U S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
FURNITURE 4 LESS, a/k/a	§	**Case No. 03-80924 HDH-7**
FURNITURE 4 LESS	§	
	§	
Debtor	§	

JOHN H. LITZLER	§	
	§	
Plaintiff	§	
	§	
v.	§	**Adversary No. 04-3180**
	§	
D.M. REID ASSOCIATES, LTD./SOUTH,	§	
DAVID REID, JOSEPH O'ROURKE,	§	
MIKE MEADOWS, AL ASHER, and	§	
MADDIE ASHER	§	
	§	
Defendants	§	

MEMORANDUM OPINION ON MOTION
OF VARIOUS DEFENDANTS FOR SUMMARY JUDGMENT

This Court has considered the *Motion of D.M. Reid Associates, Ltd./South, David Reid and Joseph O'Rourke for Summary Judgment and Memorandum in Support*, along with the response thereto of Plaintiff John H. Litzler ("Trustee"), and affidavits filed, both in support and in opposition, to the motion.

The parties have accurately set out the standard for a summary judgment in bankruptcy court. That standard is contained in Fed. R. Civ. P. 56 and need not be recited herein.

Defendants D.M. Reid Associates, Ltd./South ("D.M. Reid") and David Reid seek a summary judgment, under separate arguments.[1] Although it attempts to poke holes in the Trustee's claims against it, D.M. Reid also relies upon a settlement agreement effected between the parties around the time the services provided by D.M. Reid to Furniture 4 Less (the "Debtor") had ended. That agreement is awkwardly drafted, but contains release language and an agreement not to sue. Defendant David Reid claims that the causes of action do not reach him because there is no evidence, summary judgment or otherwise, supporting the Trustee's various claims against him individually. For example, the instant adversary proceeding contains a claim for breach of contract. However, there is no evidence before the Court that the Debtor had a contract with David Reid individually.

The settlement agreement obviously was drafted by non lawyers. However, as mentioned, it contains release language and an agreement not to sue. The agreement was prepared as part of an exit strategy of D.M. Reid from the arrangement with the Debtor. The settlement agreement appears to be enforceable. Accordingly, D.M. Reid is entitled to a partial summary judgment. The settlement agreement does not and cannot purport to release some of the claims asserted by the Trustee, because such claims arose at the filing of the case. These are avoidance actions, preference and fraudulent transfer claims and turnover.

As to David Reid, the summary judgment evidence before the Court shows that there is no genuine issue as to any material fact and that David Reid's summary judgment motion is well supported by the evidence and he is entitled to a judgment as a matter of law on the following causes of action: Conversion, Fraud in the Inducement, Breach of Contract, Violation of the Texas Theft Liability Act, Breach of Fiduciary Duty, Preference, Fraudulent Transfer, Accounting and Exemplary

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[1] At the hearing, the Trustee's counsel announced that the action would be dismissed against Defendant Joseph O'Rourke

Damages. The Trustee has not designated specific facts in the record showing that there is a genuine issue for trial on his claims against David Reid. Accordingly, the Court will enter summary judgment in favor of David Reed individually.

Counsel for D.M. Reid and David Reid should prepare a partial summary judgment in accordance with this ruling and submit it to the Court and opposing counsel within ten days.

SIGNED: 1/24/05

Harlin D. Hale
United States Bankruptcy Judge