

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: March 31 2007

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No.: 05-73452
	)	
Matthew M. Beeson and Amy M. Beeson,	)	Chapter 7
	)	
Debtors.	)	Adv. Pro. No. 06-3273
	)	
Louis J. Yoppolo, Trustee,	)	Hon. Mary Ann Whipple
	)	
Plaintiff,	)	
v.	)	
	)	
Troy L. Jackson,	)	
	)	
Defendant.	)	
	)	

**MEMORANDUM OF DECISION AND ORDER**  
**REGARDING MOTION FOR SUMMARY JUDGMENT**

This adversary proceeding is before the court on the Chapter 7 Trustee’s unopposed motion for summary judgment [Doc. # 27]. The Trustee seeks to recover, as a preferential transfer, a \$1,858.00 payment made to Defendant by Debtors within ninety days before filing their bankruptcy petition.

The court has jurisdiction over this adversary proceeding under 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, the Trustee's motion will be granted.

### **FACTUAL BACKGROUND**

Debtors Matthew M. Beeson and Amy M. Beeson ("Debtors") filed their petition for relief under Chapter 7 of the Bankruptcy Code on October 11, 2005. Plaintiff ("Trustee") is the duly appointed and acting trustee in the Chapter 7 case. Debtors' bankruptcy schedules list total assets in the amount of \$10,674, all of which they initially claimed as exempt property, and total unsecured nonpriority claims in the amount of \$30,698.10. Their schedules reveal no secured claims and one small priority debt to the State of Kansas in the amount of \$291.81. In Debtors' Statement of Financial Affairs, they disclose in response to Question 3b a payment of \$1,858.00 to Troy Jackson, the Defendant herein, identified as an insider, specifically "dad to wife." In correspondence with Trustee appearing as Exhibit A to Trustee's motion, [Doc. #27, Ex. A], Troy Jackson ("Defendant") acknowledges that Debtor Amy Beeson is his daughter. The answer to Question 3b of the Statement of Affairs indicates that the payment was in repayment of house payments her father had made for her. Defendant also acknowledges that he "paid or loaned if you wish, my daughters house payment in access [sic] of \$2,000 to keep them from losing their house." [Doc. #27, Ex. A]. Defendant had made such payments for them sometime in 2004 and had been trying to recover since. [Doc. #27, Ex. A]. Debtors' personal check for \$1,858.00 to Defendant was dated August 3, 2005, [Doc. #27, Ex. B], and it cleared their checking account on August 17, 2005, [Doc. #27, Ex. C].

### **LAW AND ANALYSIS**

#### **I. Summary Judgment Standard**

Under Fed. R. Civ. P. 56, made applicable to this proceeding by Fed. R. Bankr. P. 7056, summary judgment is proper only where 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). In reviewing a motion for summary judgment, however, all inferences "must be viewed in the light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-88 (1986). The party moving for summary judgment always bears the initial responsibility of informing the court of the basis for its motion, "and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any' which it believes demonstrate the absence of a genuine issue of material

fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the moving party has met its initial burden, the adverse party “may not rest upon the mere allegations or denials of his pleading but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue for trial exists if the evidence is such that a reasonable factfinder could find in favor of the nonmoving party. *Id.* Although a party fails to respond to a motion for summary judgment, the court must nevertheless satisfy itself that the moving party has met the demands of Fed. R. Civ. P. 56 before granting the motion. *See Guarino v. Brookfield Twp. Trustees*, 980 F.2d 399, 407 (6<sup>th</sup> Cir. 1992).

## II. Preferential Transfers under 11 U.S.C. § 547

Generally, “a preference occurs when a debtor makes a payment or other transfer of property to one or more creditors and not to others of the same class.” *Van Huffel Tube Corp. v. Artcraft (In re Van Huffel Tube Corp.)*, 74 B.R. 579, 584 (Bankr. N.D. Ohio 1987). In order to facilitate the equitable distribution of property among creditors of the debtor, § 547(b) of the Bankruptcy Code empowers a trustee to avoid such transfers as preferential, subject to certain exceptions not applicable here, if the debtor transfers an interest 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 ninety 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 [Title 11];
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by [Title 11].

11 U.S.C. § 547(b); *Mandross v. Peoples Banking Co. (In re Hartley)*, 825 F.3d 1067, 1069 (6<sup>th</sup> Cir. 1987). The Trustee has the burden of proving each of the elements under § 547(b). 11 U.S.C. § 547(g).

The Trustee has met his burden with respect to each of these elements. There is no dispute that Defendant was a creditor of Debtors and that the debt owed to him by Debtors was an antecedent debt that arose when he loaned them money in 2004. [Doc. #27, Ex. A]. The \$1,858.00 payment was made when it cleared Debtors’ checking account on August 17, 2005, which was within ninety days before Debtors filed their Chapter 7 petition on October 11, 2005. There is a statutory presumption of insolvency during the ninety days immediately preceding the filing of bankruptcy. 11 U.S.C. § 547(f). Defendant offers no

evidence to rebut that statutory presumption. See *In re Oakes*, 7 F.3d 234 (Table), 1993 WL 339725, \*2 (6<sup>th</sup> Cir. Sept. 3, 1993) (citing *In re Sierra Steel, Inc.*, 96 B.R. 275, 277 (B.A.P. 9<sup>th</sup> Cir. 1989)) (presumption vanishes only after transferee comes forward with substantial evidence of solvency). Thus, there is no dispute that the transfer made to Defendant during the ninety days prior to the filing of the bankruptcy petition was made while Debtors were insolvent. Finally, Trustee reports that the only other non-exempt nonexempt asset of the bankruptcy estate that he has recovered, and that is recoverable, is a tax refund in the amount of \$1,558.03. With one priority debt of \$291.81 and general unsecured debts of over \$30,000, it is also clear that the prepetition transfer made by Debtors resulted in Defendant receiving more than he would have received had the payment of \$1,858.00 on the debt to him of some \$2,000 not been made and he received his pro rata share under Chapter 7. Even without deduction of administrative expenses and ignoring the small priority claim, unsecured creditors would receive a maximum recovery of only 3% of their claims from the tax refund recovered (\$1,553.03/\$30,000) whereas Defendant received a recovery of approximately 90% of what he was owed by Debtors (\$1,858.00/\$30,000). Accordingly, the court will grant the Trustee's motion for summary judgment.

The relief sought by the Trustee includes not only the prepetition transfers but also prejudgment interest from the date he filed the complaint. The award of prejudgment interest in a preference action is within the discretion of the trial court. *Bergquist v. Anderson-Greenwood Aviation Corp.*, (*In re Bellanca Aircraft Corp.*), 850 F.2d 1275, 1281 (8<sup>th</sup> Cir.1988); *Rybarczyk v. TRW, Inc.*, 235 F.3d 975, 985 (6<sup>th</sup> Cir. 2000) (finding that under federal law, an award of prejudgment interest is left to the discretion of the trial court). Prejudgment interest provides for complete compensation of the plaintiff, considering the time value of money, and discourages any tactical delay by the defendant. *Id.*; *Lapin v. Glatstian (In re Glatstian)*, 215 B.R. 495, 497 (Bankr. D.N.J. 1997). Thus, prejudgment interest should be awarded when necessary to effectuate complete compensation, absent some justification for withholding it. *In re Milwaukee Cheese Wisconsin, Inc.*, 112 F.3d 845, 849 (7<sup>th</sup> Cir. 1997); *United Phosphorus, Ltd.*, 205 F.3d at 1236-37; see also *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 657 (1983) (holding that prejudgment interest should ordinarily be awarded absent some justification for withholding such an award in a patent infringement case).

In this case, Defendant raised no cognizable defense to the Trustee's preference claim and did not dispute the facts presented by the Trustee. Defendant's letters to the Trustee and the court explain his general frustration in layman's terms with the preference law, one shared by most creditors who receive payments before bankruptcy and then are faced with having to return those payments to a bankruptcy trustee

because they were received under circumstances meeting the statutory criteria of § 547(a) of the Bankruptcy Code. Defendant did not do anything “wrong” in accepting money from his daughter to repay a legitimate debt she owed to him. However, his letters also demonstrate that he does not have any defense to the Trustee’s recovery of what is a classic preferential transfer meeting the statutory criteria of § 547(a). Under these circumstances, the court finds no justification for withholding prejudgment interest and will award such interest from the date of filing the complaint.

There being no genuine issue of material fact, for the foregoing reasons, the Trustee is entitled to summary judgment on his preference claim. A separate final judgment conforming to this memorandum of decision and order will be entered by the court.

**THEREFORE**, for the foregoing reasons, good cause appearing,

**IT IS ORDERED** that the Trustee’s motion for summary judgment [Doc. #27] be, and hereby is, **GRANTED**.