



Delaware Bankruptcy Court Clarifies Pleading Standard for Preference and Fraudulent Transfer Claims

In his recent decision, Delaware Bankruptcy Judge Craig T. Goldblatt highlighted the necessary elements of a complaint alleging preference and fraudulent transfer claims to survive a motion to dismiss.

In *In re Pack Liquidating, LLC* [1], the debtors filed for chapter 11 bankruptcy protection. The Bankruptcy Court granted the Official Committee of Unsecured Creditors (“Creditors Committee”) derivative standing to pursue claims to recover preferential transfers and fraudulent conveyances. [2] Defendant Nimble Gravity, LLC filed a motion to dismiss the complaint for failure to state a claim pursuant to Fed. R. Civ. Pro. (“FRCP”) 12(b)(3) and (b)(6).

Claw Back Claims

Section 547 of the Bankruptcy Code permits the debtor, trustee, or, as in this case, a creditors committee, to claw back certain payments made to creditors within the ninety (90) days (or one (1) year if the transferee is an insider as defined by the Bankruptcy Code) immediately preceding the date that the bankruptcy is filed (“Preference Claims”). Sections 544 and 548 of the Bankruptcy Code further permit the recovery of certain payments made by the debtor for transfers without fair consideration made within two (2) years of the filing date or four (4) years under state law. (“Fraudulent Transfer Claims”). [3]

The Pleading Standards

In his opinion, Judge Goldblatt referenced the *Iqbal* [4] and *Twombly* [5] standards, confirming that plaintiffs may not simply recite the elements of a cause of action, but instead, the pleading must contain plausible facts to state a claim. Judge Goldblatt also stated that pursuant to FRCP 8(a), a complaint must include a “short and plain statement” showing that the plaintiffs are entitled to the relief sought.

The Court emphasized that to defeat a motion to dismiss, complaints alleging Preference and Fraudulent Transfer Claims must allege sufficient facts to establish that the plaintiff is entitled to the relief sought, and are not required to include all of the information that the parties eventually will learn through the discovery process.

[1] *In re Pack Liquidating, LLC*, No. 22-10797, 2024 WL 4633499 (Bankr. D. Del. Oct. 30, 2024).

[2] *In re Pack Liquidating, LLC*, 658 B.R. 305 (Bankr. D. Del. Feb. 2, 2024).

[3] A fraudulent transfer includes any transfer: (A) made by the debtor with actual intent to hinder, delay, or defraud any entity to which the debtor was indebted to, or became indebted to; or (ii) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (B)(i)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

[4] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

[5] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

Judge Goldblatt applied the Third Circuit “three-step plausibility test.” First, the court must note the elements to state a claim. Second, the court must accept that all of the complaint’s “well-pleaded facts” are true. Third, the court must decide whether the plaintiff’s factual allegations are adequate to support a plausible claim for relief. [6]

Judge Goldblatt explained that to properly allege the nature and amount of an antecedent debt, the complaint must identify, “the amounts owed, describe the relationship between the parties, and link the allegedly preferential transfers to that relationship.” [7]

Ultimately, Judge Goldblatt held that the Creditors Committee adequately alleged each of the elements to support a Preference Claim, stating that, “[a]t this stage, the complaint only needs to give enough detail to allow the defendant to identify the payment in question. A complaint does not need to apprise a defendant of everything it might wish to know about the plaintiff’s claims.” [8]

Judge Goldblatt similarly determined that the Creditors Committee sufficiently had plead the Fraudulent Transfer Claims, because the heightened pleading standard for claims of actual fraud does not apply to constructive fraudulent transfer claims. Judge Goldblatt held that to adequately plead constructive fraud, the plaintiff need only allege that “there was a transfer for less than reasonably equivalent value at the time when the [debtor was] insolvent.” [9] The complaint did just that – it detailed the transfer amount, date, transferee, transferor, and stated that the payments were not made because of an antecedent debt. Ultimately, Judge Goldblatt denied the motion to dismiss because the Creditors Committee properly plead both Preference and constructively Fraudulent Transfer Claims.

Conclusion

The recent decision in *In re Pack Liquidating, LLC* highlights the necessary elements to plead Preference and Fraudulent Transfer Claims. Preference Claim plaintiffs must plead sufficient detail to allow the defendant to identify the payments that lay the foundation for the plaintiff’s claim. Fraudulent Transfer claimants must allege that there was a transfer for a less than reasonably equivalent value that occurred at the time that the debtor was insolvent.

If you receive a demand letter alleging a Preference or Fraudulent Transfer Claim, contact your legal professional immediately.

[6] *Pack Liquidating, LLC*, 2024 WL 4633499, at *2.

[7] *Id.*

[8] *Id.* at *3.

[9] *Id.* at *4.

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