

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 )  
E.S.A., INC., ) Bankruptcy Case No. 89-30436  
 )  
Debtor. )  
\_\_\_\_\_)  
 )  
LAURA K. GRANDY, Trustee, )  
 )  
Plaintiff, )  
 )  
vs. ) Adversary Case No. 94-3083  
 )  
COMPASS MEDICAL FINANCE CO. )  
and STEVEN W. CONGER, SR., )  
 )  
Defendant. )

OPINION

This matter having come before the Court on a Motion for Summary Judgment filed by the Plaintiff/Trustee, Laura K. Grandy, and a Memorandum in Opposition thereto filed by Defendants; the Court, having reviewed the pleadings and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

In order to prevail on a Motion for Summary Judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure made applicable to adversary proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure. Rule 56(c) reads in part:

The judgment sought shall be rendered forthwith 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 a judgment as a matter of law.

See: Donald v. Polk County, 836 F.2d 376 (7th Cir. 1988).

The United States Supreme Court has issued a series of opinions which encourage the use of summary judgment as a means of disposing of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Matsushita Electric Industrial Company v. Zenith Radio Corp., 475 U.S. 574 (1986).

The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute. Farries v. Stanadyne/Chicago Division, 832 F.2d 374 (7th Cir. 1987), quoting Wainwright Bank & Trust Company v. Railroadmen's Federal Savings & Loan Assn., 806 F.2d 146 (7th Cir. 1986).

The burden is on the moving party to show that no genuine issue of material fact is in dispute. See: Anderson, supra, at 256. There is no genuine issue for trial if the record, taken as a whole, does not lead a rational trier of fact to find for the non-moving party. See: Matsushita, supra, at 587.

In reviewing the pleadings presently before the Court on the Motion for Summary Judgment and the attachments thereto, together with the record of this adversary proceeding, the Court finds that summary judgment is not proper in this matter. The Court finds that there is a material fact in dispute as to whether the alleged contract in this matter, attached as Exhibit A to the Plaintiff's Motion for Summary Judgment, is, in fact, a contract between the parties or merely an offer to enter into a contract made by E.S.A., Inc. to Defendant, Compass Medical Finance Co. Furthermore, the Court finds that the Plaintiff's reliance on the Defendant's failure to answer a certain Request to Admit served

on August 2, 1996, to show that there are no undisputed material facts is without proper basis given that the Defendant was deposed within thirty days of the service of the Request to Admit and that the matters covered in the Request to Admit were also covered in the Defendant's deposition. As such, the Court finds that, in addition to the question of whether there is a valid written contract between the parties, there are also additional factual disputes which will require the presentation of further evidence at a trial. Therefore, the Court finds that the Motion for Summary Judgment filed by the Trustee/Plaintiff must be denied pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, and that trial in this matter should be rescheduled at the earliest possible moment.

ENTERED: March 13, 1997.

/s/ GERALD D. FINES  
United States Bankruptcy Judge