

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
ROSE WAY, INC., : Case No. 89-1273-C H
Debtor. : Chapter 7
- - - - - :
THOMAS G. McCUSKEY, TRUSTEE OF :
ROSE WAY, INC., :
Plaintiff, :
v. :
TEXTRON FINANCIAL CORPORATION, : Adv. No. 92-92123
a Subsidiary of Textron, Inc.; :
SIGNAL CAPITAL CORPORATION; : Adv. No. 92-92124
PACCAR FINANCIAL CORPORATION; : Adv. No. 92-92128
BANKERS TRUST COMPANY; : Adv. No. 92-92132
CENTRAL TRAILER SERVICES, LTD.; : Adv. No. 92-92151
GREYHOUND FINANCIAL CORPORATION; : Adv. No. 92-92152
GENERAL ELECTRIC CREDIT : Adv. No. 92-92147
CORPORATION, :
Defendants. :

ORDER RE STATUTE OF LIMITATIONS ON PLAINTIFF'S ACTIONS

The above listed adversary proceedings came on for hearing on October 14, 1992. All except one concern defendants' motions to dismiss. Defendant General Electric Credit Corporation (herein GECC) moves for summary judgment in adversary number 92-92147. All of the proceedings, however, turn on the issue of whether the statute of limitations for bringing each of Plaintiff's respective complaints expired prior to the commencement of the respective actions. At the hearing Thomas G. McCuskey represented the Plaintiff Trustee;

Thomas L. Flynn represented Textron Financial Corporation and Bankers Trust; Peter S. Cannon represented Signal Capital Corporation; Mark D. Walz represented PACCAR Financial Corporation, Central Trailer Services, and Greyhound Financial Corporation; and Gerald J. Newbrough represented GECC. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). Findings and conclusions are now entered pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. The Debtor filed its Chapter 11 petition in this Court on June 8, 1989.

2. From June 8, 1989 to December 22, 1989, the Debtor served as Debtor-In-Possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. On December 21, 1989, on motions of the Unsecured Creditor's Committee and the United States Trustee, the Court ordered that a Chapter 11 trustee be appointed pursuant to § 1104.

4. On December 22, 1989 the U.S. Trustee appointed and the Court approved and ordered the appointment of Sternco, Inc. as the Chapter 11 trustee.

5. On July 2, 1990, on motions by the U.S. Trustee and the Unsecured Creditors' Committee, the Court ordered the Debtor's case be converted from Chapter 11 to Chapter 7.

6. On July 2, 1990, Thomas G. McCuskey was appointed interim Chapter 7 trustee and on August 15, 1990 at the § 341(a) meeting of creditors, there being no other trustee elected by the creditors, McCuskey's appointment became final and effective.

7. Trustee filed adversary proceeding number 92-92123 on July 2, 1992.

8. Trustee filed adversary proceeding number 92-92124 on July 2, 1992.

9. Trustee filed adversary proceeding number 92-92128 on July 2, 1992.

10. Trustee filed adversary proceeding number 92-92132 on July 2, 1992.

11. Trustee filed adversary proceeding number 92-92147 on July 2, 1992.

12. Trustee filed adversary proceeding number 92-92151 on July 2, 1992.

13. Trustee filed adversary proceeding number 92-92152 on July 2, 1992.

DISCUSSION

The Chapter 7 Trustee has filed these adversary proceedings pursuant to 11 U.S.C. § 547 concerning recovery of preferential payments. Defendants have either moved to dismiss or for summary judgment on the grounds that Plaintiff-

Trustee's claim is time barred by Bankruptcy Code § 546(a)(1). Trustee has objected to these responses arguing he is not time barred under § 546(a)(1) but as Chapter 7 Trustee had two years from his effective appointment-- August 15, 1990--in which to commence actions for the recovery of preferences.

At issue is whether the statute of limitations for the bringing of Plaintiff-Trustee's complaints expired prior to the commencement of these actions. The timeliness of Plaintiff's actions under § 547 is governed by § 546(a), which provides:

An action or proceeding under section 544, 545, 547, 548 or 553 of this title may not be commenced after the earlier of--

- (1) two years after the appointment of a trustee under section 702, 1104, 1163, 1302, or 1202 of this title; or
- (2) the time the case is closed or dismissed.

The Defendants argue that § 546(a) is clear--that the appointment of a trustee under any of the enumerated sections starts a two year period within which certain actions may be commenced. Defendants cite the following cases in support of their positions: Strell v. Weston (In re Sandra Cotton, Inc.), 92 B.R. 595, 597 (Bankr. W.D.N.Y. 1988); Steege v. Lyons (In re Lyons), 130 B.R. 272, 277 (Bankr. N.D. Ill. 1991); Westphal v. Norwest Bank (In re Missouri River Sand & Gravel, Inc.), 88 B.R. 1006, 1011-12 (Bankr. D.N.D. 1988) (same chapter successor trustee); Ravick v. Mellon Bank (In re Chequers,

Ltd.), 59 B.R. 177 (Bankr. W.D. Pa. 1986) (appears to support Trustee's position). Trustee responds that the language, purpose and legislative history of § 546(a) provide a trustee appointed under the enumerated provisions two years within which to commence avoidance actions. Trustee cites the following legal authority in support of his position. Stuart v. Pingree (In re Afco Development Corp.), 65 B.R. 781 (Bankr. D. Utah 1986); Nichols v. Wood (In re Wood), 113 B.R. 253 (S.D. Miss. 1990); Zeisler v. Connecticut Bank & Trust Co. (In re Grambling), 85 B.R. 675 (Bankr. D. Conn. 1988); Smith v. Moody (In re Moody), 77 B.R. 566 (S.D. Tex. 1987); 2 Collier Bankruptcy Practice Guide, § 37.03(9) at 37-13 (1985).

Based on the language of the statute and the lack of any legislative history to the contrary, this Court interprets § 546(a)(1) to provide that the appointment of any trustee under section 702, 1104, 1163, 1302, or 1202 starts a two-year statute of limitations period for actions limited by § 546. The language of the statute in question is the word "a" in § 546(a)(1). While the statute might have been more clearly written if the words "any," "each," or "every" were used instead, "a" is more plainly read as being indeterminate so that the appointment of a trustee under any of the sections enumerated starts the clock ticking. The appointment of Sternco, Inc. as the Chapter 11 Trustee was the appointment of a trustee and the appointment of Plaintiff as the Chapter 7

Trustee does not give him additional time to bring the action.

The legislative history contains no compelling signal that Congress intended "a" to mean "each" or "every." See Sandra Cotton, 92 B.R. at 597. But see Afco Development, 65 B.R. at 783-85. See generally United States v. South Half of Lot 7 & Lot 8, Block 14, 910 F.2d 488 (8th Cir. 1990) (interpretation of statutes). While the cases cited by the trustee make excellent arguments to the contrary and may spark the curious legal mind to question the clarity of language, this court holds the statute is sufficiently clear in this instance that further consideration of policy is unwarranted.

ORDER

IT IS ACCORDINGLY ORDERED that

1) the motions to dismiss in adversary numbers 92-92123, 92-92124, 92-92128, 92-92132, 92-92151, and 92-92152 are sustained and the complaints in said proceedings are dismissed; and

2) the Defendant's motion for summary judgment in adversary number 92-92147 is granted and summary judgment shall enter for the Defendant dismissing the complaint.

Dated this 8th day of March, 1993.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE