

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Lakeville Motor Express, Inc.,

Debtor.

Bky. No.17-40145

Chapter 7

John R. Stoebner, Trustee for the Bankruptcy
Estate of Lakeville Motor Express, Inc.,

Plaintiff,

v.

Adv. Pro. No.18-

LME, Inc., and Roger D. Wilsey, Sr.,

Defendants.

COMPLAINT

Plaintiff John R. Stoebner (the “Trustee”), Chapter 7 trustee for the Bankruptcy Estate of Lakeville Motor Express, Inc., for his Complaint against Defendants LME, Inc., and Roger D. Wilsey, Sr., alleges and states as follows:

1. This adversary proceeding is commenced pursuant to Fed. R. Bankr. P. 7001 et seq. and 11 U.S.C. §§ 547(b) and 550. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 7001(1) and Local Rule 1070-1. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. §157(b) (2). The petition commencing this case under Chapter 7 was filed January 20, 2017 (the “Petition Date”). John R. Stoebner was appointed as Trustee for the Chapter 7 bankruptcy estate; this case is now pending before this Court.
2. Defendants are subject to jurisdiction in this Court, and venue is proper pursuant to 28 U.S.C. § 1409.

3. The Debtor, Lakeville Motor Express, Inc., (the “Debtor”) was incorporated in 1948 as Wren, Inc.

4. The name of Wren, Inc., was changed to Lakeville Motor Express, Inc., in 1994.

5. The Debtor is a wholly owned subsidiary of Lakeville Transportation, Inc.

6. Lakeville Transportation, Inc., was incorporated September 24, 1997, as Taylor Wilsey, Ltd., Inc.

7. On July 30, 2015, the name of Taylor Wilsey, Ltd., was changed to Lakeville Transportation, Inc.

8. At the time of the bankruptcy filing, Kevin Deming was president of the Debtor.

9. In 2009, Kevin Deming acquired 25% of the stock of Lakeville Transportation, Inc.

10. The remaining 75% of the Lakeville Transportation, Inc., stock was owned by Roger Wilsey and his spouse Shari Taylor Wilsey (collectively, the “Wilseys”).

11. On July 31, 2015, the Wilseys sold their remaining stock in Lakeville Transportation, Inc., to Kevin Deming.

12. The July 31, 2015 sale was made pursuant to a stock purchase agreement and promissory note for \$750,000, payable in installments.

13. By reason of his ownership of Lakeville Transportation, Inc., and his position as president of the Debtor, Kevin Deming is an “insider” of the Debtor pursuant to 11 U.S.C. § 101(31)(B).

14. Defendant LME, Inc., was incorporated November 30, 2000, as Superior Cartage, Inc.

15. On October 21, 2014, the name of Superior Cartage, Inc., was changed to LME, Inc.

16. On or about December 18, 2009, the Debtor was sold to the Wilseys.

17. On or about November 20, 2000, Wren Equipment, LLC was organized with Roger Wilsey as Manager.

18. As reflected in an August 1, 2015, Vehicle Lease Agreement, Wren Equipment, LLC leased to the Debtor various trucking equipment including tractors, semi-trailers, and other equipment used in the cartage operations of the Debtor.

19. On or about March 1, 2005, Wren Enterprises, LLC was organized with Roger Wilsey as Manager.

20. At some point, Wren Enterprises, LLC acquired the terminal property at 2975 Partridge Road, Roseville, Minnesota (the "Terminal Property").

21. The Terminal Property was utilized by the Debtor as its primary location for its cartage operations.

22. The Debtor paid rent to Wren Enterprises, LLC for the Terminal Property.

23. On or about March 3, 2015, Wren Enterprises, LLC transferred the Terminal Property to RLF 1-B SPE, LLC for a reported sale price of \$4,062,500.

24. The Debtor continued to pay rent to RLF 1-B SPE, LLC for the use of the Terminal Property.

25. On or about December 31, 2014, the Debtor and LME, Inc., entered into a "Cartage Operator Agreement".

26. Under the terms of the Cartage Operator Agreement, LME, Inc., agreed to pay the Debtor for freight delivered to it by the Debtor for transport by LME, Inc.

27. Also on or about December 31, 2014, the Debtor and LME, Inc., entered into an "Administrative Services Agreement".

28. Under the terms of the Administrative Services Agreement, the Debtor agreed to pay LME, Inc., for certain administrative services to be provided by LME, Inc.

29. From at least January 1, 2016, through the Petition Date, essentially all of the Debtor's bookkeeping was handled by employees of LME, Inc.

30. From at least January 1, 2016, through the Petition Date, essentially all of the Debtor's

31. From at least January 1, 2016, through the Petition Date, essentially all of the Debtor's payments to vendors were handled by employees of LME, Inc.

32. From at least January 1, 2016, through the Petition Date, essentially all of the Debtor's payments to employees were handled by employees of LME, Inc.

COUNT ONE
(Avoidance of Security Interest)

33. The Trustee incorporates by reference all of the allegations contained in the above paragraphs of this complaint.

34. From time to time, LME, Inc., advanced funds or otherwise made loans to the Debtor.

35. Between July 25, 2016, and September 1, 2016, LME, Inc., made not less than \$1,075,000 in advances to the Debtor, as follows:

<u>Date</u>	<u>Advance</u>
7/25/2016	\$100,000
7/29/2016	\$100,000
8/2/2016	\$100,000
8/4/2016	\$100,000
8/5/2016	\$150,000
8/9/2016	\$25,000
8/12/2016	\$150,000
8/15/2016	\$350,000

36. On or about September 1, 2016, Lakeville Transportation, Inc., and the Debtor executed a "Secured Promissory Note" to LME, Inc.

37. The Secured Promissory Note contemplated future discretionary advances up to \$500,000, later amended to \$1 million.

38. Also on September 1, 2016, Lakeville Transportation, Inc., and the Debtor executed a Security Agreement.

39. Pursuant to the Security Agreement, LME, Inc., was granted a security interest in substantially all the property of Lakeville Transportation, Inc., and the Debtor.

40. The security interest granted pursuant to the Security Agreement was to secure advances under the Secured Promissory Note as well as all obligations of Lakeville Transportation, Inc., and the Debtor to LME, Inc.

41. Subsequent to September 1, 2016, LME, Inc., made advances of \$125,000 to the Debtor.

42. Subsequent to September 1, 2016, the Debtor repaid not less than \$415,000 to LME, Inc.

43. Throughout 2016, revenues to the Debtor under the Cartage Operator Agreement declined substantially.

44. On November 18, 2016, LME, Inc., terminated the Cartage Operator Agreement.

45. On November 19, 2016, the Debtor closed its doors.

46. On November 19, 2016, Union employees were locked out, with unpaid wages alleged to be approximately \$185,000.

47. The Debtor's petition in this case shows that the Debtor has substantial liabilities for other unsecured claims, including \$510,700 in disputed unpaid contributions to Central States Pension and Health and Welfare Fund, and \$90,092,302.70 in disputed withdrawal liability to Central States Pension and Health and Welfare Fund.

48. Central States Health and Welfare Fund has filed proof of claim No. 14 in the amount of \$304,773.69.

49. Central States Pension Fund has filed proof of claim No. 15 in the amount of \$276,397.02.

50. Central States Southeast & Southwest Areas Pension Fund has filed proof of claim No. 16 for alleged withdrawal liability in the amount of \$90,092,302.70.

51. At the time of extracting the September 1, 2016, grant of security interest from the Debtor, LME, Inc., was an insider of the Debtor, by reason of, among other things, Kevin Deming's

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daughter was married to Shari Taylor Wilsey's son, and thus a "relative" under 11 U.S.C. § 101(31)(B)(vi).

52. In addition, LME, Inc., and the Wilseys and affiliates were in control of the Debtor within the scope of 11 U.S.C. § 101(31)(B)(iii), in that, among other things:

- LME, Inc., effectively controlled revenues to the Debtor under the December 31, 2014, Cartage Operator Agreement.
- LME, Inc., exercised various management functions for the Debtor by reason of the December 31, 2014, Administrative Services Agreement.
- Basic bookkeeping and financial management services for the Debtor were provided by Karen Vanney, Vice President—Finance for LME, Inc. Various books and records for the Debtor, including financial books and records, were maintained at the premises of LME, Inc.
- At times material hereto, the Debtor owned little trucking equipment; its trucking fleet was leased from Wren Equipment LLC, an entity organized by Roger Wilsey. Wren Equipment LLC had the same post office box as LME, Inc.

53. The September 1, 2016, grant of security interest to LME, Inc., constituted a transfer of property or an interest in property (the "Transfer") under 11 U.S.C. §101(54).

54. At the time of the Transfer, LME, Inc., was a creditor of the Debtor.

55. The Transfer was for or on account of antecedent debts owed by the Debtor to LME, Inc. at the time the Transfer was made.

56. The Transfer was made for the benefit of LME, Inc.

57. The Debtor was insolvent at the time of the Transfer.

58. The Transfer, if not avoided, would enable LME, Inc., to recover more than it would receive as a creditor if (a) the Debtor's bankruptcy case were a case under chapter 7 of Title 11 of the United States Code, (b) the Transfer had not been made and (c) the Defendant received payment of its debt to the extent provided by the provisions of Title 11 of the United States Code.

59. Pursuant to 11 U.S.C. §547(b), the Transfer is avoidable.

Count Two

(Avoidance and Recovery of Preferential Payments)

60. The Trustee incorporates by reference all of the allegations contained in the above paragraphs of this complaint.

61. During the 90 days preceding the Petition Date, and between 90 days and one year before the Petition Date, Defendant LME, Inc., received payments from the Debtor of not less than \$4,316,674 (collectively, the “Monetary Transfers”).

62. Attached hereto as Exhibit A, compiled from bank statements and check registers of the Debtor, is a listing of \$1,595,745 in payments made by the Debtor to LME, Inc., within the ninety days preceding the Petition Date.

63. Attached hereto as Exhibit B, compiled from bank statements and check registers of the Debtor, is a listing of \$2,720,929 in payments made by the Debtor to LME, Inc., between ninety days and one year preceding the Petition Date.

64. At the time of the Monetary Transfers, LME, Inc., was a creditor of the Debtor.

65. The Monetary Transfers were for or on account of antecedent debts owed by the Debtor to LME, Inc. at the time the Monetary Transfers were made.

66. The Monetary Transfers were made for the benefit of LME, Inc.

67. The Debtor was insolvent at the time of the Monetary Transfers.

68. The Monetary Transfers enabled LME, Inc., to recover more than it would receive as a creditor if (a) the Debtor's bankruptcy case were a case under chapter 7 of Title 11 of the United States Code, (b) the transfers had not been made and (c) the Defendant received payment of its debt to the extent provided by the provisions of Title 11 of the United States Code.

69. Pursuant to 11 U.S.C. §547(b), the Monetary Transfers are avoidable.

70. Pursuant to 11 U.S.C. §550 (a) (1), the Trustee is entitled to recover from the transferee the Monetary Transfers or the value of the property transferred.

Count Three

**(Avoidance and Recovery of Preferential Payments
For the Benefit of Insider Guarantor)**

71. The Trustee incorporates by reference all of the allegations contained in the above paragraphs of this complaint.

72. Defendant LME, Inc., has filed a proof of claim No. 85-1 for \$331,410.17 in payments to United States Fire Insurance as guarantor of the Debtor's obligations for workers' compensation insurance.

73. Between 90 days and one year prior to the petition, the Debtor paid \$352,471.40 to United States Fire Insurance (the "Insurance Payments). Attached hereto as Exhibit C, compiled from bank statements and check registers of the Debtor, is a listing of Insurance Payments made by the Debtor to United States Fire Insurance between ninety days and one year preceding the Petition Date.

74. At the time of the Insurance Payments to United States Fire Insurance United States Fire Insurance was a creditor of the Debtor.

75. At the times of the Insurance Payments, LME, Inc., was a creditor of the Debtor.

76. The Insurance Payments were for or on account of antecedent debts owed by the Debtor to United States Fire Insurance at the times the Insurance Payments were made.

77. The Insurance Payments were made for the benefit of LME, Inc., as a guarantor of the Debtor's obligations to United States Fire Insurance.

78. The Debtor was insolvent at the times of the Insurance Payments.

79. The Insurance Payments enabled LME, Inc., to recover more than it would receive as a creditor if (a) the Debtor's bankruptcy case were a case under chapter 7 of Title 11 of the United States Code, (b) the transfers had not been made and (c) the Defendant received payment of its debt to the extent provided by the provisions of Title 11 of the United States Code.

80. Pursuant to 11 U.S.C. §547(b)(i), the Insurance Payments are avoidable with respect

to LME, Inc., as an insider.

81. Pursuant to 11 U.S.C. §550 (a) (1), the Trustee is entitled to recover from LME, Inc., as the entity for whose benefit the Insurance Payments were made or the value of the property transferred.

**Count Four
(Fraudulent Transfer—Tire and Parts Inventory)**

82. The Trustee incorporates by reference all of the allegations contained in the above paragraphs of this complaint.

83. Between April 1, 2016 and September 30, 2016, the Debtor purchased and paid not less than \$456,336.40 for tires.

84. The payments the Debtor made for tires between April 1, 2016 and September 30, 2016 include \$400,552.10 to Bridgestone Americas, \$39,087.60 to Pomp's Tire Service, Inc., and \$16,696.69 to Michelin North America.

85. To an extent not yet known to the Trustee, some of the tires may have been installed on equipment leased from Wren Equipment.

86. Notwithstanding the extent to which tires may have been installed on equipment leased from Wren Equipment, the Debtor's balance sheets show that its Tire and Parts Inventory increased from \$172,562.69 as of April 2, 2016, to \$256,212.85 as of August 27, 2016.

87. As of October 1, 2016, the Debtor had transferred its remaining Tire and Parts Inventory to Defendant LME, Inc.

88. LME, Inc., paid \$78,481.88 for the parts inventory.

89. On information and belief, LME, Inc., made no separate payment for the Debtor's tire inventory.

90. The October 1, 2016, balance sheet of the Debtor no longer contains an entry for Tire and Parts Inventory.

91. The transfer of the Debtor's Tire and Parts Inventory to Defendant LME, Inc., was

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a fraudulent transfer avoidable under 11 U.S.C. §548 because the Debtor did not receive reasonably equivalent value in exchange for the transfer of the Tire and Parts Inventory, and was insolvent under 11 U.S.C. §101(32).

92. Pursuant to 11 U.S.C. §550(a)(1), the Trustee is entitled to recover from Defendant LME, Inc., as the transferee, the transfers or the value of the property transferred.

Count Five
(Fraudulent Transfer—Other Property)

93. The Trustee incorporates by reference all of the allegations contained in the above paragraphs of this complaint.

94. In addition to its transfer of the Tire and Parts Inventory as alleged in Count Four, the Debtor sold to its equipment lessor Wren Equipment various trucking equipment and accessories selected by Wren Equipment for a stated purchase price of \$77,000.

95. Moreover, the remaining non-monetary assets of the Debtor were transferred to LME, Inc.

96. LME, Inc., paid \$35,000 for various office equipment and other assets which had not been fully depreciated on the books of the Debtor.

97. On information and belief, assets which had been fully depreciated were transferred to LME, Inc., without further consideration.

98. To an extent not yet fully known to the Trustee, some of the property fully depreciated on the books of the Debtor had residual value notwithstanding depreciation (“Residual Value Property”).

99. The Residual Value Property included, for example, sixty forklifts, sixteen forklift scales, ninety-nine Duraplate 53’ trailers, and three motor vehicles.

100. The transfer of the Debtor’s Residual Value Property to Defendant LME, Inc., was a fraudulent transfer avoidable under 11 U.S.C. §548 because the Debtor did not receive reasonably equivalent value in exchange for the transfer of the Residual Value Property and was insolvent under

11 U.S.C. §101 (32).

101. Pursuant to 11 U.S.C. §550(a)(1), the Trustee is entitled to recover from LME, Inc., the transfer or the value of the property transferred.

**Count Six
(Fraudulent Transfer—Stock Payment to Roger Wilsey)**

102. The Trustee incorporates by reference all of the allegations contained in the above paragraphs of this complaint.

103. Pursuant to the July 31, 2015, stock purchase agreement, Kevin Deming was obligated to make installment payments for his purchase of the Lakeville Transportation, Inc., stock.

104. By check dated 3/17/2016, the Debtor paid \$16,642.98 to Roger D. Wilsey Sr.

105. Subsequent installment payments on the stock purchase agreement were made from Kevin Deming's personal account.

106. The March 17, 2016, payment of \$16,642.98 to Roger D. Wilsey Sr. was a fraudulent transfer avoidable under 11 U.S.C. §548 because the Debtor did not receive reasonably equivalent value in exchange for its payment and was insolvent under 11 U.S.C. §101 (32).

107. Pursuant to 11 U.S.C. §550 (a) (1), the Trustee is entitled to recover from the transferee the transfer or the value of the property transferred.

**Count Seven
(Disallowance of Claim)**

108. The Trustee incorporates by reference all of the allegations contained in the above paragraphs of this complaint.

109. Defendant LME, Inc., has filed a proof of claim, Claim No. 85-1, in the total amount of \$331,410.17.

110. Pursuant to 11 U.S.C. § 502(d), any claims of Defendant LME, Inc., against the bankruptcy estate shall be disallowed until such time as Defendant pays to the bankruptcy estate an amount equal to the aggregate amount of the avoided transfers.

WHEREFORE, Plaintiff prays for Judgment against Defendants LME, Inc., and Roger D.

Wilsey, Sr., as follows:

1. On Count One, for judgment avoiding the September 1, 2016, Security Agreement;
2. On Count Two, for judgment avoiding the Monetary Transfers and awarding recovery of \$4,316,674, or such other amount as may be determined by the Court, together with interest thereon;
3. On Count Three, for judgment against Defendant LME, Inc., respecting avoidance and recovery of Debtor's preferential payments for the benefit of LME, Inc., as guarantor of obligations to United States Fire Insurance.
4. On Count Four, for judgment against Defendant LME, Inc., avoiding the transfers of the Tire and Parts inventory and awarding recovery of the transfers or the value thereof to the extent not paid for by LME, Inc.
5. On Count Five, for judgment against Defendant LME, Inc., avoiding the transfers of the Residual Value Property and awarding recovery of the transfers or the value thereof in such amount as may be determined by the Court;
5. On Count Six, for judgment against Defendant Roger D. Wilsey, Sr., avoiding the March 17, 2016, payment of \$16,642.98 and awarding recovery of \$16,642.98, together with interest thereon;
6. On Count Seven, for judgment disallowing any claim of Defendant LME, Inc., against the Debtor's bankruptcy estate pursuant to 11 U.S.C. § 502(d) until the judgment is paid in full;
7. For recovery of the Trustee's costs and disbursements herein; and
8. For such other and further relief as may be equitable and just.

Respectfully submitted,

LAPP, LIBRA, THOMSON
STOEBNER & PUSCH, CHARTERED

/s/ Andrew J. Stoebner

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COUNSEL FOR THE TRUSTEE

VERIFICATION

I, John R. Stuebner, as Trustee for the bankruptcy estate of Lakeville Motor Express, Inc., state under penalty of perjury that I have reviewed the foregoing Complaint of Trustee and that facts as stated therein are true and correct to the best of my knowledge, information, and belief.

/e/ John R. Stuebner
John R. Stuebner

EXHIBIT A

LAKEVILLE PAYMENTS TO LME WITHIN 90 DAYS PRIOR TO PETITION

<u>Date</u>	<u>Amount</u>	<u>Check/ACH Number</u>
10/27/16	\$9,997.25	361761
10/28/16	\$196,856.55	ACH 102816
	Notation: Lakeville Motor Express	
11/04/16	\$178,370.92	ACH 110416
	Notation: Lakeville Motor Express	
11/04/16	\$49,844.32	361782
11/10/16	\$184,164.03	ACH 111016
	Notation: Lakeville Motor Express	
11/17/16	\$9,452.12	361797
11/18/16	\$172,834.96	ACH 111816
	Notation: agstp Lakeville Motor Express	
11/25/16	\$154,996.96	ACH 112516
	Notation: agstp Lakeville Motor Express	
11/28/16	\$150,558.48	361802
12/02/16	\$153,453.61	ACH 120216
	Notation: Lakeville Motor Express	
12/09/16	\$2,836.09	ACH 120916
	Notation: Lakeville Motor Express	
12/09/16	\$51,707.68	361808
112/09/16	\$100,000.00	361809
12/12/16	\$25,000.00	561810
12/16/16	\$2,003.95	ACH 121616
	Notation: Lakeville Motor Express	
12/18/16	\$150,000.00	361799

12/30/16

\$3,668.01

361811

Total: \$1,595,745

EXHIBIT B

LAKEVILLE PAYMENTS TO LME BETWEEN
90 DAYS AND ONE YEAR PRIOR TO PETITION

<u>Date</u>		<u>Amount</u>	<u>Check/ACH Number</u>
1/26/16		\$31,002.94	360888
2/5/16	Lakeville Logistics	\$52,421.06	360919
2/16/16		\$19,235.17	360940
2/24/16		\$26,789.39	360979
3/10/16		\$5,314.48	361024
3/29/16		\$25,042.48	361069
4/15/16		\$3,235.80	361126
4/27/16		\$19,212.08	361210
5/11/16		\$5,181.77	351210
5/24/16		\$9,257.61	361253
6/10/16		\$5,382.44	361308
6/28/16		\$8,983.74	361351
7/27/16		\$20,392.41	361434
8/16/16		\$10,625.20	361488
8/19/16		\$252,411.23	ACH 081916
8/26/16		\$248,588.83	ACH 082616
8/30/16		\$17,582.12	361536
9/02/16		\$237,703.96	ACH 090216
9/09/16		\$216,889.17	ACH 090916
9/14/16		\$5,000.00	361677
9/14/16	Superior Cartage	\$111,273.00	internet transfer
9/16/16		\$213,428.10	ACH 091616
9/23/16		\$185,879.05	ACH 092316
9/23/16	Superior Cartage	\$93,894.00	internet transfer

9/29/16	\$10,416.68	361677
9/30/16	\$210,245.34	ACH 093016
10/07/16	\$210,527.96	ACH 100716
10/13/16	\$1,242.00	361730
10/14/16	\$211,549.92	ACH 101416
	Notation: Lakeville Motor Express	
10/21/16	\$252,220.68	ACH 102116

Total: \$2,720,929

EXHIBIT C

LAKEVILLE PAYMENTS TO UNITED STATES
FIRE INSURANCE BETWEEN 90 DAYS AND
ONE YEAR PRIOR TO PETITION

<u>Date</u>	<u>Amount</u>	<u>Check/ACH Number</u>
1/26/16	\$46,588.03	360873
1/31/16	\$13,808.85	360910
2/9/16	\$588.60	360922
2/29/16	\$13,808.85	360999
4/4/16	\$13,808.85	361091
4/5/16	\$50,666.76	361098
5/2/16	\$13,808.85	361182
5/2/16	\$51,815.54	361187
5/31/16	\$13,808.85	361280
6/9/16	\$19,860.13	361290
6/21/16	\$11.88	361328
7/3/16	\$13,808.85	361334
7/7/16	\$18,326.88	361372
7/26/16	\$24,367.29	361402
8/26/16	\$26,010.08	361516
9/22/16	\$31,383.10	361659

Total: \$352,471.40