

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: PLI LIQUIDATION, INC.

CASE NO. 07-11635-DWH

PLI LIQUIDATION, INC.

PLAINTIFF

VERSUS

ADV. PROC. NO. 08-01030-DWH

K.A.R./ROOMS UNLTD.

DEFENDANT

OPINION

On consideration before the court is the motion for summary judgment filed by the plaintiff, PLI Liquidation, Inc., (“PLI”); A response to said motion having been filed by the defendant, K.A.R./Rooms Unlimited, (“KAR”); and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (E), and (O).

II.

Summary judgment is properly granted when pleadings, depositions, answers to interrogatories, and admissions on file, together with 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. Bankruptcy Rule 7056; Uniform Local Bankruptcy Rule 18. The court must examine each issue in a light most favorable to the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Phillips v. OKC Corp., 812 F.2d

265 (5th Cir. 1987); Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). The moving party must demonstrate to the court the basis on which it believes that summary judgment is justified. The nonmoving party must then show that a genuine issue of material fact arises as to that issue. Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291 (5th Cir. 1987), Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). An issue is genuine if “there is sufficient evidence favoring the nonmoving party for a fact finder to find for that party.” Phillips, 812 F.2d at 273. A fact is material if it would “affect the outcome of the lawsuit under the governing substantive law.” Phillips, 812 F.2d at 272.

The court notes that it has the discretion to deny motions for summary judgment and allow parties to proceed to trial so that the record might be more fully developed for the trier of fact. Kunin v. Feofanov, 69 F.3d 59, 61 (5th Cir. 1995); Black v. J.I. Case Co., 22 F.3d 568, 572 (5th Cir. 1994); Veillon v. Exploration Services, Inc., 876 F.2d 1197, 1200 (5th Cir. 1989).

III.

This cause of action concerns goods purchased by KAR from PLI on open account. KAR tendered checks to PLI in payment of the goods, but, when the checks were presented through ordinary banking channels, they were returned unpaid. The dates of these unpaid checks range from February 6, 2007 through April 13, 2007, and they total approximately \$219,731.60.

KAR has raised the right of setoff as a defense based on unliquidated warranty claims resulting from the quality of the goods delivered by PLI. PLI denies that KAR has setoff rights because of these warranty claims, and asserts that Peoploungers, LLC, has assumed its warranty obligations.

IV.

Obviously, there are numerous material factual issues in dispute. There are even contested issues of law such as whether KAR is legally permitted to raise the warranty claims as an affirmative set off defense to PLI's claim for non-payment. PLI's motion for summary judgment is not well taken. It will be overruled by a separate order to be entered contemporaneously herewith.

This the 27th day of August, 2008.

/s/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE