UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No.: 03-30840
	)	
John E. Sanders	)	Chapter 7
Sue A. Sanders,	)	
	)	Adv. Pro. No. 03-3192
Debtors.	)	
	)	Hon. Mary Ann Whipple
John Graham, Trustee,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Mary Ordway,	)	
	)	
Defendant.		

MEMORANDUM OF DECISION AND ORDER REGARDING CROSS MOTIONS FOR SUMMARY JUDGMENT

This adversary proceeding is before the court on the Chapter 7 Trustee's motion for summary judgment [Doc. # 32] and Defendant's response and cross-motion for summary judgment [Doc. # 33]. In this proceeding, the Trustee seeks to recover, as preferential transfers, loan payments made to Defendant by Debtors within one year before filing their bankruptcy petition.

The court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334(b) and the general order of reference entered in this district. Proceedings to recover preferences are core proceedings that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(F). For the reasons that follow, both

motions will be granted in part and denied in part.

SUMMARY OF FACTS

The parties have stipulated to the following facts. [*See* Doc. # 31]. Debtors, John and Sue Sanders, filed a Chapter 7 petition on February 11, 2003. Defendant is a creditor of Debtors and is the mother of John Sanders. As such, Defendant is an "insider" under 11 U.S.C. § 101(31)(A)(I).[1] Defendant and Debtors entered into two written agreements wherein Defendant agreed to loan funds to Debtors. [Doc. # 34, Ex. A and B].[2] Both loans are unsecured.

The first agreement was a debt consolidation loan entered into on March 31, 2001 (hereinafter "debt consolidation loan"). Under that agreement, Defendant loaned Debtors $10,900 at 0% interest to be paid by Debtors over 108 months at $100.93 per month. [Ex. B]. Debtors made monthly, and later biweekly, payments to Defendant with respect to this loan in the total amount of $1,204.30 during the one-year immediately preceding the date Debtors filed their bankruptcy petition. Of that amount, $279.72 was paid within ninety days before filing their petition. [*See* Ex. D].

The second agreement was entered into on January 28, 2002, for the purpose of paying off an existing car loan of Debtors (hereinafter "car loan"). Pursuant to that agreement, Defendant loaned Debtors $6,670 at 0% interest to be paid over a period of twenty months. [Ex. A]. Debtors made monthly or biweekly payments during the one-year period before they filed their petition totaling $3,331.50, of which $769.80 was paid within ninety days before filing. [Ex. C].

Debtors also made payments to Defendant in the amount of $76.08 every two weeks beginning July 19, 2002, for a total of $1,141.20 between that date and February 11, 2003, the date Debtors' petition was filed. [Ex. E]. Of that amount, $456.48 was paid during the ninety-day period immediately before filing. [*Id.*] These transfers were made as payments for the purchase of 402 Bell Street, Sandusky, Ohio

---

1 An individual is an insider if she is a "relative of the debtor or of a general partner of the debtor." 11 U.S.C. § 101(31)(A)(I).

2 Hereafter, all exhibits cited are contained in Document # 34 filed in this proceeding.

(hereinafter "house payments"), where Debtors reside.[3] Debtors' petition lists the property located at 402 Bell Street as real property in which they have a legal, equitable, or future interest and values the property at $40,000. [Doc. # 1, Petition, Schedule A]. Although the facts to which the parties stipulated indicate that the house payments were made "for the repayment of [a] home loan for the purchase of 402 Bell Street," Debtors' petition lists Defendant as holding a secured claim pursuant to a land contract with respect to that property in the amount of $38,800, the approximate balance owed on the date the petition was filed and lists the land contract with Defendant as an executory contract. [*Id.*, Schedule D and G]. The parties stipulate that Defendant is the record owner of that property but that there is no written agreement or recorded land contract that was entered into before Debtors filed their bankruptcy petition.

Finally, the petition lists personal property totaling $3,735, of which $3,335 is claimed as exempt property, and unsecured debts totaling $39,177. [*Id.*, Schedule B and F]. Of the total unsecured debt, nearly $28,000 represents debt for medical expenses incurred in August, 2002, [*Id.*, Schedule F; Doc. # 32, Ex. A], and $11,276 represents debt owed to Defendant that was incurred over one year before Debtors filed their bankruptcy petition [Doc. # 1, Petition, Schedule F; Doc. # 34, Ex. A and B].

LAW AND ANALYSIS

I. Summary Judgment Standard

Under Fed. R. Civ. P. 56, applicable to this proceeding through Fed. R. Bankr. P. 7056, a party will prevail on a motion for summary judgment when "[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed.R.Civ.P. 56(c). A party seeking summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying the parts of the

---

[3] The court takes judicial notice of the contents of its case docket, including Debtor's petition and schedules. Fed. R. Bankr. P. 9017; Fed. R. Evid. 201(b)(2); *In re Calder*, 907 F.2d 953, 955 n.2 (10th Cir. 1990). Debtors' address listed on the petition is 402 Bell Street, Sandusky, Ohio.

record that it believes demonstrate an absence of a genuine issue of material fact. *Id.*, 477 U.S. at 323. Movant has the burden of showing that there exists no genuine issue of material fact on each element of the cause of action or defense subject to the motion. *Taft Broadcasting Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991). Once that burden is met, however, the opposing party must set forth specific facts showing there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-51 (1986); *60 Ivy St. Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987). Inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-88 (1986).

In cases such as this, where the parties have filed cross-motions for summary judgment, the court must consider each motion separately on its merits, since each party, as a movant for summary judgment, bears the burden to establish both the nonexistence of genuine issues of material fact and that party's entitlement to judgment as a matter of law. *Lansing Dairy v. Espy*, 39 F.3d 1339, 1347 (6th Cir. 1994); *Markowitz v. Campbell* (*In re Markowitz*), 190 F.3d 455, 463 n.6 (6th Cir. 1999). The fact that both parties simultaneously argue that there are no genuine factual issues does not in itself establish that a trial is unnecessary, and the fact that one party has failed to sustain its burden under Fed. R. Civ. P. 56 does not automatically entitle the opposing party to summary judgment. *See Taft Broadcasting Co*, 929 F.2d at 248; 10A Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, *Federal Practice and Procedure: Civil 3d* § 2720 (1998).

II. Preferential Transfers Under § 547(b)

The Trustee seeks to avoid prepetition transfers to Defendant as preferences to an insider under 11 U.S.C. § 547(b), which provides as follows:

> Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property–
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor 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; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if–

(A) the 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.

While § 547(b) authorizes a trustee to avoid certain prepetition transfers, the Bankruptcy Code excepts from avoidance the types of transfers described in § 547(c), including transfers that constituted a contemporaneous exchange for new value or transfers made in the ordinary course of business. 11 U.S.C. § 547(c)(1) and (2). The Trustee has the burden of proving all five of the elements making a transfer avoidable under § 547(b); however, the party against whom recovery or avoidance is sought has the burden of proving that a transfer is not avoidable under one of the affirmative defenses of § 547(c). 11 U.S.C. § 547(g).

Defendant does not dispute that she is a creditor of Debtors, that the debt consolidation loan and car loan were antecedent debts, that she is an insider, and that she received the challenged payments during the one year before Debtors filed their bankruptcy petition. But she contends that (1) Debtors were solvent when at least some of the transfers were made, (2) she received no more than she would have received had the transfers not been made and she received her pro rata share of the property of the estate under Chapter 7, and (3) the house payments received by her were not for or on account of an antecedent debt. She further contends that even if all elements of a preferential transfer are satisfied, the payments received by Defendant were made in the ordinary course of business or financial affairs as contemplated under § 547(c)(2) and that the house payments constitute a contemporaneous exchange under § 547(c)(1).

A. Insolvency

To prevail on his preference claims, Plaintiff must prove that Debtors made the transfers in issue while they were insolvent. 11 U.S.C. § 547(b)(3). The Bankruptcy Code defines insolvency as an entity's

"financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation ... ." 11 U.S.C. § 101(32). "Fair valuation" has been construed to refer to "the fair market value of the debtor's assets and liabilities within a reasonable time of the transfers." *Briden v. Foley*, 776 F.2d 379, 382 (1st Cir. 1985); *see also Official Committee of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 349 (3rd Cir. 2001); *Lawson v. Ford Motor* Co. *(In re Roblin Indus., Inc.)*, 78 F.3d 30, 35 (2d Cir. 1996); *Hunter v. Sylvester Material Co. (In re Turkeyfoot Concrete, Inc.)*, 198 B.R. 506, 510 (Bankr. N.D. Ohio 1996). There is, however, a statutory presumption of insolvency during the ninety days immediately preceding the filing of bankruptcy. 11 U.S.C. § 547(f).

In this case, Defendant offers no evidence to rebut the statutory presumption of insolvency under § 547(f). *See In re Oakes*, 7 F.3d 234 (Table), 1993 WL 339725, *2 (6th Cir. Sept. 3, 1993) (citing *In re Sierra Steel, Inc.*, 96 B.R. 275, 277 (B.A.P. 9th Cir. 1989)) (presumption vanishes only after transferee comes forward with substantial evidence of solvency). Thus, there is no dispute that all transfers made to Defendant during the ninety days prior to Debtors filing their petition were made while they were insolvent.

With respect to transfers made earlier than ninety days before filing, there is no presumption of insolvency. The Trustee must prove that Debtors were insolvent at the time of each transfer. The evidence before the court consists only of Debtors' bankruptcy schedules, exhibits relating to the loans made by Defendant and receipts for medical expenses incurred in August 2002. Debtors' schedules show that on the date of filing, they owned assets valued at $3,735 and owed over $39,000 in unsecured debt.[4] The evidence before the court indicates that, excluding amounts attributed to the purchase of 402 Bell Street, Debtors owed Defendant $15,518 on February 11, 2002, the date one year before Debtors filed their bankruptcy petition and that the bulk of the remaining debt was not incurred until August 2002. In addition,

---

4

The court has not included any equity in the real estate located at 402 Bell Street since the property has never been transferred to Debtors and no written land installment contract exists. *See* Ohio Rev. Code § 1335.04 (requiring contracts for the sale of real property to be reduced to writing). Nevertheless, the court notes that if an enforceable oral contract exists, *see Gleason v. Gleason*, 64 Ohio App. 3d 667, 674 (1991)(explaining when part performance of a contract may remove the agreement from the operation of the Statute of Frauds), Debtors' schedules indicate that the value of their interest in the property on the date of filing was $1,200.

Debtors' income during 2002 was approximately $19,000.

The court finds that the Trustee has not met his burden under § 547(b)(3) to provide proof that Debtors were insolvent at the time of the transfers that occurred between ninety days and one year before the petition was filed. A trustee "may meet his burden of proof by showing that the debtor was insolvent at a reasonable time subsequent to the date of the alleged transfer, accompanied by proof that no substantial change in the debtor's financial condition occurred during the interval." *Parlon v. Claiborne (In re Kaylor Equipment & Rental, Inc.)*, 56 B.R. 58, 62 (Bankr. E.D. Tenn.1985). The Trustee has demonstrated Debtors' insolvency at the time of filing their petition and the approximate debt owed one year before filing. But he offers no evidence or testimony regarding Debtors' assets at that earlier date. The court notes that in their Statement of Financial Affairs Debtors list transfers

of property within the one year before filing that total only $1,890 and payments related to debt counseling that total $600. These amounts, together with the value of assets listed in their petition total $6,225. Debtors list no additional transfers or assignments and no casualty or gambling losses
that would account for a substantial change in their assets over the course of 2002. Nevertheless, the Trustee offers no evidence or testimony that there has been no substantial change in the market value of the assets listed in the petition during the one-year period before filing. Debtors' Schedule B includes such items as a computer, baseball card collection, coin collection, stamp collection, and motor vehicle. On summary judgment, all inferences must be taken in favor of the nonmoving party. The nature of the assets as including collectibles precludes an inference in the Trustee's favor that they were not worth more on February 11, 2002, and various of the transfer dates thereafter. And the court can neither take judicial notice nor speculate about the value of these assets during the relevant time period. Absent some testimony indicating a similar value one year before filing, the court will not assume that there has been no substantial change in value.

In support of her motion for summary judgment, Defendant relies on no additional evidence in arguing that Debtors were solvent when certain transfers were made. Defendant argues only that "one year prior to debtors' bankruptcy filing, the debtors' assets were approximately $21,697 and their debt was $16,493." [Doc. # 33, unnumbered p. 6]. But no explanation of these figures and no evidence supporting this assertion, in the form required by Rule 56, is offered in the record. So while the Trustee has not met

his burden on this issue, Defendant has also not otherwise established her entitlement to summary judgment on this point. Debtors' insolvency during the extended look back period applicable to insiders thus remains an issue for trial.

B. Did Defendant Receive More Than She Would Have Received Under Chapter 7?

The Trustee's Interim Report in Debtors' bankruptcy case indicates that, except for any preferences recovered, there are no assets to administer for the benefit of creditors. [Case No. 03-30840, Doc. # 12]. Defendant offers no evidence to the contrary. Her argument in support of her position that she received no more than she would have if the transfers had not been made and she received her pro rata share of the bankruptcy estate is flawed in that she apparently considers Debtors' current annual income as an asset of the estate, which it is not, *see* 11 U.S.C. § 541(a) (providing that the bankruptcy estate is comprised of all legal or equitable interests of the debtor in property *as of the commencement of the case*), and she fails to reduce the value of assets potentially available for

distribution to creditors by the amount of costs and exemptions claimed in this case. The only asset in the estate, after reductions for costs and exemptions, consists of preferential payments made to Defendant, payments that Defendant would otherwise be required to share with other creditors on a pro rata basis. Accordingly, to the extent that Defendant received preferential payments that are not otherwise excepted from the provisions of § 547(b), she received more than she would have received in Debtors' Chapter 7 case.

C. Antecedent Debt

Defendant argues that the house payments received by her were not for or on account of an antecedent debt. Alternatively, she argues that the payments fall within the contemporaneous exchange exception in § 547(c)(1). An antecedent debt is defined as a debt that is incurred before the relevant transfer. *McClarty v. Colleta (In re D.C.T., Inc.)*, 295 B.R. 236, 238 (Bankr. E.D. Mich. 2003). A debt is not incurred until a debtor has a legal obligation to pay. *Bernstein v. RJL Leasing (In re White River Corp.)*, 799 F.2d 631, 632 (10th Cir. 1986).

Defendant relies on the rationale set forth in *Carmack v. Zell (In re Mindy's, Inc.)*, 17 B.R. 177 (Bankr. S.D. Ohio 1982), wherein the bankruptcy court addressed the issue of antecedent indebtedness

in the context of rental payments on a long-term lease. Noting that the payment of current rent has historically been held to rest upon current consideration and thus did not constitute a preference under previous bankruptcy law, the court stated:

> The Court declines to follow the rationale advanced by the trustee that the debt was incurred at the time of the original signing of the lease obligations. The total lease obligation, at that point in time, was not due and payable-it was only due and payable as the lease term progressed and as the lessee occupied the premises subject to the leasehold in accordance with the terms of the lease.

Id. at 179. Under a lease agreement, "a lessor . . . continues to supply to a lessee performance under the lease and, as rent is paid, continues to provide to the lessee the benefit of an on-going leasehold estate." *Id.* The Eighth Circuit applied this reasoning to rental debts incurred under an equipment lease, holding that the debts were incurred in monthly increments on the actual dates the rent was due. *White River Corp.*, 799 F.22d at 633.

In this case, there is no enforceable land installment contract,[5] *see* Ohio Rev. Code § 1335.04 (requiring contracts for the sale of real property to be in writing), and no long-term lease agreement. Nevertheless, Debtors have lived in the home located at 402 Bell Street since July 2002[6] and have paid Defendant $76.08 every two weeks to do so. None of the biweekly payments were late payments as evidenced in Exhibit E. Under these circumstances, the court adopts the rationale set forth in *Mindy's, Inc.* and finds that Debtors' payments constitute the payment of current rent which rests upon current consideration by Defendant in that she continued to supply Debtors with a home in which to live. Accordingly, the house payments received by Defendant during the one-year preferential look-back period

---

5 Neither Debtor nor any other party has invoked the equitable doctrine of part performance in order to remove the contract from the operation of the Statute of Frauds.

6 As indicated earlier, Debtors' petition lists 402 Bell Street as their address. Their Statement of Financial Affairs, at paragraph 15, indicates that they lived at a prior address through June 2002. From this information, the court may infer that Debtors have resided at 402 Bell Street since July 2002. [Case No. 03-30840, Doc. # 1].

were not made on account of an antecedent debt and, thus, were not preferential transfers. In light of the court's holding, it need not address Defendant's alternative argument under § 547(c)(1).

III. Ordinary Course of Business Defense

Defendant argues that all of the transfers made to her by Debtors are exempt from avoidance under the ordinary course of business defense set forth in § 547(c)(2). In light of the court's holding that the house payments were not preferential transfers, the court will address this affirmative defense with respect to the car loan and debt consolidation loan payments only.

Under § 547(c)(2), a trustee may not avoid a transfer to the extent that the transfer was

> (A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;
>
> (B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and
>
> (C) made according to ordinary business terms.

The Bankruptcy Code does not define "ordinary course of business or financial affairs" or "ordinary business terms." However, the Sixth Circuit explained that § 547(c)(2) was intended to "protect

recurring, customary credit transactions which are incurred and paid in the ordinary course of business of the debtor and the transferee" and "to leave undisturbed normal financial relations, because it does not detract from the general policy of the preference section to discourage unusual action by either the debtor or his creditors during the debtor's slide into bankruptcy." *Waldschmidt v. Ranier & Assocs. (In re Fulghum Constr. Corp.)*, 872 F.2d 739, 743 (6th Cir. 1989).

Subsections (A) and (B) are subjective elements of the § 547(c)(2) defense. Subsection (A) requires proof that the debt was incurred in the ordinary course of business or financial affairs of that debtor and that creditor and subsection (B) requires that the defendant prove that the debt and its payment are ordinary in relation to other business or financial dealings between that creditor and that debtor. *See Logan v. Basic Distribution Corp. (In re Fred Hawes Org., Inc.)*, 957 F.2d 239, 244 (6th Cir. 1992). In applying subsection (B), courts consider several factors, "'including timing, the amount and manner a transaction was paid and the circumstances under which the transfer was made.'" *Id.*, quoting *Yurika Foods Corp. v. United Parcel Serv. (In re Yurika Foods Corp.)*, 888 F.2d 42, 45 (6th Cir. 1989).

Subsection (C) is the objective prong of the defense and requires proof "that the transaction was not so unusual as to render it an aberration in the relevant industry." *Luper v. Columbia Gas of Ohio, Inc. (In re Carled, Inc.)*, 91 F.3d 811, 818 (6th Cir. 1996).

Applying the foregoing principles, Defendant has not met her burden of establishing the ordinary course of business defense under § 547(c)(2). The evidence before the court indicates that defendant, on two separate occasions, made interest-free loans to Debtors in order to consolidate their debt and later to pay off an existing car loan. Debtors agreed to repay the debt consolidation loan of $10,900 over 108 months, payable in monthly installments of $100.93 due on the 15th of each month, and to repay the car loan over a period of 20 months, payable in monthly installments of $278 due on the 15th of each month. The first six payments on both loans were made on a monthly basis, some of which were made after the 15th of the month, and then, beginning in August 2002, payment amounts were decreased and were made on a biweekly basis.

On this evidence alone, the court cannot conclude that each element of § 547(c)(2) has been satisfied. Although Defendant contends that exhibits to which the parties stipulated, together with the testimony of Debtors and Defendant, establish that the debts at issue were "ordinary" in relation to the dealings between Debtors and Defendant, no such testimony has been submitted to the court

in support of her motion. The exhibits alone do not support such a conclusion. While even irregular transactions may be considered "ordinary" for purposes of § 547(c)(2) "if those transactions were consistent with the course of dealings between the particular parties," *Fulghum Constr. Corp.*, 872 F.2d at 743, there is no explanation regarding the ordinary course of dealings between Debtors and Defendant and no explanation for the modification in the payment terms of both loans in this case. In addition, without some further explanation, it does not appear that Debtors' borrowing, and

Defendant's loaning, of funds to consolidate debt and to pay off an existing car loan are "ordinary" events in their financial affairs. Moreover, as the loans were interest-free, it appears that they were made for no consideration. As Defendant correctly acknowledges in her brief in support of her motion, a loan made without consideration may in fact be so unusual as to be an aberration in the loan industry, thus, removing such transactions from the ordinary course of business exception of § 547(c)(2).

For the foregoing reasons, Defendant is not entitled to judgment in her favor as a matter of law

based on this affirmative defense. But Defendant raised the ordinary course of business defense not only in support of her cross-motion for summary judgment, but also to defeat the Trustee's summary judgment motion. The Supreme Court explained that "the plain language of Rule 56(c)mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.*, 477 U.S. at 322-323. Thus, "one who relies upon an affirmative defense to defeat an otherwise meritorious motion for summary judgment must adduce evidence which, viewed in the light most favorable to and drawing all reasonable inferences in favor of the non-moving party, would permit judgment for the non-moving party on the basis of that defense." *Frankel v. ICD Holdings S.A.*, 930 F. Supp. 54, 64-65 (S.D.N.Y. 1996); *see also Harper v. Delaware Valley Broadcasters, Inc.*, 743 F. Supp. 1076, 1090-91 (D. Del. 1990) (finding that the burden is on defendant resisting summary judgment to adduce evidence supporting affirmative defense, not upon movant to negate its existence.). Because there is no factual dispute with respect to each element of the Trustee's preference claim relating to payments on the debt consolidation and car loans at issue that occurred during the ninety days immediately preceding the filing of Debtors' petition, and because Defendant failed to offer sufficient evidence of her affirmative defense to the Trustee's claim, partial summary judgment will be granted to the Trustee on those specific transfers in the amount of $1,049.52.[7]

IV. "Exemption" Defense

Defendant argues that to the extent the court finds that nonexempt preferential transfers were made, $795 of the amount transferred may not be recovered by the Trustee. The basis for her argument is that Debtors would be entitled to $795 in additional exemptions under Ohio law and that, as a result, this amount would not have been part of the bankruptcy estate. To the extent that Debtors would even be entitled to exempt some portion of the preferential transfers recovered by the Trustee, *see* 11 U.S.C. § 522(g) (providing that an exemption may be claimed only if the transfer was not a voluntary transfer by the debtor), Debtors, not Defendant, would be the beneficiary of that exemption. Defendant's argument is not well taken.

---

[7] Transfers within the ninety-day look-back period relating to the debt consolidation and car loan total $279.72 and $769.80, respectively, for a total amount of $1,049.52.

V. Conclusion

The Trustee is entitled to summary judgment in the amount of $1,049.52 on his preference claim relating to debt consolidation and car loan payments made during the ninety days before Debtors filed their Chapter 7 petition, and Defendant is entitled to summary judgment on the Trustee's preference claim relating to house payments made during the one-year look-back period applicable to insiders.

As discussed in this opinion, the only issue remaining for trial regarding the elements of the Trustee's preference claim relating to debt consolidation and car loan payments made by Debtors earlier than ninety days before filing their petition is whether Debtors were insolvent at the time of those transfers. All other elements have either been stipulated to by Defendant or determined by the court in favor of the Trustee in this memorandum of decision. Partial summary judgment being granted on the Trustee's claims relating to transfers made during the ninety days immediately before filing on account of the debt consolidation and car loans, Defendant may raise an ordinary course of business defense at trial only with respect to the Trustee's claims that preferential transfers were made on those two loans during the extended insider preference period.

A separate scheduling order will be entered.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Trustee's motion for summary judgment [Doc. # 32] be, and hereby is, **GRANTED in part,** on his claims for car loan and debt consolidation loan payments made to Defendant during the 90 days before commencement of Debtors' Chapter 7 case in the total amount of $1,049.52**,** and **DENIED in part,** as to the balance of his claims; and

IT IS FURTHER ORDERED that Defendant's cross-motion for summary judgment [Doc. # 33] be, and hereby is, **GRANTED in part** as to the Chapter 7 Trustee's claims regarding the house payments made by Debtors to Defendant and otherwise **DENIED in part.**

_____

Mary Ann Whipple

United States Bankruptcy Judge