United States Bankruptcy Court
Northern District of Illinois
Eastern Division
Transmittal Sheet for Opinions

Will this opinion be published? No

Bankruptcy Caption: Macronet Group, Ltd.
Bankruptcy No. 03 B 33484

Adversary Caption: Macronet Group, Ltd. v. David Patterson
Adversary No. 03 A 04263

Date of Issuance: April 22, 2004

Judge: Susan Pierson Sonderby

Appearance of Counsel:
Timothy C. Culbertson
Mora, Baugh, Waitzman & Unger, LLC
250 Parkway Drive, Suite 130
Lincolnshire, IL 60069
Attorneys for Plaintiff

Jeffrey P. White
231 West Main Street
Barrington, IL 60010
Attorneys for Defendant

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
MACRONET GROUP, LTD.,	)	
	)	
Debtor.	)	Case No. 03 B 33484
MACRONET GROUP, LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Pro. No. 03 A 04263
	)	
DAVID PATTERSON,	)	
	)	
Defendant.	)	Hon. Susan Pierson Sonderby

MEMORANDUM OPINION

This cause comes to be heard on the Motion of the Plaintiff Macronet Group, Ltd. ("Macronet") for Partial Summary Judgment. For the reasons stated herein, the motion is granted.

I.

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1409(a).

II.

FACTS

A. Procedural Background

On August 13, 2003, Macronet filed a voluntary petition for reorganization under chapter 11 of title 11 of the United States Code (the "Code"). According to Macronet's motion to use cash collateral filed in the bankruptcy case, Macronet is in the business of supplying wholesale and retail computer components, including memory components and computer systems.

On October 15, 2003, Macronet filed a three-count adversary complaint (the "Complaint") against the defendant David Patterson seeking to avoid a lien pursuant to sections 544(a) and 547(b) of the Code (Counts I and II, respectively) and avoid alleged preferential transfers pursuant to sections 547(b) and 550(a) of the Code (Count III). Patterson filed his Answer to the Complaint on November 19, 2003.

On December 3, 2003, Macronet filed a motion for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure made applicable herein by Federal Rule of Bankruptcy Procedure 7056. Partial summary judgment is allowable under the Federal Rules, but only to dispose of one or more counts of the complaint in their entirety. In re Anmar Corp., 1999 WL 26725, *4 (Bankr. N.D. Ill. Jan. 21,1999)(citations omitted). Macronet does not identify in its motion on which of the three counts of the Complaint it seeks partial summary judgment. A failure to specify the count coupled with a limited record that prevents the court from making a determination on all issues within a count may result in the motion being denied as procedurally defective. *See, e.g.*, Id.

In its prayer for relief, Macronet seeks the entry of an order "declaring that the

Defendant's claim in the underlying bankruptcy matter, if any is ultimately allowed, is that of a general unsecured creditor . . . " The parties' arguments and materials submitted with respect to the motion are premised on Macronet's ability as a debtor in possession to avoid an unperfected lien on personal property pursuant to section 544(a) of the Code, an issue which is encompassed within Count I of the Complaint. The record is complete enough to enable the court to make a determination on the issues within Count I. Accordingly, the court will consider the request for relief as one seeking summary judgment on Count I of the Complaint.

B. The Patterson Security Interest

Unless otherwise noted, the following facts are undisputed.[1] Macronet was originally incorporated under the laws of the State of Illinois with the name CPV, Inc. On December 8, 2000, Articles of Amendment were filed with the office of the Illinois Secretary of State changing the name of the corporation to its present name, Macronet Group, Ltd.

On October 12, 2001, Patterson, then a holder of shares of stock in Macronet, the other shareholders of Macronet, and Macronet entered into an Agreement for the Sale of Shares (the "Agreement") pursuant to which, Macronet agreed to pay Patterson the sum of $312,993 to purchase his shares. The Agreement called for the purchase price to be paid by a cashier's or certified check in the amount of $15,000 at closing, with the balance payable over 36 months pursuant to a promissory note signed by Macronet in favor of Patterson (the "Promissory Note"). The Agreement provides *inter alia* that,

> The Promissory Note shall be secured by (i) the assets of the

---

[1] In response to the motion, Patterson did not file a statement of any additional facts that require the denial of summary judgment, including references to affidavits, parts of the record or other supporting material relied upon. *See* Local Bankruptcy Rule 7056-2.

> CORPORATION as evidenced by an appropriate U.C.C. Financing statement to be signed by the CORPORATION at closing and to be recorded with the County recorder's office and the Secretary of State's office and (ii) shares owned by [other Macronet shareholders] in an amount equal to the percentage which the PATTERSON SHARES represented against the total issued and outstanding shares of the CORPORATION (16.67%) prior to the consummation of this Agreement.[2]

The only exhibits appended to the Agreement are the Promissory Note and a Mutual Release. A portion of the Promissory Note, also dated October 12, 2001, provides verbatim, "This Note shall be secured by a U.C.C. Financing Statement as well as a portion of the stock of individual shareholders of the undersigned as more particularly set forth in the Agreement For the sale Of Shares executed of an even date herewith."

The Agreement set the closing date as October 12, 2001, the date the Agreement and the Promissory Note were executed. In his Answer, Patterson denies Macronet's allegation in the Complaint that "a UCC financing statement was issued to Patterson contemporaneously with the execution of the Agreement, but that financing [sic] was never filed with the Illinois Secretary of State's office."

On August 26, 2002, approximately ten months after the Agreement was executed, a UCC financing statement was filed with the Office of the Illinois Secretary of State, UCC Division (the "Financing Statement"). In the box on the Financing Statement calling for the "Debtor's Exact Full Legal Name - Insert only one debtor name . . . - do not abbreviate or combine names," the following was typed, "MACRONET GROUP LIMITED (AN ILLINOIS CORPORATION)."

The Financing Statement provides further that it:

---

[2] This opinion does not address the lien on the shares.

covers the following collateral:

> ALL OF THE EQUIPMENT, TRADE FIXTURES, FURNISHINGS, FURNITURE, CHATTELS, RECEIVABLES, INVENTORY, SUPPLIES, PRODUCTS, TRADENAME [sic] TELEPHONE NUMBERS, LEASEHOLD RIGHTS AND ANY AND ALL OTHER ASSETS OF DEBTOR IN THE CONDUCT AND OPERATION OF THE BUSINESS AT 1500-A HIGGINS RD., ELK GROVE VILLAGE, IL 60007.

C. Arguments of the Parties

Macronet argues that Patterson's purported security interest failed to attach to any of Macronet's collateral because a security interest never became enforceable against Macronet due to the absence of an authenticated security agreement sufficiently describing the collateral. Macronet also contends, presumably assuming *arguendo* that the security interest attached, that the security interest was not perfected because the Financing Statement was seriously misleading as a result of the failure to identify Macronet on that statement by its exact corporate name.

Patterson argues in response that the Agreement sufficiently described the collateral by expressly incorporating the collateral description in the Financing Statement. Patterson also contends that identifying the debtor on the Financing Statement as Macronet Group Limited, as opposed to its exact corporate name, Macronet Group, Ltd., did not result in a seriously misleading financing statement that would have been fatal to perfection of the security interest.

III.

DISCUSSION

A. Standards for Summary Judgment

Summary judgment is granted "when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *E.g.*, Bellaver v. Quanex Corp., 200 F.3d 485, 491 (7th Cir. 2000); Feldman v. American Memorial Life Ins. Co., 196 F.3d 783, 789 (7th Cir. 1999). In ruling on the motion, the court reviews the record in the light most favorable to the nonmoving party and it draws all reasonable inferences therefrom in the nonmovant's favor. Schneiker v. Fortis Ins. Co., 200 F.3d 1055, 1057 (7th Cir. 2000); Filipovic v. K & R Express Systems, Inc., 176 F.3d 390, 395 (7th Cir. 1999).

The task on a motion for summary judgment is to determine whether there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2511 (1986); Ortiz v. John O. Butler Co., 94 F.3d 1121, 1124 (7th Cir. 1996), *cert. denied*, 519 U.S. 1115, 117 S.Ct. 957 (1997); Waukesha Foundry, Inc. v. Industrial Engineering, Inc., 91 F.3d 1002, 1007 (7th Cir. 1996). On such a motion, it is not the court's function to resolve factual disputes or to weigh conflicting evidence. Id. Summary judgment is appropriate when there is only one logical conclusion that the fact finder can reach. Marozsan v. United States, 90 F.3d 1284, 1290 (7th Cir. 1996), *cert. denied*, 520 U.S. 1109, 117 S.Ct. 1117 (1997).

B. Voidability of the Security Interest

Section 544(a) of the Code empowers a bankruptcy trustee to avoid interests in the debtor's property that are unperfected as of the petition date. 11 U.S.C. § 544(a), *see also* In re Vic Supply Co., Inc., 227 F.3d 928, 931 (7th Cir. 2000). This power is commonly referred to as the trustee's strong-arm power, which a debtor in possession can exercise by virtue of section 1107(a) of the Code. 11 U.S.C. § 1107(a).

Whether an interest is perfected or not as of the petition date is determined by state law.

In re Outboard Marine Corp., 300 B.R. 308, 315 (Bankr. N.D. Ill. 2003)(*citing* Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979); In re Chaseley's Foods, Inc., 726 F.2d 303, 304 (7th Cir. 1983). In this matter, the parties agree that Illinois law controls the determination.

Under Illinois' version of Article 9 of the Uniform Commercial Code, 810 ILCS 5/9-101, *et seq.*, a security interest cannot be perfected until it has attached to the collateral. 810 ILCS 5/9-308 (". . . a security interest is perfected if it has attached and all of the applicable requirements for perfection . . . have been satisfied."). A security interest does not attach to collateral until the security interest is enforceable against the debtor with respect to the collateral. 810 ILCS 5/9-203.[3] For the security interest to be enforceable against the debtor with respect to the collateral, three prerequisites must be met, i.e., value must be given, the debtor must have rights in the collateral or the power to transfer rights in the collateral to a secured party, and the debtor must have authenticated a security agreement that describes the collateral. Id.

A security agreement is defined as "an agreement that creates or provides for a security interest." 810 ILCS 5/9-102(a)(73). The security agreement must describe the collateral subject to the security interest. In re Grabowski, 277 B.R. 388, 390 (Bankr. S.D. Ill. 2002). The standard for determining the sufficiency of the collateral description in a security agreement is set forth in the UCC, which provides *inter alia*:

---

[3] Section 5/9-203 of the Uniform Commercial Code - Secured Transactions provides, *inter alia*, "(a) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment. (b) Enforceability... a security interest is enforceable against the debtor and third parties with respect to the collateral only if: (1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and (3) one of the following conditions is met: (A) the debtor has authenticated a security agreement that provides a description of the collateral . . ." 810 ILCS 5/9-203.

> (a) Sufficiency of description. Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.
>
> (b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:
>
> (1) specific listing;
> (2) category;
> (3) except as otherwise provided in subsection (e), a type of collateral defined in the Uniform Commercial Code;
> (4) quantity;
> (5) computational or allocational formula or procedure; or
> (6) except as otherwise provided in subjection (c), any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

810 ILCS 5/9-108.

The security agreement serves the purpose of defining and limiting the collateral subject to the creditor's security interest. Grabowski, 277 B.R. at 391; Allis-Chalmers Corp. v. Staggs, 117 Ill.App.3d 428, 453 N.E.2d 145, 72 Ill. Dec. 840 (5th Dist. 1983); Magna First Nat. Bank and Trust Co. v. Bank of Illinois in Mt. Vernon, 195 Ill.App.3d 1015, 553 N.E.2d 64, 142 Ill.Dec. 714 (5th Dist. 1990). The financing statement serves the purpose of notifying anyone who may be interested that a creditor may have a lien on the property described and that "further inquiry into the extent of the security interest is prudent." Id. (*citing* Signal Capital Corp. v. Lake Shore Nat'l Bank, 273 Ill.App.3d 761, 210 Ill.Dec. 388, 652 N.E.2d 1364, 1371 (1995)).

Because the security agreement itself provides for and defines the security interest and the financing statement serves a notice function, the collateral description in a financing

statement cannot expand or reduce the collateral subject to the security agreement. Allis-Chalmers, 453 N.E.2d at 149, 72 Ill. Dec. at 840 (*citing* to the Illinois Code Comment referring to the former version of UCC and Andersen's Uniform Commercial Code, Vol. 4 at 124-25 (2d ed. 1971)), *see also,* In re Martin Grinding & Machine Works, Inc., 793 F.2d 592 (7th Cir. 1986)(holding that a financing statement or other loan documents cannot modify an unambiguous document that singularly qualifies as a security agreement).

As to the issue of whether Patterson's security interest is enforceable, there is no dispute that value was given or that the debtor had rights in the collateral. The parties also agree that the Agreement itself constitutes the security agreement. The Agreement was authenticated. *See* 810 ILCS 5/9-102(7). The issue here is whether the Agreement reasonably identifies the collateral.

Applying the UCC section 9-108 standards for reasonable identification of collateral, it is obvious that the identification of the collateral in the Agreement as the assets of Macronet as evidenced by an appropriate UCC financing statement to be signed at closing and recorded at the county and state level, is not a specific or categorical listing of assets. Moreover, the collateral is not identified in the Agreement by a type of collateral defined in the UCC, e.g., inventory, accounts, etc., or by quantity or a computational formula or procedure.

Patterson argues that the method employed in the Agreement to identify the collateral by "specifically incorporating" the Financing Statement, which contains a description of collateral by UCC definition, allows for objective determination of the identity of the collateral.[4] While it may be true that incorporating a collateral description in a separate document, such as a form financing statement, by reference into a security agreement could qualify as "any other

[4] Patterson does not argue that the Financing Statement modifies the Agreement.

method" of identification pursuant to UCC section 9-108, the problem with Patterson's argument is that the Agreement does not expressly incorporate by reference or even refer to the particular Financing Statement. Rather, the Agreement references *an appropriate* financing statement *to be* signed at closing. The only Financing Statement in the record was unsigned and filed solely with the Secretary of State's office ten months after closing. Under the circumstances, the identity of the collateral cannot be objectively determined from the description of the collateral in the Agreement.

Accordingly, as a matter of law the security agreement does not reasonably identify the collateral. Consequently, the collateral description in the security agreement is insufficient, which is fatal to its enforceability. Because the security interest is not enforceable, it did not attach and thus cannot as a matter of law have been perfected. The security interest is therefore avoidable pursuant to section 544(a) of the Code. The court need not reach the arguments concerning whether or not the debtor's name listed on the Financing Statement was seriously misleading.

IV.

CONCLUSION

For the reasons stated herein, the motion of Macronet Group, Ltd. for entry of partial summary judgment is granted. By separate order in accordance with Bankruptcy Rule 9021 a judgment avoiding the unperfected security interest in the property referred to in the Agreement will be entered in favor of Macronet Group, Ltd. and against David Patterson on Count I of the

Complaint. A status hearing on Counts II and III of the Complaint will be held on May 5, 2004 at 10:30 a.m.

Date:_____ ENTER:

_____
SUSAN PIERSON SONDERBY
UNITED STATES BANKRUPTCY JUDGE