

DEBTOR:
Oscherowitz, Steven
JUDGE: Sheri Bluebond A626

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CLERK, U. S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIF. ID: E-F
REFEREN NO: CHG EST

8 Attorneys for David L. Ray, Chapter 7 Trustee)
9 Answer Date 7/10/2006)
10 Hrg. Date 08/17/2006 at 10:00 AM)

11
12 UNITED STATES BANKRUPTCY COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 LOS ANGELES DIVISION
15

16 In re)
17 STEVEN OSCHEROWITZ and)
18 SUSAN OSCHEROWITZ, and)
19 UNIVERSAL MERCHANTS, INC., a)
20 Delaware corporation,)
21 Debtors.)

Bk. No. LA 04-22926-BB
[Chapter 7]
(Substantively Consolidated with
LA 04-31426-BB)

22 DAVID L. RAY, Chapter 7 Trustee,)
23 Plaintiff,)

Adv. No. _____

24 v.)
25 YESHIVA GEDOLAH OF LOS)
26 ANGELES, INC., a California)
27 corporation,)
28 Defendant.)

- COMPLAINT:
- (1) FOR AVOIDANCE AND RECOVERY OF INSIDER PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 547(b) and 550 (within one year before petition date);
 - (2) FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 544(b) AND 550 AND CALIFORNIA CIVIL CODE §§ 3439.04(a)(1) and 3439.09;
 - (3) FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 544(b) AND 550 AND CALIFORNIA CIVIL CODE §§ 3439.04(a)(2), 3439.05 and 3439.09; AND

[Caption Continued on Next Page. . .]

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) (4) FOR AVOIDANCE AND RECOVERY OF
) FRAUDULENT TRANSFERS
) PURSUANT TO 11 U.S.C. § 548(a)(1)(A)
) and 548(a)(1)(B)
)
_____) [HEARING TO BE SET]

David L. Ray, Chapter 7 Trustee in the above-captioned bankruptcy case and plaintiff in this adversary proceeding, respectfully represents and alleges:

I.

JURISDICTION AND VENUE

1. This adversary proceeding arises in and relates to the consolidated Chapter 7 case *In re Steven Oscherowitz, Susan Oscherowitz and Universal Merchants, Inc.*, which is now pending before the United States Bankruptcy Court for the Central District of California, Case No. LA 04-22926-BB (the "Bankruptcy Case").

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

4. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (E), (F), (H) and (O), and the Court can and should enter final judgment.

II.

THE PARTIES

5. David L. Ray is the duly appointed and acting chapter 7 trustee of the consolidated bankruptcy estate ("Plaintiff" or "Trustee").

6. At all relevant times, Defendant Yeshiva Gedolah of Los Angeles, Inc., California corporation, did business within this district, or filed a Proof of Claim in the Bankruptcy Case ("Defendant").

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III.

GENERAL ALLEGATIONS

7. This Bankruptcy Case was commenced on June 10, 2004 (the "Petition Date"), when Steven Oscherowitz and Susan Oscherowitz (the "Oscherowitzes" or the "Debtors") filed a voluntary petition under chapter 7 of the United States Code. David L. Ray was thereafter appointed as the chapter 7 trustee.

8. On June 24, 2004, Mr. Oscherowitz caused to be filed in the United States Bankruptcy Court for the District of Delaware a voluntary petition under chapter 7 of the United States Bankruptcy Code for Universal Merchants, Inc. ("UMI"), a "Subchapter S" corporation wholly owned by the Oscherowitzes.

9. In September 2004, the Trustee successfully moved the United States Bankruptcy Court for the Central District of California to transfer venue of UMI bankruptcy case away from the United States Bankruptcy Court for the District of Delaware, now Bk. No. LA 04-31426-BB. David L. Ray was thereafter appointed as the chapter 7 trustee of the UMI bankruptcy estate.

10. By orders entered on May 8 2006, the Oscherowitz and UMI bankruptcy estates were substantively consolidated.

11. Mr. Oscherowitz has listed, on the Schedule of Financial Affairs filed in this Bankruptcy Case, eighteen (18) business entities that he wholly or partially owned.

12. The Trustee's investigation reveals that, for many years pre-petition, Mr. Oscherowitz commingled his personal and business finances, including those of UMI. Mr. Oscherowitz transferred substantial amounts of funds both to and from these entities and, in many instances, credited and charged personal expenses to advance accounts.

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1 **FIRST CLAIM FOR RELIEF**

2 **(For Avoidance and Recovery of Insider Preferential**
3 **Transfer Pursuant to 11 U.S.C. §§ 547(b))**

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5 13. Plaintiff incorporates herein by this reference the allegations in
6 paragraphs 1 - 12.

7 14. Plaintiff is informed and believes and on that basis alleges that between
8 June 11, 2003 to June 10, 2004, the Debtors transferred an interest of the Debtors in
9 property by transferring no less than \$32,000.00 (the "Insider Transfer") to the
10 Defendant.

11 15. Plaintiff is informed and believes and on that basis alleges that the
12 Insider Transfer was made within one (1) year before the Petition Date.

13 16. Plaintiff is informed and believes and on that basis alleges that the
14 Defendant was an insider pursuant to 11 U.S.C. § 101(31).

15 17. Plaintiff is informed and believes and on that basis alleges that the
16 Insider Transfer was made for or on account of an antecedent debt owed by the
17 Debtors to the Defendant before the Insider Transfer was made.

18 18. Plaintiff is informed and believes and on that basis alleges that, at the
19 time the Insider Transfer was made, the Debtors were insolvent.

20 19. Plaintiff is informed and believes and on that basis alleges that by
21 reason of the Insider Transfer, Defendant was able to receive more than Defendant
22 would otherwise receive (a) as a distribution in this chapter 7 case; (b) if the Insider
23 Transfer had not been made; and (c) Defendant received payment on claims against
24 the Debtors only to the extent provided by the Bankruptcy Code.

25 20. The Insider Transfer constitutes a preferential transfer within the
26 meaning of 11 U.S.C. § 547(b) which is avoidable by Plaintiff.

27 21. Since the Insider Transfer is an avoidable preferential transfer
28 pursuant to 11 U.S.C. § 547(b), Plaintiff may recover the property transferred or the

1 value of it from Defendant as the initial transferee, as immediate or mediate
2 transferee or as the entity for whose benefit the transfer was made, pursuant to
3 11 U.S.C. § 550(a)(1) or (2).

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5 **SECOND CLAIM FOR RELIEF**

6 **(For Avoidance and Recovery of Actual Fraudulent**
7 **Transfer Pursuant to 11 U.S.C. §§ 544(b) and 550**
8 **and California Civil Code §§ 3439.04(a)(1) and 3439.09**
9 **and Other Applicable State Statutes)**

10
11 22. Plaintiff incorporates herein by this reference the allegations in
12 paragraphs 1 - 12.

13 23. Plaintiff is informed and believes and on that basis alleges that between
14 June 11, 2000 to June 10, 2004, the Debtors transferred an interest of the Debtors in
15 property by transferring no less than \$2,834,389.00 (the "Four Year Transfer") to the
16 Defendant.

17 24. Plaintiff is informed and believes and on that basis alleges that the
18 Four Year Transfer was made to Defendant within the four-year period immediately
19 preceding the Petition Date and that the Four Year Transfer was of the Debtors'
20 property.

21 25. Plaintiff is informed and believes and based thereon alleges the
22 Transfers are avoidable by a creditor, which rights Plaintiff succeeded under 11 U.S.C
23 § 544.

24 26. Plaintiff is informed and believes and on that basis alleges that the
25 Four Year Transfer was made to Defendant with the actual intent to hinder, delay, or
26 defraud an entity or entities to which the Debtors were or became indebted, on or after
27 the date that the Four Year Transfer was made.

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1 39. Plaintiff is informed and believes and on that basis alleges that between
2 June 11, 2003 to June 10, 2004, the Debtors transferred an interest of the Debtors in
3 property by transferring no less than \$32,000.00 (the "One Year Transfer") to the
4 Defendant.

5 40. Plaintiff is informed and believes and on that basis alleges that the One
6 Year Transfer was made to Defendant within the one-year immediately preceding the
7 Petition Date and that the One Year Transfer was of the Debtors' property.

8 41. Plaintiff is informed and believes and based thereon alleges the
9 Transfers are avoidable by a creditor, which rights Plaintiff succeeded under 11 U.S.C.
10 § 544.

11 42. Plaintiff is informed and believes and thereon alleges that the
12 Partnerships made such One Year Transfer with the actual intent to hinder, delay or
13 defraud any entity to which the Debtors were or became, on or after the date that such
14 One Year Transfer was made.

15 43. Plaintiff is informed and believes and thereon alleges that the
16 Partnerships received less than reasonably equivalent value in exchange for such One
17 Year Transfer, and that on the date that such One Year Transfer was made:

- 18 (a) the Debtors were insolvent or became insolvent as a result of
19 such One Year Transfer;
- 20 (b) the Debtors were engaged in a business or transaction, for which
21 any property remaining with the Debtors was an unreasonably
22 small capital; or
- 23 (c) the Debtors intended to incur, or believed that they would incur,
24 debts that would be beyond their ability to pay as such debts
25 matured.

26 44. The One Year Transfer is avoidable pursuant to 11 U.S.C.
27 §§ 548(a)(1)(A) and 548(a)(1)(B) and other applicable statutes.

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1 45. Pursuant to 11 U.S.C. §§ 550(a)(1) or (2), Plaintiff is entitled to recover
2 from Defendant the property transferred or the value of it, in an amount to be
3 established according to proof at trial.
4

5 WHEREFORE, Plaintiff prays for judgment as follows:

6 1. On the First Claim for Relief:

7 (a) For judgment on Plaintiff's Second Claim for Relief against
8 Defendant for the avoidance and recovery of preferential transfer pursuant to
9 11 U.S.C. § 547(b).

10 (b) Plaintiff recovers the Insider Transfer from Defendant as the
11 initial transferee, as immediate or mediate transferees or as the entity for whose
12 benefit the Insider Transfer was made, pursuant to 11 U.S.C. § 550(a)(1) or (2).

13 2. On the Second Claim for Relief:

14 (a) That the Four Year Transfer made to Defendant be avoided
15 pursuant to 11 U.S.C. §§ 544(b) and 550, California Civil Code §§ 3439.04(a)(1) and
16 3439.09 and other applicable state statutes; and

17 (b) That the Four Year Transfer be preserved for the benefit of the
18 Debtors' estates pursuant to 11 U.S.C. § 551.

19 3. On the Third Claim for Relief:

20 (a) That the Four Year Transfer made to Defendant be avoided
21 pursuant to 11 U.S.C. §§ 544(b) and 550, California Civil Code §§ 3439.04(a)(2),
22 3439.05 and 3439.09 and other applicable state statutes; and

23 (b) That the Four Year Transfer be preserved for the benefit of the
24 Debtors' estates pursuant to 11 U.S.C. § 551.

25 4. On the Fourth Claim for Relief:

26 (a) That the One Year Transfer made to Defendant be avoided
27 pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550 and other applicable statutes; and

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1 (b) That the One Year Transfer be preserved for the benefit of the
2 Debtors' estates pursuant to 11 U.S.C. § 551.

3 5. On All Claims for Relief:

4 (a) For Plaintiff's costs of suit incurred herein;

5 (b) For pre-judgment interest on any amount recovered at the lawful
6 rate in an amount to be established according to proof at trial; and

7 (c) For such other and further relief as this Court deems necessary
8 and appropriate.

9
10 DATED: June 7, 2006

WEINSTEIN, WEISS & ORDUBEGIAN LLP

11
12 By 
13 GIL HOPENSTAND
14 Attorneys for David L. Ray, Chapter 7
Trustee

B. 104 (Rev. 8/99)	<h2 style="margin:0;">ADVERSARY PROCEEDING SHEET</h2> <p style="margin:0;">(Instructions on Reverse)</p>	ADVERSARY PROCEEDING NUMBER (For Court Use Only)
PLAINTIFFS Address	DEFENDANTS Address	
ATTORNEYS (Firm Name, Address, and Telephone Number) Bar ID: Telephone # Fax #	ATTORNEYS (if known) Bar ID: Telephone # Fax #	
PARTY (Check one box only) 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 U.S. NOT A PARTY		
CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved)		
NATURE OF SUIT (Check the one most appropriate box only)		
454 To recover money or property 435 To determine validity, priority, or extent of a lien or other interest in property 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property 424 To object or to revoke a discharge 11 U.S.C. § 727	455 To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan 426 To determine the dischargeability of a debt 11 U.S.C. § 523 434 To obtain an injunction or other equitable relief 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan	456 To obtain a declaratory judgment relating to any of the foregoing causes of action 459 To determine a claim or cause of action removed to a bankruptcy court 498 Other (specify)
ORIGIN OF PROCEEDING (Check one box only)	1 Original Proceeding 2 Removed Proceeding 4 Reinstated or Reopened 5 Transferred from Another Bankruptcy Court	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND	NEAREST THOUSAND \$	OTHER RELIEF SOUGHT
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR	BANKRUPTCY CASE NUMBER	
DISTRICT IN WHICH CASE IS PENDING Central District of California	DIVISIONAL OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NUMBER
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE
FILING FEE (Check one box only)	FEE ATTACHED FEE NOT REQUIRED FEE IS DEFERRED	
DATE	PRINT NAME	SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/S/</i>

ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the Clerk of the Court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it **do not** replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. This form is required for the use of the Clerk of the Court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the Clerk of the Court for each complaint filed. The form is largely self-explanatory.

Parties. The names of the parties to the adversary proceeding **exactly** as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

Cause of Action. Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint seeking damages for failure to disclose information, Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.," or "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. § 544."

Nature of Suit. Place an "X" in the appropriate box. Only one box should be checked. If the cause fits more than one category of suit, select the most definitive.

Origin of Proceedings. Check the appropriate box to indicate the origin of the case:

1. Original Proceeding.
2. Removed from a State or District Court.
4. Reinstated or Reopened.
5. Transferred from Another Bankruptcy Court.

Demand. On the next line, state the dollar amount demanded in the complaint in thousands of dollars. For \$1,000, enter "1," for \$10,000, enter "10," for \$100,000, enter "100," if \$1,000,000, enter "1000." If \$10,000,000 or more, enter "9999." If the amount is less than \$1,000, enter "0001." If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

Bankruptcy Case In Which This Adversary Proceeding Arises. Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed and the name of the presiding judge.

Related Adversary Proceedings. State the names of the parties and six-digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending and the name of the presiding judge.

Filing Fee. Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

Signature. This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not represented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.