

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Dan River Holdings LLC, et al.,

Debtor(s).

**Jeffrey L. Burtch, Esq. in his capacity
as Chapter 7 Trustee for the estate of
Dan River Holdings LLC,**

Plaintiff,

v.

**GHCL International, Inc., GHCL, Inc.,
Sanjay Purohit, Michael Flatow,
Raman Chopra, Ravi Shanker Jalan,
Parthasarathy Sampath, and Paul E.
Washington,**

Defendants.

Chapter 7

Case No. 08-10726 (BLS)

(Jointly Administered)

Adv. No. 08-51141

Related to Docket Nos. 28, 29,
30, 31, & 33

Adv. No. 08-51531

Related to Docket No. 5

MEMORANDUM ORDER¹

Upon consideration of the Motion for Summary Judgment on Count XI of the Amended Complaint (the "MSJ")² filed by Defendants Sanjay Purohit, Michael Flatow, Raman Chopra, Ravi Shanker Jalan, Parthasarathy Sampath, and Paul E. Washington (collectively, the "Director Defendants") and the responses thereto,³ and the Court having held a hearing on the MSJ; and the Court having reviewed the supplemental briefing filed by Plaintiff Jeffrey L. Burtch, in his capacity as Chapter 7 Trustee for the estate of Dan River Holdings LLC (the "Trustee") and by Director Defendants;⁴ and after due deliberation, the Court hereby FINDS as follows:

1. On October 30, 2008, the Official Committee of Unsecured Creditors of Dan River Holdings LLC filed the Amended Complaint for Determination of (I) Nature, Extent, Validity, Priority and Amount of Alleged Liens, Claims and Interests, (II) Damages for Avoidable and/or Fraudulent Transfer of Assets and (III) Damages for Breaches of Fiduciary Duty (the "Amended Complaint").⁵

2. The Amended Complaint seeks relief against the Director Defendants for alleged breaches of fiduciary duties in connection with the decision to enter into three agreements—the Participation Agreement, the Services Agreement, and the Goods Agreement

¹ This Memorandum Order constitutes the Court's findings of fact and conclusions of law, as required by the Federal Rules of Bankruptcy Procedure. *See* Fed. R. Bankr. P. 7052, 9014(c). The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334. Venue is proper pursuant to §§ 28 U.S.C. 1408, 1409. Consideration of this matter constitutes a "core proceeding" under 28 U.S.C. §§ 157(b)(2)(A) and (O). To the extent this matter is determined not to be a "core proceeding," consistent with the Amended Standing Order of Reference dated February 29, 2012, this Memorandum Order shall constitute the Court's proposed findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 9033(a).

² Adv. Docket No. 28. Unless otherwise noted, references to the Adversary Docket refer to Adv. Pro. No. 08-51141.

³ Adv Docket Nos. 31 & 33.

⁴ Adv. Docket Nos. 39, 40 & 45.

⁵ Adv. Pro. No. 08-51531 [Adv. Docket No. 5].

(collectively, the "Agreements")—between Dan River Inc., a Georgia Corporation ("DR GA") and Best Textiles International Ltd. ("BTI").

3. Defendant GHCL, Inc. ("GHCL") wholly owns BTI. GHCL also was the controlling stockholder of DR GA from December 30, 2005 until January 11, 2008, when it transferred all of DR GA's outstanding shares to Dan River Holdings, LLC ("DR Holdings"). Plaintiff alleges GHCL exercised control of DR GA by its ownership of 100% of the outstanding limited liability company interests in DR Holdings.

4. The record reflects that the following positions were held by the Director Defendants: Defendant Sanjay Purohit served on the board of directors of DR Holdings from 2008. He also served on the board of DR GA, GHCL, and GHCL International, Inc. ("GHCL Int'l") from 2006 and on the board of BTI from February 2007 until January 2008. Defendant Michael Flatow served on the board of directors of DR Holdings from January 2008 and the boards of DR GA and BTI from November 2007 until April 2008. He also served as Chief Executive Officer ("CEO") of DR Holdings and DR GA throughout his time as director. Defendant Raman Chopra served on the board of directors of DR GA and BTI from November 2007 as well as an officer of GHCL Limited ("GHCL Ltd."), which wholly owns GHCL. Defendant Ravi Shanker Jalan was a director of DR Holdings and DR GA and currently the managing director of GHCL Ltd. Finally, Defendant Parthasarathy Sampath served, at times, on the board of directors of DR Holdings, DR GA, and BTI as well as a managing director at GHCL Ltd. Defendant Paul Washington served, at times, as a director of DR Holdings and DR GA.

5. On April 23, 2012, the Director Defendants filed their MSJ on count XI.⁶ On May 25, 2012, the Trustee filed an answering brief to the MSJ.⁷ The Director Defendants filed their reply⁸ and the Court heard oral argument on the MSJ.

⁶ Director Defendants also filed a motion to dismiss count X on the Amended Complaint. Upon stipulation from the parties, the Court dismissed count X.

⁷ Adv. Docket No. 31.

⁸ Adv. Docket No. 33.

6. On October 1, 2012, having observed that the Director Defendants had yet to file an answer to the Amended Complaint, the Court ordered the Director Defendants to file an answer within ten days.⁹ The Court further ordered the Trustee to supplement his response to the MSJ with information consistent with Fed. R. Civ. P. 56(d), *viz.*, identifying information to be sought through discovery that would support the Trustee's opposition to the MSJ, and afforded the Director Defendants an opportunity to reply thereto. Finally, the Court ordered that consideration of the MSJ will be held in abeyance until such briefing was finished.

7. In accordance with the Court's Order, the Director Defendants timely answered the Amended Complaint¹⁰ and the Trustee filed a supplemental brief in opposition to the MSJ.¹¹ The Director Defendants filed its response to the supplemental briefing on January 11, 2013.¹² The MSJ is now fully briefed and ripe for decision.

Analysis

8. Summary judgment is proper where, viewing the evidence in the light most favorable to the non-moving party and drawing all inferences in favor of that party, there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex v. Catrett*, 477 U.S. 317, 322-23 (1986). Any doubt must be resolved in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Further, the movant bears the initial burden of establishing that no genuine dispute of material fact exists. Once the moving party carries its burden, the opposing party must go beyond the pleadings and identify

⁹ Adv. Docket No. 36.

¹⁰ Adv. Pro. No. 08-51531 [Adv. Docket No. 45].

¹¹ Adv. Docket No. 39. The Court notes that the Order requested the Trustee to supplement his response with information consistent with the requirements of Fed. R. Civ. P. 56(d). The Trustee's response does not discuss any documents unavailable to the Trustee or discovery needed. Although not entirely consistent with the Order, the Court will consider the Trustee's supplemental briefing on the MSJ and will rule on the MSJ on the merits.

¹² Adv. Docket No. 40.

specific facts showing more than “[t]he mere existence of a scintilla of evidence” that a genuine dispute of material fact exists. *Id.* at 252; *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (stating that the opposing party “must do more than simply show that there is some metaphysical doubt as to the material facts”).

9. At the summary judgment stage, the Court’s function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. *Celotex*, 477 U.S. at 317. Substantive law determines which facts are material. *Anderson*, 477 U.S. at 248. Only facts that “might affect the outcome of the suit under governing law” are considered material and will preclude summary judgment. *Id.* A dispute regarding a material fact is genuine “when reasonable minds could disagree on the result.” *Matsushita Elec. Indus. Co.*, 475 U.S. at 587.

10. Director Defendants argue that the Trustee cannot identify board minutes or anything else showing that they authorized or instructed management to enter into the Agreements with BTI. Director Defendants argue that the sole board meeting minutes that Trustee attaches do not support the claim that the Director Defendants “instructed” DR GA’s management to negotiate and complete the Agreements. Rather, Defendants argue that the minutes only authorize DR GA’s management to negotiate an amendment to its revolving credit facility. Further, the Director Defendants correctly note that Dan River’s CFO G. Rodney Reynolds, a non-defendant, signed the Agreements.

11. In his supplemental briefing, the Trustee argues that the minutes of a Dan River board of directors meeting held on March 21, 2007 prove that the Director Defendants considered and authorized the Agreements.¹³ The Trustee attaches three documents to support his position: the March 21, 2007 minutes, a letter from CapitalSource Finance LLP (“CapSource”) to Dan River regarding its revolving credit facility,¹⁴ and an amendment to the revolving credit facility.¹⁵

¹³ Adv. Docket No. 39 Ex. A.

¹⁴ Adv. Docket No. 39 Ex B.

¹⁵ Adv. Docket No. 39 Ex. C.

12. In the minutes, the board discussed an amendment to its revolving credit facility “which would provide for such new financing to be completed within 120 days from the date of the amendment, [and] would permit the Company to engage in certain related party transactions, including the sale of inventory to BTI...”¹⁶ The minutes go on to state that after discussion, “the Board authorized management to proceed with negotiation of the amendment as described...[and] instructed Mr. Purohit to work on a non-exclusive basis with Loughlin, Meghji + Company and LJS Holdings LLC as well as certain contacts in India, in order to complete the refinancing.”¹⁷

13. First, the Court notes that the minutes do not specifically mention any of the Agreements.¹⁸ Likewise, the minutes do not authorize, ratify, or even discuss the Services Agreement or the Participation Agreement. Second, the Goods Agreement, which appears to have been “discussed,” is not approved or resolved by the board and the record reflects that the board did not authorize the company to enter into the Goods Agreement. The board reviewed a proposal for refinancing and an amendment to its revolving credit facility. The board then authorized Defendant Purohit to complete the refinancing. The Trustee does not produce any evidence of minutes where the board, or any of the Director Defendants, authorized any of the Agreements.

14. The minutes’ reference to a potential sale of inventory to BTI does not create a genuine issue of material fact. The Goods Agreement and the Participation Agreement were not entered into until almost a year later and the Trustee presents no other evidence that the Director Defendants discussed either agreement, let alone authorized them. As such, the Trustee fails to identify specific facts that show more than a “mere scintilla of evidence.” *Anderson*, 477 U.S. at 252.

¹⁶ Adv. Docket No. 39 Ex. A.

¹⁷ *Id.*

¹⁸ It is undisputed that the Participation Agreement and the Goods Agreement were not entered into until January of 2008, which was well after the board meeting in question. *See* Amended Compl. ¶¶ 129, 130. Additionally, the Services Agreement was entered into on February 9, 2007. *See Id.* ¶ 126.

15. Regarding the Trustee's exhibits B and C, it is undisputed that both the letter to Dan River from CapSource regarding the revolving credit facility and the amendment to the credit facility do not contemplate any action or inaction by the Director Defendants. Neither document discusses the Director Defendants' involvement in approving, voting, or agreeing to these terms. Moreover, both documents are signed by non-defendant Reynolds, Dan River's CFO.¹⁹

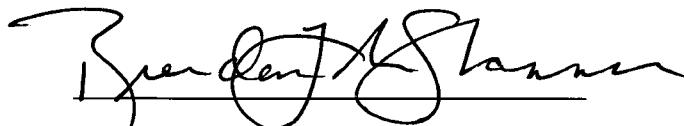
16. The Court finds, and the record reflects, that Director Defendants carried their burden to show that no genuine dispute of material fact exists. Upon that showing, the Trustee failed to point to any material evidence to show that the Director Defendants authorized or caused DR GA to enter into the Agreements. Thus, the Court will grant Director Defendant's MSJ on count XI.

Accordingly it is hereby

ORDERED, that the Director Defendant's MSJ as to Count XI is **GRANTED**, and judgment is hereby entered against the Trustee and in favor of the Director Defendants as to Count XI.

BY THE COURT:

Dated: February 7, 2013
Wilmington, Delaware



Brendan Linehan Shannon
United States Bankruptcy Judge

¹⁹ Substantively, Trustee's exhibits B and C only refer to one of the Agreements—the Participation Agreement. This agreement involved Dan River's participation interest in CapSource's agreements with BTI. Exhibits B and C deal specifically with Dan River's credit facility and only briefly discuss CapSource's consent to enter into the Participation Agreement. Again, these documents do not implicate the Defendant Directors' approval or involvement in the Agreements.