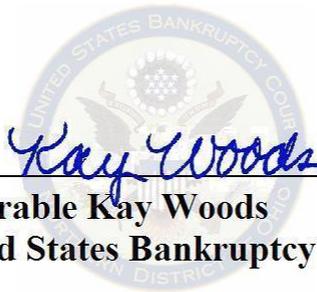


IT IS SO ORDERED.

Dated: February 01, 2007  
02:34:11 PM



\_\_\_\_\_  
Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
OMEGA DOOR COMPANY, INC.,	*	
	*	CASE NUMBER 03-42905
Debtor.	*	
	*	
*****	*	
	*	
KATHRYN A. BELFANCE, Trustee of	*	
the Omega Door Company	*	
Liquidation Trust,	*	
	*	ADVERSARY NUMBER 05-4291
Plaintiff,	*	
	*	
vs.	*	
	*	
RICHARD BUONPANE, et al.,	*	
	*	THE HONORABLE KAY WOODS
Defendants.	*	
	*	

\*\*\*\*\*  
M E M O R A N D U M O P I N I O N  
\*\*\*\*\*

This matter is before the Court upon Cross-motions for Summary Judgment. Plaintiff Kathryn A. Belfance, Trustee of the Omega Door Company Liquidation Trust ("Trustee") filed her Motion for Summary

Judgment and, in the Alternative, Motion for Partial Summary Judgment on November 13, 2006. Defendants Richard Buonpane and Georgeanne Buonpane ("Defendants") filed their Motion for Partial Summary Judgment on the same date. The parties filed their respective opposition briefs on December 4, 2006.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (C),(F), (H), and (O). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

### **I. Standard of Review**

The procedure for granting summary judgment is found in FED. R. CIV. P. 56(c), made applicable to this proceeding through FED. R. BANKR. P. 7056, which provides in part that:

The judgment sought shall be rendered forthwith if the 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 a judgment as a matter of law.

FED. R. BANKR. P. 7056(c). Summary judgment is proper if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it could affect the determination of the underlying action. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986);

*Tennessee Department of Mental Health & Retardation v. Paul B.*, 88 F.3d 1466, 1472 (6th Cir. 1996). An issue of material fact is genuine if a rational fact-finder could find in favor of either party on the issue. *Anderson*, 477 U.S. at 248-49; *SPC Plastics Corp. v. Griffith (In re Structurlite Plastics Corp.)*, 224 B.R. 27 (B.A.P. 6th Cir. 1998). Thus, summary judgment is inappropriate "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248 (1986).

In a motion for summary judgment, the movant bears the initial burden to establish an absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at 322; *Gibson v. Gibson (In re Gibson)*, 219 B.R. 195, 198 (B.A.P. 6th Cir. 1998). The burden then shifts to the nonmoving party to demonstrate the existence of a genuine dispute. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992). The evidence must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970). However, in responding to a proper motion for summary judgment, the nonmoving party "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989) (quoting *Anderson*, 477 U.S. at 257). That is, the nonmoving party has an affirmative duty to direct the court's attention to those specific

portions of the record upon which it seeks to rely to create a genuine issue of material fact. *Street*, 886 F.2d at 1479.

## **II. Facts**

The following facts are undisputed unless otherwise noted. On January 1, 1999 ("Purchase Date"), pursuant to a Purchase Agreement dated December 14, 1998, Richard Buonpane sold all of the stock of Debtor, Omega Door Company, Inc. ("Debtor" or "company"), as well as the stock of two of Debtor's affiliate companies, S&S Omega Garage Door Company and Holtzer-Omega Garage Door Company, to John and Tina Thompson for the purchase price of \$1,550,000.00.

Buonpane received \$550,000.00 in cash, and a Commercial Secured Promissory Note ("Note") dated January 1, 1999 in the principal amount of \$1,000,000.00 executed and delivered by the Thompsons. To secure payment on the Note, Debtor executed and delivered a Guaranty on the same date in which Debtor guaranteed repayment of the obligations of the Thompsons under the Note. The \$550,000.00 cash payment was financed through two loans (the "Loans") incurred by the Thompsons, one from Mahoning National Bank for \$350,000.00 and the other from Cortland Bank for \$200,000.00. Like the Note, both Loans were guaranteed by Debtor.

Trustee concedes that, as a result of the stock purchase on January 1, 1999, the Thompsons owned all of the stock of Debtor and its affiliates. However, all of the payments on the Note were made

by checks drawn on Debtor's bank account.<sup>1</sup> Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on June 10, 2003 ("Petition Date"). On October 12, 2005, this Court entered an Order confirming Debtor's First Amended and Restated Plan of Reorganization ("Plan").<sup>2</sup>

In the course of this litigation, Trustee deposed John Thompson. John Thompson testified that he did not have sufficient funds<sup>3</sup> to purchase Debtor's stock in 1999, and that he intended that all of the payments on the Note would be made by Debtor. (Deposition of John Thompson at 29.) Thompson further testified that Richard Buonpane was aware that Thompson did not have the independent means to purchase the stock. (*Id.* at 48.) Finally, Thompson testified that, had the guarantor liability been reflected on Debtor's financial statements throughout the course of his ownership of the company, Debtor would have been insolvent on the Purchase Date as well as at all times after the Purchase Date. (*Id.* at 121, 124, 125, 130, 134.)<sup>4</sup>

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<sup>1</sup>Payments on the Note were directed to Richard Buonpane, with the exception of \$15,192.90, which was directed to Georgeanne Buonpane after the parties' divorce.

<sup>2</sup>Pursuant to the Plan, the Confirmation Date is September 30, 2005, the date the Court orally confirmed the Plan.

<sup>3</sup>Despite Thompson's protestations, there is no evidence before the Court that the Loans were ever challenged as being under-collateralized or fraudulent in nature.

<sup>4</sup>Defendants attached the Affidavit of Karl B. Schroedel to their Response to Trustee's Motion for Summary Judgment. Schroedel's affidavit directly contradicts Thompson's conclusions regarding the solvency of the company. On December 6, 2006, Trustee filed a Motion to Strike the Affidavit of Karl B. Schroedel. Defendants filed an Objection to the Motion to Strike on December 8, 2006. Because the Court did not consider the Schroedel Affidavit in rendering its decision on the merits of the pending motions, Trustee's Motion to Strike is

Based upon the foregoing facts, Trustee asserts that the installment payments made by Debtor on the Note during the four years preceding the Petition Date constitute fraudulent transfers pursuant to 11 U.S.C. § 544(b) and R.C. § 1336.07<sup>5</sup> (First Claim for Relief). Trustee further argues that the installment payments made by Debtor on the Note during the one year preceding the Petition Date likewise constitute fraudulent transfers pursuant to 11 U.S.C. § 548 (Second Claim for Relief). Next, Trustee asserts that the installment payments made by Debtor on the Note during the four years preceding the Petition Date constitute illegal corporate dividends in violation of R.C. §§ 1701.33 and 1701.35 (Third Claim for Relief).<sup>6</sup>

Defendants counter that the First, Second, and Third Claims for Relief are barred by the applicable statutes of limitations, because the limitations periods began to run on the Purchase Date, rather than on the dates that the respective installment payments were made. In the alternative, Defendants argue that Debtor received reasonably equivalent value for the payments on the Note, that is, a commensurate reduction in Debtor's guarantor liability.

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moot.

<sup>5</sup>R.C. § 1336.07 is the remedies section of the Ohio Fraudulent Transfer Act ("OFTA"), R.C. § 1336.01, *et seq.* As such, Trustee fails to identify upon which section of the OFTA her claim is premised. Because Trustee argues that a four year statute of limitations applies, the Court will presume that the First Claim for Relief is premised upon R.C. § 1336.04(A).

<sup>6</sup>In her Fourth Claim For Relief, Trustee contends that the installment payments made by Debtor on the Note during the 90 days preceding the Petition Date constitute preferences pursuant to 11 U.S.C. § 547. Neither party has moved for summary judgment on the Fourth Claim for Relief.

### III. Law

#### A. § 544 of the Bankruptcy Code and R.C. § 1334.04 (First Claim for Relief)

Section 544(b)(1) of the Bankruptcy Code permits the trustee to "avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title[.]" 11 U.S.C. § 544 (1998).

Upon avoiding a transfer or obligation under 11 U.S.C. § 544, 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 the initial transferee of such transfer[.]" 11 U.S.C. § 550 (West 1994).

R.C. § 1336.04 captioned "Intent to Defraud; property depletion; debts incurred beyond ability to pay," reads, in pertinent part:

(A) A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the claim of the creditor arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following ways: . . .

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and if either of the following applies:

(a) The debtor was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were

unreasonably small in relation to the business or transaction;

(b) The debtor intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

OHIO REV. CODE ANN. § 1336.04(B) (West 2006). A claim for relief with respect to a transfer or obligation that is fraudulent under R.C. § 1336.04(A)(2) is extinguished unless brought "within four years after the transfer was made or the obligation was incurred[.]" OHIO REV. CODE ANN. § 1336.09(B) (West 2006). Pursuant to R.C. § 1336.07(A)(1), Trustee may avoid the fraudulent transfer or obligation to the extent necessary to satisfy her claim. OHIO REV. CODE ANN. § 1336.07 (West 2006).

The burden of proof rests upon Trustee to demonstrate the statutory elements of constructive fraud. *Youngstown Osteopathic Hosp. Assn. v. Pathways Center for Geriatric Psychiatry, Inc.* (*In re Youngstown Osteopathic Hosp. Ass'n*), 280 B.R. 400, 409 (Bankr. N.D. Ohio 2002). However, "[o]nce the creditor proves the requisite elements, the debtor then has the opportunity to rebut the presumption of a fraudulent transfer or obligation by demonstrating that the transaction was made for value or consideration." *Id.* (citing OHIO REV. CODE ANN. § 1336.08 (West 2006)); see also *In re Jones*, 305 B.R. 276, 280 (Bankr. S.D. Ohio 2003) ("Fair consideration is an absolute defense to a fraudulent conveyance action under Ohio law.").

**B. § 548 of the Bankruptcy Code (Second Claim for Relief)**

11 U.S.C. § 548(a)(1)(B), the Bankruptcy Code's constructive fraud provision, provides:

(a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily-

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

11 U.S.C. § 548 (West 2006). Like the state fraudulent conveyance claim, Trustee must prove the elements of the § 548 claim by a preponderance of the evidence. *Rieser v. Hyaslip (In re Canyon Systems Corp.)*, 343 B.R. 615, 638 (Bankr. S.D. Ohio 2006).

Upon avoiding a transfer or obligation under 11 U.S.C. § 548, 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 the initial transferee of such transfer[.]" 11

U.S.C. § 550.

**C. R.C. § 1701.35 (Third Claim for Relief)**

R.C. § 1701.35(B) reads, in its entirety:

A corporation shall not purchase its own shares except as provided in this section, nor shall a corporation purchase or redeem its own shares if immediately thereafter its assets would be less than its liabilities plus its stated capital, if any, or if the corporation is insolvent, or if there is reasonable ground to believe that by such purchase or redemption it would be rendered insolvent.

OHIO REV. CODE ANN. § 1701.35 (West 2006).

R.C. § 1701.95, captioned "Liability of directors and shareholders for unlawful loans, dividends, or distributions," reads, in pertinent part:

(D) A shareholder who knowingly receives any dividend, distribution, or payment made contrary to law or the articles shall be liable to the corporation for the amount that is in excess of the amount that could have been paid or distributed without a violation of law or the articles.

OHIO REV. CODE ANN. § 1701.95 (West 2006).<sup>7</sup>

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<sup>7</sup>The parties disagree as to the statute of limitations applicable to Trustee's illegal redemption claim. However, because Trustee's substantive arguments on her Third Claim for Relief fail as a matter of law, the Court need not address the statute of limitations arguments set forth by the parties in their respective briefs.

Furthermore, the Court notes, *sua sponte*, that Trustee premises her standing on the Third Claim for Relief on 11 U.S.C. § 544. However, liability imposed upon a shareholder pursuant to R.C. § 1701.95 runs to the corporation and not to creditors directly. See *James v. McCoy*, 56 F.Supp.2d 919, 932(S.D. Ohio 1998)(*citing Schaefer v. De Chant*, 11 Ohio App.3d 281, 283 (Ohio App. (6th Dist.) 1983)). Again, because Trustee's substantive arguments fail as a matter of law, the Court will not address the standing issue.

#### IV. Analysis

With respect to the First and Second Claims for Relief, Trustee contends that each of the installment payments made by Debtor on the Note constitute a separate fraudulent transfer under the Revised Code and the Bankruptcy Code. Defendants, on the other hand, assert that the transfer at issue in this case is the transfer of Debtor's stock on the Purchase Date, which occurred more than four years prior to the Petition Date.

Trustee relies upon the definitions of "transfer" in the Revised Code and the Bankruptcy Code in support of her argument. R.C. § 1336.01 defines "transfer" as "every direct or indirect, absolute or conditional, and voluntary or involuntary method of disposing of or parting with an asset or an interest in an asset, and includes the payment of money, release, lease, and creation of a lien or other encumbrance." OHIO REV. CODE ANN. § 1336.01 (West 2006).

Section 101 (54) of the Bankruptcy Code defines a "transfer" as:

. . . every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption;

11 U.S.C. § 101 (West 2003).

Trustee also cites *Helman v. EPL Prolong, Inc.*, 139 Ohio App.3d 231, 248 (Ohio App. (7th Dist.) 2000) and *Northwestern Nat. Ins. Co. of Milwaukee v. Joslyn*, 53 F.3d 331, 1995 WL 270995 \*4

(6th Cir.) for the proposition that "the Court must examine each transfer individually at the date of each of the payments to the Defendants." (Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment at p. 9.)

In fact, *Helman* and *Joslyn* establish that the statute of limitations in fraud cases does not begin to run until a plaintiff actually discovers the alleged fraud. *Helman*, 139 Ohio App.3d at 248, *Joslyn*, 1995 WL 270995 \*3. Therefore, Trustee's reliance on *Helman* and *Joslyn* is misplaced because neither case addresses the treatment of installment payments under state or federal fraudulent transfer law.

Defendants contend that the transfer at issue in this case is the transfer of Debtor's stock, which took place on the Purchase Date, and that the applicable statutes of repose prevent Trustee from challenging the stock transfer.

Neither party cited, nor did this Court independently find, any case law addressing the treatment of installment payments under a promissory note under state or federal fraudulent transfer law. However, after considering the arguments of both parties, the Court finds that the installments payments represent an obligation "incurred" by the Thompsons and Debtor on the Purchase Date, and, therefore, the respective statutes of limitations bar the state and federal fraudulent transfer actions.

R.C. § 1336.06(B)(2) states that an obligation is incurred, if evidenced by a writing, when the writing executed by the obligor is

delivered to or for the benefit of the obligee. OHIO REV. CODE ANN. § 1336.06 (West 2006). Likewise, federal courts interpreting 11 U.S.C. § 547(c)(2) have concluded that an obligation is incurred when the debtor becomes legally obligated to pay. *Sandoz v. Fred Wilson Drilling Co. (In re Emerald Oil Co.)*, 695 F.2d 833, 837 (5th Cir. 1983); see also *Belfance v. BancOhio/National Bank (In re McCormick)*, 5 B.R. 726, 731 (Bankr. N.D. Ohio 1980)(debt not "incurred" anew every month when installment becomes due).

More pointedly, the bankruptcy court for the Southern District of New York acknowledged that, "While the Bankruptcy Code is silent on the question of when a debt or obligation is 'incurred,' courts have not questioned that an 'obligation' to pay principal indebtedness under a promissory note is 'incurred' on the date the note is executed and delivered." *Federal Communications Commission v. NextWave Personal Communications (In re NextWave Personal Communications, Inc.)*, 235 B.R. 277, 289 (Bankr. S.D.N.Y. 1999)(citing *In re Iowa Premium Service.*, 695 F.2d 1109, 1111-12 (8th Cir. 1982); *In re Smith-Douglass, Inc.*, 842 F.2d 729, 730 (4th Cir. 1988); *In re Pippin*, 46 B.R. 281, 283-84 (Bankr. W.D. La. 1984)(holding that, for preference purposes, debtor becomes legally obligated to pay under installment payment contract when contract is executed)).

Based upon the state statute and the rationale articulated in the foregoing case law, this Court finds that Debtor incurred its guarantor liability on the Note on January 1, 1999. As a

consequence, both the state and federal statutes of limitations bar Trustee from pursuing the First and Second Claims for Relief. Moreover, because the statute of limitations in the state statute expired prior to the Petition Date in this case, Trustee cannot invoke the extension of time provided in 11 U.S.C. § 108.<sup>8</sup> Therefore, Defendants are entitled to judgment as a matter of law on Trustee's state and federal fraudulent transfer claims.

Turning to Trustee's Third Claim for Relief, Trustee contends that the stock purchase at issue in this case was a thinly-veiled stock redemption because Debtor made all of the installment payments on the Note. As such, Trustee urges the Court "to 'loo[k] beyond the artifice created by the parties to the essence of the transaction.'" (Trustee's Motion for Summary Judgment at p. 19 quoting *Yoder v. T.E.L. Leasing (In re Suburban Motor Freight, Inc.)*, 124 B.R. 984, 998 (Bankr. S.D. Ohio 1990)).

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<sup>8</sup>Trustee relies on 11 U.S.C. § 108 to extend the statute of limitations on her state fraudulent transfers claim. Section 108 reads, in pertinent part:

If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

11 U.S.C. § 108 (West 2006).

Trustee's argument ignores the operative language in § 108, which requires that the limitations period in the state statute not have expired before the Petition Date. Here, the statute of limitation in R.C. § 1336.09 ran prior to the Petition Date. Therefore, 11 U.S.C. § 108 is of no avail to Trustee.

Trustee characterizes the transaction at issue as "no different than a purchase or redemption by the Debtor of its own shares of stock," (Trustee's Motion for Summary Judgment at p. 19) Trustee's argument, however, misses the mark in the following fundamentally important respects: First, as a result of the Purchase Agreement in 1999, the Thompsons acquired ownership and control of the company.<sup>9</sup> Second, although Debtor made all of the payments on the Note, Debtor neither purchased nor redeemed its own stock. The payments made on the Note by Debtor, as guarantor of the debt owed by the Thompsons, were made for the benefit of the Thompsons.

Despite the fact that the Thompsons, not the Buonpanes: (1) were the primary obligors on the Note; (2) directed that payments on the Note be made by Debtor; (3) benefitted from the Debtor's payment for their stock; and (4) did not include the company's guarantor liability on its balance sheet, Trustee has never attempted to recover the value of the payments on the Note from the Thompsons.<sup>10</sup>

Instead, Trustee ignores the foregoing facts and attempts to incriminate the Buonpanes. In an effort to establish a violation

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<sup>9</sup>Upon confirmation, the stock ownership of 100 treasury shares representing 100% interest was conveyed to R.G. Thompson (John Thompson's father) or his nominee upon payment by him of \$20,000.00 and the stock ownership interest of John Thompson was cancelled. (Plan at Section 5.4.)

<sup>10</sup>John Thompson filed a Chapter 11 Petition on September 24, 2003 in case no. 03-44830. The Order confirming his Chapter 11 Plan of Reorganization was entered on October 7, 2005. Tina Thompson filed a Chapter 7 Petition on July 30, 2003 in case no. 03-43808. The Order of Discharge was entered on December 1, 2003.

of R.C. § 1701.95 by the Buonpanes, Trustee writes, “[T]his transaction was facilitated with the certainty that the contingency would occur and an understanding between the parties involved that the contingent liability would become a real liability of the Debtor.” (Trustee’s Mot. at 12.) However, the facts do not support Trustee’s conclusion.

Even, assuming *arguendo*, that a stock redemption, rather than a stock sale, occurred in this case, Trustee has not carried her burden of demonstrating that there is no genuine issue of material fact as to whether Richard Buonpane “knowingly receive[d] a dividend, distribution, or payment.” R.C. § 1701.95 (Emphasis added). Although Thompson testified that Buonpane was aware that Thompson did not have the independent means to purchase the stock, when he was asked whether Buonpane was aware that Debtor was the entity that would be paying the Note, Thompson responded, “I think it was understood. I’m not sure we had that conversation.” (Thompson Dep. at 48.) There is no other evidence of Buonpane’s knowledge on this subject. Therefore, Trustee cannot establish that Buonpane knew the Note would be paid by Debtor.

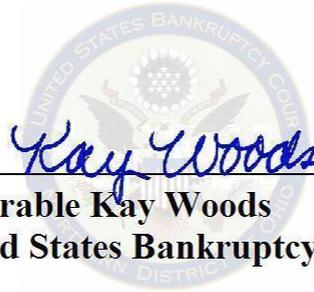
Likewise, the fact that Buonpane knew that Thompson did not have independent means to pay for the company on the Purchase Date falls far short of demonstrating that Buonpane knew Debtor would ultimately make all of the payments on the Note. Simply stated, Thompson’s testimony only establishes that Thompson knew Debtor would make all of the payments on the Note.

Because Trustee has failed to show that a stock redemption occurred or that the Buonpanes knowingly sold their shares back to Debtor, Defendants are entitled to judgment as a matter of law on the Third Claim for Relief.

An appropriate Order will follow.

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IT IS SO ORDERED.



Dated: February 01, 2007  
02:34:11 PM

Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

OMEGA DOOR COMPANY, INC.,

Debtor.

\*\*\*\*\*

KATHRYN A. BELFANCE, Trustee of  
the Omega Door Company  
Liquidation Trust,

Plaintiff,

vs.

RICHARD BUONPANE, et al.,

Defendants.

\*\*\*\*\*

O R D E R

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For the reasons set forth in the Court's Memorandum Opinion,  
this Court grants the Motion for Partial Summary Judgment filed on  
behalf of Defendants Richard Buonpane and Georgeanne Buonpane and

denies the Motion for Summary Judgment and, in the Alternative, Motion for Partial Summary Judgment filed on behalf of Plaintiff Kathryn A. Belfance, Trustee of the Omega Door Company Liquidation Trust. A telephonic status conference is set for February 12, 2007 at 10:15 a.m.