

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7

BKY No. 01-45284-NCD

Xtratyme Technologies Inc.,

Debtor.

John R. Stoebner, Trustee,

ADV No. 04-4097-NCD

Plaintiff.

vs.

**AMENDED COMPLAINT TO
AVOID TRANSFERS**

Shari Ackerman, d/b/a Sharilee Studios,

Defendant.

For his Amended Complaint against the above-named Defendant, Plaintiff John R. Stoebner, Trustee of the bankruptcy estate of Xtratyme Technologies, Inc., states and alleges as follows:

I. THE PARTIES.

1. John R. Stoebner is the duly qualified and acting Trustee in this bankruptcy proceeding.
2. Defendant Shari Ackerman is a Minnesota resident currently residing at 16754 705th Avenue, Dassel, MN 55325.
3. Debtor Xtratyme Technologies, Inc., is a corporation that filed a Chapter 11 bankruptcy petition on December 7, 2001, and the case was subsequently converted to a Chapter 7 case on March 21, 2003. The case is now pending before this Court.

II. JURISDICTION.

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334. As a matter concerning administration of the estate, recovery of property of the estate, and matters affecting the adjustment of the debtor-creditor relationship, this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. Venue is properly before the Court pursuant to 28 U.S.C. § 1409.

III. FACTS.

6. At all relevant times the Debtor was insolvent within the meaning of 11 U.S.C. § 101(32).

7. At all relevant times, Defendant was an insider within the meaning of 11 U.S.C. § 101(31).

8. Within one (1) year prior to the filing of the bankruptcy petition, Defendant received transfers of an interest in property of the Debtor or the benefit from such transfer in the total amount of at least \$5,742.77.

IV. LEGAL CLAIMS.

COUNT ONE

PREFERENTIAL TRANSFER UNDER 11 U.S.C. § 547(b)

9. The Trustee restates, realleges, and adopts by reference the allegations contained in Paragraphs 1 through 8, inclusive, herein.

10. Within one (1) year prior to the filing of the petition in this case, transfer of an interest in the Debtor's property in the amount of at least \$5,742.77 was made to or for the benefit of Defendant.

11. The above-described transfer was made for or on account of an antecedent debt.

12. At the time of such transfer, the Debtor was insolvent.

13. At all relevant times, Defendant was an insider of the Debtor.

14. Such transfer enabled Defendant to receive more than it would receive if the transfer had not been made and the Defendant received payment of such debt to the extent provided by Chapter 7 of the Bankruptcy Code.

15. The transfer constitutes a preferential transfer within the meaning of 11 U.S.C. § 547(b) which may be avoided by the Trustee and the Trustee is entitled to recover the funds transferred pursuant to 11 U.S.C. § 550.

COUNT TWO

POSTPETITION TRANSFERS UNDER 11 U.S.C. § 549

16. Plaintiff restates, realleges, and adopts by reference the allegations contained in paragraphs 1 through 15, inclusive, herein.

17. To the extent the transfers made by Debtor to Defendant occurred after the commencement of the case, said transfers constitute postpetition transfers of property of the estate not authorized under Title 11 or by the Court within the meaning of 11 U.S.C. § 549.

18. The transfers constitute postpetition transfers within the meaning of 11 U.S.C. § 549 which may be avoided by the Trustee and the Trustee is entitled to recover the funds transferred pursuant to 11 U.S.C. § 550.

WHEREFORE, Plaintiff John R. Stoebner, Trustee, respectfully demands the following relief:

A. Judgment against Defendant avoiding the aforesaid transfer as a preference and ordering Defendant to pay over to the Plaintiff at least \$5,742.77, plus pre-judgment interest from the date of commencement of this action;

B. Judgment against Defendant awarding Plaintiff his reasonable costs and disbursements; and

C. Such other and further relief as is just and equitable.

LAPP, LIBRA, THOMSON, STOEBNER &
PUSCH, CHARTERED

Dated: March 16, 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

VERIFICATION

John R. Stoebner, Trustee, Plaintiff herein, declares under penalty of perjury that he has read the foregoing Amended Complaint and that the facts set forth therein are true and correct according to the best of his knowledge, information, and belief.

/e/ John R. Stoebner
John R. Stoebner

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Debtor.

John R. Stuebner, Trustee
Plaintiff, ADV No. 04-4097-NCD

vs.

Shari Ackerman, d/b/a Sharilee Studios,
Defendant.

UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on March 16, 2004, I mailed by U.S. Mail copies of the attached **Amended Verified Complaint** to each entity named below at the address stated for each entity:

Shari Ackerman d/b/a
Sharilee Studios
16754 705th Avenue
Dassel, MN 55325

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Executed on: March 16, 2004

/e/ Sarah L. Fortin
Sarah L. Fortin, Legal Administrative Assistant
Lapp, Libra, Thomson, Stuebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612-338-5815