



IT IS ORDERED as set forth below:

Date: June 06, 2008

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NOS. 04-78434 through 04-78436
Rhodes, Inc., et al.,	CHAPTER 11
Debtors.	JUDGE MASSEY

Joel H. Dugan, as Liquidating Agent,	
Plaintiff,	
v.	ADVERSARY NO. 06-6498
Sea Products, Inc.,	
Defendant.	

**ORDER DENYING MOTIONS IN LIMINE AND GRANTING DEFENDANT'S MOTION
TO EXTEND TIME TO SUPPLY CERTAIN EXHIBITS UNTIL TRIAL**

Concerned about having to pay for an expert witness on the issue of the solvency of Debtor Rhodes, Inc. during the preference period to be present at trial where its insolvency does not appear to be disputed, Plaintiff moves for an order foreclosing Defendant from introducing

any evidence on the issue of solvency. There is a presumption of insolvency that stands to satisfy the burden of proving insolvency in the absence of evidence that the debtor was solvent at the point or points in time at issue. 11 U.S.C. § 547(f).

Section 547(f) provides that “for the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.” 11 U.S.C. § 547(f). “A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption.” Fed.R.Evid. 301.

In re Lids Corp., 281 B.R. 535, 540 (Bankr. D. Del. 2002).

“Therefore, in the absence of evidence to rebut the presumption, [a plaintiff is] entitled to rely on the § 547(f) presumption to establish . . . insolvency” during the preference period. *In re Old World Cone Co.*, 119 B.R. 473, 477 (Bankr. E.D. Pa. 1990).

Here, the pretrial order adequately deals with the perceived but actually non-existent problem. Defendant’s only objection to the Plaintiff’s statement of its case (what he intends to prove) in the pretrial order is that Plaintiff merely repeated what is in the complaint. So what? The complaint states a claim for relief, and so Defendant’s objection to Plaintiff’s case does not raise solvency as an issue. Further, what Plaintiff stated in his portion of the pretrial order (which goes beyond the complaint) is that Debtor’s insolvency cannot be questioned because Defendant has no evidence to the contrary. Defendant’s response to that statement does not controvert Plaintiff’s assertion that solvency is not an issue, and its statement of its case does not assert that Rhodes was solvent when the alleged transfers were made.

Of course parties are free to present evidence at trial subject to objection. Generally speaking it is up to the party opposing the introduction of evidence on an issue not raised in a pretrial order to object at that time. So a motion in limine is unnecessary because the issue is

plainly covered by the pretrial order, and Plaintiff's objection to what Defendant might try to do at trial can be raised at trial. Should there be any great surprise on this issue at trial and were the Court to permit Defendant to present such evidence, the Court would continue the trial to enable Plaintiff to introduce the testimony of its expert witness.

Defendant also filed a motion in limine seeking to exclude the testimony of a proposed expert witness of Plaintiff on the ground that the testimony of the witness at a deposition casts doubt on the extent of his knowledge. That objection may be made at trial at the time that Plaintiff offers the witness as an expert.

Defendant moves for an order permitting it to postpone delivering copies of hundreds of exhibits until trial. The parties are urged to agree on these exhibits. It would make no sense to require the introduction of such exhibits if there is no issue about their authenticity and a summary would supply all of the facts that the individual invoices would show. It may, of course, be necessary for Plaintiff to review the copies of invoices that Defendant would propose to introduce, as has been previously discussed by the parties with the Court off the record. If, however, Plaintiff does not dispute the facts that each invoice purports to convey, it would seem that a summary would provide all of the evidence needed, without cluttering the record with hundreds of pages of documents. This is not meant to foreclose Plaintiff from asserting what he believes to be a sound reason for requiring the offering into evidence of individual invoices or all of them.

For these reasons, the motions in limine filed by each of Plaintiff and Defendant are DENIED and Defendant's motion to postpone lodging invoice exhibits with the Court until the time of trial is GRANTED.

END OF ORDER