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Two Recent Decisions Address the Pleading Standard for Preference Actions

*By Jason W. Harbour and Olivia “Liv” Maier**

In this article, the authors explore two recent court decisions that provide guidance to plaintiffs and defendants in analyzing compliance with the “reasonable due diligence” language of Bankruptcy Code Section 547(b).

Two recent decisions— *Rebein v. Tempel Grain Elevators, LLP*¹ and *Miller v. Prestige Patio Co. Ltd.*² —provide guidance about complying with the “reasonable due diligence” language in 11 U.S.C. § 547(b).

THE CODE

As part of the Small Business Reorganization Act of 2019, Section 547(b) of the Bankruptcy Code was amended to provide that the trustee may, “based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable affirmative defenses under subsection (c),” avoid any transfer of an interest of the debtor in property. Two recent decisions have addressed this language, with one court finding that the plaintiff complied with this requirement and the other court finding that the plaintiff failed to comply.

REBEIN V. TEMPEL GRAIN ELEVATORS, LLP

On October 22, 2025, the U.S. Bankruptcy Court for the District of Kansas denied a motion to dismiss a preference action, finding that the trustee sufficiently pleaded the due diligence requirement under Section 547(b).³

In *Rebein*, prior to filing the complaint, the trustee sent a demand letter requesting that the defendant identify and substantiate any verifiable defenses to avoidance and demanded payment of the transfer amount. Defense counsel responded with explanations, but the trustee proceeded with the complaint.

In the complaint, the trustee stated, in pertinent part, that “Trustee conducted a review of its records and an analysis of any transfers to Defendant

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¹ *Rebein v. Tempel Grain Elevators, LLP* (In re Sandy Rd. Farms, LLC), 2025 Bankr. LEXIS 2720, Adv. Pro. No. 25-07002 (Bankr. D. Kan. Oct. 22, 2025).

² *Miller v. Prestige Patio Co. Ltd.* (In re Christmas Tree Shops, LLC), 2025 Bankr. LEXIS 3152, Adv. Pro. No. 25-50875 (Bankr. D. Del. Dec. 5, 2025).

³ *Rebein*, 2025 Bankr. LEXIS 2720 at *10.

subject to avoidance as well as an examination of applicable and provable defenses (if any) to avoidance of such transfers.”⁴

Additionally, the trustee referenced the previously sent demand letter. “In advance of commencement of this adversary action, Debtor issued a letter dated August 27, 2024 (the ‘Demand Letter’) to Defendant requesting identification and substantiation of any verifiable defenses to avoidance of the Transfers (the ‘Preference Claim’) and otherwise making demand on Defendant for disgorgement of the Transfers. A true and correct copy of the Demand Letter is attached hereto as Exhibit B.”⁵

The complaint further alleged that “Defendant failed to supply any viable and provable basis for defenses to the Preference Claim nor did it disgorge the Transfers.”⁶

The defendant moved to dismiss, arguing that the trustee failed to meaningfully address the affirmative defenses raised in response to the demand letter, and that the generic rejection of these defenses did not satisfy the due diligence requirement of Section 547(b).

The court analyzed the motion to dismiss under Federal Rule of Civil Procedure 9(c), which required the court to evaluate whether the trustee generally alleged that the due diligence requirement was met. Specifically, the court concluded that the trustee’s assertions alleged “that he investigated the transfers and any defenses to their avoidance.”⁷ The court also concluded that the trustee’s allegations were sufficient, stating that:

Trustee’s allegations were competent and sufficient to generally allege the condition precedent of due diligence in the circumstances of the case, taking into account the Defendants’ defenses. Trustee is not required to “plead around the defenses” by describing which defenses he considered and why he determined that they were not viable or what his reaction to Defendant’s explanation of its defenses might have been. It is sufficient that Trustee alleged he did not find any viable defenses. Trustee is further not required to plead his due diligence efforts with any particularity but that they generally occurred as required by Rule 9(c).⁸

⁴ Compl. at ¶8, *Rebein v. Tempel Grain Elevators, LLP* (In re Sandy Rd. Farms, LLC), Adv. No. 25-07002 (Bankr. D. Kan. Jan. 10, 2025).

⁵ Id. at ¶11.

⁶ Id. at ¶12.

⁷ *Rebein*, 2025 Bankr. LEXIS 2720 at *9.

⁸ Id. at *9-10.

As a result, the court denied the motion to dismiss.

MILLER V. PRESTIGE PATIO CO. LTD.

By contrast, on December 5, 2025, the U.S. Bankruptcy Court for the District of Delaware dismissed a trustee’s preference complaint for failure to adequately plead the due diligence requirement of Section 547(b).⁹

In *Miller v. Prestige Patio Co. Ltd.*, the defendant moved to dismiss contending that the trustee had not adequately pleaded due diligence under Section 547(b). The trustee argued that the following statement from the complaint satisfied the requirement: “[A]lthough it is possible that some Transfers might be subject in whole or in part to defenses under 11 U.S.C. § 547(c), Defendant bears the burden of proof pursuant to 11 U.S.C. § 547(g) to establish any defense(s) under 11 U.S.C. § 547(c).”¹⁰

The complaint did not allege that the trustee had investigated the transfers, reviewed debtor records, or considered specific affirmative defenses prior to filing suit. Instead, the only reference to potential defenses was the statement regarding the defendant’s burden under the Bankruptcy Code.

The court concluded that this single statement was insufficient to meet the requirements of Section 547(b). In doing so, the court contrasted the trustee’s complaint against the one in *Off. Comm. Unsecured Creditors v. Nimble Gravity, LLC (In re Pack Liquidating, LLC)*,¹¹ in which the plaintiff specifically alleged as follows:

Plaintiff also performed Plaintiff’s own due diligence evaluation of the reasonably knowable affirmative defenses available to Defendant. As part of Plaintiff’s due diligence, Plaintiff reviewed the books and records in Plaintiff’s possession and identified that Defendant potentially has 0 in invoices qualifying for the subsequent new value defense under section 547(c)(4) of the Bankruptcy Code. However, the subsequent new value defense is an affirmative defense, for which Defendant bears the burden of proof under section 547(g). The potential new value is based on the invoice date in the books and records. As the dates for new value are often based on the shipping dates for goods and the actual dates of service for services, this new value is subject to adjustment. Accordingly, Plaintiff puts Defendant to

⁹ Miller, 2025 Bankr. LEXIS 3152 at *9.

¹⁰ Miller, 2025 Bankr. LEXIS 3152 at *5.

¹¹ Compl., Off. Comm. Unsecured Creditors v. Nimble Gravity, LLC (In re Pack Liquidating, LLC), Adv. No. 24-50048 (Bankr. D. Del. April 22, 2024).

its burden of proof to establish it is entitled to this new value.

Based upon Plaintiff's review of the information, if any, provided by Defendant prior to filing this Complaint, and after performing Plaintiff's own due diligence evaluation of the reasonably knowable affirmative defenses to avoidance of the Transfer(s), Plaintiff has determined that Plaintiff may avoid some or all of the Transfers even after taking into account Defendant's alleged affirmative defenses.¹²

The court also noted that in *Pack Liquidating* the complaint referenced a demand letter sent to the defendant in which the plaintiff requested any evidence the defendant may have to support any affirmative defenses.

The court concluded that the *Miller v. Prestige Patio Co. Ltd.* complaint was insufficient to satisfy the due diligence requirement of 11 U.S.C. § 547(b), stating that the complaint "merely state[d] the obvious" in referencing that the defendant may or may not have certain defenses. As a result, the court dismissed the complaint without prejudice and noted that while no "magic words" are required, some articulation of the trustee's due diligence efforts must appear in the complaint to satisfy Federal Rule of Civil Procedure Rule 9(c) as applied to 11 U.S.C. § 547(b).¹³

PRACTICAL IMPLICATIONS

Together, these decisions suggest that courts may require trustees to allege actual due diligence actions, not merely recite statutory language. Accordingly, these decisions provide useful guidance to plaintiffs and defendants in analyzing compliance with the due diligence language of 11 U.S.C. § 547(b).

¹² Id. at ¶¶ 28-29.

¹³ Miller, 2025 Bankr. LEXIS 3152 at *5, *8.