

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Chapter 7

BKY No. 01-44137-NCD

Watt/Peterson, Inc.,

Debtor,

---

John R. Stoebner, Trustee,

ADV No. 03-4298-NCD

Plaintiff,

vs.

**NOTICE OF HEARING AND  
MOTION**

Quality Quick Bindery Services, Inc.,

Defendant.

---

TO: DEFENDANT QUALITY QUICK BINDERY SERVICES, INC., AND ITS ATTORNEYS,  
WILLIAM H. HENNEY, ESQ., THE LAW OFFICE, SUITE 200, 5101 THIMSEN  
AVENUE, MINNETONKA, MN 55345.

1. John R. Stoebner, Trustee of the above-captioned bankruptcy estate, moves the Court for the relief requested below and gives notice of hearing.

2. The Honorable Nancy C. Dreher, United States Bankruptcy Judge, will hold a hearing on this motion for summary judgment at 11:30 a.m. on February 18, 2004, in Courtroom No. 7 West, United States Court House, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than 5:00 p.m. on February 11, 2004, which is 7 days before the time set for the hearing, or filed and served by mail not later than 5:00 p.m. on February 6, 2004, which is ten days before the time set for the hearing.

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 201. This proceeding is a core proceeding. This case was originally filed as a Chapter 11 case on September 23, 2001 and was converted into a Chapter 7 case on March 4, 2002. This case is now pending before the Court.

5. This motion for summary judgment arises under Fed. R. Civ. P. 56, 11 U.S.C. § 547, and Bankruptcy Rule 7056. This motion is filed under Bankruptcy Rule 9014 and Local Rules 1201-1215. Movant requests relief with respect to the Defendant's receipt of a preference from the Debtor as follows:

Defendant Quality Quick Bindery Services, Inc. received preferences in the amount of \$16,978.90 when the Debtor transferred such amount to Defendant on July 31, 2001.

6. This motion is based upon the attached Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment, the Affidavit of John R. Stoebner and exhibit thereto, and upon the files, records, and proceedings herein.

WHEREFORE, John R. Stoebner, moves the Court for an order that summary judgment be granted against Defendant as follows: (1) in the amount of \$16,978.90, plus interest, against Defendant. Plaintiff further requests costs and disbursements herein and such other relief as may be just and equitable.

LAPP, LIBRA, THOMSON, STOEbNER  
& PUSCH, CHARTERED

Dated: January 15, 2004

By: /e/ John R. Stoebner  
John R. Stoebner (#140879)  
David A. Harbeck (#238594)  
One Financial Plaza  
Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
(612) 338-5815

Attorneys for Plaintiff  
John R. Stoebner

**VERIFICATION**

I, John R. Stoebner, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: January 15, 2004

By: /e/ John R. Stoebner  
John R. Stoebner, Trustee  
One Financial Plaza  
Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
(612) 338-5815

**Exhibit****A****UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:  
Watt/Peterson, Inc.,  
Debtor.

Chapter 7  
BKY No. 01-44137-NCD  
ADV No. 03-4298-NCD

---

John R. Stoebner, Trustee,  
Plaintiff,

vs.

Quality Quick Bindery Services, Inc.,  
Defendant,

DEFENDANT QUALITY QUICK  
BINDERY SERVICES, INC.'S  
ANSWERS TO INTERROGATORIES

---

**INTERROGATORIES**

1. Identify each person who may be called by you as an expert witness at the trial herein and for each such person state the following:

- a. the subject matter upon which the expert is expected to testify;
- b. the substance of the facts and opinions to which the expert is expected to testify;
- c. a summary of the grounds for each opinion;
- d. the identity of documents, treatises, books, studies or other materials upon which such expert may rely for information in support of his/her opinion; and
- e. the qualifications that make the person an expert.

If you have not yet selected such person(s), state the subject matter upon which any experts may testify, and supplement your answer to the entire interrogatory at the appropriate time.

**ANSWER:** No experts have been identified at this time.

2. Identify each person who you believe has or may have knowledge or information concerning any facts relating to the claims, defenses, and/or subject matter of this litigation, and, for such person: (1) describe in detail all such knowledge, information, and facts; and (2) set forth the basis of such person's knowledge and information.

**ANSWER:** Sandra Vieau, Shar Sitler and Theresa Selander.

3. Identify all documents that in any way support, refute, or otherwise relate to any of the claims, defense, and/or subject matter of the above-entitled action.

**ANSWER:**

4. Identify any person retained as an investigator, consultant, detective, or appraiser in connection with the subject matter of this lawsuit.

**ANSWER:** No one at this time.

5. Identify each person with whom you, your counsel, your agent, and/or investigator have spoken and/or corresponded regarding any of the claims, defenses, and/or subject matter of the above-entitled action.

**ANSWER:** Shar Sitler, CPA

6. Identify each credit manager and each person in your company responsible for credit and collections respecting the Debtor Watt/Peterson, Inc. (the "Debtor").

**ANSWER:** Sandra Vieau and Theresa Selander.

7. Identify each person now or previously in your employ having any substantive knowledge of credit and collections relationships with the Debtor.

**ANSWER:** Sandra Vieau, Theresa Selander, Tom McClellan and Shar Sitler.

8. State the date and amount of each payment received by you from the Debtor during the calendar years 1999, 2000 and 2001, and with respect to each, state the date and amount of each invoice paid in whole or in part by such payment.

**ANSWER:** See attached schedule.

9. Identify each transfer of property or money (other than payments described in your answer to Interrogatory No. 8) received by you from the Debtor during the period September 21, 2000 to September 21, 2001.

**ANSWER:** None.

10. With respect to each allegation of Plaintiff's complaint which you deny in whole or in part, state each fact and identify each document which supports your denial.

**ANSWER:**

11. Identify each person responsible for or involved with preparation of any proof of claim filed by you in this case.

ANSWER: William H. Henney, Esquire and Shar Sitler, CPA.

Dated: December \_\_\_\_, 2003

QUALITY QUICK BINDERY SERVICE, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
William H. Henney  
5101 Thimsen Avenue, #200  
Minnetonka, MN 55345  
(952) 474-4406  
Atty. I.D. #136475  
Attorney for Defendant  
Quality Quick Bindery  
Services, Inc.

**ANSWER:** William H. Henney, Esquire and Shar Sitter, CPA.

Dated: January 6, 2004

QUALITY QUICK BINDERY SERVICE, INC.

By: Theresa M. S. Conder

Its: President

Subscribed and sworn to before me  
this     day of                     , 2004.

\_\_\_\_\_  
Notary Public

Dated: 1/6, 2004

William H. Henney  
William H. Henney  
5101 Thimsen Avenue, #200  
Minnetonka, MN 55345  
(952) 474-8105  
Atty. I.D. #138475  
Attorney for Defendant  
Quality Quick Bindery  
Services, Inc.

4:11 PM

12/02/03

**Quality Quick Bindery**  
**Customer QuickReport**  
 January 1999 through December 2001

Type	Date	Num	Amount
<b>WATT/PETERSON, INC.</b>			
Payment	01/15/1999	57445	6,783.22
Payment	01/29/1999	57656	4,286.95
Payment	02/17/1999	66722	5,329.54
Payment	03/02/1999	57927	12,935.85
Payment	03/31/1999	58193	1,166.98
Payment	04/28/1999	58500	34,190.74
Payment	05/27/1999	58813	1,055.73
Payment	06/15/1999	58980	5,862.57
Payment	06/29/1999	59085	12,257.97
Payment	07/15/1999	59233	1,405.36
Payment	07/27/1999	59359	7,390.01
Payment	08/12/1999	52055	3,557.02
Payment	08/26/1999		2,574.25
Payment	09/14/1999	59813	1,824.00
Payment	09/29/1999	59916	1,084.70
Payment	10/27/1999	60185	9,509.53
Discount	11/03/1999		-14.95
Payment	11/15/1999	60383	6,216.80
Payment	12/01/1999	60510	6,555.09
Payment	12/14/1999	60641	6,200.79
Payment	12/30/1999	60804	1,241.88
Payment	02/17/2000	61260	2,144.90
Payment	03/30/2000	70436	1,500.30
Payment	05/08/2000	61914	1,114.19
Payment	05/17/2000	62034	643.51
Payment	06/15/2000	62197	9,518.01
Payment	06/30/2000	62341	1,557.70
Payment	07/31/2000	62585	961.07
Payment	08/16/2000	62750	1,601.25
Payment	10/26/2000	63317	5,736.51
Payment	11/13/2000	63556	26,078.02
Payment	02/12/2001	64388	3,538.50
Payment	02/20/2001	664484	1,714.21
Payment	02/26/2001	654544	321.25
Payment	03/06/2001	64585	810.00
Payment	03/26/2001	73659	11,739.80
Payment	04/09/2001	64930	3,074.05
Payment	04/17/2001	65008	5,578.48
Payment	06/11/2001	65490	3,915.92
Payment	07/31/2001	65970	16,978.90

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Watt/Peterson, Inc.,  
Debtor.

Chapter 7  
BKY No. 01-44137-NCD  
ADV No. 03-4298-NCD

John R. Stoebner, Trustee,  
Plaintiff,

vs.  
Quality Quick Bindery Services, Inc.,  
Defendant,

DEFENDANT QUALITY QUICK  
BINDERY SERVICES, INC.'S  
RESPONSES TO REQUEST FOR  
ADMISSIONS

ADMISSIONS

1. Admit you received payment from the Debtor in the amount of \$16,978.90 on or about July 31, 2001.

RESPONSE Admit.

2. Admit that the payment received from the Debtor on or about July 31, 2001 was in payment of invoices from January 23, 2001 through May 29, 2001.

RESPONSE Admit.

3. Admit that at the time of each payment listed in Request No. 1, the Debtor was insolvent within the meaning of 11 U.S.C. § 101 (32).

RESPONSE Deny.

Dated: \_\_\_\_\_, 2003

QUALITY QUICK BINDERY SERVICE, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

FROM : LAW OFFICES

PHONE NO. : 952 474 5270

Dec. 22 2003 12:03

Dated: \_\_\_\_\_, 2003

---

William H. Henney  
5101 Thimsen Avenue, #200  
Minnetonka, MN 55345  
(952) 474-4406  
Atty. I.D. #136475  
Attorney for Defendant  
Quality Quick Bindery  
Services, Inc.

hen-2003/resp-quality

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Watt/Peterson, Inc.,  
Debtor.

Chapter 7  
BKY No. 01-44137-NCD  
ADV No. 03-4298-NCD

John R. Stoebner, Trustee,  
Plaintiff,

vs.  
Quality Quick Bindery Services, Inc.,  
Defendant.

DEFENDANT QUALITY QUICK  
BINDERY SERVICES, INC.'S  
RESPONSE TO REQUEST FOR  
ADMISSIONS

ADMISSIONS

1. Admit you received payment from the Debtor in the amount of \$16,973.90 on or about July 31, 2001.

RESPONSE Admit.

2. Admit that the payment received from the Debtor on or about July 31, 2001 was in payment of invoices from January 23, 2001 through May 29, 2001.

RESPONSE Admit.

3. Admit that at the time of each payment listed in Request No. 1, the Debtor was insolvent within the meaning of 11 U.S.C. § 101 (32).

RESPONSE Deny.

Dated: \_\_\_\_\_, 2003

QUALITY QUICK BINDERY SERVICE, INC.

By: Sheeshu S. Das

Its: President

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2003.

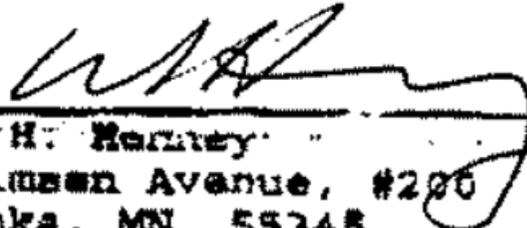
\_\_\_\_\_  
Notary Public

FROM : LAW OFFICES

PHONE NO. : 952 474 5270

Dec. 19 2004

Dated: 1/6, 2004

  
William H. Hervey  
5101 Thimben Avenue, #200  
Minnetonka, MN 55345  
(952) 474-4406  
Atty. I.D. #136475  
Attorney for Defendant  
Quality Quick Bindery  
Services, Inc.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Chapter 7

BKY No. 01-44137-NCD

Watt/Peterson, Inc.,

Debtor,

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John R. Stoebner, Trustee,

ADV No. 03-4298-NCD

Plaintiff,

vs.

Quality Quick Bindery Services, Inc.

Defendant.

---

**MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

Plaintiff John R. Stoebner, Trustee, respectfully submits this memorandum of law in support of his motion for summary judgment against Defendant Quality Quick Bindery Services, Inc. (“Quality”).

**I. INTRODUCTION**

An involuntary bankruptcy proceeding under Chapter 11 of Title 11 of the United States Code was filed against the Debtor Watt/Peterson, Inc. (the “Debtor”) on September 21, 2001. The case was converted to a Chapter 7 on March 4, 2002, and the case is now pending before this Court.

Plaintiff can readily establish each and every element of a preferential transfer to Quality in the amount of \$16,978.90. Indeed, Defendant admits that, within 90 days before the filing of the Debtor’s petition, the Debtor paid Quality the sum of \$16,978.90. Defendant further admits that such payments were made on account of debts owed to Quality for invoices dating from January 23, 2001 through May 29, 2001. Finally, at the time such payment, the Debtor was insolvent within the

meaning of 11 U.S.C. § 101(32) and the payment enabled Quality to receive more than it would have received in this Chapter 7 case.

As a matter of law therefore, the Debtor's payment to Quality constitutes an avoidable preference under 11 U.S.C. § 547. Because there are no genuine issues of material fact, the Trustee is entitled to summary judgment.

## II. STATEMENT OF UNDISPUTED FACTS.

### A. The Parties.

Plaintiff John R. Stoebner is the duly qualified and acting Trustee in this bankruptcy proceeding. *See* Complaint, ¶ 1; Answer, ¶ 2.

The Debtor Watt/Peterson, Inc., is a corporation existing under the laws of the State of Minnesota. An involuntary bankruptcy proceeding under Chapter 11 of Title 11 United States Code was filed against the Debtor on September 21, 2001. The case was converted to a Chapter 7 proceeding on March 4, 2002. This case is now pending before this Court. *See* Complaint, ¶ 3; Answer, ¶ 2.

Defendant Quality Quick Bindery Services, Inc. is a corporation registered to do business in Minnesota. *See* Complaint, ¶ 2; Answer, ¶ 2.

### B. Quality Received Preferences In The Amount Of \$16,978.90 For Payment Of The Debtor's Antecedent Debts To Quality.

On July 31, 2001, a date which is within 90 days of the date of the filing of the petition, the Debtor paid Quality the sum of \$16,978.90. *See* Complaint, ¶ 7; Defendant Quality Quick Bindery Services, Inc.'s Responses to Request for Admissions, No. 1, attached as Exhibit A to the Affidavit of John R. Stoebner ("Stoebner Affidavit"). Quality admits that the payment of the aforementioned \$16,978.90 was in payment of an antecedent debt; specifically, in payment of invoices dating from January 23, 2001 to May 29, 2001. *See* Defendant Quality Quick Bindery Services, Inc.'s Responses to Request for Admissions, No. 2.

The evidence further demonstrates that the Debtor was insolvent within the meaning of 11 U.S.C. § 101(32) and that the payment enabled Quality to receive more than it would have received in this Chapter 7 case. *See* Stoebner Affidavit at ¶¶ 3-4. The Trustee thus seeks summary judgment with respect to the entire \$16,978.90 payment.

### **III. LEGAL DISCUSSION.**

#### **A. The Trustee Can Establish Each Element Of A Preferential Transfer Under 11 U.S.C. § 547.**

As a matter of law, the Debtor's July 31, 2001, payment of \$16,978.90 to Quality constitutes a preference under 11 U.S.C. § 547.

Because Plaintiff, as Trustee, is entitled under 11 U.S.C. § 547 to avoid preferential payments to Defendant, the Trustee is entitled under Section 550(a) to recover the value of the preferences plus interest thereon at the pre-judgment rate from the commencement of this proceeding on November 7, 2003, to the date of judgment herein. *See* 11 U.S.C. § 550(a).

Section 547 of the Bankruptcy Code provides in pertinent part:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property –

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made –

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if –

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided in by the provisions of this title.

11 U.S.C. §547(b).

With respect to the transfer at issue in this adversary proceeding, Quality has admitted to the following elements of a preference:

- That Quality received a transfer of an interest in the property of the Debtor;
- That such transfer of the funds was on account of an antecedent debt owed by the debtor; and
- That such transfer was made on a date within 90 days of the filing of the petition.

*See* Defendant Quality Quick Bindery Services, Inc’s Responses to Request for Admissions, Nos. 1-2.

Based upon these admissions, the Trustee need only prove the following elements of a preference: (i) that the transfer was to or for the benefit of a creditor; (ii) that the transfer was made while the debtor was insolvent; and (iii) that the transfer enabled the creditor to receive more than such creditor would receive if the case were a case under Chapter 7 of this title, the transfer had not been made, and the creditor received payment of such debt to the extent provided by the provisions of this title. *See* U.S.C. § 547. The Trustee can readily demonstrate each of these elements.

**B. The Transfer Was To Or For The Benefit Of A Creditor.**

The Bankruptcy Code defines “creditor” to mean:

[an] entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor; ...

11 U.S.C. § 101(10).

Here, Quality has admitted that the transfer was made in payment of certain debts that arose from invoices issued by Quality between January 23, 2001 to May 29, 2001. *See* Defendant Quality

Quick Bindery Services, Inc's Responses to Request for Admissions, No. 2. Therefore, as a matter of law, Quality is a "creditor" under the Bankruptcy Code. Because Quality has admitted that it received the funds from the Debtor, it is indisputable that the transfer was "to or for the benefit of a creditor." *See* Defendant Quality Quick Bindery Services, Inc's Responses to Request for Admissions, No. 1, 2.

**C. The Debtor Was Insolvent At The Time Of The Preferential Transfer.**

11 U.S.C. § 547(f) provides that:

For the purposes of this section, a debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

11 U.S.C. § 547(f). The evidence supports the existence of this presumption. *See* Stoebner Affidavit at ¶ 3 (within ninety days after the payment was made, the Debtor's liabilities exceeded its assets by more than \$4,496,000.00).

The preferential transfer occurred on July 31, 2001, well within the 90 days prior to the date of the filing of the petition, which occurred on September 23, 2001. Therefore, it is presumed that the Debtor was insolvent at the time of the preferential transfer. To overcome this presumption, Quality must present affirmative evidence sufficient to rebut the presumption. *See Jones Truck Lines, Inc. v. Full Service Leasing Corp. (In re Jones Truck Lines, Inc.)*, 83 F.3d 253, 258 (8<sup>th</sup> Cir. 1996).

Here, however, Quality has not presented – and cannot present – any evidence whatsoever demonstrating that the Debtor was solvent at the time of the July 31, 2001 payment. Indeed, the evidence is directly to the contrary. *See* Stoebner Affidavit at ¶ 3. Thus, summary judgment is proper. *See, e.g., In re St. James Plating, Inc.*, 1989 WL 8641, \*2 (Bankr. D. Minn. 1989) (Dreher, J.) (defendant's failure to present any evidence rebutting plaintiff's presumption of insolvency renders summary judgment in favor of plaintiff proper).

**D. The Transfers Enabled Quality To Receive More Than It Otherwise Would Have Received In This Case.**

Finally, the payment to Quality unquestionably enabled the recipient of the preference (i.e. Quality) to receive more than Quality would have if the transfer had not been made and it had received payment of the debt to the extent provided under the Bankruptcy Code in this chapter 7 case. *See* Stoebner Affidavit at ¶ 4.

Because the Trustee has proven each element of a preference under 11 U.S.C. § 547(b), summary judgment is proper.

**E. Quality Has Not Pled Any Affirmative Defenses.**

The defenses set forth in 11 U.S.C. § 547(c) are affirmative defenses, which, if not affirmatively pled in an Answer, are waived. *See, e.g., Cox v. Kone Employees Credit Union (In re Riley)*, 297 B.R. 122, 125-26 (Bankr. E.D. Ark. 2003).

Rule 8 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings in bankruptcy cases by Rule 7008 of the Federal Rules of Bankruptcy Procedure, requires that all affirmative defenses be specifically pled in the Answer to the Complaint. Failure to plead an affirmative defense results in a waiver of the defense. *Sayre v. Musicland Group, Inc.*, 850 F.2d 350, 354 (8<sup>th</sup> Cir.1988); *Stephenson v. Davenport Community School*, 111 F.3d 1303, 1306 (8<sup>th</sup> Cir. 1997). The waiver rule set forth in Rule 8 of the Federal Rules of Civil Procedure applies with full force to the affirmative defenses set forth in Bankruptcy Code Sections 547(c). *See, e.g., Sapir v. Keener Lumber Co. (In re Ajayem Lumber Corp.)*, 143 B.R. 347, 353 (Bankr.S.D.N.Y.1992) (stating that section 547(c)(4) “subsequent advance” rule was not pleaded affirmatively and could not be used to defend against Trustee’s preference action).

Here, Quality did not plead in its Answer *any* of the affirmative defenses set forth in Section 547(c). As a matter of law, therefore, such defenses are waived. *See, e.g., Apex Oil Co. v. Artoc Bank & Trust Ltd. (In re Apex Oil Co.)*, 265 B.R. 144, 160 (8th Cir. B.A.P. 2001) (ruling that under

Rule 7008(c), any matter constituting avoidance or affirmative defense must be pled in responsive pleading or it is waived), *rev'd on other grounds*, 297 F.3d 712 (8th Cir. 2002).

Thus, the Trustee has demonstrated the existence of each element of a preference, and Quality has not presented – and cannot present – any evidence to the contrary.

#### **IV. CONCLUSION.**

For all the foregoing reasons, Plaintiff John R. Stoebner respectfully requests that the Court grant his motion for summary judgment and enter judgment in his favor and against Defendant Quality Quick Bindery Services, Inc., in the amount of \$16,978.90, plus interest.

Respectfully submitted,

LAPP, LIBRA, THOMSON, STOEBNER  
& PUSCH, CHARTERED

Dated: January 15, 2004

By: /e/ John R. Stoebner  
John R. Stoebner (#140879)  
David Harbeck (#238594)  
One Financial Plaza  
Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402

Attorneys for Plaintiff  
John R. Stoebner, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Chapter 7  
BKY No. 01-44137-NCD

Watt/Peterson, Inc.,

Debtor,

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John R. Stoebner, Trustee,

ADV No. 03-4298-NCD

Plaintiff,

**AFFIDAVIT OF JOHN R.  
STOEBNER**

vs.

Quality Quick Bindery Services, Inc.

Defendant.

---

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

John R. Stoebner, being first duly sworn upon oath says as follows.

1. I am an attorney duly licensed to practice law in the State of Minnesota since 1982 and in the United States District Court for the District of Minnesota since 1982. My attorney registration number is 140879. I am the Trustee of the Bankruptcy Estate of Watt/Peterson, Inc. (the "Estate"), and make this affidavit based upon my own personal knowledge.

2. As Trustee of the Estate, I have engaged in collection of the Estate's assets. Accordingly, I have become familiar with the size of the Estate and the nature of its assets and creditors. I am also the Plaintiff in the above-captioned matter. As Plaintiff, I have knowledge of the claims asserted against the above-named Defendant.

3. Attached hereto as Exhibit A and incorporated by reference herein is a true and correct copy of Defendant Quality Quick Bindery Services, Inc.'s Responses to Request for Admissions.

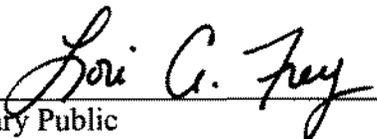
4. The Debtor's bankruptcy schedules filed on October 31, 2001 with the United States Bankruptcy Court reflect that the total assets of the debtor as of that date were \$4,475,932.00 and the total liabilities were \$8,972,014.82.

5. The transfer that Plaintiff asserts constitutes a preference under 11 U.S.C. § 547, as set forth in Plaintiff's memorandum of Law in Support of his Motion for Summary Judgment, enabled Defendant to receive more than it would have received if the transfers had not been made and Defendant had received payment of the debts to the extent provided under the Bankruptcy Code in this Chapter 7 case. This is based upon the fact that Quality received payment of 100% of the debts reflected in the \$16,978.90 payment, whereas in this bankruptcy case, I estimate that unsecured creditors such as Quality will receive a distribution of less than twenty-five percent (25%) of their claim amounts.

Further your affiant sayeth not.

  
\_\_\_\_\_  
John R. Stuebner

Subscribed and sworn to before me  
this 15<sup>th</sup> day of January, 2004.

  
\_\_\_\_\_  
Notary Public



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In re: BKY Case No. 01-44137-NCD  
Chapter 7  
Watt/ Peterson Inc.,  
Debtor(s).

---

John R. Stoebner, Trustee,  
Plaintiff,  
vs. ADV No. 03-4298-NCD

Quality Quick Bindery Services, Inc.  
Defendant(s).

---

**UNSWORN CERTIFICATE OF SERVICE**

I, Sarah L. Fortin, declare under penalty of perjury that on Thursday, January 15, 2004, I mailed copies of the attached **Notice of Hearing and Verified Motion for Summary Judgment** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Quality Quick Bindery Services, Inc.  
c/o William H. Henney  
Attorney at Law  
5101 Thimsen Avenue  
Minnetonka, MN 55345-4406

U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Executed on: January 15, 2004

/e/ Sarah L. Fortin  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Chapter 7  
BKY No. 01-44137-NCD

Watt/Peterson, Inc.,

Debtor,

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John R. Stoebner, Trustee,

ADV No. 03-4298-NCD

Plaintiff,

vs.

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW,**  
**AND ORDER FOR JUDGMENT**

Quality Quick Bindery Services, Inc.,

Defendant.

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The above-entitled action came on for hearing before the Honorable Judge Nancy C. Dreher on February 18, 2003, upon the motion of Plaintiff John R. Stoebner, Trustee, for summary judgment.

David A. Harbeck appeared on behalf of Plaintiff John R. Stoebner, Trustee. William Henney appeared on behalf of Defendant Quality Quick Bindery Services, Inc.

Based upon all the files, records, and proceedings herein, the Court being duly advised in the premises, the Court hereby makes the following:

**FINDINGS OF FACT:**

1. The Debtor Watt/Peterson, Inc., is a corporation existing under the laws of the State of Minnesota. An involuntary bankruptcy proceeding under Chapter 11 of Title 11 United States Code was filed against the Debtor on September 21, 2001. The case was converted to a Chapter 7 proceeding on March 4, 2002. This case is now pending before this Court.

2. Defendant Quality Quick Bindery Services, Inc. ("Quality") is a corporation registered to do business in Minnesota.

3. On July 31, 2001, a date which is within 90 days of the date of the filing of the petition, the Debtor paid Quality the sum of \$16,978.90.

4. The payment of \$16,978.90 was in payment of an antecedent debt; specifically, in payment of invoices dating from January 23, 2001 to May 29, 2001.

5. The payment to Quality was a payment to or for the benefit of a creditor.

6. At the time of the payment, the Debtor was insolvent within the meaning of 11 U.S.C. § 101(32).

7. The payment enabled Quality to receive more than it would have received in this Chapter 7 case, the transfer had not been made, and Quality received payment of such debt to the extent provided by the provisions of Title 11.

**CONCLUSIONS OF LAW:**

1. Plaintiff's motion for summary judgment is hereby GRANTED in its entirety.

2. Defendant Quality Quick Bindery Services received preferences under 11 U.S.C. § 547 in the amount of \$16,978.90.

3. Plaintiff is entitled to his costs and disbursements herein.

4. Plaintiff is thus entitled to a judgment against Defendant Quality in the amount of \$16,978.90, plus interest thereon, together with his costs and disbursements.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

**BY THE COURT:**

Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
The Honorable Nancy C. Dreher  
United States Bankruptcy Court Judge