

United States Bankruptcy Court

District of Massachusetts

IN RE  CD TITLES, INC.,  Debtor
MARK DEGIACOMO, CHAPTER 7 TRUSTEE,  Plaintiff  vs.  DAVID DEEVER BROWN, individually and doing business as Simply Magazine and Simply Media, SIMPLY MAGAZINE, INC. and SIMPLY MEDIA, INC. ,  Defendants

Chapter 7  
Case No. 98-17026

Adversary Proceeding  
No. 00-1383

**ORDER**

Upon consideration of 1) the Plaintiff's Complaint; 2) the Plaintiff's Motion for Injunction [sic] Relief; 3) the Plaintiff's Motion for Attachment; 4) the Affidavit of Mark DeGiacomo, Esq. in support of Plaintiff's Motion for Injunctive Relief and Motion for Attachment; 5) the Plaintiff's Certificate of No Liability Insurance; 6) the Memorandum in Opposition by Defendant David Deaver Brown to Motion for Injunctive Relief and Motion for Attachment; 6) the Declaration of David Deaver Brown; 7) the arguments of the parties at the hearing held on September 13, 2000; 8) the Memorandum in Further Support of Plaintiff's Motion for Preliminary Injunction and for Attachment; 9) the Defendant's Opposition to

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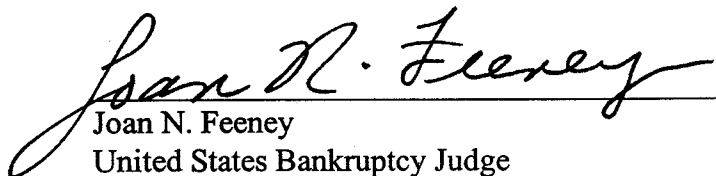
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Trustee's Memorandum in Further Support of Plaintiff's Motion for Preliminary Injunction and for Attachment; 10) the entire record of proceedings in this adversary proceeding and the Debtor's chapter 7 case,

Now therefore, the Court finds that the Plaintiff has not shown the likelihood of success on the merits of his Complaint. The Plaintiff has failed to make a sufficient evidentiary showing that the Defendants received a fraudulent transfer made with actual intent to hinder, delay, or defraud creditors, or that the transfer was made for less than reasonably equivalent value. The Plaintiff has failed to show the value of the assets at the time of the transfer, and therefore the Court is unable to compare the consideration received to the value of assets transferred. Moreover, the Plaintiff has failed to show that the Defendants committed unfair or deceptive acts and practices in connection with a transfer of the Debtor's assets. Accordingly, the Plaintiff is not entitled to the requested preliminary injunctive relief or attachment. Moreover, the Plaintiff has failed to state a claim against the owners of the real estate he seeks to attach, and these entities have not been named as party defendants in this adversary proceeding. The Motion for Injunction [sic] Relief and the Motion for Attachment are denied without prejudice to renewal at a later date based upon sufficient evidence for the entry of equitable relief.

By the Court,

Dated: October 16, 2000

  
Joan N. Feeney  
United States Bankruptcy Judge

cc: James D. Gotz, Esq.  
Peter A. Greenberg, Esq.