

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
REFCO INC., <i>et al.</i> ,	:	Case No. 05-60006 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
MARC S. KIRSCHNER,	:	
as Trustee of the Refco Litigation Trust	:	
	:	Adv. Proc. No. 07-[-----]
Plaintiff,	:	
-v-	:	
	:	
Doubledown Media, LLC,	:	
	:	
Defendant.	:	
	:	

**COMPLAINT (A) TO AVOID TRANSFERS PURSUANT TO
11 U.S.C. §§544(B), 547 AND 548, (B) TO RECOVER PROPERTY
TRANSFERRED PURSUANT TO 11 U.S.C. §550 AND (C) OBJECTING
TO THE ALLOWANCE OF CLAIMS PURSUANT TO 11 U.S.C. §502(D)**

Plaintiff Marc S. Kirschner (the “**Trustee**” or “**Plaintiff**”), in his capacity as Court-approved Trustee for the Refco Litigation Trust (the “**Trust**”), brings this action based upon personal knowledge and information and belief to (a) avoid and recover certain transfers made by the debtors (the “**Debtors**”)¹ to the above-captioned defendant, Doubledown Media, LLC, (the “**Defendant**”), and (b) object to the allowance of any claims asserted by Defendant pending return of the subject transfers, and alleges as follows:

¹ The Debtors are comprised of the following entities: Bersec International LLC; Kroeck & Associates, LLC; Lind-Waldock Securities LLC; Marshall Metals, LLC; New Refco Group Ltd., LLC; Refco Administration, LLC; Refco Capital Holdings, LLC; Refco Capital, LLC; Refco Capital Management, LLC; Refco Capital Trading, LLC; Refco Finance Inc.; Refco Financial, LLC; Refco Fixed Assets Management, LLC; Refco F/X Associates, LLC; Refco Global Capital Management LLC; Refco Global Finance Limited; Refco Global Futures, LLC; Refco Global Holdings, LLC; Refco Group, Ltd., LLC; Refco, Inc.; Refco Information Services, LLC; Refco Managed Futures, LLC; Refco Mortgages Securities, LLC; Refco Regulated Companies, LLC; Summit Management, LLC; and Westminster-Refco Management LLC and Refco Capital Markets, Ltd.

BACKGROUND

1. Each of the Debtors filed in this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) on or about October 17, 2005 (the “**Petition Date**”).

2. In an order dated December 15, 2006 (the “**Confirmation Order**”), this Court confirmed the Modified Joint Chapter 11 Plan of Plan of Refco Inc. and Certain of its Direct and Indirect Subsidiaries (the “**Plan**”). In accordance with the Confirmation Order, on December 26, 2006, the Plan became effective and, pursuant to Paragraph 23 of the Confirmation Order, i) the Trust was established “for pursuit of the Contributed Claims,” ii) the “Contributed Claims ... [were] transferred to the [Trust],” and iii) Marc S. Kirschner was appointed as Trustee. The claims and causes of action asserted herein are “Contributed Claims” within the meaning of the Plan, the Confirmation Order, and the Trust, and Mr. Kirschner, as Trustee, is authorized to assert them.

3. Upon information and belief, at all times relevant hereto, Defendant was an unsecured creditor of one or more of the Debtors.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this proceeding under chapter 11 of the Bankruptcy Code, pursuant to 28 U.S.C. §§ 151, 157 and 1334.

5. Plaintiff commences this adversary proceeding pursuant to Rule 7001, *et seq.* of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and sections 544, 547, 548, and 550 of the Bankruptcy Code.

6. Venue in this Court is proper, pursuant to 28 U.S.C. §§ 1408 and 1409, because this adversary proceeding arises under and in connection with a case pending in this District under the Bankruptcy Code.

7. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (F) and (H).

COUNT I

AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS

8. Plaintiff re-alleges and re-asserts the allegations set forth in Paragraphs 1 through 7 as though fully set forth herein.

9. Plaintiff has attached hereto and incorporates by reference Exhibit "A," which is a schedule of transfers made to the Defendant on or within the ninety (90) day period prior to the Petition Date (the aggregate amount of such transfers of property is referred to herein as the "**Transfers**") by one or more of the Debtors (the "**Transfer Debtor(s)**").

10. The Transfers were transfers of an interest in property of one or more of the Transfer Debtor(s).

11. The Transfers were made to or for the benefit of the Defendant, a creditor of one or more of the Transfer Debtor(s).

12. The Transfers were made for or on account of an antecedent debt owed by one or more of the Transfer Debtor(s) to the Defendant before the Transfers were made.

13. Upon information and belief, the Transfers were made while one or more of the Transfer Debtor(s) was or were insolvent.

14. The Transfers were made on or within ninety (90) days before the Petition Date.

15. Upon information and belief, the Transfers enabled Defendant to receive more than Defendant would have received if (a) the Debtors' chapter 11 cases were cases under chapter 7 of the Bankruptcy Code, (b) the Transfers had not been made, and (c) Defendant had received the Transfers to the extent provided by the Bankruptcy Code.

16. By reason of the foregoing, the Transfers constitute avoidable preferences, and the Plaintiff is entitled to an order and judgment avoiding the Transfers under section 547 of the Bankruptcy Code.

COUNT II

AVOIDANCE AND RECOVERY OF FRAUDULENT CONVEYANCE - 11 USC § 548 (A) (1)

17. Plaintiff re-alleges and re-asserts the allegations set forth in paragraphs 1 through 10 and 13 hereof, as if fully set forth herein and, in the alternative, pleads as follows:

18. The Transfers were transfers of an interest in property of one or more of the Transfer Debtor(s).

19. Defendant received the Transfers within ninety (90) days prior to the Petition Date.

20. The Transfer Debtor(s) received less than reasonably equivalent value in exchange for the Transfers.

21. Upon information and belief, the Transfer Debtor(s) (i) was or were insolvent on the date(s) the Transfers were made, (ii) was or were engaged in business or a transaction, or was or were about to engage in such business or a transaction, for which any property remaining with the Transfer Debtor(s) was an unreasonably small capital, or (iii) intended to incur, or believed each would incur, debts that would be beyond the ability of the Transfer Debtor(s) to pay as such debts matured.

22. By reason of the foregoing, the Transfers constitute avoidable fraudulent conveyances, and the Plaintiff is entitled to an order and judgment avoiding the Transfers pursuant to section 548(a)(1) of the Bankruptcy Code.

COUNT III

AVOIDANCE AND RECOVERY OF FRAUDULENT CONVEYANCE - 11 USC § 544 (B)

23. Plaintiff re-alleges and re-asserts the allegations set forth in paragraphs 1 through 10 and 13 hereof, as if fully set forth herein and, in the alternative, pleads as follows:

24. The Transfers were transfers of an interest in property of one or more of the Transfer Debtor(s).

25. Defendant received the Transfers within ninety (90) days prior to the Petition Date.

26. The Transfer Debtor(s) received less than reasonably equivalent value in exchange for the Transfers.

27. Upon information and belief, the Transfer Debtor(s) (i) was or were insolvent on the date(s) the Transfers were made, (ii) was or were engaged in business or a transaction, or was or were about to engage in such business or a transaction, for which any property remaining with the Transfer Debtor(s) was an unreasonably small capital, or (iii) intended to incur, or believed each would incur, debts that would be beyond the ability of the Transfer Debtor(s) to pay as such debts matured.

28. By reason of the foregoing, the Transfers constitute avoidable fraudulent conveyances, and the Plaintiff is entitled to an order and judgment avoiding the Transfers pursuant to section 544(b) of the Bankruptcy Code.

COUNT IV

RECOVERY OF PROPERTY – 11 U.S.C. § 550

29. Plaintiff re-alleges and re-asserts the allegations set forth in Paragraphs 1 through 28 as though fully set forth herein.

30. Defendant is the initial transferee of the Transfers, or the entity for whose benefit the Transfers were made, or the immediate or mediate transferee of the initial transferee receiving such Transfers.

31. Pursuant to section 550(a) of the Bankruptcy Code and by reason of the foregoing, once the Transfers are avoided, the Plaintiff is entitled to recover, as successor-in-interest to the estate(s) of the Transfer Debtor(s), the Transfers.

COUNT V

OBJECTION TO CLAIM – 11 U.S.C. § 502(D)

32. Plaintiff re-alleges and re-asserts the allegations set forth in Paragraphs 1 through 31 as though fully set forth herein.

33. Pursuant to § 502(d) of the Bankruptcy Code, the Court shall disallow any claim of the Defendant because property is recoverable from the Defendant under sections 542, 543, 550, or 553 of title 11, or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of title 11, unless Defendant pays the amount recoverable.

34. Until such time as Defendant returns the Transfers to the Plaintiff, Defendant's claims, whether previously or subsequently scheduled, filed or otherwise asserted or paid in the Debtor(s)' chapter 11 estates, should be disallowed in its/their entirety.

RESERVATION OF RIGHTS

35. The Plaintiff hereby specifically reserves the right to bring any and all other causes of action that it may maintain against Defendant including, without limitation, causes of action arising out of the same transaction(s) set forth herein, to the extent discovery in this action or further investigation by the Plaintiff reveals such further causes of action.

WHEREFORE, the Plaintiff prays for a judgment granting the relief against the Defendant as set forth below:

- A. Avoidance and recovery of the Transfers, pursuant to sections 547(b) and 550 of the Bankruptcy Code.
- B. Avoidance and recovery of the Transfers, pursuant to sections 548 and 550 of the Bankruptcy Code.
- C. Avoidance and recovery of the Transfers, pursuant to sections 544 and 550 of the Bankruptcy Code.
- D. Disallowing any claims of Defendant, until it turns over any Transfers to the Plaintiff, pursuant to section 502(d) of the Bankruptcy Code.
- E. An award of prejudgment interest at the maximum legal rate as of the date hereof and an award of post-judgment interest at the maximum legal rate.
- F. An award of the costs of the suit herein.
- G. An award of such other and further relief the Court deems just and proper.

Dated: New York, New York
October 5, 2007

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: /s/Christopher P. Johnson

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*Counsel to Plaintiff Marc S. Kirschner, as Trustee of
the Refco Litigation Trust*

Attachment A

Preference Recipient: Doubledown Media, LLC.

<u>Date of Payment</u>	<u>Payment Amount</u>
8/16/2005	\$61,100.00
Total Preference Payments	\$61,100.00