

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

OAKWOOD MARKETS, INC.,  
Debtor.

No. 96-20444  
Chapter 7

MAURICE K. GUINN, TRUSTEE,  
Plaintiff,

vs.

OAKWOOD PROPERTIES, INC.,  
Defendant.

Adv. Pro. No. 98-2027

[affirmed E.D. Tenn.  
No. 2:98-CV-375; 02-12-1998]  
[affirmed and published  
6th Circuit 203 F.3d 406]

M E M O R A N D U M

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MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE

In this adversary proceeding, the chapter 7 trustee seeks the avoidance and recovery pursuant to 11 U.S.C. §§ 549 and 550 of certain transfers by ordinary check made to Oakwood Properties, Inc. ("Oakwood") by the state court receiver for the debtor. Oakwood has moved for dismissal or for summary judgment, asserting that the transfers are not avoidable as postpetition payments under § 549(a) because the checks were delivered to Oakwood prior to the filing of an involuntary petition against the debtor and because the transfers were authorized by the court. In the alternative, Oakwood contends that the transfers are excepted from avoidance under § 549(b) because value was given in exchange for the transfers. As a secondary issue, Oakwood asserts that this adversary proceeding should be dismissed for failure to join an indispensable party under Fed. R. Bankr. P. 7019.

As explained below, the court concludes that the transfers meet the requirements for avoidability under § 549(a): the transfers occurred postpetition when the checks were honored by the debtor's bank and the transfers were not authorized by the court. The court additionally concludes, however, that the transfers are excepted from avoidance under § 549(b) to the extent of the value given by Oakwood in exchange for the transfers. Because Oakwood has not met its burden of proving

the extent of the value given in exchange for the transfers, *i.e.* that the value of leased premises for one month was reasonably equivalent to the amount of the transfers received by Oakwood, summary judgment will be denied. Oakwood's motion to dismiss for failure to join an indispensable party is without merit and will also be denied. This is a core proceeding. See 28 U.S.C. § 157(b)(2)(A).

I.

Prior to the commencement of this case, the debtor owned and operated six retail grocery stores located in northeast Tennessee and southwest Virginia. The debtor's principal creditor was Fleming Companies, Inc. ("Fleming"), the majority supplier of its inventory and equipment, to which the debtor owed more than \$2.7 million under certain promissory notes, equipment leases, and open accounts. As security for these obligations, Fleming held a perfected security interest in virtually all of the debtor's assets, including its inventory, equipment, supplies, machinery, furnishings, fixtures, leasehold interests and improvements, accounts, contract rights, and general intangibles. In December 1995, Fleming declared the debtor in default under the terms of the parties' loan agreements, placed the debtor on C.O.D. basis for the purchase

of inventory, and filed suit in state court for the appointment of a receiver to operate the debtor's business. Subsequently, on February 1, 1996, the debtor and Fleming entered into an agreement wherein the debtor agreed, *inter alia*, to a foreclosure sale by Fleming under the Uniform Commercial Code and the appointment of a receiver to operate the debtor's stores pending the sale. A state court receiver was appointed on February 8, 1996, and a bulk sale of the debtor's assets was noticed by Fleming for March 7, 1996.

One of the debtor's grocery stores was located in Weber City, Virginia, in rental property leased from Oakwood. On March 5, 1996, Oakwood received from the debtor's state court receiver two checks dated March 1, 1996, and totaling \$13,627.63 in payment of the rent for the Weber City store which was due March 1 and subject to a late penalty on March 10.<sup>1</sup> Oakwood deposited the checks into its bank account and the checks were honored by the debtor's bank on March 7, 1996.

Subsequent to Oakwood's receipt of the checks on March 5, but prior to their honor by the debtor's bank on March 7, three

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<sup>1</sup>It is unclear why two checks in the amounts of \$12,825.00 and \$802.63 were delivered. The affidavit of Oakwood's general partner simply recites that "I received two checks from the Receiver of Oakwood Markets for payment of March rents." The lease containing the payment terms for rental of the Weber City property was not presented to the court.

unsecured creditors of the debtor filed an involuntary chapter 11 petition against the debtor on March 6, 1996. Fleming immediately responded by filing a motion for relief from the automatic stay to permit the foreclosure sale scheduled for March 7 at 10:00 a.m. to proceed and requested an emergency hearing on the motion. Upon notice to the attorney for the petitioning creditors, a hearing on the stay relief motion was held at 9:00 a.m. on March 7, 1996. At the hearing, Fleming's counsel announced that an agreement allowing the sale to go forward had been reached with the petitioning creditors. The terms of the agreement were announced and after approval by the court, an agreed order lifting the automatic stay to allow the public sale to proceed was entered at the conclusion of the hearing. The agreed order authorized the debtor and Fleming to take the necessary steps to complete the sale and transfer the assets, including execution of bills of sale. The order also authorized the purchasers of the assets at the various stores to accept assignments of leases for the real properties from which the grocery stores were operated. Under the terms of the agreed order, all sale proceeds were to be paid into the registry of the court pending further orders unless Fleming was the successful bidder, in which event Fleming would pay into the court registry only the proceeds of sale which exceeded the

debtor's indebtedness to Fleming. The right of any party in interest to challenge Fleming's security interest and its entitlement to the sale proceeds was expressly preserved.

The foreclosure sale was held as scheduled, with Fleming being the successful bidder, although immediately after the sale Fleming assigned its interest in the assets and its claim against the debtor to Heartland Supermarkets, Inc., Fleming's wholly-owned subsidiary. Included in the assets sold and assigned was the debtor's leasehold interest in the Weber City real property owned by Oakwood. Fleming filed a report of sale on April 12, 1996, and paid into the court registry excess sale proceeds of \$15,198.00. The report of sale indicates that from the gross sale proceeds, Fleming paid the various sums owed Fleming by the debtor, related attorney fees, and the sum of \$35,465.00 to Oakwood for past-due rental payments in connection with the assumption and assignment of the Weber City store lease.

No response controverting the involuntary chapter 11 petition was filed by the debtor. Accordingly, an order for relief under chapter 11 was entered in the bankruptcy case on April 2, 1996. Upon motion by the petitioning creditors, the case was subsequently converted to chapter 7 by order entered April 18, 1996.

The present adversary proceeding to recover the two March 1 rental checks paid to Oakwood was commenced by the chapter 7 trustee on March 6, 1998. After being granted an extension of time to respond to the complaint, Oakwood filed on April 29, 1998, the pending motion for summary judgment or dismissal pursuant to Fed. R. Civ. P. 56 and 12(b)(6), as incorporated by Fed. R. Bankr. P. 7012(b) and 7056. The motion was supported by a memorandum of law and the affidavit of Oakwood's general partner, Wally Boyd. On May 29, 1998, after obtaining an extension of time, the trustee filed a memorandum of law in response to Oakwood's motion, supported by his personal affidavit referencing attached copies of the checks at issue and the Agreed Order Lifting Automatic Stay entered on March 7, 1996. Oral argument on the motion was heard by the court on June 25, 1998. The motion is now ready for resolution.

## II.

In considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court must construe the complaint in the light most favorable to the plaintiff, accept as true the factual allegations in the complaint, and determine whether the plaintiff undoubtedly could prove no set of facts in support of his claims that would entitle him to relief. *See, e.g., Allard*

*v. Weitzman (In re DeLorean Motor Co.)*, 991 F.2d 1236, 1240 (6th Cir. 1993), *reh'g denied* (1993). A complaint need only give fair notice of what the plaintiff's claim is and the grounds upon which it rests. *Id.* Although this standard is extremely liberal, the plaintiff may not simply assert legal conclusions. Rather, the complaint must contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal theory. *Id.* Of course, the burden of demonstrating that a complaint does not state a claim is on the moving party. *See, e.g., Riumbau v. Colodner (In re Colodner)*, 147 B.R. 90, 92 (Bankr. S.D.N.Y. 1992).

When matters outside the pleadings are presented and considered by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Fed. R. Civ. P. 12(b). Summary judgment under Fed. R. Civ. P. 56(c), made applicable to bankruptcy adversary proceedings by Fed. R. Bankr. P. 7056, is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See, e.g., Celotex Corporation v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2554 (1986). Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *See, e.g., McCafferty v. McCafferty (In re McCafferty)*, 96 F.3d 192, 195

(6th Cir. 1996)(citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)).

### III.

11 U.S.C. § 549(a) states:

Except as provided in subsections (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

- (1) that occurs after the commencement of the case; and
- (2) (A) that is authorized only under section 303(f) or 542(c) of this title; or  
(B) that is not authorized under this title or by the court.

Pursuant to this subsection, the criteria for avoidance are:

(1) a transfer; (2) of property of the estate; (3) which occurred postpetition; and (4) was not authorized by the court or the Bankruptcy Code. See *Manuel v. Allen (In re Allen)*, 217 B.R. 952, 955 (Bankr. M.D. Fla. 1998) (citing *Geekie v. Watson (In re Watson)*, 65 B.R. 9, 11 (Bankr. C.D. Ill. 1986)). Although as a general rule the trustee as the party seeking to avoid a transfer bears the burden of proving each of these elements, see, e.g., *Musso v. Brooklyn Navy Yard Dev. Corp. (In re Westchester Tank Fabricators, Ltd.)*, 207 B.R. 391, 396 (Bankr. E.D.N.Y. 1997)(citing *Consolidated Partners Inv. Co. v. Lake*, 152 B.R. 485 (Bankr. N.D. Ohio 1993)); the recipient of the transfer has the burden of proof to the extent it asserts

the validity of the transfer. See Fed. R. Bankr. P. 6001 ("Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof."). Because Oakwood contends that the transfers in question were authorized by the court and that they come within the § 549(b) exception to avoidance, Oakwood bears the burden of proving these affirmative defenses. See 10 COLLIER ON BANKRUPTCY ¶ 6001.01[2] and [3](15th ed. rev. 1998)(although some courts have suggested that Rule 6001 places burden of proof as to all four elements of the § 549(a) claim upon the defendant, more appropriate reading is to place burden only upon last element and exceptions under subsections (b) and (c)).<sup>2</sup>

In its memorandum of law, Oakwood asserts that the facts of this case do not establish a cause of action under § 549(a) because the third and fourth elements of a § 549(a) claim are lacking. According to Oakwood, the third component of § 549(a), that the transfer occur postpetition, is not met because the

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<sup>2</sup>But see *In re Westchester Tank Fabricators, Ltd.*, 207 B.R. at 395 (ignoring Rule 6001 entirely); *Schieffler v. Coleman (In re Beshears)*, 196 B.R. 464, 466 (Bankr. E.D. Ark. 1996)(holding burden of proof is upon recipient as to all elements including whether transfer was of estate property); *Hoagland v. Edward Hines Lumber Co. (In re LWMcK Corp.)*, 196 B.R. 421, 423 (Bankr. S.D. Ill. 1996)(same holding); and *In re Watson*, 65 B.R. at 11 (suggesting that burden of proof is on recipient regarding whether disclaimer of an interest is a transfer of property of the estate).

transfers occurred prepetition when the debtor's state court receiver delivered the checks to Oakwood on March 5, 1996. With respect to the fourth prong of § 549(a) which specifies that the transfer must not have been authorized by the Bankruptcy Code or the court, Oakwood argues that the transfers were authorized by the court in the March 7, 1996, agreed order. Finally, Oakwood argues in the alternative that even if all of the requirements of § 549(a) are satisfied, the transfers are not avoidable because they come within the § 549(b) exception to avoidance since Oakwood gave value in the form of lease space in exchange for the transfers. Each of these contentions will be addressed by the court.

The first issue is whether the transfers in question occurred after commencement of the bankruptcy case and thus come within the scope of § 549. In his memorandum of law in opposition to Oakwood's motion, the trustee asserts that the transfers occurred postpetition when the checks were honored by the debtor's bank. As authority for its argument that the transfers occurred upon delivery, Oakwood cites a 1989 Fourth Circuit Court of Appeals decision, *Quinn Wholesale, Inc. v. Northen*, 873 F.2d 77 (4th Cir. 1989), *cert. denied* 493 U.S. 851, 110 S. Ct. 151 (1989). Neither the United States Supreme Court nor the Sixth Circuit Court of Appeals has specifically ruled on

the question of whether for avoidance purposes under § 549, a transfer of an ordinary check occurs upon delivery of the check to the transferee or upon its honor by the drawee bank. However, the U.S. Supreme Court has examined the issue in the § 547(b) preference context. In *Barnhill v. Johnson*, 503 U.S. 393, 112 S. Ct. 1386 (1992), the court held that in determining whether a transfer occurred within the 90-day preference period, a transfer made by ordinary check is deemed to occur on the date the check is honored by the drawee bank, rather than when the check is presented to the recipient.

Although *Barnhill* was a preference case, every court since *Barnhill* which has considered in a reported decision the issue of when a transfer of an ordinary check occurs for purposes of § 549 has concluded based on *Barnhill* that the transfer takes place when the check is honored, regardless of its delivery date. See *Wittman v. State Farm Ins. Co. (In re Mills)*, 176 B.R. 924, 927 (D. Kan. 1994); *Steege v. AT&T (In re Superior Toy & Mfg. Co.)*, 183 B.R. 826 (Bankr. N.D. Ill. 1995); *Spear v. CEMA Distrib. (In re Rainbow Music, Inc.)*, 154 B.R. 559, 561 (Bankr. N.D. Cal. 1993); *Shanor v. Chappell & Barlow (In re Bellamah Community Dev.)*, 139 B.R. 29, 31 (Bankr. D.N.M. 1992); and *Vasquez v. Mora (In re Mora)*, 218 B.R. 71, 74 (9th Cir. BAP

1998)(dicta). See also *Williams v. Jeffcoat (In re Williams)*, No. 97-0430, 1997 WL 252649 at \*1 (Bankr. W.D. Tenn. April 24, 1997). These courts have noted that the *Barnhill* ruling was based upon the general definition of transfer found at 11 U.S.C. § 101(54) and the Uniform Commercial Code's treatment of check transfers, rather than on the narrow scope or precise language of § 547(b). See, e.g., *In re Mills*, 176 B.R. at 926; *In re Rainbow Music, Inc.*, 154 B.R. at 561. The *Barnhill* opinion concluded that no transfer as defined in § 101(54) of the Code occurs until the check clears the drawee bank because under the UCC the receipt of a check gives the recipient no right in the funds held by the bank and myriad events could intervene between delivery and presentment that could result in the check being dishonored. *In re Mills*, 176 B.R. at 926 (citing *Barnhill*, 503 U.S. at 400, 112 S. Ct. at 1390 ("For the purposes of payment by ordinary check, therefore, a 'transfer' as defined by § 101(54) occurs on the date of honor, and not before.")). Post-*Barnhill* courts have concluded that "[p]recisely the same rationale applies with respect to checks delivered before the commencement of a bankruptcy case which are honored after its commencement (or for that matter which are both delivered and honored after its commencement)." *In re Rainbow Music, Inc.*, 154 B.R. at 561. See also *In re Mills*, 176 B.R. at 927 ("The rationale found in

*Barnhill* applies with equal force to postpetition transfers under § 549."). Many of these courts have also observed that if the same rule were not used for preferences and postpetition transfers, a safe harbor would be created for certain transfers by check. *Id.* "A check ... which was delivered before the commencement of the bankruptcy case and honored after its commencement, would be recoverable neither as a preference nor as a post-petition transfer." *In re Rainbow Music, Inc.*, 154 B.R. at 561. The courts analyzing this issue have rejected such an outcome because nothing in the Bankruptcy Code or its legislative history suggests that a safe harbor was intended, and no policy reason could be envisioned for making transfers such as these immune from recovery. *Id.* at 561-562.

This court agrees with the post-*Barnhill* courts' interpretation of *Barnhill* and their conclusion that *Barnhill* applies with equal force to transfers under § 549. Accordingly, the court finds that the transfers to Oakwood occurred on March 7, 1996, when the checks were honored by the debtor's bank, which was after the commencement of the underlying bankruptcy case on March 6, 1996. Oakwood's assertion to the contrary is without merit.

The second issue to be addressed by the court is whether the transfers in payment of the March rent were authorized. Oakwood

contends that the transfers were authorized by the court in connection with the sale of the debtor's assets on March 7, 1996. Oakwood observes that the rent delinquency owed to Oakwood on the Weber City store was cured from the sale proceeds in order for the lease to be assigned and contends that if the March rent had not been previously paid, the amount owing for the March rental would have been included in the delinquency and paid out of the sale proceeds. Oakwood notes that the trustee has made no effort to avoid and recover this payment or set aside the sale and states that if the trustee were permitted to "unravel the rental payments previously paid, the Court must also unravel the sale of the property and allow Oakwood to increase the amount of past due rentals it is claiming for the lease to be assumed."

Regardless of the seeming contradiction in the trustee's position (seeking to recover the March rental payment but not the payment made at the time of sale to cure the rent deficiency), the evidence does not support Oakwood's assertion that the transfers in payment of the March rent were authorized. As a copy of the transcript attached to Oakwood's memorandum of law plainly indicates, there was no discussion at the March 7 hearing regarding payment of the March rent or of any past-due rent. Instead, the only discussion at the hearing concerned the

agreement which had been reached between Fleming and the petitioning creditors; that the scheduled sale had been advertised for some time and substantial harm could come to the creditors of the debtor through the continued deterioration of the business if the sale were not allowed to proceed; that all sale proceeds would be paid into court unless Fleming were the successful bidder in which case Fleming would only pay in the proceeds in excess of its debt; and that the proposed agreed order would provide the debtor and Fleming the authority to take whatever actions were necessary in connection with the sale, such as execution of documents necessary to convey good title and assignments of leases.

Furthermore, the agreed order entered on March 7 contained no such authorization. The order simply lifted the automatic stay to allow Fleming to proceed with its sale and authorized the debtor and Fleming to execute bills of sale to transfer title of the assets and to take such other steps as were necessary to complete the foreclosure sale and transfer the assets to the purchasers. The order also authorized the purchasers of the assets at the various stores to accept assignments of leases on the real properties and recited that such assignments were valid and enforceable.

Oakwood argues that even if the court did not specifically

authorize the transfers in payment of the March rent, it authorized payment of the past-due delinquency in connection with the foreclosure sale and thus would have authorized payment of the March rent if it had not been paid previously. That fact scenario, however, did not occur. Regardless of whether payment of the March rent would have been authorized if it had been paid with the rent delinquency, the fact remains that the March rent was not paid in this manner. Accordingly, Oakwood has no factual basis for its assertion that the transfers in question were authorized.<sup>3</sup>

The court having concluded that the transfers to Oakwood meet the requirements of avoidable postpetition transfers under § 549(a), the transfers may be avoided by the trustee unless they fall within the exception to avoidance found in § 549(b). This subsection provides:

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<sup>3</sup>As an aside, the court is not convinced that it would conclude that payment of the March rent was "authorized" even if it had been paid with the delinquent rent owing at the time of the foreclosure sale. Although clearly the debtor was authorized to assign the Weber City store lease, no specific authority was granted to pay any past-due rental or otherwise cure any rent arrearage. To the contrary, all of the sale proceeds with the exception of the amount owed Fleming were to be paid into the court registry. The general authorization permitting the debtor and Fleming "to take such ... steps as may be necessary to complete the foreclosure sale and transfer the assets to the purchasers," can not be construed to warrant payment of past-due rentals in light of the court's specific directive regarding the disposition of the sale proceeds.

In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

11 U.S.C. § 549(b).

The time between the filing of the petition for involuntary bankruptcy and the order of relief is commonly known as the "gap period." *Yancey v. Varner (In re Pucci Shoes, Inc.)*, 120 F.3d 38, 41 (4th Cir. 1997). Under § 549(b), a transfer of property of the estate made during the gap period in exchange for value (including services, but not satisfaction of a prepetition debt) may not be avoided by a bankruptcy trustee, notwithstanding the otherwise avoidability of the transfer under § 549(a). *Id.* Because the transfers in question occurred when the checks were honored on March 7, 1996, they fall within the gap period which commenced on March 6 when the involuntary petition was filed and ended on April 2, 1996, upon entry of the order for relief.

Oakwood notes that it is undisputed that the transfers were in payment of the March rent which became due on March 1 and subject to penalty on March 10, 1996. Oakwood asserts that the value given in exchange for the rental payment was the right to occupy the leased premises for the month of March. In response,

the trustee notes that the value specified in § 549(b) which is sufficient to protect otherwise avoidable transfers does not include "satisfaction or securing of a debt that arose before the commencement of the case." The trustee maintains that because the subject rental payment was made pursuant to a prepetition lease agreement, the only value given by Oakwood was "satisfaction ... of a debt that arose before the commencement of the case." In the alternative, the trustee argues that if value in the form of the leased space was given, it only covered two days, March 6 and 7, 1996, because value must be provided postpetition and the estate no longer received value after the debtor lost its occupancy rights as a result of the March 7, 1996, foreclosure sale.

The trustee is incorrect in both respects. First, the value provided by Oakwood was services in the form of providing rental space for the operation of the debtor's business, rather than the satisfaction of a prepetition debt. An essential characteristic of a lease is that in return for a payment of rent, the lessee has a right to use or possess the leased property. *Speciner v. Gettinger Assoc. (In re Brooklyn Overall Co.)*, 57 B.R. 999, 1003 n.4 (Bankr. E.D.N.Y. 1986). Because the debtor received the concomitant right to use and possess the leased premises for the month of March in exchange for the rent

payment, this case is distinguishable from those situations where payment is made on an existing obligation in which value has already been fully received. *Cf. id.* (absolving debtor from rent deficiency was mere satisfaction of prepetition debt absent debtor's ability to occupy leased premises); *Shaia v. Conoco, Inc. (In re Williams Contract Furniture, Inc.)*, 148 B.R. 805 (Bankr. E.D. Va. 1992) (payment of prior month's gasoline credit purchases was satisfaction of prepetition debt). "Section 549(b) is intended to protect contemporaneous exchanges for value to permit continued operation of the business during the 'gap' period." *Cossitt v. First American State Bank (In re Ft. Dodge Creamery Co.)*, 121 B.R. 831, 835 (Bankr. N.D. Iowa 1990). Payment of monthly rent in exchange for the right to occupy the debtor's business premises so the debtor can continue its operations would appear to be precisely the type of value contemplated by § 549(b).

The trustee's argument that any value given is limited to the two days the Weber City store was occupied postpetition by the debtor is based on the premise that value must be measured from the debtor's or estate's perspective. Nothing, however, in § 549(b) limits value to that realized by the estate. Instead, § 549(b) focuses on the transferee's frame of reference since it provides an exception for "value ... given ... in exchange for

such transfer." See *Hamilton v. Lumsden (In re Geothermal Resources Int'l, Inc.)*, 93 F.3d 648, 652 (9th Cir. 1996), on remand 1998 WL 169683 (N.D. Cal. 1998); and *Allen v. Rib Detention Equip., Inc., (In re Roanoke Iron & Bridge Works, Inc.)*, 98 B.R. 256, 259-260 (Bankr. W.D. Va. 1988). See also *Nadel v. Fruitville Pike Assoc. (In re Burke)*, 60 B.R. 665, 670 (Bankr. D. Conn. 1986)(intent of § 549(b) exception is "to return the transferee to the economic position he was in before the transfer"); but see *McManus, Stewart, Ferraro & Schwarz, P.A. v. Bakst (In re Sanchez-Casis)*, 99 B.R. 115, 117 (Bankr. S.D. Fla. 1989) ("The obvious legislative purpose of § 549(b) is to give credit to a transferee to the extent that the bankrupt estate has received equivalent value for the transfer and, therefore, has not been depleted.").

If value is to be measured from only the debtor's perspective, it would have been more logical for Congress to use the word "received" instead of "given" so that § 549(b) reads "value received in exchange for the transfer." Since the precise language chosen by Congress focuses on value from the giver's perspective and there is no indication in the legislative history to § 549(b) suggesting that this interpretation is at odds with the intention of Congress in

enacting this legislation,<sup>4</sup> the court will examine the issue from the viewpoint of the value *given* by Oakwood.

Clearly the value given by Oakwood in exchange for payment of the March rent, *i.e.* the *quid pro quo*, was the unfettered right to occupy the Weber City premises during the month of March. The fact that the debtor occupied the premises for only two days postpetition is irrelevant since Oakwood made no effort to recover the consideration it gave for the transfers by taking possession of the leased premises after the debtor's occupation terminated. To the contrary, in recognition of the fact that the March rent had been fully paid, Oakwood permitted the assignment and assumption of the lease by the purchaser of the debtor's assets. Accordingly, the value given by Oakwood was the worth of one month's rental of the Weber City leased premises and Oakwood is entitled to judgment in its favor if this value is reasonably equivalent or not disproportionate to the amount of the transfers, \$13,627.63. See *In re Roanoke Iron & Bridge Works, Inc.*, 98 B.R. at 261 (quoting WEBSTER'S NEW COLLEGIATE DICTIONARY (1977 ed.))("Value is defined as 'a fair return or

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<sup>4</sup>The plain meaning of legislation is conclusive "except in the rare cases in which the literal application of a statute would produce a result demonstrably at odds with the intention of its drafters." *In re Young*, 199 B.R. 643, 653 (Bankr. E.D. Tenn. 1996) (quoting *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242, 109 S. Ct. 1026, 1031 (1989)).

equivalent in goods and services or money for something exchanged, the monetary worth of something.'"))). Because Oakwood has failed to present any evidence from which this court can determine the value of one month's rental,<sup>5</sup> a genuine issue of fact remains which precludes summary judgment in Oakwood's favor.

Finally, the court turns to Oakwood's argument that the complaint must be dismissed because the trustee has failed to join Fleming, which it contends is an indispensable party. Under Fed. R. Bankr. P. 7019, which incorporates Fed. R. Civ. P. 19, Oakwood must show that Fleming's absence prevents the court from rendering complete relief, or alternatively, that Fleming is so situated that the disposition of this action in Fleming's absence will impair Oakwood's interest or expose it to the risk of multiple and potentially inconsistent adjudications. See, e.g., *Knopfler v. Schraiber (In re Schraiber)*, 107 B.R. 899, 902 (Bankr. N.D. Ill. 1989). Oakwood has presented no argument, much less any fact, to support either proposition. Accordingly, the motion is without merit and will be denied.

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<sup>5</sup>The value of postpetition transfers should be measured at the time they occurred. See *Official Comm. of Creditors v. Union Bank (Matter of Texas Research, Inc.)*, 862 F.2d 1161, 1163 (5th Cir. 1989).

IV.

In conclusion, Oakwood's motion for summary judgment or dismissal will be denied as an issue remains concerning the value of the rental premises for the month of March given by Oakwood in exchange for the transfers of \$13,627.63. In light of the findings contained herein, the court will schedule a trial on this remaining issue only. An order to this effect will be entered contemporaneously with the filing of this memorandum opinion.

FILED: July 27, 1998

BY THE COURT

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MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE