

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
TWO BIRD ENTERPRISES, INC.,) CASE NO. 05-61518 JPK
) Chapter 7
) Debtor.)

STACIA L. YOON, TRUSTEE,)
)
Plaintiff,)
)
v.) ADVERSARY NO. 07-2117
)
MARTY FRALEY, HARRY)
BEAMER and ALLEN FRALEY,)
)
Defendants.)

ORDER FOR HEARING

This adversary proceeding was commenced by a complaint filed on October 25, 2007. In paragraph 4 of Count I of the complaint – directed against the defendant Marty Fraley – the plaintiff alleged that “The Defendant is a shareholder of the debtor”. In paragraph 7 of Count II of the complaint – asserted against the defendant Harry Beamer – the plaintiff alleged that defendant “is an insider as defined by 11 U.S.C. § 101(31) of the debtor”. Paragraph 4 of Count II alleges that Harry Beamer was also a shareholder of the debtor.

This adversary proceeding was filed with respect to the Chapter 7 bankruptcy case of Two Bird Enterprises, Inc., which was filed on March 31, 2005. Therefore, provisions under 11 U.S.C. § 547 effected by amendments by BAPCPA are not applicable to this case, and the law in effect prior to those amendments is applicable. 11 U.S.C. § 101(31), as applicable to this case, does not include a shareholder as an entity presumptively deemed to be an “insider”. There is nothing in this record to indicate that any of the alleged transfers occurred within the 90-day period applicable to a non-insider, and there is nothing in this record to indicate that the defendants are “insiders” as that term has been defined presumptively.

IT IS ORDERED that a hearing will be held on **March 28, 2008 at 9:00 A.M.** at which the plaintiff shall appear to advise the Court as to how she proposes to proceed with respect to this adversary proceeding in light of the fact that the record before the Court does not entitle her to a judgment by default.

Dated at Hammond, Indiana on February 28, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record