

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

824 MARKET STREET  
WILMINGTON, DE 19801  
(302) 252-2925

September 30, 2008

John D. Demmy  
Stevens & Lee, P.C.  
1105 N. Market Street, 7<sup>th</sup> Floor  
Wilmington, DE 19801

Counsel to Defendants

Seth A. Niederman  
Fox Rothschild LLP  
919 N. Market Street, Suite 1300  
Wilmington, DE 19801-3046

Michael J. Pappas  
C. Scott Osborn  
Harrison Law Group  
40 West Chesapeake Ave., Suite 600  
Towson, MD 21240

Counsel to Montague S. Claybrook,  
Chapter 7 Trustee

**Re: Montague S. Claybrook v. Les Schwab Tires Centers of Oregon,  
Inc. t/a Les Schwab Tires, and Les Schwab Warehouse Center,  
Inc.  
Adv. Proc. No. 07-51760**

Dear Counsel:

This is with respect to Defendants' motion (Doc. # 18) for a determination of whether the claims in this adversary proceeding are core or non-core. For the reasons briefly described below, I find that the relevant claims are non-core.

The relevant claims seek the recovery of a \$209,053.41 alleged obligation under four counts: (1) breach of contract, (2) unjust enrichment, (3) quantum meruit, and (4) turnover of estate property. In the alternative, the complaint seeks to avoid and recover alleged transfers pursuant to 11 U.S.C. §§ 547, 548, 549 and 550.

With respect to the first four counts, the complaint is unclear as to what portion of the \$209,053.41 obligation occurred post-petition. The Defendants argue that only a limited portion occurred post-petition. The Plaintiff argues that since some portion of it did occur post-petition, it occurred during the administration of the estate and therefore these counts are core proceedings. I do not believe this decision turns on the issue of what portion of the claim occurred post-petition. It is without dispute that this is essentially a contract dispute which could be addressed outside the bankruptcy arena. As our District Court recently observed:

If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding; it may be related to the bankruptcy because of its potential effect, but under section 157(c)(1) it is an "otherwise related" or non-core proceeding. Id. (quoting In re Wood, 825 F.2d 90, 97 (5th Cir. 1987)).

LJM2 Co-Investment, L.P. v. LJM2 Capital Mgm't, L.P., 2003 WL 431684\*4 (D. Del. Feb. 24, 2003). Thus, I conclude that the first four counts are non-core proceedings.

With respect to the avoidance counts, these counts appear to be essentially the same type of avoidance counts that this Court addressed in its memorandum opinion of July 25, 2008 in the matter of Montague S. Claybrook v. Metro Auto Xpress, LLC trading as Tri-City Automotive Warehouse, Adv. Proc. No. 07-51750 (PJW) (Doc. # 26). That opinion dismissed the avoidance claims pursuant to a Rule 12(b)(6) motion. I believe the same ruling would apply here. Therefore I do not believe that these counts are relevant to the core versus non-core issue before me.

Very truly yours,



Peter J. Walsh

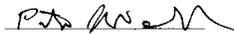
PJW:ipm

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:	)	Chapter 7
	)	
AMERICAN REMANUFACTURERS, INC.,	)	Case No. 05-20022 (PJW)
et al.,	)	
	)	(Jointly Administered)
Debtors.	)	
<hr style="width: 40%; margin-left: 0;"/>		
	)	
MONTAGUE S. CLAYBROOK,	)	
Chapter 7 Trustee for the	)	
estates of AMERICAN	)	
REMANUFACTURERS, INC., et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 07-51760 (PJW)
	)	
LES SCHWAB TIRES CENTERS OF	)	
OREGON, INC. trading as LES	)	
SCHWAB TIRES, and LES SCHWAB	)	
WAREHOUSE CENTER, INC.,	)	
	)	
Defendants.	)	

**ORDER**

For the reasons set forth in the Court's letter ruling of this date, with respect to Defendants' motion (Doc. # 18) for a determination of whether the claims in this adversary proceeding are core or non-core, the Court finds that the relevant claims are non-core.



Peter J. Walsh  
United States Bankruptcy Judge

Dated: September 30, 2008