

IT IS HEREBY ADJUDGED  
and DECREED this is SO  
ORDERED.

The party obtaining this order is responsible for  
noticing it pursuant to Local Rule 9022-1.

Dated: December 14, 2006



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IN THE UNITED STATES BANKR

FOR THE DISTRICT OF A

*Randolph J. Haines*

RANDOLPH J. HAINES  
U.S. Bankruptcy Judge

In re:

(Chapter 7 Case)

XEBA, INC.,

No. 2:03-bk-18093-RJH

Debtor.

Adv. No. 05-813

MORRIS C. AARON, Chapter 7 Trustee,

Plaintiff,

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

vs.

ABC APPLIANCE, INC., a Michigan  
corporation, dba ABC WAREHOUSE,

Defendant.

Following a review of the Motion for Summary Judgment, Statement of Facts in Support Thereof, Declaration of Stacie Witten, the pleadings on the docket and matters presented at oral argument December 11, 2006, the Court makes the following findings of fact:

**Findings of Fact**

1. On October 14, 2003 (the "Petition Date"), Debtor filed for Chapter 7 relief in the United States Bankruptcy Court for the District of Arizona (Phoenix Division).

2. Plaintiff and Trustee Morris Aaron was elected by the creditor body of Debtor as the Trustee of the Chapter 7 Estate, ("Trustee")

3. (The Complaint alleges that ABC Appliance, Inc., ("ABC") is indebted to the Debtor in the amount of \$50,000.00 for receivables that arose before the bankruptcy petition was filed October 13, 2003.

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2 4. ABC through its counsel filed its Answer denying liability and asserting that it  
3 was entitled to unspecified credits.

4 5. ABC informally provided Trustee's counsel with information purporting to  
5 establish that ABC was entitled to offsets, which was reviewed by Stacie Witten on behalf  
6 of the Trustee and is attached to the Statement of Facts in Support of the Motion for  
7 Summary Judgment.

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9 6. Stacie Witten filed a Declaration in which she notes that her analysis reveals the  
10 following:

11 7. Exhibit "A" to the Declaration reflects that the sum of \$2,451.00 as a return  
12 dated November 21, 2003. This does not include a "Return Authorization" or "RA"  
13 number" or any record of shipment of the return, and so it is not a valid offset. ( Declaration  
14 ¶7)

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16 8. Exhibit "A" reflects the following returns with an "RA" number and shipping  
17 label and so the Debtor acknowledges the following offsets in the total amount of  
18 \$17,211.15. (Declaration ¶8).

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Amount authorized for offset	Ship Date	RA number
\$1037.70	10/23/2003	TX033000124
\$2083.95	10/16/2003	TX033000123
\$1292.85	10/07/2003	TX033000122
\$3379.65	9/25/2003	TX033000121
\$9417.00 (the sum of \$471.45 did not have an authorization for return, so no credit is given	9/16/2003	TX033000120

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2 for the full \$9888.45 as requested by ABC )

3 9. Exhibit "A" reflects that as of August 14, 2003, the sum of \$172,602 was due  
4 and owing to the Debtor by ABC Appliance. (Declaration ¶9).

5 10. Exhibit "A" includes two checks that were purportedly paid to the Debtor:  
6 Check #357112 dated September 2, 2003 for \$102,514, and check #358843 for \$24,128.00  
7 dated September 22, 2003, for total payments of \$126,642.00. (Declaration ¶10).

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9 11. Based on the records of ABC Appliance, the following amounts are due and  
10 owing: (Declaration ¶11).

11 Balance Due per ABC records on August 14, 2003	\$172,602.00
12 Allowed credits per paragraph 8 above	(\$17,211.15)
13 Check #357112	(\$102,514.00)
14 Check #358843	(\$ 24,128.00)
15 TOTAL DUE TO DEBTOR	\$28,748.85

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18 12. Based on the Defendant's own records the Declarant concluded that that the  
19 Defendant owes the Debtor \$28,748.85. (Declaration ¶12).

20 13. Trustee filed its Motion for Summary Judgment on September 20, 2006, along  
21 with a Statement of Facts and Declaration under oath in support thereof.

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23 14. On September 22, 2006, Trustee through his counsel noticed Defendant through  
24 its counsel of the December 11, 2006 hearing and of the order setting the briefing schedule  
25 in this matter, which included this Court's Order that "Failure to timely file a responsive  
26 memorandum shall constitute consent to the granting of the motion."

15. On October 16, 2006, Trustee through his counsel noticed Defendant through its  
counsel of the December 11, 2006 continued status hearing on the complaint.

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2 16. Counsel for the Trustee avowed at the December 11 hearing that while she had  
3 informally granted two extensions for Defendant to respond to the Motion, that the last of  
4 these extensions expired November 13, and that no further extension had been granted, and  
5 that Defendant was aware of the pending Motion for Summary Judgment as indicated by e-  
6 mail correspondence between herself and Defendant's counsel.

7  
8 17. No response to the Motion for Summary Judgment was filed with the Court,  
9 notwithstanding due notice of the Order setting forth filing deadlines.

10 18. Defendant did not appear at the December 11, 2006 hearing, notwithstanding due  
11 notice thereof;

12 19. This is an action to collect an account receivable.

13 **Conclusions of Law**

14 19. Trustee is entitled to Judgment against Defendant in the amount of \$28,748.85.

15 20. Trustee is entitled to interest on the judgment amount at the prime rate of interest  
16 [In re NETtel Corp., Inc., 327 B.R. 8 (Bankr. D.C. 2005)] from August 14, 2003 on the  
17 principal amount of \$28,748.85 from August 14, 2003 until paid.

18 21. Trustee is entitled to attorneys fees and costs against Defendant pursuant to  
19 A.R.S. §12-341.01, and may submit an application for payment of same.  
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22 **SIGNED AND DATED AS SET FORTH HEREIN ABOVE**  
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