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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 96-53513-JRG
TRANS-EAGLE CORPORATION, Chapter 7
Debtor.

_____/
SUZANNE L. DECKER, Trustee, Adversary No. 99-5475
Plaintiff,
vs.
ADDONICS, et al.,
Defendants.

ORDER GRANTING MOTION TO DISMISS BY
ADDONICS TECHNOLOGY, INC.

I. INTRODUCTION

This motion came before the Court for hearing on October 26, 2000, at which time the Court took the matter under submission. After considering the supplemental briefs filed by the parties, the Court adopts its tentative ruling and grants Addonics' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(c).

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1 **II. BACKGROUND**

2 Approximately six months before filing for bankruptcy, the
3 debtor, Trans-Eagle Corporation, allegedly made payments to various
4 third parties on behalf of Quake International Corporation
5 ("Quake"), as part of a failed merger arrangement. In particular,
6 the debtor allegedly paid Addonics Technology, Inc. ("Adonics")
7 \$5,300 on January 9, 1995 and \$5,300 on February 6, 1996.

8 The debtor filed its Chapter 11 petition on May 9, 1996, and
9 the case was later converted to Chapter 7 on June 6, 1996.
10 Approximately two years later on May 8, 1998, Suzanne Decker, the
11 Chapter 7 trustee ("trustee"), commenced adversary proceeding 98-
12 5160-JRG ("avoidance action") against Quake to avoid the alleged
13 prepetition transfers made to Addonics and other third parties
14 pursuant to § 548(a).¹ Addonics was not named as a party to the
15 trustee's avoidance action and was not served with a summons and
16 copy of the complaint.

17 Ultimately, the parties to the avoidance action stipulated to
18 a judgment avoiding the transfers, and the trustee served a notice
19 of the stipulation and of an opportunity to object on all
20 transferees, including Addonics. Addonics filed no response to the
21 proposed stipulation and a judgment was entered on January 5, 1999
22 avoiding the transfers in question, including the \$10,600
23 transferred to Addonics.

24 Approximately one year later, on December 21, 1999, the
25 trustee commenced the instant adversary proceeding, 99-5475-JRG
26 ("recovery action"), against Addonics and other transferees to

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28 ¹ Unless otherwise indicated, all statutory references are to the United States
Bankruptcy Code, 11 U.S.C. § 101 et seq.

1 recover the purportedly avoided transfers pursuant to § 550(a).
2 Addonics, in turn, moved to dismiss the trustee's recovery action
3 under Federal Rule of Civil Procedure 12(c), made applicable to
4 adversary proceedings under Federal Rule of Bankruptcy Procedure
5 7012.

6 **III. SUMMARY OF HEARING AND TENTATIVE RULING**

7 At the hearing on Addonics' Rule 12(c) motion held on October
8 26, 2000, the Court found that Addonics, as a non-party to the
9 avoidance action, could not be bound by the stipulated judgment
10 based solely on notice and an opportunity to be heard; fundamental
11 due process required that it be named a party to the avoidance
12 action in order to be bound by the judgment.^{2 3} The trustee
13 submitted no credible authority to refute this proposition. Since
14 the statute of limitations for filing a § 548 adversary proceeding
15 against Addonics had already expired under § 546(a), the Court
16 entered a tentative ruling in favor of Addonics.⁴

17 Although prepared to grant Addonics' motion at the conclusion
18 of the hearing, the Court delayed making a final ruling for the
19 sole purpose of allowing the parties to address in writing an
20 argument raised orally by the trustee at the hearing.
21 Specifically, the trustee argued that she was not time barred from
22

23 ² See e.g., In re Halpert & Co., Inc., 254 B.R. 104, 116 (Bankr.D.N.J. 1999) ("Both the
24 transferor and the transferee should be named as necessary parties to a fraudulent transfer
25 suit."); 5 Collier on Bankruptcy, ¶ 548.07[1] at 548-54 [15th ed. revised 2000].

26 ³ The Court noted that although in many instances Congress placed specific language in
27 the Bankruptcy Code allowing individuals to be bound after notice and an opportunity to be
28 heard, no such provisions permit binding non-parties to judgments in adversary proceedings.

⁴ The Court incorporates by reference all comments made to the parties at the October
26, 2000 hearing.

1 filing an avoidance action against Addonics because § 550(f), and
 2 not § 546(a), contained the applicable statute of limitations.
 3 However, after considering this issue, it is clear that § 546(a)
 4 contains the applicable statute of limitations.

5 **IV. DISCUSSION**

6 Avoidance of a transfer under § 548(a) and recovery of the
 7 avoided transfer under § 550(a) are two separate and distinct
 8 actions. See 5 Collier on Bankruptcy, ¶ 550.01[1] at 550-3 [15th
 9 ed. revised 2000] ("Section 550 ... 'enunciates the separation
 10 between the concepts of avoiding a transfer and recovering from the
 11 transferee.'"). Nevertheless, recovery under § 550(a) cannot
 12 proceed until a transfer has first been avoided. As § 550(a)
 13 clearly provides, "**to the extent that a transfer is avoided under**
 14 **section ... 548** ... of this title, the trustee may recover, for the
 15 benefit of the estate, the property transferred...." (emphasis
 16 added) Conceptually, recovery must follow avoidance.

17 As the trustee stated correctly at the hearing, §§ 548(a) and
 18 550(a) have separate statutes of limitations. Section 548(a)'s
 19 statute of limitations is contained in § 546(a), and provides:

- 20 An action or proceeding under section 544, 545, 547, 548,
 21 or 553 of this title may not be commenced after the
 earlier of—
 (1) the later of—
 22 (A) 2 years after the entry of the order
 for relief; or
 23 (B) 1 year after the appointment or
 24 election of the first trustee under section 702, 1104,
 1163, 1202, or 1302 of this title if such appointment or
 25 such election occurs before the expiration of the period
 specified in subparagraph (A); or
 26 (2) the time the case is closed or dismissed.

27 In contrast, § 550's statute of limitations is contained in §
 28 550(f),

1 and provides:

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An action or proceeding under this section may not be commenced after the earlier of—
(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or
(2) the time the case is closed or dismissed.

8
9 Although common practice is for a trustee to file a consolidated action for avoidance and recovery in a single adversary proceeding, it is permissible to file separate adversary proceedings for each, as the trustee did in this case. See 5 Collier on Bankruptcy, ¶ 550.07 at 550-25. Nevertheless, since the trustee elected to proceed under two separate and distinct lawsuits to recover the transferred property from Addonics, the trustee was obliged to abide by the appropriate standard of due process with regard to each lawsuit.

18 As the Court ruled at the October 26, 2000 hearing, Addonics is not bound by the judgment in the trustee's avoidance action because it was not joined as a party to that lawsuit. It follows logically that since Addonics is not bound by the avoidance judgment, the transfers made to it have not been avoided. Consequently, the trustee cannot recover any transfers made to Addonics until those transfers have been properly avoided.

25 Unfortunately for the trustee, under the terms of § 546(a) her opportunity to file a § 548 avoidance action against Addonics expired on May 9, 1998, two years after entry of the order for relief, i.e., the filing of the Chapter 11 petition. Since the

1 trustee is incapable of filing a timely avoidance action against
2 Addonics, it is impossible for her to file a recovery action
3 against Addonics. Section 550's statute of limitations is of no
4 consequence.

5 **V. CONCLUSION**

6 The trustee put the cart in front of the horse. As a matter
7 of law the trustee cannot file a timely avoidance action against
8 Addonics. Therefore, the trustee cannot properly prosecute a
9 recovery action against Addonics. Accordingly, the Court's
10 tentative ruling is adopted and Addonics' motion to dismiss the
11 present adversary proceeding is granted.

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13 DATED: _____

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JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

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1 Adversary No. 99-5475

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CERTIFICATE OF SERVICE

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I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: **ORDER GRANTING MOTION TO DISMISS BY ADDONICS TECHNOLOGY, INC.** by placing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

LISA OLSEN

Office of the U.S. Trustee
280 So. First St., Rm. 268
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UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

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