

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN RE: )  
)  
Magna Corporation, ) Case No. 01-80763C-7D  
)  
Debtor. )  
\_\_\_\_\_)  
)  
William L. Yaeger, Trustee, )  
)  
Plaintiff, )  
)  
v. ) Adversary No. 03-9032  
)  
)  
Magna Corp., Steven E. )  
Edwards, Marian C. Edwards, )  
Carolina Green, Inc., and )  
Capital Financial Group, Inc., )  
d/b/a Capital Marketing, Inc., )  
The Nations Group, Inc., 2VC )  
Holdings, Ltd., )  
)  
Defendants. )  
)

MEMORANDUM OPINION

This case comes before the court on a motion for partial summary judgment filed by William L. Yaeger, the Chapter 7 Trustee ("Trustee") of Magna Corporation ("Debtor"), against Steven E. Edwards ("Edwards") seeking to recover \$4,558,472.70 of the Debtor's funds that Edwards allegedly converted to his personal use pursuant to Count VI of the Trustee's Amended Complaint.

The court held a hearing on this matter on February 10, 2005, in Durham, North Carolina, at which time the court took the matter under advisement. After considering the arguments of the parties, the evidence introduced in support of the parties' positions, and

the relevant law, the court will grant the Trustee partial relief under Fed. R. Civ. P. 56(d) and find that no genuine issue of material fact exists as to the Trustee's claim that Edwards converted \$7,797.57 of the Debtor's money. Regarding the remaining \$4,550,675.35 sought by the Trustee, the court finds that a genuine issue of material fact exists over whether the Debtor owned the funds allegedly converted by Edwards.

#### I. STANDARD OF REVIEW

Summary judgment is appropriate when the matters presented to the court "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056; Celotex v. Catrett, 477 U.S. 317, 322 (1986). The party moving for summary judgment has the initial burden of proving that there is no genuine issue as to any material fact. Adickes v. S. H. Kress & Co., 398 U.S. 144, 161 (1970). Once the moving party has met this initial burden of proof, the non-moving party must set forth specific facts sufficient to raise a genuine issue for trial, and may not rest on its pleadings or mere assertions of disputed facts to defeat the motion. Matsushita Electric Industrial Co., Ltd., v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (stating that the party opposing the motion "must do more than simply show that there is some metaphysical doubt as to the material facts"). The mere existence of a scintilla of evidence in support of the opposing party's

position will not be sufficient to forestall summary judgment, but "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 252 (1986). In ruling on a motion for summary judgment, "the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

## II. BACKGROUND

The Debtor, a Kansas corporation, provided various payroll, tax, and insurance services to businesses as a professional employer organization. Edwards was a corporate officer of the Debtor and in charge of its workers' compensation coverage services. For each workers' compensation policy that he serviced, Edwards received a commission. According to The Trustee's forensic accountant, Adrian Barnett, Edwards had after tax income - including both his salary and earned commissions - of \$13,134.63 in 1995; \$59,073.01 in 1996; \$150,725.63 in 1997; \$15,542.72 in 1998; \$218,742.00 in 1999; and \$45,387.00 in 2000.

In connection with his employment with the Debtor, Edwards formed another entity, Capital Marketing, Inc. ("Capital Marketing"), which was eventually merged with the Debtor. Edwards served as the secretary/treasurer of Capital Marketing and had

broad banking authority.<sup>1</sup> A portion of the funds that the Debtor's clients sent to it flowed through Capital Marketing's bank accounts. One of these accounts was at South Bank, account number 39378, which was in the name of "Capital Marketing, Inc. Subsidiary of Magna Corp." Edwards maintained the power to withdraw funds from that account.

From March 19, 2000 to February 1, 2001, \$8,269,427.21 was deposited in account number 39378 at South Bank. Of that amount, \$3,987,888.63<sup>2</sup> was directly attributable to the Debtor's business

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<sup>1</sup> The minutes of the Debtor's Stockholders Meeting of June 3, 1996 provide:

Be it resolved that MAGNA Corporation shall merge with Capital Marketing Inc, with the resulting Corporation to be known as MAGNA Corporation ....

Be it further resolved that a new division of MAGNA Corporation shall be created, to be known as "Magna/Capital Marketing, Inc."

Be it further resolved that Steven E. Edwards shall serve as Secretary/Treasurer of Magna/Capital Marketing, Inc., and that in his capacity as Secretary/Treasurer, he shall be and hereby is authorized to perform the following activities on his signature alone: open any deposit or checking account(s) in the name of Magna/Capital Marketing, Inc., and indorse checks and orders for the payment of money and withdraw [illegible] on deposit in said account(s) ....

(Ex. 1 to Pl. Ex 1).

<sup>2</sup> In Adrian Barnett's affidavit, he stated that \$4,300,000.00 in the bank account was attributable to business receipts of the Debtor - not the \$3,987,888.63 as stated in his report, which is supported by copies of business records. Counsel for the Trustee stated at the hearing that the \$4,300,000.00 dollar figure was the correct amount but did not offer additional evidence in support of that number. Construing all reasonable inferences in favor of Edwards as the non-moving party for purposes of this motion for



















