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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
THE AMERICAN BASKETBALL LEAGUE,
INC., a California corporation,

Debtor.

Case No. 98-60354-MM
Chapter 11

UECKER & ASSOCIATES, INC., Plan
Administrator,

Plaintiff,

Adv. Proc. No. 00-5216

v.
L.G. HUNT & ASSOCIATES, INC., a
Georgia corporation, LARRY G. HUNT, and
THE UNITED STATES OF AMERICA,

Defendants.

**MEMORANDUM DECISION
AND ORDER THEREON**

INTRODUCTION

Before the Court is the Plan Administrator’s Motion for Summary Judgment to avoid and recover prepetition payments to the United States totaling \$1,230,000 pursuant to 11 U.S.C. §§ 544, 548, and 550. The Court grants partial summary adjudication for the Plan Administrator with respect to certain issues: the debtor was insolvent under § 548(a); and the United States is an initial transferee under § 550(a)(1). For purposes of § 544, although the stock redemptions are distributions prohibited by California Corporations

1 Code § 501, the Plan Administrator cannot recover from the United States under this section because it was
2 not a shareholder. The motion is also denied with respect to whether the estate received reasonably equivalent
3 value in exchange for the challenged transfers.

4 **FACTUAL BACKGROUND**

5 The American Basketball League, Inc. (“the ABL”) was a women’s professional basketball league
6 founded in 1995 during a period of increased national attention and interest in women’s basketball. However,
7 the ABL never completed its third season of league play because of operational, competitive, and financial
8 issues. It filed a chapter 11 case on December 31, 1998 and thereafter confirmed a Plan of Reorganization
9 that established procedures for a Plan Administrator to wind up the affairs of the corporation and provide for
10 an orderly liquidation. Among the assets to be pursued by the Plan Administrator is an avoidance claim against
11 Larry G. Hunt, his corporation, L.G. Hunt & Associates, Inc. (“Hunt, Inc.”), and the United States to recover
12 prepetition payments made under a settlement agreement.

13 The facts underlying the avoidance claim are as follows. On September 12, 1997, the United States
14 commenced a civil forfeiture action in the United States District Court for the Northern District of Georgia,
15 *United States of America v. 810,000 Shares of Indiana State Bonds, et al.*, to seize various assets held by
16 Hunt, including shares of ABL Series A preferred stock. The government alleged that Hunt acquired the ABL
17 shares using proceeds traceable to unlawful activity. A few days later, the United States commenced a parallel
18 criminal proceeding against Hunt, Inc. for Medicaid fraud, money laundering and mail fraud.

19 In response to the lawsuits, the ABL and Hunt, Inc. entered into a Stock Repurchase and Settlement
20 Agreement dated September 18, 1997. The settlement resolved claims of stock ownership between the ABL
21 and Hunt, Inc. Under the terms of the agreement, the ABL agreed to repurchase from Hunt, Inc. 2.3 million
22 shares of the ABL Series A-1 preferred stock for \$3.5 million. The terms of the written agreement required
23 a \$700,000 cash payment to Hunt, Inc. at closing. However, it is undisputed that the ABL paid \$100,000 to
24 Hunt, Inc. and \$600,000 to the United States on behalf of Hunt, Inc. In addition to the cash payment, the ABL
25 executed a promissory note in the amount of \$1.5 million that required the ABL to make monthly installment
26 payments of \$10,000 to Hunt, Inc. and \$90,000 to the United States. Further, the settlement agreement
27 provided for mutual releases, indemnification, the dismissal of all pending legal actions involving the parties, and
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1 confidentiality of the settlement terms.

2 To resolve the civil forfeiture action in part, Hunt, Inc. and the United States entered into a Stipulation
3 for Sale of Stock on December 12, 1997 substituting the sales proceeds for the stock as the res subject to
4 forfeiture. On February 17, 1998, the United States District Court for the Northern District of Georgia
5 approved the stipulation.

6 Pursuant to the terms of the settlement agreement and the promissory note, the ABL paid directly to
7 the United States the total sum of \$1,230,000 between March 3, 1998 and September 14, 1998. The United
8 States deposited this amount into a "seized asset account" pending further order of the District Court. On
9 March 10, 2000, the District Court issued a final judgment of forfeiture.

10 The ABL commenced the fiscal year ended March 31, 1998 with negative retained earnings of
11 \$9,200,743. Its corporate tax return for the fiscal year ending March 31, 1998 reveals a net operating loss
12 of \$18,980,250. Its corporate tax return for the fiscal year ending March 31, 1999 reflects a further net
13 operating loss of \$13,256,089.

14 The Plan Administrator commenced this adversary proceeding on June 30, 2000 against defendants
15 Hunt, Hunt, Inc., and the United States seeking to avoid and recover the prepetition transfers pursuant to 11
16 U.S.C. §§ 544, 547, 548 and 550 and under California law. She seeks summary judgment against only the
17 United States at this time on the fraudulent transfer claim under § 548, the state law claim pursuant to the
18 California Corporations Code, and the claim to recover the transfer under § 550.

19 **CONTENTIONS OF THE PARTIES**

20 With respect to the fraudulent transfer claim under § 548, the Plan Administrator contends that as a
21 matter of law, the ABL received less than reasonably equivalent value in exchange for the payments the ABL
22 made to the United States on behalf of Hunt, Inc. under the settlement agreement. She also contends that the
23 ABL was insolvent at the time it made the payments or was rendered insolvent by the transaction. The Plan
24 Administrator further contends that as an initial transferee of the payments, the United States is an appropriate
25 defendant from which to recover the transfers and is not entitled to avail itself of the safe harbor defenses
26 available to a mediate transferee. Lastly, she contends that the transfer is avoidable because it was a
27 prohibited distribution to a shareholder in violation of state law.

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1 The United States responds that issues of fact exist as to whether reasonably equivalent value for the
2 transfers was exchanged and whether the ABL was insolvent, precluding summary judgment. It asserts that
3 the ABL received intangible benefits for the transfer such as removing the stigma of having a party under
4 criminal indictment on its roster of shareholders, preventing the appointment of government bureaucrats to its
5 Board of Directors should the United States prevail in the civil forfeiture action, and the ability to resell the
6 shares. The United States contends that Hunt, Inc. was the initial transferee. It further contends that factual
7 issues exist as to whether it, as the subsequent transferee, received the funds for value, in good faith, and
8 without knowledge of the voidability of the transfer, precluding summary judgment. Finally, it disputes the Plan
9 Administrator's contention that the stock redemption constitutes a distribution to shareholders under California
10 law.

11 **LEGAL DISCUSSION**

12 **A. Standard for Summary Judgment**

13 Federal Rule of Civil Procedure 56 provides that summary judgment is proper "if . . . there is no
14 genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."
15 Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In order to prevail, the movant must demonstrate all the
16 elements of the claim for relief. Lockwood v. Wolf Corp., 629 F.2d 603, 611 (9th Cir. 1980). If the moving
17 party satisfies this burden, summary judgment is precluded only if there is a genuine issue for trial. Anderson
18 v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Where there is no real controversy over certain facts and
19 issues, and a trial of these facts and issues is unnecessary, partial summary adjudication is in order. Lies v.
20 Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981); Fed. R. Civ. P. 56(d).

21 **B. The Elements of a Fraudulent Transfer Claim Under § 548**

22 Section 548(a) provides in pertinent part:

23 (a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any
24 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 –

25 * * *

26 (B) (i) received less than a reasonably equivalent value in exchange for such
transfer or obligation; and

27 (ii) (I) was insolvent on the date that such transfer was made or such obligation
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1 was incurred, or became insolvent as a result of such transfer or obligation;

2 * * *

3 To prevail on a claim to set aside a fraudulent transfer under § 548(a)(1)(B), the Plan Administrator
4 must establish the following elements: (1) a transfer of an interest of the debtor in property; (2) within one year
5 of the filing of the petition; (3) for less than reasonably equivalent value; and (4) while the debtor was insolvent.
6 BFP v. Resolution Trust Corporation, 511 U.S. 531, 535 (1994). Of these elements, the Plan Administrator
7 seeks summary judgment only on whether the ABL received reasonably equivalent value in exchange for the
8 payments made and the debtor's solvency.

9 **1. Genuine Issues of Material Fact Preclude Determination Whether Reasonably**
10 **Equivalent Value Was Given**

11 There is no *per se* rule that redemption of stock by an insolvent corporation is avoidable as a fraudulent
12 transfer. Contrary to the Plan Administrator's assertions, in In re Roco Corporation, the First Circuit expressly
13 acknowledged that it is possible, in certain circumstances, for a corporation to redeem shares in an amount that
14 would be reasonably equivalent to the value a corporation transfers. In re Roco Corporation, 701 F.2d 978,
15 982 (1st Cir. 1983). The First Circuit cited as an example a publicly traded company redeeming a fraction of
16 its shares, perhaps to fund an executive benefits plan or for use in converting convertible bonds or preferred
17 shares. In Roco however, an insolvent corporation redeemed all of its outstanding shares from its sole
18 shareholder. The debtor received nothing in exchange for the transfer other than the shares, which the
19 bankruptcy court concluded were worthless to the debtor.

20 The value of the consideration received by the debtor should be compared to the value of what the
21 debtor surrendered to determine whether the debtor received less than reasonably equivalent value. In re
22 United Energy Corp., 944 F.2d 589, 597 (9th Cir. 1991). This analysis examines the issue from the standpoint
23 of creditors. In re Roosevelt, 176 B.R. 200, 206-08 (B.A.P. 9th Cir. 1994). It also considers whether the
24 value exchanged results in a diminution of the estate.

25 The court may delve behind the form of a transaction and the relationships between the parties to
26 determine the substance of the transaction, United Energy, 944 F.2d at 596, by examining the totality of the
27 circumstances. In re RML, Inc., 92 F.3d 139, 148-49 (3rd Cir. 1996). The value given the debtor may be
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1 indirect and from someone other than the transferee of the transfer sought to be avoided. In re Metro
2 Communications, 945 F.2d 635, 646-47 (3rd Cir. 1991), cert. denied, 503 U.S. 937 (1992); Rubin v.
3 Manufacturers Hanover Trust Co., 661 F.2d 979, 991 (2d Cir. 1981). It may also be intangible, so long as
4 there is an economic benefit to the debtor. Metro Communications, 945 F.2d at 647.

5 In Metro Communications, the Third Circuit considered whether a leveraged buyout provided
6 reasonably equivalent value to the debtor in that case. Within a year before the bankruptcy case was filed,
7 Total Communications, Inc. (“TCI”) acquired all of the capital stock of Metro Communications with a loan
8 from Mellon Bank, N.A. The debtor guaranteed the acquisition loan and secured it with substantially all its
9 assets. The Creditors’ Committee sought to set aside the guaranty and the security interest as fraudulent
10 transfers. The Third Circuit reversed the District Court, which had affirmed the Bankruptcy Court’s findings
11 that the guaranty and grant of the security interest constituted constructive fraudulent transfers. It acknowledged
12 that indirect economic benefits and intangible assets are part of an analysis of reasonably equivalent value. For
13 example, as a result of the leveraged buyout, Metro Communications qualified for a substantial extension of
14 credit and reasonably expected its relationship with TCI to produce a synergy of complementary services,
15 creating a stronger and more profitable combination. These intangible assets conferred realizable commercial
16 value on the debtor. Id.

17 In exchange for the cash payments, the ABL received the preferred shares back from Hunt. Under
18 the terms of the settlement agreement, the ABL also received a general release, indemnification, and a dismissal
19 of all pending actions relating to the ownership of ABL shares. It arguably preserved its positive public image.
20 It gained the right to resell the redeemed shares, potentially enabling the ABL to attract additional investors.
21 No evidence of the value of these intangible benefits has been presented at this juncture. Instead, the Plan
22 Administrator asserts conclusorily that the exchange as a matter of law failed to confer reasonably equivalent
23 value on the debtor. Applying the diminution of the estate test, genuine issues of material fact exist as to
24 whether the United States gave reasonably equivalent value in exchange for the transfer it received.

25 **2. The Plan Administrator Has Established That the ABL Was Insolvent**

26 The Bankruptcy Code defines “insolvent” as a “financial condition such that the sum of such entity’s
27 debts is greater than all of such entity’s property, at a fair valuation,” exclusive of property transferred with
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1 actual fraudulent intent and property that may be exempted. 11 U.S.C. § 101(32). The Bankruptcy Code
2 definition adopts a balance sheet test. In re DAK Industries, Inc., 170 F.3d 1197, 1199 (9th Cir. 1999).
3 Under the test, assets and liabilities are tallied at fair valuation to determine whether the corporation's debts
4 exceed its assets. Solvency is measured at the time the debtor transferred value. R.M.L., 92 F.3d at 154-55.
5 However, the Court may infer that the debtor was insolvent on the date of the transfers based on evidence of
6 insolvency at a time that is close in proximity to the time of the transfers. In re Sullivan, 161 B.R. 776, 784
7 (Bankr. N.D. Tex. 1993); In re Ocean Line of North Florida, 137 B.R. 540, 543 (Bankr. M.D. Fla. 1992).
8 See also In re Koubourlis, 869 F.2d 1319, 1321 (9th Cir. 1989). To make a determination of insolvency, a
9 court may rely on the debtor's financial statements, even if unaudited. See Roco Corporation, 701 F.2d at
10 983.

11 The ABL's financial statements appended to its corporate tax return for the fiscal year ending March
12 31, 1998 reflect negative retained earnings of \$9,200,743 and a net operating loss of \$18,980,250. The
13 ABL's corporate tax return for the fiscal year ending March 31, 1999 reflects a net operating loss of
14 \$13,256,089. These financial statements support a reasonable inference that the debtor was insolvent during
15 the entire period of the transfers from March 3, 1998 to September 14, 1998. By this unrefuted evidence, the
16 Plan Administrator has established a prima facie showing of insolvency.

17 **C. Under Section 544 the Trustee May Avoid a Transfer if Avoidable Under Applicable State**
18 **Law**

19 Section 544 authorizes the Trustee to exercise the rights of a hypothetical judicial lien creditor to avoid
20 a transfer of property that is avoidable under applicable state law. The Plan Administrator argues that the
21 ABL's redemption of shares constitutes a prohibited distribution to shareholders as defined in the California
22 Corporations Code. The relevant sections of the California Corporations Code provide:

23 § 166. Distribution to its shareholders.

24 "Distribution to its shareholders" means the transfer of cash or property by a corporation to its
25 shareholders without consideration, whether by way of dividend or otherwise, except a
26 dividend in shares of the corporation, or the purchase or redemption of its shares for cash or
property, including the transfer, purchase, or redemption by a subsidiary of the corporation.

27 * * *

28 § 501. Inability to meet liabilities as they mature; prohibition of distribution.

1 Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's
2 shareholders (Section 166) if the corporation or the subsidiary making the distribution is, or
3 as a result thereof would be, likely to be unable to meet its liabilities (except those whose
4 payment is otherwise adequately provided for) as they mature.

* * *

5 § 506. Receipt of prohibited dividend; liability of shareholder; suit by creditors or other
6 shareholders; fraudulent transfers.

- 7 (a) Any shareholder who receives any distribution prohibited by this chapter with
8 knowledge of facts indicating the impropriety thereof is liable to the corporation for the
9 benefit of all of the creditors . . . entitled to institute an action under subdivision (b) for
10 the amount so received . . . with interest thereon at the legal rate. . . .
11 (b) Suit may be brought in the name of the corporation to enforce the liability (1) to
12 creditors arising under subdivision (a) for a violation of Section 500 or 501 against any
13 or all shareholders liable by any one or more creditors of the corporation whose debts
14 or claims arose prior to the time of the distribution.

* * *

15 California Corporations Code § 501 prohibits a corporation from making a distribution to shareholders if the
16 corporation would be rendered unable to meet its liabilities as they mature, and § 506 requires a shareholder
17 that receives an improper distribution under § 501 to repay the distribution with interest.

18 **1. Stock Redemptions Are Prohibited Distributions**

19 Where a statute contains an ambiguity and is susceptible to more than one reasonable interpretation,
20 the court is to ascribe to it the meaning intended by the legislature in order to effectuate its purpose. Rizzo v.
21 Board of Trustees, 27 Cal. App. 4th 853, 896-97 (Cal. Ct. App. (4th Dist.) 1994). Corporations Code § 166
22 may be read to include stock redemptions within the ambit of a prohibited “distribution to its shareholders.”
23 Section § 166 may also reasonably be read to except a stock redemption from the defined term, “distribution
24 to shareholders.” To ascertain the intent, courts look at the legislative history of the statute and the historical
25 circumstances of its enactment. Industrial Risk Insurers v. The Rust Engineering Co., 232 Cal. App. 3d 1038,
26 1043 (Cal. Ct. App. (1st Dist.) 1991)(citing American Tobacco Co., v. Superior Court, 208 Cal. App. 3d 480,
27 485-786 (Cal. Ct. App. (1st Dist.) 1989)). The Legislative Committee Comment to California Corporations
28 Code § 166 provides in pertinent part:

The term means any transfer by a corporation of cash or property to its shareholders without
consideration or for the purchase or redemption of its shares (including such purchase or
redemption by a subsidiary of the corporation).

1 Legislative Committee Comment to California Corporations Code § 166 (California Assembly 1975). Here,
2 the legislative committee comment makes clear the legislature’s intent that a distribution to shareholders
3 prohibited under § 166 includes cash or property paid to shareholders for the purchase or redemption of
4 shares. This interpretation suggests that a stock redemption is avoidable under § 544.

5 **2. The United States is Not a Shareholder Under the California Corporations Code**

6 Notwithstanding that a “distribution to shareholders” does include stock redemptions, California
7 Corporations Code § 185 defines a “shareholder” as “one who is a holder of record of shares.” Although the
8 United States received a portion of the payments otherwise payable to Hunt, Inc., it did not become the holder
9 of record of the ABL shares. Under the terms of the settlement agreement, the ABL repurchased the shares
10 from Hunt, Inc. The United States separately entered into a stipulation with Hunt, Inc. to substitute the sales
11 proceeds as the res subject to forfeiture. Because the United States is not a shareholder as defined under the
12 California Corporations Code, it is not liable under Corporations Code § 506 for receiving a distribution
13 prohibited by the statute.

14 **D. The United States is an Initial Transferee Under § 550(a)**

15 The Plan Administrator seeks summary adjudication that the United States is an initial transferee under
16 § 550(a)(1). Section § 550 provides in pertinent part:

- 17 (a) . . . [T]o the extent that a transfer is avoided . . . the trustee may recover, for the
18 benefit of the estate, the property transferred, or, if the court so orders, the value of
19 such property, from –
20 (1) the initial transferee of such transfer or the entity for whose benefit such
21 transfer was made; or
22 (2) any immediate or mediate transferee of such initial transferee.
23 (b) The trustee may not recover under section (a)(2) of this section from –
24 (1) a transferee that takes for value, including satisfaction or securing of a present
25 or antecedent debt, in good faith, and without knowledge of the voidability of
26 the transfer avoided; or
27 (2) any immediate or mediate good faith transferee of such transferee.

28 The applicability of § 550(a)(1) determines whether a party can avail itself of the defenses available to a
mediate transferee under § 550(b), including that it received the transfer for value, in good faith, and without
knowledge of the voidability of the transfer.

1 Section 550 affords trustees greater flexibility in the recovery of avoided transfers from multiple
2 defendants. In re Mill Street, Inc., 96 B.R. 268, 270 (B.A.P. 9th Cir. 1989). By definition, the term
3 “transferee” necessarily implies that the party from whom recovery is sought received the property. In re
4 Lucas Dallas, Inc., 185 B.R. 801, 809 (B.A.P. 9th Cir. 1995). The distinction in § 550 between an initial
5 transferee and a mediate transferee strikes a balance between the policies of protecting creditors from
6 diminutions of the asset pool and imposing the duty of inquiry on all transferees. In re Video Depot, Ltd., 127
7 F.3d 1195, 1198 (9th Cir. 1997). An initial transferee is exposed to stricter risk of liability because it is in the
8 best position to evaluate whether a transfer is fraudulent. Id. at 1199; In re Cohen, 236 B.R. 1, 6 (B.A.P. 9th
9 Cir. 1999). The transferee’s burden to monitor the transaction is at its greatest when it receives funds directly
10 from the debtor. Video Depot, 127 F.3d at 1199. The defenses in § 550(b) do not apply to an initial
11 transferee, and a trustee’s power to recover from an initial transferee is absolute. In re Bullion Reserve of
12 North America, 922 F.2d 544, 547 (9th Cir. 1991).

13 A limited exception to the absolute liability of initial transferees exists where the recipient serves as a
14 mere conduit of the funds. See In re First Security Mortgage Co., 33 F.3d 42 (10th Cir. 1994)(bank acting
15 as financial intermediary making funds available per instruction); In re Dominion Corporation, 199 B.R. 410
16 (B.A.P. 9th Cir. 1996)(brokerage firm acting as mere facilitator of transactions). While not applicable to the
17 United States in this case, this exception illustrates that § 550 is not strictly applied and that equitable
18 considerations govern its application. Dominion Corp., 199 B.R. at 414.

19 The determinative factor that dictates whether a party is an initial transferee is the exercise of dominion
20 and control over the asset transferred. The Ninth Circuit adopted the “control test” in Bullion Reserve of North
21 America to determine whether one has sufficient control and dominion over assets to come within the definition
22 of a “transferee” for purposes of § 550(a). Bullion Reserve, 922 F.2d at 548-49. Bullion Reserve involved
23 a transfer from a corporate debtor to its president, who loaned the funds to purchase the stock of another
24 entity, The Commercial Bank of California (“CBC”), on behalf of two directors of CBC. The directors
25 pledged the stock to secure the loan from the debtor’s president. It was stipulated that the transfer to the
26 debtor’s president was avoidable because it was without consideration. However, the question then arose
27 whether the director in whose name the stock was acquired was also liable as a transferee. “[T]he minimum
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1 requirement for the status as a ‘transferee’ is dominion over the money or other asset, the right to put the money
2 to one’s own purposes.” Id. at 548 (*citing Bonded Fin. Services v. European American Bank*, 838 F.2d 890,
3 895 (7th Cir. 1988)). “[A]n entity does not have ‘dominion over the money’ until it is, in essence, ‘free to invest
4 the whole [amount] in lottery tickets or uranium stocks.’” Id. at 549 (*citing Bonded Fin. Services*, 838 F.2d
5 at 894).

6 The test . . . is a very flexible, pragmatic one; in deciding whether debtors had controlled
7 property subsequently sought by their trustees, courts must “look beyond the particular
8 transfers in question to the entire circumstances of the transactions.”

9 The control test . . . simply requires courts to step back and evaluate a transaction in its entirety
10 to make sure that their conclusions are logical and equitable. . . . [T]he general approach . . .
11 applies regardless of whether a debtor controlled the . . . funds it transferred to a defendant
12 or a defendant gained control over the funds transferred to it.

13 Id. at 548-49 (*quoting Nordberg v. Societe Generale (In re Chase and Sanborn Corp.)*, 848 F.2d 1196,
14 1199 (11th Cir. 1988)). The Ninth Circuit reversed the decision below, concluding that the director was not
15 a transferee for purposes of § 550 because he did not have sufficient dominion and control over the property
16 that he was contractually obligated to pledge. Bullion Reserve, 922 F.2d at 549.

17 A principal or agent does not have “dominion or control” unless he or she has “legal dominion or
18 control .” Video Depot, 127 F.3d at 1198. The Ninth Circuit in Video Depot considered whether the
19 principal of a debtor corporation necessarily is the initial transferee of corporate funds used to pay a personal
20 obligation. The case involved the principal’s payment to the Las Vegas Hilton of a personal gambling debt by
21 a cashier’s check purchased with the corporation’s funds and made payable directly to the Hilton. The Ninth
22 Circuit held that simply because a principal has the authority to direct the allocation of corporate resources does
23 not mean the principal has sufficient legal dominion and control to be an initial transferee. Id. at 1199. Legal
24 control over the funds passed directly from Video Depot to the Hilton, and the principal’s control over the
25 business operations did not compel a finding that the principal had dominion or control over the transferred
26 funds. This principle holds true even where the principal delivers the check to the creditor. See id. at 1200;
27 Rupp v. Markgraf, 95 F.3d 936, 940 (10th Cir. 1996).

28 The Ninth Circuit concluded that the Hilton was the initial transferee even though the corporation’s
principal directed the transfer. Video Depot, 127 F.3d at 1199-1200. The Ninth Circuit’s view comports with

1 the weight of authority in other circuits holding that the creditor that received the payment is the initial transferee.
2 See In re Southeast Hotel Properties Limited Partnership, 99 F.3d 151 (4th Cir. 1996)(payment by debtor’s
3 management company of debt to speedway by other corporation owned by company’s principal); Rupp v.
4 Markgraf, 95 F.3d 936 (instruction by primary shareholder and officer of corporate debtor for bank to issue
5 check from debtor’s account to officer’s personal judgment creditor); In re Chase & Sanborn Corp., 904 F.2d
6 588 (11th Cir. 1990)(direct repayment by corporation with instructions to apply to principal’s bank loan). See
7 also Lucas Dallas, 185 B.R. at 809; In re M. Blackburn Mitchell, Inc., 164 B.R. 117, 127 (Bankr. N.D. Cal.
8 1994).

9 An evaluation of this transaction in its entirety leads to the conclusion that the United States was the
10 initial transferee. The argument by the United States that Hunt directed the transfers by the ABL is the same
11 one asserted by Las Vegas Hilton in Video Depot. Once the debtor disbursed the settlement funds to the
12 United States, Hunt did not have sufficient dominion over the payments to be the initial transferee. The United
13 States was in the best position to evaluate whether the transfer was fraudulent. It was aware that the payor was
14 the ABL and that the ABL did not, in fact, owe an obligation to the United States when it made the payments.
15 Video Depot is controlling, and the United States is the initial transferee of the settlement payments that it
16 received directly from the ABL. The Plan Administrator’s ability to recover from the United States would be
17 absolute if the transfers ultimately are avoided. This finding renders it unnecessary to conduct a trial on the
18 applicability of the defenses under § 550(b) as to the United States.

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1 CONCLUSION

2 For the reasons set forth, the Court grants partial summary adjudication for the Plan Administrator with
3 respect to: (1) the debtor's insolvency under § 548(a); and (2) the liability of the United States as an initial
4 transferee under § 550(a)(1) from which the Plan Administrator may recover avoided transfers. The Plan
5 Administrator's motion is denied with respect to: (1) whether reasonably equivalent value was given; and (2)
6 the claim under § 544 on the basis that, although stock redemptions constitute prohibited distributions to
7 shareholders, the United States was not a shareholder as defined in the California Corporations Code from
8 whom recovery may be sought.

9 Good cause appearing, IT IS SO ORDERED.