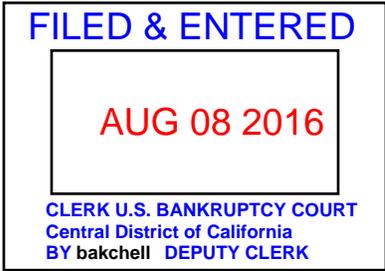


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
L. SCOTT APPAREL, INC.,
Debtor.
HOWARD GROBSTEIN as Liquidating
Trustee of L. Scott Apparel Inc.,
Plaintiff,
vs.
LOWELL S. SHARRON, an individual;
BEYOND BASICS, LLC dba DAILY
THREADS, a California limited liability
company; and DOES 1-10, inclusive,
Defendants.

Case No. 2:13-bk-26021-RK
Chapter 11
Adv. No. 2:15-ap-01122-RK

**SEPARATE STATEMENT OF DECISION
IN SUPPORT OF ORDERS GRANTING
IN PART AND DENYING IN PART
MOTION AND APPLICATION OF
LIQUIDATING TRUSTEE FOR ORDERS
FOR ISSUANCE OF WRITS OF
ATTACHMENT AGAINST DEFENDANTS
LOWELL S. SHARRON AND BEYOND
BASICS, LLC dba DAILY THREADS**
DATE: July 14, 2016
TIME: 1:30 p.m.
PLACE: Courtroom 1675

Having considered the moving, opposing and reply papers, the testimony and exhibits admitted at the evidentiary hearing on June 22, 2016 on the motion and application of Howard Grobstein as liquidating trustee for orders for issuance of writs of attachments against defendants Lowell S. Sharron and Beyond Basics, LLC dba Daily Threads, and the oral and written arguments of the parties at the hearings on May 10,

1 2016, June 22, 2016 and July 14, 2016, and issued orders granting in part and denying in
2 part the motion and application,

3 The court further orders for purposes of the liquidating trustee's motion and
4 application for orders for issuance of writs of attachment as follows:

5 1. The court determines that the date of the breach by defendants of their
6 obligations to pay loans back to debtor, giving rise to the right to attach is the
7 date that debtor, L. Scott Apparel, Inc., became insolvent on June 19, 2013,
8 the date of the filing of the date of the involuntary bankruptcy petition. The
9 court has considered the opinions of the parties' respective expert witnesses
10 on the solvency of the debtor and gives greater weight to the opinion of
11 defendants' expert, Coral Hansen. Neither expert witness provided a credible
12 opinion of balance sheet solvency based on fair valuations in that Hansen
13 admitted that he did not conduct a fair valuation analysis and that the so-called
14 fair valuation analysis of plaintiff's expert witness, David Wall, only consisted of
15 unexplained and thus, apparently arbitrary, adjustments in the book values of
16 debtor's assets. The opinion of defendants' expert witness, Hansen, better
17 explains debtor's financial condition and eventual insolvency based on the
18 refusal of debtor's supplier, Kody, to ship merchandise to debtor, leading to the
19 cancellation of debtor's customer orders, and when this happened in early
20 2013, by the time that the involuntary bankruptcy petition was filed in June
21 2013, debtor was generally unable to pay its debts as they became due. 11
22 U.S.C. § 101(32); California Civil Code, § 3439.02. When debtor became
23 insolvent, defendants as borrowers on outstanding loans made by debtor to
24 them were obligated to repay the loans. See, e.g., *Saracco Tank & Welding*
25 *Co. v. Platz*, 65 Cal.App.2d 306 (1944)(stating general rule in California assets
26 of an insolvent corporation are held in trust for the benefit of creditors and
27 shareholders).

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The date of the breach deemed to be June 19, 2013 also constitutes the date on which prejudgment interest on the obligations owed to debtor is due for purposes of California Civil Code § 3287(a).
3. The court also deems the date of the breach of June 19, 2013 to constitute the date on which defendant Sharron may assert any offset of the obligation of the debts of \$350,000 owed by debtor to him, which amount is admitted by plaintiff for purposes of the motion and application for orders for issuance of writs of attachment. In this regard, the court notes that debtor and defendants had a continuing course of conduct in lending money to each other with no fixed terms, and it makes sense that when debtor became insolvent and defendants as net borrowers had the obligation to pay back the outstanding loans since debtor's insiders, including defendant Sharron, no longer had the right to use the equity or assets of debtor previously a solvent entity, but allow him an offset to the extent that the debtor owed him for its loans from him at the same time he became obligated to repay debtor. Since the debts are mutually offsetting with the balance owed by defendant Sharron, there is no need to consider the rate of any prejudgment interest on the obligations owed by debtor to him.
4. The court sets a bond of \$10,000 as the undertaking for issuance of the writ of attachment against defendant Sharron in order to protect him for any potential injury should the attachment be later found to have been wrongful. California Code of Civil Procedure §§ 489.210 and 489.220(a) and (b). In this regard, the court agrees with the trustee that the amount of the undertaking should be minimal because the amount owed by Sharron as shown on debtor's books and records is not disputed.
5. The court sets a bond of \$10,000 as the undertaking for issuance of the writ of attachment against defendant Beyond Basics LLC in order to protect it for any potential injury should the attachment be later found to have been wrongful.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

California Code of Civil Procedure §§ 489.210 and 489.220(a) and (b). In this regard, the court agrees with the trustee that the amount of the undertaking should be minimal because the amount owed by Beyond Basics as shown on debtor's books and records is not disputed.

IT IS SO ORDERED.

###

Date: August 8, 2016



Robert Kwan
United States Bankruptcy Judge