . of this title, the trustee may recover, for the benefit of the estate, the property transferred, or if the court so orders, the value of such property from -

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transfer.

See 11 U.S.C. §550(a)(1) and (2). Because the transfer of the Fireworks License will not be undone (*see* pages 13-15, *supra*), it is the value of that property that plaintiff-trustee may recover. That value is comprised of profits derived by defendants (as transferees) through their use of the Fireworks License. *See* Plaintiff-Trustee Ex. "x-8" at ¶31 ("Although a fireworks license may not be transferred by a licensee, the operational rights it grants make the product of its exercise and use a thing of value that can be subject to the claim of creditors"). *See also* Plaintiff-Trustee Ex. "x-8" at ¶¶32-37.

During trial, plaintiff-trustee presented the Court with copies of 41 checks evidencing transfers of \$580,500.00 from Safety Fourth to the Aquanaut Lounge during the period March, 1995 to September, 1996. All of those checks were signed by Abdalla on behalf of Safety Fourth. When questioned as to what goods or services the Aquanaut Lounge provided Safety Fourth in exchange for this money, Abdalla testified that the Aquanaut Lounge did nothing to receive the money. Abdalla claimed that in order to save on service charges, all monies from his fireworks retail stores were deposited into one "conglomerate" account in the name of Safety Fourth and then all operating expenses for those individual businesses were

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paid from that account. Other than his testimony, Abdalla provided no evidence to support this claim.

Also during his testimony, Abdalla indicated that he did not keep accurate records of the money flowing through the "conglomerate" account. Despite this testimony, Abdalla contended that none of the money paid by Safety Fourth to the Aquanaut Lounge came from the Route 14 Store through use of the transferred Fireworks License because that store has been consistently unprofitable.³ Particularly in the context of his failure to provide court-ordered accountings, Abdalla's testimony on this subject is entitled to no weight. Because defendants have never provided a proper accounting from that business location, plaintiff-trustee has been unable to independently verify anything Abdalla testified to regarding profitability of the Route 14 Store.

Abdalla personally controlled and managed the business operations of Safety Fourth, the Aquanaut Lounge and the Route 14 Store. Despite his personal involvement, Abdalla was unable or, more likely, unwilling to answer even the most basic questions of how those businesses were run. For instance, Abdalla claimed that Safety Fourth purchases the fireworks inventory for all the fireworks retail locations and simply charges each store 75% of their gross profits as the cost of inventory provided to that store and that such a cost allocation is standard in the fireworks industry. However, evidence adduced at trial indicates that the actual cost of goods sold is unlikely to exceed 40% of the total receipts of any particular location. Also, despite his decision to employ a centralized purchasing system,

³ As to the \$210,000.00 in proceeds from the Route 14 Store that are currently on deposit in the Account, Abdalla claims that such money does not represent pure profit because certain business expenses related to the Route 14 Store and the sale of fireworks have not been deducted from those funds. Abdalla provided no evidence as to what portion of the funds on deposit in the Account should be used to cover expenses.

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despite the fact that Ohio Revised Code §3743.20(A) requires all licensed wholesalers of fireworks to keep "complete records of all fireworks in their inventory," and despite the judgments and other court orders requiring accounting for the 14&76 location that have been pending for almost three years, Abdalla testified that Safety Fourth does not keep accurate records of what stores are sent what particular fireworks inventory.

Abdalla's inability to adequately explain the basic operations of his business, coupled with his continued failure to provide plaintiff-trustee with the court ordered accountings, completely undermines his credibility and completely discredits defendants' claims that Abdalla properly conducts his multiple businesses and that the Route 14 Store is unprofitable.

Since the time of the fraudulent transfer of the Fireworks License, it is highly likely that the Route 14 Store has been profitable and that those profits have been diverted away from that location (and hence this bankruptcy estate) by defendants' furtive conduct. Because defendants have failed to ever provide a proper accounting, plaintiff-trustee has been unable, to date, to trace those profits. Also without the ordered accounting, plaintiff-trustee has yet been unable to prove defendants' diversion of those profits in sufficient enough detail to clear completely the path to entering a money judgment against them personally. However, if and when that evidence is uncovered through the independent accounting ordered below, plaintiff-trustee shall recover the proceeds of the fraudulently transferred license and those proceeds shall not be limited to the 1993 Judgment, but shall extend to all allowed claims filed in the chapter 7 case, including allowed claims for all administrative expenses in the 14&76 case.

Count Six: In Count Six, plaintiff-trustee requests that if debtor's transfer of the Fireworks License is avoided by this Court, the license be preserved for the benefit of the bankruptcy estate. Because the Court has concluded that the transfer of the Fireworks

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License will not be undone, Count Six is without merit.

CONCLUSION

Defendants' conduct in failing to comply with the 1997 Judgment, as further clarified by Judge Bodoh's July 27, 1998 Order, has resulted in legal and accounting expenses to plaintiff-trustee for which Abdalla and Safety Fourth are hereby found to be personally responsible. Included in those expenses are the transactional costs of the pursuit of the rights of 14&76's bankruptcy estate, including the seemingly endless pursuit of a court ordered accounting. Once an accounting is finally provided (as ordered below), the Court will, upon the presentation of proper evidence that defendants diverted profits away from debtor, enter judgment against each defendant, personally.

Based upon the foregoing, the Court finds that defendants have failed to provide plaintiff-trustee with the accounting ordered by the 1997 Judgment and Judge Bodoh's July 27, 1998 Order. The Court further finds that, pursuant to §550(a) of the Bankruptcy Code, plaintiff-trustee may recover from defendants, as transferees, the net proceeds of all business conducted under the aegis of the Fireworks License until such time as all allowed claims in the chapter 7 case of 14&76 are fully satisfied, including all applicable interest. The defendants remain liable regardless of any further transfer of the Fireworks License. **THEREFORE, IT IS HEREBY ORDERED:**

1. That plaintiff-trustee is hereby authorized to engage the services of an independent accountant to audit the books and business records of debtor, Safety Fourth, the Aquanaut Lounge, and Abdalla and to prepare the accounting ordered by the 1997 Judgment and Judge Bodoh's July 27, 1998 Order.
2. That, upon approval of fee applications by the independent accountant, any and

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all costs incurred by the independent accountant in preparing such accountings may be withdrawn by plaintiff-trustee from the Account for payment of the independent accounting.

3. That if, after plaintiff-trustee has had an opportunity to review the "accounting," he determines that the accounting demonstrates withdrawals from the accounts of earnings and profits of the Route 14 Store, he shall file the written accounting demonstrating such withdrawals together with a proposed judgment entry in the amount of such earnings and profits to be entered jointly and severally against Abdalla and Safety Fourth; upon the filing of such accounting and proposed judgment entry, unless the Court in its discretion determines that a hearing is necessary, judgment shall be granted in consecutive amounts jointly and severally against each defendant until an amount sufficient to pay all allowed claims in the 14&76 chapter 7 case, with interest, is realized by plaintiff-trustee.
4. That if Snyder is willing to accept the assignment, then no further application to employ will be necessary and his engagement by debtor's estate will be expanded to cover such assignment.
5. That if Snyder is not willing to accept the assignment, then plaintiff-trustee shall file an application to employ such accountant by not later than **May 1, 2000** and that any objection to the application to employ shall be filed with the Court by **May 15, 2000**.
6. That if an objection to the application to employ is timely filed, a hearing on the matter shall be held on **May 19, 2000**.
7. That if no objection to the application to employ is timely filed, no hearing will

THIS OPINION IS NOT INTENDED FOR PUBLICATION

be held (unless the Court, after review of the application to employ determines that a hearing is necessary) and plaintiff-trustee shall submit to the Court a proposed order to employ.

8. That a further status conference in this matter shall be held on April 26, 2000, at 2:30 p.m., in Room 250, U.S. Courthouse and Federal Building, 2 South Main Street, Akron, Ohio.

MARILYN SHEA-STONUM
U.S. Bankruptcy Judge

DATED: 3/31/00