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

In re

Case No. 99-30466

CARIBBEAN CIGAR COMPANY
d/b/a CARIBBEAN CIGAR & TOBACCO CO.
d/b/a CARIBBEAN CIGAR COMPANY, INC.
d/b/a CARIBBEAN CIGAR FACTORY
d/b/a CARIBBEAN CIGAR HOLDING CORP.

Debtor

ANN MOSTOLLER, TRUSTEE

Plaintiff

v. Adv. Proc. No. 01-3019

CURTIS ZIMMERMAN and
THE ZIMMERMAN AGENCY

Defendants

M E M O R A N D U M

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court on the Complaint to Avoid Preferential Transfer and Fraudulent Conveyance filed February 1, 2001, filed by the Chapter 7 Trustee, Ann Mostoller, as amended on December 10, 2001, by an Amended Complaint to Avoid Preferential Transfer and Fraudulent Conveyance (collectively, Complaint). By the Complaint, the Trustee seeks to avoid and recover two alleged preferential transfers pursuant to 11 U.S.C.A. §§ 547(b) and 550(a) (West 1993). In determining whether the payments made by the Debtor to the Defendant, The Zimmerman Agency,[1] a corporation, are avoidable, the court must first resolve the following issues:

1. Whether The Zimmerman Agency is an insider under 11 U.S.C.A. § 101(31) (West 1993);[2] and, if so,

2. Whether The Zimmerman Agency has an ordinary course of business defense under 11 U.S.C.A. § 547(c)(2) (West 1993).

All issues were tried on September 16, 2002. The record before the court consists of facts and documents stipulated by the parties through written Stipulations filed as Exhibit 1, and the testimony of two witnesses, Edward Williams, a former officer of the Debtor, and the Defendant, Curtis Zimmerman.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(F) (West 1993).

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[1] The correct name of this Defendant, a Florida corporation, is The Zimmerman Agency, Inc.

[2] The parties have stipulated that all of the required elements of § 547(b) have been met as to one of the transfers, and that the only issue regarding the other transfer relates to whether The Zimmerman Agency was an insider, thus bringing it within the ambit of § 547(b)(4)(B).

I

The Debtor filed its Chapter 7 petition on February 8, 1999. Prior to filing for bankruptcy, on April 8, 1998, the Debtor made a wire transfer in the amount of $75,000.00 to The Zimmerman Agency, representing partial payment on an account balance of approximately $430,000.00. On February 2, 1999, the Debtor made a payment to The Zimmerman Agency by way of a $600.00 check payable to the Defendant, Curtis Zimmerman. The check was deposited directly to the checking account of The Zimmerman Agency.[3]

II

The threshold issue the court is called upon to resolve regarding the $75,000.00 transfer is whether The Zimmerman Agency qualifies as an insider of the Debtor, as defined by 11 U.S.C.A. § 101(31) (West 1993), thus meeting the requirements of § 547(b)(4)(B). Section 547(b) provides in material part:

> (b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—
>
> . . . .
>
> (4) made—
>
> . . . .

[3] The parties agree that this transfer was intended for the benefit of The Zimmerman Agency and not Curtis Zimmerman. The Plaintiff accordingly acknowledged prior to trial that Mr. Zimmerman should be dismissed as a party defendant.

> (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[.]

11 U.S.C.A. § 547(b) (West 1993).

Pertinent to this issue, "insider" is defined in the Bankruptcy Code as follows:

> (31) "insider" includes—
>
> . . . .
>
> (B) if the debtor is a corporation—
>
> (i) director of the debtor;
> (ii) officer of the debtor;
> (iii) person in control of the debtor;
> (iv) partnership in which the debtor is a general partner;
> (v) general partner of the debtor; or
> (vi) relative of a general partner, director, officer, or person in control of the debtor[.]

11 U.S.C.A. § 101(31).

Section 101(31) is a non-exclusive list, signifying Congressional intent that insiders need not be limited to those provided for in the statute, but should include anyone having a "sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms length with the debtor." *Schreiber v. Stephenson (In re Emerson)*, 235 B.R. 702, 706-07 (Bankr. D.N.H. 1999) (quoting S. Rep. No. 989, 95th Cong. 2d Sess. 25 (1978); H. Rep. No. 595, 9th Cong. 1st Sess. 312 (1977)). "Mere financial power over the debtor, however, does not necessarily impute insider status." *Matson v. Strickland (In re Strickland)*, 230 B.R. 276, 285-86 (Bankr. E.D. Va. 1999). "[T]he relationship and power [between the debtor and the transferee] must be *more than* the debtor-creditor relationship itself." *Damir v. Trans-Pacific Nat'l*

Bank (In re Kong), 196 B.R. 167, 171 (N.D. Cal. 1996) (emphasis in original). Even if the creditor enjoys a strong bargaining position in its dealing with the debtor, and even if there was "some degree of [a] personal relationship with the debtor," as long as the parties transact their business at arm's length, the creditor is not necessarily an insider. *Friedman v. Sheila Plotsky Brokers, Inc. (In re Friedman)*, 126 B.R. 63, 70 (B.A.P. 9th Cir. 1991).

Determination of whether one is an insider is a question of fact and should be decided on a case by case basis. *Id.* at 67; *Strickland*, 230 B.R. at 285. Courts generally focus on two factors when making such a determination: "(1) the closeness of the relationship between the transferee and the debtor; and (2) whether the transactions between the transferee and the debtor were conducted at arm's length." *Emerson*, 235 B.R. at 707; *Strickland*, 230 B.R. at 285 (citations omitted). Various factual elements are examined and used by courts in making this determination, including the following, which are germane to this adversary proceeding: (1) the ability of the transferee to control or influence the debtor; (2) the transferee's authority to make business decisions for the debtor; (3) the existence of a relationship between the transferee and the debtor giving the transferee an advantage over other creditors; and (4) any evidence that the debtor desired to treat the transferee differently from other general unsecured creditors. *Emerson*, 235 B.R. at 707 (citations omitted).

The parties stipulate that Curtis Zimmerman was a director of the Debtor at the time of the $75,000.00 April 8, 1998 payment, and that, as such, he was an insider for the purposes of

§ 547(b)(4)(B). However, the payments were made to The Zimmerman Agency, a corporation and a creditor of the Debtor, in partial payment on outstanding invoices.[4]

The Trustee concludes that through his director status, Mr. Zimmerman put himself into a position to get the debts owed to his company paid, thus evidencing control over the Debtor and an advantage over other creditors. The Trustee also argues that, by virtue of his being a 40% shareholder in The Zimmerman Agency, Mr. Zimmerman's insider status should be imputed to The Zimmerman Agency. She asserts that because Mr. Zimmerman was a shareholder, director, and officer of The Zimmerman Agency, the nexus between Mr. Zimmerman and The Zimmerman Agency requires a finding that The Zimmerman Agency is an insider of the Debtor. Finally, the Trustee references 11 U.S.C.A. § 101(31)(A)(iv), which provides that if the debtor is an individual, a corporation of which the debtor is a director or officer would be an insider of the individual debtor. By analogy, the Trustee argues that because The Zimmerman Agency would be an insider of Mr. Zimmerman if he was a debtor, it is also an insider of this Debtor based simply on Mr. Zimmerman's insider status.

First, the court must examine Mr. Zimmerman's ability to control or influence the Debtor. At trial, the Trustee introduced the testimony of Edward Williams, former Chief Financial Officer of the Debtor. Mr. Williams' testimony evidenced both the lack of control over the Debtor and Mr. Zimmerman's lack of authority to make business decisions for the Debtor, including whether or not The Zimmerman Agency would be paid. Mr. Williams testified that the $75,000.00 payment came from proceeds received from an insurance settlement in the total amount of $1.4

[4] The Zimmerman Agency is an advertising agency that assisted the Debtor in promoting its tobacco products.

million resulting from a flood in the Debtor's tobacco warehouse in the Dominican Republic in 1998. Next, Mr. Williams testified that the decision to make payments out of those proceeds came from himself and the former president of the Debtor, and not from Curtis Zimmerman. Specifically, Mr. Williams testified on cross examination by the Defendants' counsel as follows:

> Q Mr. Zimmerman was not involved in the day-to-day operations of the debtor, though, was he?
>
> A No.
>
> Q He didn't determine who was paid and who wasn't paid?
>
> A That's correct.
>
> Q He didn't have anything to do with the cash flow?
>
> A That's correct.
>
> . . . .
>
> Q . . . Mr. Zimmerman had nothing to do with determining who was going to get paid, as a director?
>
> A No.
>
> Q . . . He had nothing to do with determining the amount of the payment?
>
> A That's correct.
>
> Q And the only involvement he had, you called him and said you were going to pay him seventy-five thousand and wanted to know which invoices to allocate the seventy-five thousand to?
>
> A I'm not even sure that I would have even cared what invoices it would have been allocated to.
>
> Q Okay. The point is he had nothing to do with the decision, whether to make the payment or the amount of the payment?
>
> A That's correct.

> Q And he had nothing to do with the decision as to even who would be paid or who not would be paid at that point?
>
> A That's correct.

Excerpt of Tr. at 3-5.

Mr. Williams further testified that the Debtor used the insurance proceeds to pay people that it believed would ultimately help it go forward; *i.e.*, subordinated note holders, The Zimmerman Agency, as well as Mr. Williams himself. The insurance proceeds were not used to pay any other unsecured trade creditors or to pay the Debtor's secured creditors.

Mr. Zimmerman testified that he was asked to be on the Debtor's board of directors in order to fill a vacancy which had to be filled to enable the Debtor to consummate a sale or seek a purchaser of the Debtor and that he accepted the position on the board to help the company move forward. Additionally, he testified that he never had conversations about the operation of the Debtor and that he only attended two board meetings, neither of which involved discussions regarding the operations of the Debtor's business or the Debtor's obligations to The Zimmerman Agency. Mr. Zimmerman testified that he and other employees of The Zimmerman Agency made routine calls to the Debtor in an effort to collect the outstanding balance owed to The Zimmerman Agency, both before and after his appointment to the board of directors. Neither this testimony nor the testimony of Mr. Williams evidences any effort on Mr. Zimmerman's part to use his position on the board of directors as a means to influence specific payments to The Zimmerman Agency, including the $75,000.00 in dispute.

As previously stated, insider status cannot be conferred simply from a creditor having financial power over a debtor. *See Strickland*, 230 B.R. at 285-86. In fact, pressure by a creditor to make payments on an outstanding account does not establish sufficient control for insider status. *See Kong*, 196 B.R. at 171 (daily pressure by the defendant bank to cover a substantial overdraft by the debtors, including threats of criminal prosecution, did not establish sufficient control over the debtors to render the bank an insider). Actual decision-making authority is necessary for an entity to be considered an insider. *See, e.g., Desmond v. State Bank of Long Island (In re Computer Eng'g Assocs., Inc.)*, 252 B.R. 253, 284 (Bankr. D. Mass. 2000) (because they were not involved in decisions by the debtor to hire attorneys or to borrow money, subcontractors were not insiders of the debtor, even though they exerted "a substantial degree" of economic leverage over the debtor), *aff'd in part, vacated in part, remanded on other grounds, Computer Eng'g Assocs., Inc. v. State Bank of Long Island (In re Computer Eng'g Assocs., Inc.)*, 278 B.R. 665 (D. Mass. 2002); *Hunter v. Babcock (In re Babcock Dairy Co. of Ohio, Inc.)*, 70 B.R. 657, 661-62 (Bankr. N.D. Ohio 1986) (former chairman of the debtor's board of directors who had remained employed by the debtor corporation via an employment contract was not found to be an insider because he lacked sufficient control over the management of the corporation).

Moreover, there must be more than an ordinary debtor-creditor relationship for a court to confer insider status. *See Kong*, 196 B.R. at 171. Often, this requires stock ownership by the creditor in the debtor. *See, e.g., Official Comm. of Unsecured Creditors v. Liberty Sav. Bank, FSB (In re Toy King Distribs.)*, 256 B.R. 1, 98 (Bankr. M.D. Fla. 2000) (corporation creditor was determined to be an insider of the debtor corporation based on financial control exercised over the

debtor, together with ownership of more than 20% of debtor's outstanding stock); *Jensen v. Tudor (In re Preferred Aluminum, Inc.)*, 131 B.R. 889, 892 (Bankr. M.D. Fla. 1991) (creditor of debtor was deemed an insider by virtue of 50% stock ownership, input in debtor's financial decisions, and authority to sign debtor's checks, as was separate creditor company over which he served as president).

In addition, an actual relationship of affinity between the parties can establish insider status, but mere friendship between the parties is not necessarily enough. *See Emerson*, 235 B.R. at 706-09 (father and son working together "collectively" were deemed insiders based upon evidence examined by the court including possible joint venture between the debtor and transferee, acknowledgment by both parties that they were friends, and unsecured loan made to debtor by transferee with no specific loan amount, rate, or amortization period); *but see Friedman*, 126 B.R. at 67 (because the transaction sought to be avoided was conducted at arm's length, real estate brokers that recorded a negotiated deed of trust for money owed by the debtor for commissions and a substantial loan were not deemed insiders, despite a long-standing relationship between the parties in which the debtor provided almost 100% of the brokers' business, and the brokers had signatory privileges on the debtor's bank accounts); *Strickland*, 230 B.R. at 285 (future stepfather of debtor who made unsecured loan was not deemed to be an insider because there was not a particularly close relationship and there was only one loan between the parties); *Pfeiffer v. Thomas (In re Reinbold)*, 182 B.R. 244, 246-47 (Bankr. D.S.D. 1995) (friend who made loan to debtors was not an insider, as friendship alone was not sufficient to confer insider status, social lunches to

discuss loan did not remove it from being at arm's length, and creditor did not control or ?dominate" the debtors).

The proof is undisputed that Mr. Zimmerman did not exercise any control or influence over the Debtor nor did he make business decisions for the Debtor. Mr. Zimmerman had no hand in the Debtor's decision to pay the $75,000.00 from the insurance proceeds to The Zimmerman Agency. In fact, he was simply told that the Debtor would be paying $75,000.00 towards the outstanding balance of over $430,000.00 owed to The Zimmerman Agency, arising out of the advertising services that The Zimmerman Agency was hired by the Debtor to perform. Otherwise, The Zimmerman Agency had no relationship with the Debtor outside of being its largest unsecured creditor.

Mr. Williams testified that Mr. Zimmerman's being on the board of directors played a role in the Debtor's decision to pay the $75,000.00; however, he also agreed that Mr. Zimmerman did not have input in this decision. The Debtor's subjective motives in making Mr. Zimmerman a member of the board of directors and then deciding to pay The Zimmerman Agency in an attempt to alleviate further requests for payment by Mr. Zimmerman cannot be used against him when he had no other relationship to the Debtor aside from being a shareholder and co-owner of its largest trade creditor. These facts do not evidence the type of control necessary for The Zimmerman Agency to be deemed an insider of the Debtor under § 101(31).

Likewise, there is nothing in the record to support the Trustee's contention that Mr. Zimmerman's insider status should be imputed to The Zimmerman Agency. The Zimmerman

Agency was an ordinary trade creditor of the Debtor. All transactions between the Debtor and The Zimmerman Agency were conducted at arm's length. Because the court does not find Mr. Zimmerman to have had any control or influence over the Debtor, his actual insider status cannot be imputed to The Zimmerman Agency.

Because The Zimmerman Agency is not an insider of the Debtor, the requirements of § 547(b) have not been met as to the $75,000.00 payment. Consequently, this payment was not a preference and is therefore not avoidable by the Trustee.

III

The Zimmerman Agency does not dispute that the $600.00 payment to The Zimmerman Agency made on February 2, 1999, six days prior to the Debtor's bankruptcy filing, falls within the purview of § 547(b).[5] However, The Zimmerman Agency raises an **?**ordinary course of business defense" under § 547(c)(2). This section provides:

> (c) The trustee may not avoid under this section a transfer—
>
> . . . .
>
> (2) to the extent that such transfer was—
>
> > (A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;
> >
> > (B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and
> >
> > (C) made according to ordinary business terms[.]

[5] *See supra* n.2.

11 U.S.C.A. § 547(c)(2) (West 1993 & Supp. 2002). The party asserting the ordinary course of business defense bears the burden of proving that all three elements have been met by a preponderance of the evidence. 11 U.S.C.A. § 347(g) (West 1993); *Logan v. Basic Distribution Corp. (In re Fred Hawes Org., Inc.)*, 957 F.2d 239, 242-43 (6th Cir. 1992). All that is required to meet § 547(c)(2)(A) is a showing that the parties were engaged in their usual business when the debt was incurred and when the transfer took place. *Official Comm. of Unsecured Creditors v. Charleston Forge, Inc. (In re Russell Cave Co.)*, 259 B.R. 879, 882 (Bankr. E.D. Ky. 2001); *accord Fitzpatrick v. Central Communications & Electronics, Inc. (In re Tenn. Valley Steel Corp.)*, 203 B.R. 949, 954 (Bankr. E.D. Tenn. 1996) (inquiry as to **?**whether the debt was incurred in the ordinary course of business *between* the parties") (emphasis in original). An analysis of § 547(c)(2)(B) is subjective, dealing with the business dealings between the debtor and the specific transferee in question, while the analysis of § 547(c)(2)(C) is objective, requiring proof of how the industry deals within itself. *Luper v. Columbia Gas of Ohio, Inc. (In re Carled, Inc.)*, 91 F.3d 811, 813 (6th Cir. 1996) (citing *Fred Hawes*, 957 F.2d at 244).

The ordinary course exception was intended to **?**allow[] suppliers and other furnishers of credit to receive payment within the course that has developed in the commercial relationship between the parties unless substantial deviations from established practices occur." *Brown v. Shell Canada Ltd. (In re Tenn. Chemical Co.)*, 112 F.3d 234, 238 (6th Cir. 1997). Additionally, the exception induces creditors to continue dealing with a distressed debtor, increasing the debtor's chances of survival. *Carled*, 91 F.3d at 815.

A

Based upon the evidence presented, it is clear that the $600.00 payment occurred in the ordinary course of business between the Debtor and The Zimmerman Agency and was intended to pay on the balance incurred as a result of The Zimmerman Agency's marketing on behalf of the Debtor. As evidenced by Exhibits D and E to the Stipulations and testimony at trial, these parties had an ongoing business relationship for over two years prior to the $600.00 payment and the filing of the Debtor's Chapter 7 petition. Accordingly, the § 547(c)(2)(A) element is satisfied.

B

An analysis under § 547(c)(2)(B) is fact-specific. *Fred Hawes*, 957 F.2d at 244. When deciding an ordinary course of business question, the following factors should be considered as between the parties: (1) the history of their dealings with each other; (2) the timing of the payments; (3) the payment amounts at issue; and (4) the circumstances surrounding the transaction at issue as a whole. *Tenn. Chemical Co.*, 112 F.3d at 237.

The Zimmerman Agency contends that the $600.00 payment received from the Debtor comes under the ordinary course of business exception because the Debtor regularly made sporadic payments. Courts have allowed sporadic payments to fall within the scope of **?**ordinary business practices" between a debtor and creditor if the sporadic nature of the payments was consistent and not the result of extensive collection activity. *See, e.g.*, *Tenn. Chemical Co.*, 112 F.3d at 237 (the parties had a long history of late payments and payment of several invoices with one check, thus giving rise to an ordinary course of business satisfying § 547(c)(2)(B)); *TennOhio Transp. Co. v.*

Navistar Fin. Corp. (In re TennOhio Transp. Co.), 269 B.R. 769, 772-74 (Bankr. S.D. Ohio 2001) (sporadic late payments sent to the creditor after intensive collection activity by the creditor were not in the ordinary course of business); *Swallen's, Inc. v. Corken Steel Prods. Co. (In re Swallen's, Inc.)*, 266 B.R. 807, 814 (Bankr. S.D. Ohio 2000) (rigid payment schedule prior to bankruptcy filing did not meet § 547(c)(2)(B) element because there had been a flexible repayment schedule between the parties for earlier months); *Speco Corp. v. Canton Drop Forge, Inc. (In re Speco Corp.)*, 218 B.R. 390, 402 (Bankr. S.D. Ohio 1998) (late payments to the creditor that did not deviate from previous range of payments by the debtor, ranging between 19 and 51 days, were determined to fall within the scope of § 547(c)(2)(B)); *Tenn. Valley Steel Corp.*, 203 B.R. at 954 (the debtor's late payments were "consistently scattered" for approximately the same ranges of time for the pre-preference and post-preference periods, satisfying § 547(c)(2)(B)).

In this case, The Zimmerman Agency has not met its burden of proof that the $600.00 payment was made in the ordinary course of business between these parties. Exhibit E to the Stipulations is The Zimmerman Agency's payment history statement, showing the dates, amounts, and types of payments received from the Debtor. Pursuant to this document, it appears that the Debtor did make sporadic, yet consistent, payments to The Zimmerman Agency from January 23, 1997, through April 8, 1998, ranging from 24 to 132 days between payments, for an average of 54 days between payments.[6] The $75,000.00 payment was made 81 days after the prior payment, and it was the last payment made within this time period. The next payment made by the Debtor

[6] The Zimmerman Agency offered no proof regarding how the Debtor's payments were applied, *i.e.*, to which invoices. As it appears that the Debtor's payments were never invoice specific but were always payments on account, the court's focus is on the time between partial payments and not the time between the Debtor's payment of specific invoices.

to The Zimmerman Agency was the $600.00 payment in question, which was made 303 days later. Obviously, this falls outside the ?normal" sporadic payments made by the Debtor over the life of the debtor-creditor relationship.

Furthermore, although not addressed by the parties in their briefs, critical to the § 547(c)(2)(B) issue is the method of the $600.00 payment. Although the parties agree that this payment was intended for The Zimmerman Agency, the check was nonetheless made payable to Curtis Zimmerman. There is no proof that any prior payment to The Zimmerman Agency was made by a check designating Mr. Zimmerman as the payee. This fact alone is sufficient to defeat The Zimmerman Agency's claim that the transfer met the § 547(c)(2)(B) element.

C

Because The Zimmerman Agency presented no proof as to industry standards other than the testimony of Mr. Zimmerman that The Zimmerman Agency accepted sporadic payments from other clients, The Zimmerman Agency did not meet its burden of proof as to § 547(c)(2)(C) either.

IV

In summary, the court finds that The Zimmerman Agency is not an insider of the Debtor because there is no evidence of sufficient control or influence over the Debtor by either The Zimmerman Agency or Mr. Zimmerman in his position as a director. Likewise, there is no evidence that either The Zimmerman Agency or Mr. Zimmerman had any authority to make or influence business decisions of the Debtor. Therefore, Mr. Zimmerman's insider status was not imputed to The Zimmerman Agency simply because Mr. Zimmerman sat on the Debtor's board of directors. For these reasons, the $75,000.00 payment from the Debtor to The Zimmerman Agency dated April 8, 1998, was not a preferential transfer and cannot be avoided by the Trustee.

As to the $600.00 payment, the court finds that The Zimmerman Agency did not establish an ordinary course of business defense, and the Trustee is entitled to recover the amount of this transfer from The Zimmerman Agency.

An appropriate judgment will be entered.

FILED: September 30, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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

In re

Case No. 99-30466

CARIBBEAN CIGAR COMPANY
d/b/a CARIBBEAN CIGAR & TOBACCO CO.
d/b/a CARIBBEAN CIGAR COMPANY, INC.
d/b/a CARIBBEAN CIGAR FACTORY
d/b/a CARIBBEAN CIGAR HOLDING CORP.

Debtor

ANN MOSTOLLER, TRUSTEE

Plaintiff

v. Adv. Proc. No. 01-3019

CURTIS ZIMMERMAN and
THE ZIMMERMAN AGENCY

Defendants

J U D G M E N T

For the reasons stated in the Memorandum filed this date containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, it is ORDERED, ADJUDGED, and DECREED as follows:

1. The Plaintiff's action is DISMISSED as to the Defendant, Curtis Zimmerman.

2. The Plaintiff's action is DISMISSED as to the $75,000.00 transfer by the Debtor to the Defendant, The Zimmerman Agency, on April 8, 1998.

3. The $600.00 payment made by the Debtor to the Defendant, The Zimmerman Agency, on February 2, 1999, is AVOIDED pursuant to 11 U.S.C.A. § 547(b) (West 1993).

4. The Plaintiff will recover from The Zimmerman Agency the amount of the avoided transfer, $600.00.

ENTER: September 30, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE