

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SUMMIT METALS, INC. )  
 )  
 Plaintiff, )  
 )  
 v. )  
 ) Civil Action No. 00-387 (KAJ)  
 RICHARD E. GRAY, et al., )  
 )  
 Defendants. )  
 )

**MEMORANDUM ORDER**

This matter is an adversary proceedings related to the bankruptcy of Summit Metals, Inc. Presently before the court is plaintiff's Second Motion for Partial Summary Judgment. (Docket Item ["D.I."] 74; the "Motion".) The plaintiff ("Summit") asserts it is entitled to summary judgment on the third claim of its Complaint,<sup>1</sup> which alleges that one of the defendants, Richard Gray ("Gray"), misappropriated millions of dollars from Summit's predecessor in interest, a corporation known as the Chariot Group ("Chariot"), while Gray was the Chairman of the Board and sole member of the Board of Directors of Chariot. (See D.I. 1 at ¶¶ 107-13; D.I. 71 at 1.) For the following reasons, the Motion is denied.

The Complaint alleges that Gray manipulated Chariot and related companies to cause them to pay to him and other entities under his control several million dollars in unearned, bogus management fees, consulting fees, bonuses, and dividends. (D.I. 1 at

---

<sup>1</sup>The parties have apparently been operating under the impression that Summit's First Amended Complaint has been filed in this action. While that document was submitted (see, e.g., D.I. 150 at Ex. 1), it was not formally filed, so, for purposes of the present Motion, the original Complaint is the operative pleading.

¶109.) Summit claims it is entitled to summary judgment on these counts because it is “indisputable” that Gray received several million dollars from Chariot and because Chariot’s former chief operating officer testified that he could not identify anything that Gray had done to justify the payments of those sums. (See D.I. 71 at 7-9.)

Gray<sup>2</sup> counters by affidavit that he in fact performed services warranting the payment of certain fees and that the chief operating officer would not have been in a position to know of those services. (See Affidavit of Richard E. Gray, dated July 10, 2002 (“Aff.”), attached to D.I. 92.) He asserts that “disputed facts and unresolved questions include the following: (a) What amounts were paid by Chariot, to whom and for what time period? (b) What was the relationship of Gray to [certain entities related to Chariot]? (c) What was the nature of the work or services performed by Gray? [and] (d) What was the value of Gray’s services? Were the payments made excessive or fair?” (*Id.* at ¶ 4.) Summit’s response to Gray’s argument and affidavit is simply to say that it is insufficient to create a material issue of fact.

Summit previously moved for partial summary judgment on the first claim in its Complaint, which sought to rescind certain corporate transactions involving entities related to Chariot. (See D.I. 96 at 1.) That motion was denied because there were material issues of fact that remained in dispute. (*Id.* at 12-13.) The conclusion reached then is the same now. It simply does not follow that because Summit has developed what it believes is impressive evidence of Gray’s malefactions that it has created a

---

<sup>2</sup>The brief in opposition to the Motion was filed on behalf of all of the defendants. (D.I. 92.) For ease of reference, this Order will refer only to Gray.

record free of any evidence from which a reasonable fact finder could determine that it has not carried its burden of proof on each element of the third claim in the Complaint.

As was pointed out by the court on Summit's last motion for partial summary judgment, the well-known standard under Federal Rule of Civil Procedure 56 requires that the record show there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. In determining whether a movant has made the requisite showing, the court is required to review all the evidence, including self-serving affidavits, in the light most favorable to the non-movant and to draw every inference in the non-movant's favor. See Fed.R.Civ.P. 56(c); *Valhal Corp. v. Sullivan Assocs., Inc.*, 44 F.3d 195, 200 (3d Cir. 1995).

With regard to the present Motion, Summit has adduced evidence indicating that Gray made a great deal of money in his dealings with entities that he controlled. It has not, however, created a record from which it can be said, when viewing the evidence as is required at this stage, that it is entitled to judgment as a matter of law on the third claim in the Complaint.

Trial is scheduled to begin shortly. Summit will have its opportunity to resolve the matter on a fully developed record then.

Accordingly, it is hereby ORDERED that the plaintiff's Motion (D.I. 74) is DENIED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

DATE: October 29, 2003  
Wilmington, Delaware