

ENTERED ON

JAN 20 2004

DOCKET

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
S&W INTERNATIONAL FOOD	)	CASE NO. 02-95250-MHM
	)	
Debtor	)	
-----		
PAUL ANDERSON, JR., Trustee	)	
	)	<b>ADVERSARY PROCEEDING</b>
Plaintiff	)	<b>NO. 03-9282</b>
v.	)	
	)	
JASON SLAUGHTER	)	
SHERNELL SLAUGHTER	)	
	)	<b>ORDER</b>
Defendants	)	

On October 17, 2003, Defendants filed a motion to dismiss Count 2 of this adversary proceeding on the grounds that Count 2 of Plaintiff's complaint fails to state a claim upon which relief can be granted. Specifically, Defendants show that the fraudulent conveyance statute which is the basis for Count 2 of Plaintiff's complaint was repealed effective July 1, 2002, without reservation, and the new fraudulent conveyance statute does not have retroactive effect.

Plaintiff filed an untimely response to Defendants' motion to dismiss November 5, 2003.<sup>1</sup> Nevertheless, Defendants filed no reply to Plaintiff's response and filed no other objection to its untimeliness. Therefore, Plaintiff's response will be considered.

Plaintiff also filed a motion to compel Defendants to file an answer to the other counts of Plaintiff's complaint that were not the subject to Defendants' motion to dismiss.

Defendants filed a timely response opposing Plaintiff's motion. Plaintiff filed no reply.

---

<sup>1</sup> BLR 7007-1(b) provides that responses to motions, except motions for summary judgment, must be filed within ten (10) after service of the motion. Plaintiff's response was filed 19 days after service of Defendants' motion to dismiss.

The legal issue which is the subject of Defendants' motion to dismiss is currently pending before the Eleventh Circuit Court of Appeals in *Chepstow Limited v. Marshall B. Hunt* (03-14051), and is scheduled for oral argument January 30, 2004. Given the unusual nature of the issue and the significance of a finding concerning the effect of the repeal of the Georgia fraudulent conveyance statute, it is appropriate to stay proceedings in this adversary proceeding related to Count 2 of Plaintiff's complaint until a decision is rendered by the Eleventh Circuit Court of Appeals on the issue.

A stay of the proceedings on Count 2, however, does not appear to hinder continuation of this adversary proceeding as to the other counts of Plaintiff's complaint. The operative facts for each of the counts in Plaintiff's complaint, including Count 2, appear to be essentially the same. If Defendants prevail in their motion, so that Count 2 of Plaintiff's complaint is dismissed, the other counts of the complaint will be unaffected. Therefore, delaying the time for Defendants to file their answer and delaying discovery would accomplish nothing except delay. Accordingly, it is hereby

ORDERED that further consideration of Defendants' motion to dismiss Count 2 of Plaintiff's complaint is stayed pending entry of a final order by the Eleventh Circuit Court of Appeals on the same issue. It is further

ORDERED that **Plaintiff's motion to compel Defendants to file an answer to the other counts of Plaintiff's complaint is granted.** Within 20 days of the date of entry of this order, Defendants shall file an answer to all counts of Plaintiff's complaint, except Count 2.

IT IS SO ORDERED, this the 16<sup>th</sup> day of January, 2004.

  
MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE