

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In Re: )  
)  
SUBMICRON SYSTEMS )  
CORPORATION. ) Chapter 11  
)  
Debtors. ) Case Nos. 99-2959  
\_\_\_\_\_ ) through 99-2962-SLR  
)  
HOWARD COHEN, )  
)  
Plaintiff, ) Civil Action No. 02-714-SLR  
)  
v. ) Adv. Proc. No. A-01-6214-SLR  
)  
EXCELERATED AUTOMATION, )  
)  
Defendant. )

**MEMORANDUM ORDER**

At Wilmington this 3rd day of March, 2003, having reviewed plaintiff's motion for summary judgment, and defendant's having failed to respond to such;

IT IS ORDERED that said motion (D.I. 8) is granted, for the reasons that follow:

1. 1. A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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). The moving party bears the burden of

proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477

U.S. 317, 322 (1986).

2. By not responding to plaintiff's request for admissions, pursuant to Fed.R.Civ.P. 36 and Fed.R.Bankr.P. 7036, defendant is deemed to have admitted that the transfers to defendant in the aggregate amount of \$15,550 are avoidable:

a. The transfers were to or for the benefit of a creditor (defendant);

b. The transfers were on account of antecedent debt;

c. The transfers were made while the debtors were insolvent;

d. The transfers were made within ninety (90) days before the petition was filed; and

e. The transfers enabled defendant to receive more than it would have received if: (1) the case were a case under Chapter 7 of Title 11 of the United States Code; (2) the transfers had not been made; and (3) defendant had received payment of the debt underlying the transfers to the extent provided by the provisions of Chapter 7.

(D.I. 5, Ex. A)

3. Defendant has not made any factual showing that the transfers were made in the ordinary course of business or financial affairs of the debtor and, therefore, the transfers are not unavoidable pursuant to 11 U.S.C. § 547(c)(2).

4. Defendant has not made any factual showing that it extended new value to or for the benefit of debtor and, therefore, the transfers are not unavoidable pursuant to 11 U.S.C. § 547(c)(4).

5. IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment in favor of plaintiff and against defendant.

Sue L. Robinson  
United States District Judge