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ADV. NUMBER: 97-1011

JUDGE: M. A. Mahoney

PARTIES: One to One Communications, Inc., Scott A. Egstad, Stanard & Mark

CHAPTER: 11

ATTORNEYS: T. A. Borowski, Jr., C. K. Stanard

DATE: 5/6/97

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

ONE TO ONE COMMUNICATIONS, INC.

Case No. 95-12383-MAM-11

Debtor

SCOTT A. EGSTAD, EXAMINER
for One to One Communications, Inc.

Plaintiff,

v.

Adv. No. 97-1011

STANARD & MARK

Defendant.

**ORDER GRANTING PARTIAL SUMMARY JUDGMENT
TO THE PLAINTIFF AS TO COUNTS I AND II OF THE COMPLAINT**

T. A. Borowski, Jr., Pensacola, FL, Attorney for the Plaintiff
Chandler K. Stanard, Mobile, AL, Attorney for the Defendant

This matter is before the Court on the Motion of the Plaintiff for Partial Summary Judgment in this adversary proceeding. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is partially granting the motion of the Plaintiff, One to One Communications, Inc.

FACTS

This complaint seeks recovery of attorneys fees paid to Stanard & Mark both before and after One to One filed bankruptcy. One to One filed Chapter 11 on July 13, 1995. In the month

preceding that filing, Stanard & Mark was paid \$15,861.25. On or about September 6, 1995, Stanard & Mark was paid \$1,498.75.

LAW

The Examiner alleges that these transfers are recoverable pursuant to 11 U.S.C. § 547 or § 548 and § 549 respectively. As to the prepetition transfers, the Defendant alleges that the transfers were not made with intent to hinder, delay, or defraud creditors and that reasonably equivalent value was given. The Defendant also alleges that the payments were ordinary course of business transactions. As to the postpetition transfer, it is unclear what defense is asserted but the Court believes it to be ordinary course as well.

For the same reasons as stated in the Court Order of May 6, 1997 in Adv. No. 96-1169, a copy of which is attached, the Court concludes that summary judgment as to the issues in Plaintiff's case in chief is warranted. However, the Court concludes that the Defendant has raised genuine issues of material fact as to its possible defenses.

THEREFORE IT IS ORDERED that the Motion of the Plaintiff for Summary Judgment is PARTIALLY GRANTED as follows:

1. All of the elements of 11 U.S.C. § 547(a) have been established;
2. All of the elements of 11 U.S.C. §§ 548(a)(1) and (a)(2) have been established except whether the debtor made the transfers at issue "with actual intent to hinder, delay, or defraud any entity" and whether the debtor "received less than a reasonably equivalent value in exchange for [the] transfer"; and
3. All of the elements of 11 U.S.C. § 544 have been established except the provisions under Arizona, California, and Utah state law identical to the language quoted above in paragraph 2; and

4. As to the postpetition transfer, all of the elements of 11 U.S.C. § 549 have been established except whether the postpetition transfer was “authorized under this title or by the court” pursuant to 11 U.S.C. § 549(a)(2).

Dated: May 9, 1997

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE