UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: RONNIE DAN WARE
AND STEPHANIE LYNN WARE, DEBTORS — CASE NO. 06-12523-DWH

MIKE HENSON AND
SOUTHERN CABINETRY — PLAINTIFFS/COUNTER-DEFENDANTS

VS. — ADV. PROC. NO. 07-1008-DWH

RONNIE DAN WARE — DEFENDANT/COUNTER-PLAINTIFF

OPINION

On consideration before the court is motion for partial summary judgment, filed by the debtor/counter-plaintiff, Ronnie Dan Ware ("Ware"); a response thereto having been filed by the plaintiffs/counter-defendants, Mike Henson ("Henson") and Southern Cabinetry; and the court, having considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and parties to 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).

II.

Ware and Henson formed Southern Cabinetry, a Mississippi General Partnership, in January, 2005. On July 20, 2005, Ware and his wife, Stephanie Lynn Ware, executed a deed of trust in favor of National Bank of Commerce (a/k/a Cadence Bank), which encumbered their real property, in order to obtain a line of credit for "George M. Henson [and] Dan Ware d/b/a Southern Cabinetry" in the amount of $50,966.00. This credit line was increased to $71,251.00

in August, 2005. More than $70,000.00 was advanced, and, as of February 7, 2007, the partnership owed, with accrued interest, the sum of $79,167.33. Henson dissolved Southern Cabinetry in December, 2005, but the affairs of the partnership were not wound up at that time.

Ware filed a Chapter 13 bankruptcy on October 9, 2006, and listed Henson and Southern Cabinetry as unsecured creditors in his bankruptcy schedules. The case was subsequently converted to Chapter 7 on October 3, 2007.

Henson filed an adversary proceeding against Ware alleging the non-dischargeability of Ware's debt pursuant to 11 U.S.C. §523(a)(2), (4), and (6). The complaint was later amended to add Southern Cabinetry as a plaintiff. Subsequently, Ware filed his answer and counterclaim against both plaintiffs. Count Three of the counterclaim asserts that Henson and/or Southern Cabinetry violated the automatic stay by exercising control over Ware's partnership interest through diverting, converting, misappropriating and withholding his share of the partnership's net profits. Ware filed his motion for partial summary judgment as to this count of the counterclaim.

III.

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.29 265 (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).

IV.

Following a review of the motion for partial summary judgment and the parties' memoranda of law, the court finds that Count Three of Ware's counterclaim is extremely fact intensive, and, not surprisingly, that there are numerous factual issues remaining in dispute. As such, Ware is not entitled to judgment as a matter of law, and his motion for partial summary judgment must be overruled.

A separate order, consistent with this opinion, shall be entered contemporaneously herewith.

This the 6th day of February, 2008.

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