UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 05-93363
	)	(Jointly Administered)
THE AUSTIN COMPANY, *et al.*,	)	
	)	Chapter 11
Debtors.	)	
	)	Judge Pat E. Morgenstern-Clarren
	)	
MARK A. ROBERTS as Liquidating Trustee of TAC LIQUIDATING TRUST, successor to THE AUSTIN COMPANY, *et al.,*	)	Adversary Proceeding No. 08-1130
Plaintiffs,	)	
v.	)	**MEMORANDUM OF OPINION**
AAC DESIGNERS BUILDERS, INC.,dba AUSTIN AECOM, *et al.*,	)	
Defendants.	)	

The plaintiff in this adversary proceeding is Mark A. Roberts, Liquidating Trustee of TAC Liquidating Trust, successor to debtor, The Austin Company and affiliated debtors (the debtor). His multi-count complaint seeks judgment against AAC Designers Builders, Inc. (AAC) for avoidance and recovery of alleged fraudulent and preferential transfers, turnover of property of the estate, breach of contract, unjust enrichment, and disallowance and equitable subordination of AAC's claims.[1] AAC moves for judgment on the pleadings under federal civil rule 12(c) with

[1] Complaint, counts I through VIII and X through XII. (Docket 1). The claim against the other defendant, Austin-AECOM, is contained in count IX. Austin-AECOM did not join AAC in the instant motion.

respect to counts I, II, and III of the complaint which seek avoidance and recovery of fraudulent transfers under bankruptcy code §§ 544, 548, and 550. (Docket 27, 28, 37). AAC also requests judgment on the pleadings as to count XI which seeks the equitable subordination of AAC's claims against the bankruptcy estate. The plaintiff opposes the motion. (Docket 35).

For the reasons stated below, the court finds that judgment on the pleadings is not appropriate with respect to counts I, II, III and XI of the complaint. AAC's motion is, therefore, denied.[2]

I. JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (E), (F), (H) and (O).

II. THE ADVERSARY PROCEEDING

A. The Complaint

As previously detailed in the memorandum of opinion addressing AAC's 12(b)(6) motion, *see* docket 47, the complaint includes these factual allegations:[3]

In 2004, the debtor encountered financial difficulty, and sought to sell portions of its business. In October 2004, the debtor entered into a letter-of-intent with AECOM Technology Corporation (AECOM Parent), for a stock acquisition of the debtor's business. The letter contained a provision that the debtor not market its assets or negotiate with any third-parties for

[2] This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

[3] For the sake of clarity, the capitalized terms used here have the same definition as the capitalized terms in the complaint.

ninety days, giving AECOM Parent exclusive bid rights during this period.[4] Ultimately, the debtor and AECOM Parent entered into an agreement (Asset Purchase Agreement) by which AAC—formed specifically for the contemplated transaction—acquired only certain of the debtor's assets (Purchased Assets). The Purchased Assets included the rights to certain projects estimated to produce approximately $80 million in revenue.[5] The plaintiff asserts that AECOM Parent reduced its bid during the exclusivity period and offered to purchase specific assets only, instead of the debtor's entire business,[6] thus "cherry-picking" the debtor's best assets at a reduced price.

The Asset Purchase Agreement called for a sale of the Purchased Assets to AECOM Parent for $6,500,000.00.[7] The Asset Purchase Agreement required AAC to assume certain liabilities; AAC was to receive $4,409,893.00 of the purchase price back after closing; AAC was to make payments representing the Post-Closing Adjustments to the debtor, and the debtor was to make certain Post-Closing Transfers.[8] The Asset Purchase Agreement also required that the debtor obtain fairness and solvency opinions.[9] The plaintiff asserts that these opinions were influenced by AECOM Parent's general counsel to give the appearance that the debtor was

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[4] Complaint ¶ 12-14.

[5] Complaint ¶ 23.

[6] Complaint ¶ 15.

[7] Complaint ¶ 16, 24.

[8] Complaint ¶ 24-25, 27-28.

[9] Complaint ¶ 17.

solvent and would be able to continue its business after the contemplated sale transaction,[10] when this was not true.

The sale closed on or about January 21, 2005.[11] However, AAC allegedly failed to make the Post-Closing Adjustments, while the debtor made Post-Closing Transfers in the minimum amount of $8,947,422.71.[12] The plaintiff alleges that all of these events resulted in the debtor's valuable business assets being transferred to AAC, while the debtor was left only with unprofitable assets and substantial liabilities.[13]

Plaintiff's complaint sets forth allegations against AAC in eleven separate counts; however, AAC only seeks dismissal of counts I, II, III and XI. Counts I and II allege that AAC was the recipient of fraudulent transfers from the debtor under 11 U.S.C. § 548, and under 11 U.S.C. § 544 and "potentially applicable state law,"[14] respectively.[15] Count III alleges that the plaintiff is entitled to recover the value of the transfers alleged in counts I and II for the benefit of the bankruptcy estate under 11 U.S.C. § 550. Count XI seeks equitable subordination of AAC's claims under 11 U.S.C. § 510(c).

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[10] Complaint ¶ 18-20.

[11] Complaint ¶ 21.

[12] Complaint ¶ 27, 28.

[13] Complaint ¶ 29-30.

[14] Plaintiff asserts that the state law of California, Delaware, Illinois, Michigan, Ohio and Texas are "potentially applicable."

[15] Count II included an alternative request for relief in the form of a declaration that AAC is a corporate successor to the debtor. Complaint ¶ 56. AAC's motion to dismiss this claim was previously granted. *See* memorandum of opinion and order, docket 47, 48.

B. The Timing of the Motion

On June 23, 2008, the defendants filed an answer to the complaint, and a counterclaim seeking payment for post-petition work and services.[16] The plaintiff answered the counterclaim on July 23, 2008.[17] AAC's motion was filed after the pleadings had closed. Discovery in this matter has not been completed. The case management scheduling order which was entered after consultation with the parties provides that factual discovery is to be completed by December 31, 2008, and expert discovery is to be completed by March 31, 2009.[18]

III. DISCUSSION[19]

A. The Positions of the Parties

AAC moves for judgment on the pleadings as to the first three counts of the complaint. AAC asserts that the plaintiff's fraudulent transfer claims fail as a matter of law, and makes three arguments in support of this assertion: (1) the plaintiff has no factual basis for alleging that the debtor did not receive reasonably equivalent value in the transaction; (2) the plaintiff did not plead facts showing that the debtor had unreasonably small assets or capital following the transaction; and (3) the plaintiff failed to plead facts showing that the debtor was insolvent at the time of or as a result of the transaction, or intended to or believed it would incur debts exceeding its ability to pay. AAC also moves for judgment on count XI of the complaint, arguing that this

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[16] *See* docket 16.

[17] *See* docket 23.

[18] *See* docket 20.

[19] The chapter 11 cases were filed before the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA); therefore, all references to the bankruptcy code in this opinion are to the pre-BAPCPA version.

claim fails as a matter of law because the plaintiff failed to allege the kind of gross misconduct that would warrant equitably subordinating its claims as a non-insider. AAC submitted a number of documents in support of its motion.

The plaintiff takes the position that he met the applicable pleading requirements on each of the disputed counts. The plaintiff argues that AAC's motion fails to challenge the legal sufficiency of the claims set forth and merely raises issues of disputed fact in an attempt to contradict the well-pleaded allegations of the complaint.

B. Rule 12(c)

Federal rule of civil procedure 12(c) allows a defendant to move for judgment on the pleadings after the pleadings have closed, but within such time so as not to delay trial. FED. R. CIV. P. 12(c) (made applicable by federal rule of bankruptcy procedure 7012(b)). The court applies the same analysis under rule 12(c) that is applied under rule 12(b)(6); only the timing of the two types of motions differs. Under rule 12(c), the court must "construe the complaint in the light most favorable to the nonmoving party, accept the well-pled factual allegations as true, and determine whether the moving party is entitled to judgment as a matter of law." *Comm. Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 336 (6th Cir. 2007).

The Sixth Circuit recently explained a plaintiff's pleading requirements under rule 12(c):

> In *Bell Atlantic Corp. v. Twombly*, 550 U.S. — , 127 S.Ct. 1955, 167 L. Ed.2d 929 (2007), the Supreme Court explained that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level. . . ." *Id*. at 1964-65 (internal citations omitted). In *Erickson v. Pardus*, 550 U.S. — , 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007), decided two weeks after *Twombly*, however,

> the Supreme Court affirmed that "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.' Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Id*. at 2200 (quoting *Twombly*, 127 S.Ct. at 1964). The opinion in *Erickson* reiterated that "when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." *Id*. (citing *Twombly*, 127 S.Ct. at 1965). We read the *Twombly* and *Erickson* decisions in conjunction with one another when reviewing a district court's decision to grant a . . . motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12.

Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291, 295-96 (6th Cir. 2008) (footnote omitted). "The court 'need not accept the plaintiff's legal conclusions or unwarranted factual inferences as true.'" *Barany-Snyder v. Weiner*, 539 F.3d 327, 332 (6th Cir. 2008) (quoting *Commercial Money Ctr., Inc.*, 508 F.3d at 336). "To withstand a Rule 12(c) motion for judgment on the pleadings, 'a complaint must contain direct or inferential allegations respecting all the material elements under some viable legal theory.'" *Id.*

When matters outside the pleadings are presented in support of rule 12(c) motion and are not excluded by the court in considering the motion, the motion must be treated as a request for summary judgment. FED. R. CIV. P. 12(d). The Sixth Circuit interprets that requirement strictly, and "the mere presentation of evidence outside the pleadings, absent the . . . court's rejection of such evidence, is sufficient to trigger the conversion of a Rule 12(c) motion to a motion for summary judgment." *Max Arnold & Sons, LLC v. W.L. Hailey & Co.*, 452 F.3d 494, 503 (6th Cir. 2006). However, as discussed below, there are certain matters outside of the actual complaint which may be considered by a court in determining whether a defendant should be granted judgment on the pleadings.

Written instruments which are attached to the complaint are part of the pleading, *see* FED. R. CIV. P. 10(c) (made applicable by federal bankruptcy rule 7010), and may be considered on a motion for judgment on the pleadings, *see Commercial Money Ctr., Inc.,* 508 F.3d at 335. A plaintiff may attach such instruments to the complaint, but is not required to do so. *Weiner D.P.M. v. Klais and Co.*, 108 F.3d 86, 89 (6th Cir. 1997). As a general rule, if there is an inconsistency between the complaint's allegations and the attached documents, the documents control. *Mengel Co. v. Nashville Paper Prods. and Specialty Workers Union, No. 513*, 221 F.2d 644, 647 (6th Cir. 1955). This rule should not be applied too broadly, however, and it "'does not require a plaintiff to adopt every word within the exhibits as true for purposes of pleading simply because the documents were attached to the complaint to support an alleged fact.'" *Jones v. City of Cincinnati*, 521 F.3d 555, 561 (6th Cir. 2008), *petition for cert. filed*, 77 U.S.L.W. 3267 (U.S. Oct. 17, 2008) (No. 08-521) (quoting *N. Ind. Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 455 (7th Cir. 1998)). Instead, an appended document—

> will be read to evidence what it incontestably shows once one assumes that it is what the complaint says it is (or in the absence of a descriptive allegation, that it is what it appears to be). For example, a written contract appended to the complaint will defeat invocation of the Statute of Frauds, and a document that discloses what the complaint alleges it concealed will defeat the allegation of concealment. By the same token, however, a libel plaintiff may attach the writing alleged in the complaint to be libelous without risk that the court will deem true all libels in it.

Gant v. Wallingford Bd. of Educ., 69 F.3d 669, 674 (2d Cir. 1995). *See also Jones,* 521 F.3d at 561 (noting that rule 10(c) does not require a plaintiff to adopt every word in an exhibit as true simply because the exhibit was attached to the complaint to support an alleged act); *Guzell v. Hiller*, 223 F.3d 518, 519 (7th Cir. 2000) (noting that "[t]he plaintiff's purpose in attaching an

exhibit to his complaint determines what assertions if any in the exhibit are facts that the plaintiff has incorporated into the complaint").

If a plaintiff includes a written instrument that is referenced in the complaint as an attachment to the complaint, the defendant may submit the document for consideration on a rule 12(c) motion. *Weiner*, 108 F.3d at 89. Consequently, "'[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings, if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claim.'" *Id.* (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)). While the court may consider such documents on a 12(c) motion, such reference does not alter the focus of the court's inquiry which is not to resolve factual disputes but rather to determine whether the plaintiff's allegations are adequate to survive a motion to dismiss. *See Greenburg v. Life Ins. Co. of Va.*, 177 F.3d 507, 516-17 (6th Cir. 1999) (addressing an analogous situation under 12(b)(6)).

The court may also consider other materials on a rule 12(c) motion, including public records or materials that are otherwise appropriate for judicial notice. *New England Health Care Employees Pension Fund v. Ernst & Young, LLP*, 336 F.3d 495, 501 (6th Cir. 2003) (stating analogous rule as to rule 12(b)(6) motions). However, "in general a court may only take judicial notice of a public record whose existence or contents prove facts whose accuracy cannot reasonably be questioned." *Passa v. City of Columbus*, No. 03-4111, 123 F. App'x. 694, 697 (6th Cir. Feb. 16, 2005). The court is not required to consider such materials on a 12(c) motion where the evidence offered "captures only part of the incident and would provide a distorted view of the events at issue[.]" *Jones*, 521 F.3d at 562 (internal quotations omitted). *See also Comm. Money Ctr., Inc.*, 508 F.3d at 336 (noting that it was appropriate to consider a public

record without converting the 12(c) motion to one for summary judgment because it "was offered not to establish any disputed facts").

C. The Motion

AAC's motion for judgment on the pleadings includes a number of matters outside of the complaint. It is not appropriate to treat AAC's motion as a motion for summary judgment at this point in the proceeding because neither of the parties has requested it and because discovery has not yet been completed. The court must, therefore, determine which of the matters submitted by AAC in support of its motion may be appropriately considered on a 12(c) motion.

AAC refers to and submits these items in support of its motion: the Asset Purchase Agreement and attached schedules; the October 2004 letter of intent; a November 2004 letter of intent; asset sale and bidding procedure motions which were filed in the debtor's chapter 11 case; transcripts of various hearings held before this court; the debtor's bankruptcy schedules and disclosure statement; the fairness and insolvency opinions rendered by FMI in connection with the Asset Purchase Agreement, as well as the debtor's application to retain FMI and the FMI retention order, interim fee award, and engagement letter; and the declaration of M. Glenn Hobratschk, debtor's Executive V.P., Secretary and CFO, made in support of the debtor's first day motions. The Asset Purchase Agreement, the October 2004 letter of intent, and the fairness and insolvency opinions may clearly be considered in determining the merits of the motion because they are referenced in the complaint and are central to the plaintiff's claims. The November 2004 letter of intent, on the other hand, is not specifically referenced in the complaint and will not be considered. Each of the additional items submitted by AAC will also be excluded from consideration. While these items are public records, which AAC argues may be considered

on a rule 12(c) motion, it is clear that they are being offered to establish the truth of the facts asserted in them, rather than to establish their existence or to establish facts that cannot reasonably be questioned.

1. Counts I, II, and III

a. Legal Standard

Counts I and II assert fraudulent transfer claims under § 548(a)(1)(B) and § 544(b). Count III seeks recovery of the transfers alleged in those counts under § 550. Section 548(a)(1)(B) provides that:

> (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(a)(1)(B). Section 544(b) states that the trustee "may 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 or that is not allowable only under section 502(e) of this title." 11 U.S.C. § 544(b)(1). AAC acknowledges for these purposes that the pleading requirements for § 544(b) are virtually identical to those under § 548(a)(1)(B). Section 550 provides for the recovery of avoided transfers. 11 U.S.C. § 550.

b. Sufficiency of Counts I, II, and III

AAC asserts that it is entitled to judgment on these three counts because: (1) the debtor received reasonably equivalent value through the sale transaction; (2) the plaintiff failed to plead concrete facts tending to show that the debtor had unreasonably small capital or assets following the transaction; and (3) the plaintiff failed to allege facts showing that the debtor was insolvent at the time of the transaction, became insolvent as a result of the transaction, or believed that it would incur debts beyond its ability to pay. However, after reviewing the complaint and the Asset Purchase Agreement, the October 2004 letter of intent, and the fairness and insolvency opinions which were submitted on AAC's motion, the court finds that the plaintiff has sufficiently pled these counts and that AAC is not entitled to judgment at this point in the proceedings.

The complaint includes specific factual allegations as to the fraudulent transfer claims indicating the parties to the sale transaction, the assets that were conveyed, what the debtor received in the transaction, and the debtor's financial status at the time of and following the transaction. The complaint includes allegations that: the debtor was financially distressed and suffering from a severe liquidity crisis in late 2004 and looking to sell its businesses; the debtor participated in negotiations with AECOM Parent and a sale of certain of its assets to AAC that was flawed; the purchase price for the debtor's assets was well below their actual value;

following the sale the debtor was left with considerable liabilities, but without its profitable operations; and the debtor's financial decline continued until it filed chapter 11 less than nine months after the transaction closed.

The complaint makes direct and inferential factual allegations, which if they are proven, would entitle the plaintiff to relief under § 548, § 544, and § 550 for the avoidance and recovery of fraudulent transfers. AAC does not argue otherwise. Instead, AAC asserts that the plaintiff cannot prove facts which would entitle the plaintiff to relief because the documents referred to in the complaint (and the other documents which the court has excluded) tell a different story. For example, AAC points to the fairness opinion to support its factual assertion that there were no other interested bidders for the debtor's assets. It also points to the fairness opinion to show that AAC paid a premium over net asset value, and that the transaction was fair from a financial perspective to the debtor and its creditors. AAC argues further that the definition of Retained Assets in the Asset Purchase Agreement shows that the debtor retained substantial assets following the sale. And it relies on the solvency opinion to show that the debtor was solvent and was not left with unreasonably small capital following the transaction.

AAC argues that the documents which the plaintiff refers to in the complaint include facts which contradict the complaint, and that these facts rather than the allegations made in the complaint should control the court's determination regarding the adequacy of the complaint under rule 12(c). This argument overstates the effect of the plaintiff's reference to those documents for the purposes of deciding this motion. While the Asset Purchase Agreement sets forth the terms of the sales transaction, the parties dispute the facts and circumstances surrounding that transaction. And while the complaint references the opinion letters, the plaintiff

has also alleged that the solvency opinion was altered at the behest of AECOM Parent's general counsel and that the opinions given were flawed because their author had a conflict of interest. These are factual issues and they cannot be decided as a matter of law merely because the plaintiff's complaint refers to documents which include information beyond the allegations of the complaint. "The appropriate analysis [at this point] requires asking the less demanding question of whether, taking all of the well-pled allegations as true, [the plaintiff] can prove any set of facts in support of [his] claim[s] that would entitle [him] to relief." *Greenberg*, 177 F.3d at 516–17. The answer to that question is yes.

AAC's motion for judgment on the pleadings as to counts I, II and III of the complaint is, therefore, denied.

2. Count XI

a. Legal Standard

AAC also moves for judgment in its favor on count XI which requests equitable subordination of AAC's claims. Section 510(c)(1) provides for equitable subordination as follows:

> (c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—
>
> (1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest[.]

11 U.S.C. § 510(c)(1). To establish that a claim should be equitably subordinated, the plaintiff must prove these elements by a preponderance of the evidence:

> 1) The claimant must have engaged in some type of inequitable conduct.
>
> 2) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant.
>
> 3) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy [Code].

First Nat'l Bank of Barnesville v. Rafoth (In re Baker & Getty Fin., Servs., Inc.), 974 F.2d 712, 717–18 (6th Cir. 1992) (adopting the legal standard set out in *Benjamin v. Diamond (In re Mobil Steel Co.)*, 563 F.2d 692, 699–700 (5th Cir. 1977)); *see also Bayer Corp. v. MascoTech, Inc. (In re AutoStyle Plastics, Inc.*, 269 F.3d 726, 744–45 (6th Cir. 2001).

How the three-part test for equitable subordination is applied varies depending on whether or not the creditor is an insider.

> The primary distinctions between subordinating the claims of insiders versus those of non-insiders lie in the severity of the misconduct required to be shown, and the degree to which the court will scrutinize the claimant's actions toward the debtor or its creditors. Where the claimant is a non-insider, egregious conduct must be proven with particularity. It is insufficient for the objectant in such cases merely to establish sharp dealing; rather, he must prove that the claimant is guilty of gross misconduct tantamount to 'fraud, overreaching, or spoilation to the detriment of others.' Where the claimant is an insider, his dealings with the debtor will be subjected to more exacting scrutiny.

First Nat'l Bank of Barnesville, 974 F.2d at 718 (quoting *Anaconda-Ericsson, Inc. v. Hessen (In re Teltronics Servs., Inc.)*, 29 B.R. 139, 169 (Bankr. E.D.N.Y. 1983)).

b. Sufficiency of Count XI

There is no allegation in the complaint that AAC is an insider. AAC asserts that it is entitled to judgment on count XI because the plaintiff failed to allege the type of gross

misconduct that, if proven, would warrant equitably subordinating its claims as a non-insider. A review of the complaint leads the court to conclude that the plaintiff has sufficiently pled his claim for equitable subordination. The complaint makes factual allegations of inequitable conduct, as discussed above, including an alleged direct manipulation of the fairness and solvency opinion by AECOM Parent's general counsel to create a false impression about the effect of the transaction. Whether those allegations will prove to be sufficient for purposes of equitably subordinating AAC's claims cannot be decided at this stage in the proceeding.[20] AAC's request for judgment on count XI is, therefore, denied.

IV. CONCLUSION

Counts I, II, III of the complaint are sufficient to state causes of action for avoidance and recovery of fraudulent transfers under § 544, § 548, and § 550 of the bankruptcy code. Count XI of the complaint is sufficient to state a cause of action for equitable subordination under § 510(c) of the bankruptcy code. AAC's motion for judgment on the pleadings is, therefore, denied. The court will enter a separate order reflecting this decision.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

[20] Although the plaintiff argues that the debtor's undercapitalization or insolvency is evidence of inequitable conduct in this proceeding, AAC correctly notes that the cases cited by the plaintiff all involve the equitable subordination of insider claims.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 05-93363
	)	(Jointly Administered)
THE AUSTIN COMPANY, *et al.*,	)	
	)	Chapter 11
Debtors.	)	
	)	Judge Pat E. Morgenstern-Clarren
	)	
MARK A. ROBERTS as Liquidating Trustee of TAC LIQUIDATING TRUST, successor to THE AUSTIN COMPANY, *et al.,*	)	Adversary Proceeding No. 08-1130
Plaintiffs,	)	
v.	)	**ORDER**
AAC DESIGNERS BUILDERS, INC.,dba AUSTIN AECOM, *et al.*,	)	
Defendants.	)	

For the reasons stated in the memorandum of opinion entered this same date, the motion of defendant AAC Designers Builders, Inc. for judgment on the pleadings is denied. (Docket 27).

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge