

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

FRISCO MANUFACTURING CO.,
INC.,

CASE NO. 99-10152-WSS

FRISCO TRANSFER COMPANY,

CASE NO. 99-10154-WSS

Debtors.

Chapter 11

FRISCO MANUFACTURING CO., INC., and
FRISCO TRANSFER COMPANY,

Plaintiffs,

v.

ADV. PROC. NO. 99-1207

CENTRAL ALABAMA PACKAGING, INC.,

Defendant.

**ORDER ON DEBTORS' AMENDED COMPLAINT TO RECOVER
MONEY OR PROPERTY PURSUANT TO 11 U.S.C. §550**

This matter came before the Court on the Debtors' amended complaint to avoid preferential transfer and to recover money or property pursuant to 11 U.S.C. §§547(b), 550. Lawrence Voit appeared for the Debtors, and Richard Lively appeared for the Defendant, Central Alabama Packaging Inc. (hereinafter "Central"). 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). After due consideration of the evidence, testimony and arguments of the counsel, the Court makes the following findings of fact and conclusions of law:

The Debtors, Frisco Manufacturing Company, Inc. and Frisco Transfer Company

(hereinafter collectively referred to as “Frisco”), filed a voluntary Chapter 11 petition in this Court on January 13, 1999. Within ninety days of January 13, 1999, Frisco made the following payments to the Defendant, Central Alabama Packaging (hereinafter “Central”):

<u>INVOICE DATE</u>	<u>PAYMENT DATE</u>	<u>AMOUNT</u>
7-20-98	10-29-98	\$1,937.84
7-23-98	11-05-98	\$1,999.08
8-11-98	11-25-98	\$1,895.62
8-11-98	11-25-98	\$1,512.70
8-21-98	11-25-98	\$253.78
8-24-98	11-25-98	\$791.18
8-24-98	11-25-98	\$460.28
8-24-98	11-25-98	\$611.60
8-28-98	11-25-98	\$1,525.05
9-04-98	11-25-98	\$2,092.97
9-09-98	11-25-98	<u>\$1,273.86</u>
TOTAL		\$14,353.96

The payments were made according to invoices submitted by Central. The terms of each invoice provided for 1% in 10 days, and the net amount in thirty days. None of the payments at issue made were within thirty days of the date of the invoice. Central did not refuse to extend credit to Frisco based on Frisco’s failure to pay according to the terms of the invoices. Central did not require Frisco to provide a letter of credit or down payment to extend credit. It was not uncommon for Frisco to pay several outstanding Central invoices with one check, as in the case of the invoices dated August 11, 1998 to September 9, 1998.

Section 547(b) of the Bankruptcy Code allows the Trustee to avoid transfers of the debtor’s property: 1) for the benefit of a creditor; 2) on account of an antecedent debt; 3) made

while the debtor was insolvent; 4) within 90 days before the filing of the petition. The plaintiff has the burden of proving that the transfer was an avoidable preference under §547(b). See 11 U.S.C. §547(g). For purposes of §547, there is a presumption that the debtor was insolvent during the 90 days preceding the filing of the petition. See 11 U.S.C. §547(f).

It is clear that the payments listed above were for the benefit of Central, and that they were made on account of an antecedent debt. Central presented no evidence that Frisco was solvent at the time that the transfers were made, therefore there is a presumption that Frisco was insolvent under 11 U.S.C. § 547(f). Finally, all of the payments were made within 90 days of the filing of Frisco's petition on January 13, 1999. The Court finds that Frisco has met its burden of proof, and that the transfers can be avoided under 11 U.S.C. §547(b). Frisco is entitled to recover the fund transferred to Central in the amount of \$14,353.96. It is hereby

ORDERED that the relief sought in the Frisco' amended complaint to avoid preferential transfer and to recover money or property pursuant to 11 U.S.C. §§547(b), 550 is **GRANTED** and the Frisco shall recover the following payments from Central Alabama Packaging, Inc:

<u>PAYMENT DATE</u>	<u>AMOUNT</u>
10-29-98	\$1,937.84
11-05-98	\$1,999.08
11-25-98	\$1,895.62
11-25-98	\$1,512.70
11-25-98	\$253.78
11-25-98	\$791.18
11-25-98	\$460.28
11-25-98	\$611.60
11-25-98	\$1,525.05

11-25-98	\$2,092.97
11-25-98	<u>\$1,273.86</u>

TOTAL \$14,353.96; and it is further

ORDERED that a judgment in the amount of FOURTEEN THOUSAND THREE HUNDRED FIFTY-THREE AND 96/100 DOLLARS (\$14,353.96) shall be entered in favor of Frisco and against Central Alabama Packaging, Inc.

DATED: March ____, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
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Defendant.

JUDGMENT

These proceedings having come on for hearing before the Court and a decision having been duly rendered; it is

ORDERED AND ADJUDGED that pursuant to Rule 58 of the Federal Rules of Civil Procedure and Bankruptcy Rule 9021, a **JUDGMENT** in the amount of FOURTEEN THOUSAND THREE HUNDRED FIFTY-THREE AND 96/100 DOLLARS (\$14,353.96) plus costs of Court and interest accruing at the rate allowed by federal law be and it hereby is **ENTERED** in favor of the Plaintiff, Frisco Manufacturing Company, Inc. and Frisco Transfer Company, and against the Defendant, Central Alabama Packaging, Inc.

Dated: March ___, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE