

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Watt/Peterson, Inc.,

Bky. 01-44137 (NCD)

Debtor

John R. Stoebner, Trustee,

Plaintiff,

v.

Dennis E. Watt, David B. Peterson, Printech
Investors, Aggressive Investors, and
Superior Airlines, Inc.,

Defendants.

Adv. No. 03-_____ (NCD)

COMPLAINT

Plaintiff John R. Stoebner, as Chapter 7 trustee for the Bankruptcy Estate of Watt/Peterson, Inc., for his Complaint against Defendants Dennis E. Watt, David B. Peterson, Printech Investors, Aggressive Investors, and Superior Airlines, Inc., alleges and states as follows:

1. This adversary proceeding is commenced pursuant to Fed. R. Bankr. P. 7001 et seq. and 11 U.S.C. §§ 544, 547, 548 and 550. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 7001(1) and Local Rule 1070-1. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The

petition commencing this case as an involuntary bankruptcy was filed September 21, 2001, and the Order for Relief was entered October 15, 2001; this case is now pending before this Court.

2. Plaintiff is the duly appointed, qualified, and acting Chapter 7 Bankruptcy Trustee for the Bankruptcy Estate of Watt/Peterson, Inc.

3. Defendants are subject to jurisdiction in this Court, and venue is proper pursuant to 28 U.S.C. § 1409.

4. The Debtor, Watt/Peterson, Inc., was incorporated in or prior to 1984. Prior to June 2000, its primary shareholders were Defendants Dennis E. Watt (“Watt”) and David B. Peterson (“Peterson”). At all times material hereto, Watt and Peterson were in control of Watt/Peterson, Inc.

5. In addition to Watt/Peterson, Inc., Watt and Peterson organized various other entities, including, among others, the following:

A. Aggressive Investors, a Minnesota limited partnership (“Aggressive”). Aggressive acquired real estate financed by an industrial revenue bond and leased certain business premises to Watt/Peterson, Inc.

B. Printech Investors, a partnership of Watt and Peterson (“Printech”). Printech acquired various printing equipment which was leased to Watt/Peterson for use in its business operations.

C. Superior Airlines, Inc. (“Superior”). Superior acquired an aircraft which was rented to Watt/Peterson for business use and also for personal use of Watt and Peterson.

6. The organization and operation of these entities, receiving their revenues from

Watt/Peterson, was done, in substantial part, to afford tax benefits to Watt and Peterson.

7. Watt/Peterson, Inc., obtained secured bank financing from U. S. Bank National Association, under various credit agreements and amendments thereto.

8. For several years, Watt/Peterson, Inc., prospered in the printing business, but in the late 1990s it began to experience substantial operating losses, and commencing in approximately November 1999, Watt and Peterson began contingency plans for liquidation of the business.

9. On or about December 31, 1999, in exchange for Watt/Peterson's acquisition of various printing equipment transferred to Printech, Printech executed a promissory note to Watt/Peterson in the approximate amount of \$1.4 million. As of the date of the bankruptcy filing, the balance owing from Printech to Watt/Peterson on the note was approximately \$1,238,700.

10. In January 2000, Watt/Peterson was in default of various provisions of its credit agreement with U.S. Bank. At that time, Watt/Peterson entered into an Eighth Amendment to the credit agreement. Under that Eighth Amendment, Watt/Peterson was authorized to transfer various of its equipment to Printech. On information and belief, Watt/Peterson thereafter made lease payments to Printech for the equipment it had transferred, as well as continuing to make lease payments to Printech on other equipment.

11. Watt/Peterson also continued to pay rent to Aggressive Investors respecting its leased business premises.

12. At the time of commencement of the bankruptcy case and prior thereto, the United States of America, through the Department of the Treasury, Internal Revenue Service,

was an unsecured creditor of the Debtor, Watt/Peterson, Inc., and filed proofs of claim numbers 109 and 110.

13. At all times material hereto, Watt/Peterson, Inc., was insolvent or became insolvent as a result of the transfers and related obligations incurred, and was otherwise left with unreasonably small capital.

14. At all times material hereto, Defendants and each of them were “insiders” of Watt/Peterson within the meaning of 11 U.S.C. §101 (31), Minn. Stat. §513.41, and 28 U.S.C. §3301.

**Count One
(Promissory Note)**

15. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 14 of his Complaint herein.

16. Defendant Printech is liable to the bankruptcy estate for the indebtedness reflected in the promissory note alleged in Paragraph 9 herein.

**Count Two
(Fraudulent Transfers)**

17. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 16 of his Complaint herein

18. Watt/Peterson from time to time made various transfers of equipment to Printech, including:

- A. The equipment transferred in exchange for the December 31, 1999, promissory note;
- B. The equipment transferred in January 2000 pursuant to the Eighth

Amendment to the then-existing credit agreement with U.S. Bank.

19. Watt/Peterson did not receive reasonably equivalent value for the transfers of equipment, nor for payments made to Printech after expiration of the original terms of various leases between Watt/Peterson and Printech.

20. The transfers and payments are avoidable pursuant to 11 U.S.C. §§ 544 and 548, 28 U.S.C. § 3301 et seq., and Minn. Stat. § 513.41 et seq.

21. Printech is liable to the estate for recovery of the transfers or the value thereof pursuant to 11 U.S.C. § 550.

22. The transfers to Printech alleged herein were made at times when Watt/Peterson was in financial distress and contemplating liquidation, and would operate to place the transferred assets beyond the reach of general creditors, while enabling Watt/Peterson to make “lease” payments to Printech for the benefit of insiders and to the detriment of general unsecured creditors.

23. The transfers were made with intent to hinder, delay, or defraud creditors, and are avoidable under 11 U.S.C. §§ 544 and 548, 28 U.S.C. §3301 et seq., and Minn. Stat. §513.41 et seq.

24. Printech is liable to the estate for recovery of the transfers or the value thereof pursuant to 11 U.S.C. § 550.

**Count Three
(Preferential/fraudulent transfers)**

25. Plaintiff repeats and realleges the allegations of paragraphs 1 through 24 of his Complaint herein.

26. Within one year prior to the Petition Date, Watt/Peterson made various transfers

to or for the benefit of insider creditors, including Defendants herein, the precise dollar amount of which is not yet known to Plaintiff.

27. At the time of the transfers, the Defendants were creditors of the Debtor.

28. The Transfers constituted a transfer of an interest of the Debtor in property.

29. The Transfers were for or on account of antecedent debts owed by the Debtor to Defendants at the time the Transfers were made.

30. The Transfers were made for the benefit of Defendants.

31. The Debtor was insolvent at the time of the Transfers.

32. The Transfers enabled Defendants to recover more than they would receive as a creditor if (a) the Debtor's bankruptcy case were a case under chapter 7 of Title 11 of the United States Code, (b) the Transfers had not been made and (c) the Defendant received payment of its debt to the extent provided by the provisions of Title 11 of the United States Code.

33. Pursuant to 11 U.S.C. § 547(b), the Transfers are avoidable.

34. In addition, such preferential transfers to Defendants made with two years prior to the Petition Date are avoidable pursuant to 11 U.S.C. § 544 and 28 U.S.C. § 3301 et. seq.

35. Pursuant to 11 U.S.C. § 550(a), the Trustee may recover from Defendant the avoided Transfers or the value thereof.

**Count Four
(Claim Objections)**

36. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 35 of his Complaint herein.

37. Defendants Watt, Peterson, Printech, and Aggressive have each filed proofs of claim in this case.

38. Pursuant to 11 U.S.C. § 502 (d), Defendants' claims must be disallowed until and unless Defendants have paid over to the estate the amount of the avoidable Transfers.

**Count Five
(Equitable Subordination)**

39. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 38 of his Complaint herein.

40. Defendants' conduct as insiders of Watt/Peterson as alleged above, and their conduct in orchestrating the liquidation of Watt/Peterson to maximize benefit to themselves constitutes inequitable conduct, such that their claims should be subordinated pursuant to 11 U.S.C. § 510 (c).

WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

1. On Count One, for judgment against Defendant Printech Investors for recovery of all amounts owing on the promissory note alleged in Paragraph 9, together with interest thereon;
2. On Count Two, for judgment against Defendant Printech Investors avoiding the transfers alleged therein, and awarding Plaintiff recovery of the transfers or the value thereof, together with interest thereon;
3. On Count Three, for judgment against each Defendant avoiding the transfers alleged therein and awarding Plaintiff recovery of the transfers or the value thereof, together with interest thereon;
4. On Count Four, for an order disallowing Defendants' claims;
5. On Count Five, for judgment that Defendants' claims be equitably subordinated;
6. For recovery of Plaintiff's costs and disbursements herein, including attorneys'

fees to the extent allowed by law; and,

7. For such other and further relief as may be equitable and just.

October 14, 2003

KALINA, WILLS, GISVOLD & CLARK, P.L.L.P.

By: /s/ Gordon B. Conn, Jr.

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